THE
DOCKET
October 2011
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The Official Publication of the Lake County Bar Association

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Business Foresight.™

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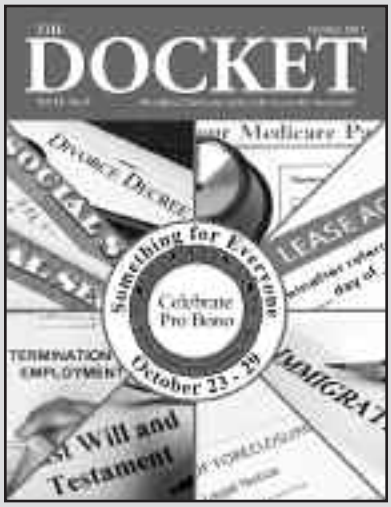
THE DOCKET

Inside this issue...



A publication of the

LAKE COUNTY BAR ASSOCIATION est. 1912

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In the Director's Chair by Christopher T. Boadt

Building Your Reputation and Referrals

The Lake County Bar Association offers several unique opportunities to develop leadership abilities, establish a reputation with the Lake County legal community and advance your professional career. Members are encouraged to serve on committees and specially appointed task forces, write for *The Docket*, speak at CLE seminars, attend special events and participate as a member of the Board of Directors.

Speak at a CLE Program

Have you ever said to yourself, "someone should do a CLE on that." That would be the perfect time to call the LCBA staff and ask them to share your idea with the CLE Committee. That committee has many resources at its fingertips and is able evaluate the need for such a program in Lake County and to locate speakers to address specific topics.

LCBA Member Gary Schlesinger volunteers his time to discuss the changes to Supreme Court Rule 1.15 during a recent CLE program.

Additionally, please consider sharing your knowledge with fellow LCBA members by speaking at a CLE program. You are one of our greatest assets. You will find that speaking at a CLE program will help build a positive reputation amongst your fellow practitioners and increase the number of referrals you receive. Just in case you didn't know, you will earn six times your actual presentation time in CLE Credit!

Write an article for *The Docket*

By authoring articles that circulate among nearly 1,000 business and legal professionals throughout Lake County, members can broaden their exposure to a whole host of referral opportunities. Articles are accepted for consideration year round. Please feel free to contact *The Docket* co-chairs Michael Strauss (strauss-familylaw@aol.com) or Rebecca Whitcombe (rwhitcombelaw@att.net) to discuss concepts or ideas you may have. Substantive legal articles ranging in length from 1,500 – 3,500 words are encouraged.

How to write for The Docket

The Editorial Board of *The Docket* is always looking for fresh and relevant articles to feature every month. Feature articles should be a minimum of 1,500 words and a maximum of 3,500. The deadline for submissions is the first day of the month preceding publication. Articles should be submitted electronically in Word or WordPerfect. The Editorial Board reserves the right to edit articles as they see fit to meet the needs of the publication. Please send submissions to info@lakebar.org or call (847) 244-3143 with questions.

The President's Page by Perry S. Smith, Jr.

Every year about this time someone reminds me that October features Pro Bono Week. Usually it's Susan Perlman from Prairie State Legal Service, who runs the Volunteer Lawyer Program. This year it was our own Virginia Elliott who reminded me that Pro Bono Week is October 23-29, 2011. So, if you didn't know about it, or, if you are like me and seemingly always forget about it, let me enlighten you.

Each year at the end of September we honor those among us who have contributed their time and talents to pro bono services at our luncheon meeting. This year we have moved that luncheon back to October 5th. If you get your Docket before that date and haven't registered for the luncheon, I am encouraging you to do so. Our special guest and speaker is a man who long ago worked with Kevin Kane at Prairie State Legal Services, our state Supreme Court Chief Justice, Thomas Kilbride. Also, through the efforts of Linda Rothnagle at Prairie State, there will be a CLE presentation on Negotiations by Dr. Jennifer Robbennolt, Professor of Law and Psychology at the University of Illinois. If you are already a volunteer for the LCBA – VLP, or agree to become a volunteer and agree to accept a case before December 31, 2012, the seminar is free. Otherwise there will be a $50.00 charge for the seminar.

But, volunteerism doesn't end at the VLP. In fact, it's just the beginning. We have expanded what was the Legal Aid Committee into what is now the Community Outreach Committee. One of that committee's upcoming activities is a blood drive on Tuesday, October 25th. The event will be at the LCBA office between 7:00 a. m. and 2:00 p. m. Come out and help show that we give of our blood for our clients and the public.

I am also asking that you give some of your time by volunteering to be a mentor to one of those who is new to our profession and the practice of law. By helping them we are helping the public and ourselves. The public is benefited by how we help guide the new lawyer and help them avoid the common pitfalls of inexperience. At the same time we help ourselves by producing a more competent and better quality lawyer, bolstering the public's confidence in our profession as a whole.

The LCBA is also helping out with Elliot Pinsel's Christmas ornament drive. We will have a number of ornaments available at our office and events for you to choose from in November and December, leading up to the holidays. If you are not familiar with Elliot's project, let me tell you all about it. There are a number of organizations or facilities like the Ann Kiley Center (a state operated facility in Waukegan for developmentally handicapped adults) which benefit from the program. The residents or clients make up a wish list of things that they need or want. The lists are translated into ornaments. You pick an ornament, purchase the item or items requested, drop it off to us or Elliot, and it is delivered at the holidays.

Another opportunity is to join with my wife and I as we celebrate our anniversary a day late and attend the Lake County Bar Foundation's second gala. This year's event will be held on November 18th at the Genesee Theatre. Last year's event was a great evening. There was cocktails, dinner, and dancing, silent auction, a photo both and more. This year's event promises to be all of that and then some. Proceeds from the event are shared with community charitable organizations. So come on out. Have a great time and help others at the same time.

Annual Shred Event

September 8, 2011

Over 8,000 pounds shredded!

Family Law Update

October 21, 2011
Greenbelt Cultural Center
1215 Greenbay Road, North Chicago

The Schedule:

Friday, October 21, 2011

11:45 a.m. — 1:15 p.m. Lunch served
12:30 noon — 4:45 p.m. Seminar

4 CLE Hours
Including 1 Ethics hours!
(pending Professionalism & Ethics Credit approval)

Topics:

Case Law Update
Mary Clark, Berger Schatz

Introduction of Electronic Evidence
Marjorie Sher, Attorney at Law

Interface of Family Law and Immigration Law
Andrew Sagartz, BENNU Legal Services

Domestic Violence
Hon. Mark L. Levitt

Judge's Round Table

Issues dealing with Retirement Plans in the Marital Settlement Agreement
Kevin Kane, Goldberg & Kane

Interface of Divorce and Bankruptcy
Andrew Youra, Fraser, Youra & Parikh

Custody Evaluator Panel

Mark your calendar:
Annual Family Law Travel Program
April 26-29, 2012
Austin, Texas

Registration Form

Seminar Tuition:

LCBA Attorney Member _____ $150 per person
Non-Member _____ $300 per person*

LCBA Associate Members contact LCBA Office for details

Name: _____ ARDC # _____
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Payment method: ☐ Check Enclosed ☐ AmEx ☐ VISA ☐ MasterCard ☐ Discover ☐ Credit card on file
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The Chief Judge's Page by Chief Judge Victoria A. Rossetti

From the volunteers that first served in the Continental Army to those currently serving in Iraq and Afghanistan, our country has long been safeguarded by brave men and women ready to defend our freedom.

Our Armed Forces have changed but what remains consistent among all branches is a sense of honor, duty and commitment. This is evident in the millions of veterans who have returned home to their communities as productive citizens strengthened by their military experience. But we are also aware that some veterans struggle upon returning home.

Today, there are now more than 23 million U.S. veterans. In Lake County our veteran population is about 39,000. The current Veteran's Assistance Commission client base shows 9,500 with approximately 4,500 unemployed, 782 on food stamps and 60 in homeless shelters. Research shows that one in six veterans from Operations Enduring.

Freedom and Iraqi Freedom suffers from a substance abuse challenge; one in five has symptoms of mental disorder or cognitive impairment. And the research continues to draw a link between substance abuse and combat related mental illness and an increasing number of veterans are appearing in our courts to face charges stemming directly from these issues. And so this unique population calls for a unique solution.

In late August we began a third branch in our Therapeutic Intensive Monitoring Court (TIM), Veterans Treatment and Assistance Court (VTAC). VTAC is modeled after our drug and mental health court programs; that is, judicially supervised balancing the need to treat a veteran and the need to protect community safety; between the need for effective treatment and the need to hold a person accountable; to give hope and productive citizenship.

We ask much of our men and women in uniform and VTAC is one way to give back, to give a veteran an opportunity for treatment and restoration.

The mission of VTAC is to coordinate a community response to the rehabilitative needs of the veteran offender through collaboration between the Veteran's Administration's service delivery system, local treatment providers and the criminal justice system partners, to promote sobriety, recovery and stability.

The bonds of military service run deep. Veterans have many shared experiences not common among civilians; therefore, traditional community services may not be adequately suited to meet their distinct needs. VTAC will involve veteran mentors as well as veterans and veterans family support organizations.

We are off to a great start, with Judge John Phillips presiding and Judge Mark Levitt as his back up.

We ask much of our men and women in uniform and VTAC is one way to give back, to give a veteran an opportunity for treatment and restoration.

While writing this; on September 19, 2011, the American Legion passed a resolution in support of Veterans Treatment Courts.

Membership Luncheon Series

Lunch 12:00 noon
Meeting and Guest Speaker 12:15 — 1:15 p.m.
Greenbelt Cultural Center
1215 Green Bay Road, North Chicago

October 5, 2011

Chief Justice Thomas L. Kilbride

Pro Bono Service Awards

Co-Sponsored by
Community Outreach Committee
&
Association of Women Attorneys of Lake County

October 26, 2011

ARDC James J. Grogan

ARDC Update
(1 hr. Professionalism CLE)

Co-Sponsored by
Professionalism & Office Management Committee

November 16, 2011

ISBA President John G. Locallo

State of the Cuban Legal System

Shortly after returning from a visit to Cuba, ISBA President Locallo will discuss his observations of the Cuban legal system as compared to the U.S.

	EARLY-BIRD FEE	STANDARD FEE
Oct 5 Luncheon:	_____ $25 (paid by 9/30)	____ $30
Oct 26 Luncheon/CLE:	_____ $50 (paid by 10/21)	____ $75
Nov 16 Luncheon:	_____ $25 (paid by 11/11)	____ $30
ALL THREE LUNCHES	_____ **$75** (paid by 9/30)	

THE FINE PRINT
Early-bird fee applies to registrations received and paid for by the Friday prior to each lunch. All other registrations (including pay-at-the-door) pay the "standard" fee. Cancellations accepted through the Friday prior to each luncheon.

Name: _____ ARDC # _____

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E-Mail: _____

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Signature: _____

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RATES INDICATED ARE THE MEMBER DISCOUNTED RATES...NON-MEMBER RATE IS DOUBLE

The American Jobs Creation Act of 2010

Section 181 Extension

Late last year, the President signed into law the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010. With this change in the tax code qualified tax incentives under Section 181 of the Internal Revenue Code (26 U.S.C. 181) were extended for two years. Under Section 181, all taxpayers, individuals or companies who invest in qualified films or television projects can have a loss of 100 percent of the money invested in the production in the tax years in which the production company spends the money invested. All qualified films and television projects made in 2010 and all qualified films and television projects to be made or begun in 2011 will be covered under Section 181. Section 181 first came into effect in October, 2004, under the American Jobs Creation Act of 2004.

By
Hal "Corky" Kessler

Each qualified film or television project can expense out to the taxpayer investors an amount up to a maximum of $15 million per film or, if a significant amount is filmed or paid in a low-income state, $20 million per film. In television, the amount allowed to be expensed out to the taxpaying investors is a similar up to a maximum of $15 million or $20 million per episode for up to 44 episodes.

It is surprising that not many television or film projects have taken advantage of Section 181 and its benefits. The reasons given are either that they knew nothing about it or that their attorney and/or accountant told them it was too difficult to use or did not work. These reasons are false and baseless excuses. The application is simple and it works. All of the films that I was the attorney on since October, 2004, took full advantage of all of the benefits of Section 181.

One major issue affecting the applicability of Section 181 bars the capitalizing of the production expenses. If the accountant does not know better and capitalizes the production expenses, the film or television project is disqualified from Section 181.

In the fourth quarter of 2011 and if Section 181 is not being then extended, all filmmakers and television producers should ensure all their projects are "grandfathered" before the end of 2011. This will assure that their films or television projects will have continued Section 181 benefits for years.

There is no excuse filmmakers and independent television producers should not use Section 181 for all qualified films and in television projects. Failure to do so will leave investors without a recovery of their investment by using Section 181 benefits on their tax returns. When you take advantage of Section 181 and spend production funds in states with good benefits or transferable state tax credits, you can provide your taxpaying investors a recovery of their investment of 50 to 77 cents on every dollar invested. There is no other business that can take advantage of these benefits. This is the case regardless of any sale or distribution of revenue from the film or television project.

In addition to the tax reduction incentives under Section 181, the income received also has some tax reduction opportunities under Code Section 199, which was also added by the American Jobs Creation Act of 2004. Under the manufacturing sections of the Act, film production businesses are considered "manufacturing businesses." From 2007 until 2010, manufacturing businesses can deduct income from their qualified production activities of an amount equal to 6 percent of such income, and from 2010, and beyond they can deduct 9 percent. This deduction may also apply to television productions. For example, if $100 is received from 2007 up to 2010, then the taxable income is $94. If $100 is received after 2010, then the taxable income would be $91. Section 199 provides income tax benefits to a taxpayer separate from those provided under Section 181. A film could qualify under both sections. However, even if a film does not qualify for income tax benefits under Section 181, the film may be a "qualified film production" pursuant to Section 199 if (a) direct labor and overhead costs incurred within the United States account for 20 percent or more of the total costs of the film, and (b) 50 percent or more of the total cost of the film is spent on services performed in the United States. In addition, expenses incurred in Puerto Rico are allowed to take advantage of Section 199. Section 199 **DOES NOT** sunset.

I hope none of you lose out on the opportunity to take advantage of Section 181 and the benefits of Section 199.

Hal "Corky" Kessler is with the Chicago firm of Deutsch, Levy & Engel. Most recently he has successfully worked with governors and United States Congressmen in several states to implement new laws and federal tax incentives for investments in qualifying film and television projects, which led to Sections 181 and 199 of The American Jobs Creation Act of 2004 and the 2008 extension and amendment to same.

Summary Suspension after a Motor Vehicle Accident

The Illinois legislature has granted the Secretary of State authority to suspend driver's licenses and driving privileges of individuals who are involved in motor vehicle accidents involving personal injuries. This article will discuss *Odom v. White*, 408 Ill. App. 3d 1113 (Ill. App. 5 th Dist. 2011), a recent decision from the Illinois Appellate Court, Fifth District. The issue in *Odom v. White* was whether the injuries suffered in two motor vehicle accidents met the statutory definition of a type "A" injury, which confers implied consent for a blood-alcohol test.

By Lisa L. Dunn

Section 6-206(a)(31) of the Illinois Vehicle Code gives the Secretary of State discretionary authority to suspend or revoke the driving privileges of any person upon sufficient evidence that the person has refused to submit to a blood-alcohol test as required by section 11-501.6 of the Vehicle Code (625 ILCS 5/11-501.6 (West 2008)) or has submitted to a test resulting in an alcohol concentration of 0.08 or more. 625 ILCS 5/6-206(a)(31) (West 2008). Section 11-501.6(a) of the Vehicle Code provides that any person who drives or is in actual control of a motor vehicle upon the public highways and who has been involved in an accident resulting in personal injury or death for which he has been arrested for a non-equipment violation, as evidenced by a traffic ticket, shall be deemed to have given consent for a blood-alcohol test. 625 ILCS 5/11-501.6(a) (West 2008). Pursuant to 625 ILCS 5/11-501.6(g), "[a] personal injury shall include any type A injury as indicated on the traffic accident report completed by a law enforcement officer that requires immediate professional attention in either a doctor's office or a medical facility. A type A injury shall include severely bleeding wounds, distorted extremities, and injuries that require the injured party to be carried from the scene."

In *Ryan v. Fink*, 174 Ill. 2d 302, 310 (1996), the Illinois Supreme Court held that type A injuries are limited to those listed in Section 5/11-501.6(g), namely, "severely bleeding wounds, distorted extremities, or injuries that require the injured party to be carried from the scene." As a result, only drivers involved in more serious accidents, in which the expectation of privacy is diminished and the administration of the blood-alcohol test is minimally intrusive, are subject to testing. *Fink*, 174 Ill. 2d at 311. The statute does not require the law enforcement officer to have any suspicion or cause to believe that the driver is intoxicated or under the influence of alcohol prior to asking him or her to submit to testing. Therefore, the application is limited to motor vehicle accidents of a more serious nature. *Fink*, 174 Ill. 2d at 309-12.

Odom v. White consisted of two consolidated cases. The facts surrounding appellant Joshua A. Odom reveal that he was involved in a one-car accident and could not get out of his vehicle because his car came to rest against an embankment. Appellant Odom repeatedly told the responding personnel that he was "fine and not injured." Odom's only injury was a minor head laceration. The traffic accident report indicates a type B injury. The only time Odom might have "moaned" or "groaned" was at the hospital when blood was drawn because of his aversion to that procedure.

The facts surrounding appellant Jason H. Janes reveal that a passenger in Janes's vehicle had a small cut above his right eye. Over his objection, the passenger was taken to the hospital by ambulance,. The traffic accident report did not indicate a type A injury or an incapacitating injury. Both Odom and Janes submitted to blood alcohol tests, which revealed blood alcohol concentrations of 0.08 or more. Both drivers' driving privileges were suspended and each driver contested the suspension before the Secretary of State. In each case, the Secretary upheld the suspension, which was then affirmed by the circuit court. The Appellate Court reversed the Secretary's decisions and found that merely carrying away a passenger from the scene by ambulance does not fulfill the statutory requirement of a type A injury. The Appellate Court held that the plain language of the statute requires not only that the injured party be carried from the scene, but that they have injuries that **require** they be carried from the scene. The Appellate Court stated that the implied consent statute was held constitutional in *Fink* because it was narrowly drawn to apply only to drivers involved in more serious accidents. It is those more serious accidents in which the expectation of privacy is diminished and the administration of a blood-alcohol test is minimally intrusive. Thus, the Illinois Appellate Court, Fifth Distict held that suspension of driving privileges pursuant to Section 6-206(a)(31) of the Illinois Vehicle Code is limited to type A injuries, which must include "severely bleeding wounds, distorted extremities, and injuries that require the injured party to be carried from the scene." Odom, 408 Ill. App. 3d at1115.

In summary, the Fifth District Appellate Court has now provided some guidance as to what a type A personal injury actually means. According to the Fifth District, a type A injury includes "severely bleeding wounds, distorted extremities, and injuries that require the injured party to be carried from the scene." 625 ILCS 5/11-601.5(g) (West 2008). It does not mean merely removed from the scene by ambulance.

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 former Hearing Officer with the Secretary of State, Department of Administrative Hearings, and has extensive experience with DUI license reinstatement hearings, BAIID violations, and interpretation of the rules and regulations of the Secretary of State.

Inaugural Meeting of
LCBA Immigration Law Committee

Join us on Columbus Day Eve to acknowledge America's most famous Italian immigrant, and to plan our new Immigration Law Committee activities!

Tuesday, October 11
4:30-6:30PM at LCBA Offices

Light beverages and refreshments will be available.

Our Mission: To heighten awareness and encourage participation in representing the legal needs of non-citizens across our community. To promote the delivery of competent, ethical and lawful immigration services. To serve as a platform to provide support and professional development for practitioners interested in or impacted by immigration law. To raise awareness of the impact of immigration status on other areas of the law, such as criminal defense, employment law, family law, estate planning, corporate law, etc.

If you are unable to attend and would like to be added to the Immigration Law Committee mailing list, please send a quick note to: info@lakebar.org.

Best Practices in Diversity

Up to 7.75 CLE hours

****Incl. up to 4.25 hr of Professional Responsibility Credit (pending)**

Tuesday, November 8, 2011
Lake County Bar Association
300 Grand Ave, Suite A — Waukegan, IL

LAKE COUNTY BAR ASSOCIATION 1912

Supported by:
LCBA Diversity Committee

Attn: Employment, Estate Planning & Family Law Practitioners

Diversity is a broad category, one that refers to differences in race, gender, age, disability, religion, sexual orientation or nationality. Diversity essentially means differences. Workplaces, and our lives in general, have become far more diverse over the past several decades. This program will increase your knowledge of and importance of understanding how anti-discrimination policies and laws are changing our community.

Attend one session or the entire day

SESSION 1 8:30 a.m. – 9:15 a.m. (45 min / Ethics)

Discrimination Prohibitions in the Code of Professional Responsibility: Know the Law or Risk Your License

JEROME LARKIN, Administrator, Attorney Registration and Disciplinary Commission (ARDC).

SESSION 2 9:15 – 9:45 (30 min / Ethics)

The Illinois Human Rights Act: A Case Study of a Previously Federal-Only COA

HON. WALLACE B. DUNN

SESSION 3 10:00 – 10:45 (45 min)

The Illinois Civil Union Statute: What the law says – What to know before saying, "I do."

HON. CHARLES D. JOHNSON

SESSION 4 10:45 – 11:30 (45 min)

Pre Nuptial, Ante-Union Agreements for Domestic Partnerships

Speaker TBA

SESSION 5 11:30 – 12:15 (45 min / Ethics)

Ethical and Planning Issues for Unmarried Domestic Partners

DAVID J. GORDON, CFP, CIMA Managing Director – Investment Officer Wells Fargo Advisors

SESSION 6 12:15 -1:45 (1.5 hours / Ethics)

Bullying Prevention and Awareness

JUDY FREEDMAN, MSW, LCSW

SESSION 7 1:45 – 2:15 (30 min)

Public Sector Employment Issues

LAWRENCE WEINER, Laner Muchin Dombrow Becker Levin & Tominberg Ltd.

SESSION 8 2:30 – 3:15 (45 min)

Employment Law in the Private Sector: Plaintiff's Issues

KEITH HUNT, Hunt & Associates, PC

SESSION 9 3:15 – 4:00 (45 min)

Defendants' Viewpoint on Avoiding Legal Issues with Problem Managers: Bullies and Wimps

BURR ANDERSON, Anderson Law Offices

SESSION 10 3:15 – 4:00 (45 min)

Sexual Harassment Law & Complaint Investigation

JENNIFER J. HOWE, Lesser Lutry, McGlynn

Wells Fargo – Together, we'll go far.

Lunch and refreshments sponsored by Wells Fargo Funds and David J. Gordon, Managing Director / Investment Officer, Wells Fargo Advisors

Need Professionalism Credit? Attend sessions 1, 2, 5, 6 & 10

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REGISTRATION FORM ON NEXT PAGE

Diversity CLE Buffet

Up to 7.75 CLE hours

****Incl. up to 4.25 hr of Professional Responsibility Credit (pending)**

Tuesday, November 8, 2011
Lake County Bar Association
300 Grand Ave — Waukegan, IL

REGISTRATION

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Session 1: _____ $25**
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Session 2: _____ $25**
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Session 3: _____ $25
IL Civil Union Statute

Session 4: _____ $25
Prenuptial agreements for Domestic Partnerships

Session 5: _____ $25**
Planning Issues for Unmarried Domestic Partners

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Employment Law in the Private Sector: Plaintiff's Issues

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Legal Issues with Problem Managers: Bullies and Wimps

Session 10: _____ $25**
Sexual Harassment

Attend all or only the sessions you want!

All Day Tuition: 7.75 CLE hours

____$175 LCBA Members

____ $299 Non-members

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Session 3: _____ $50
IL Civil Union Statute

Session 4: _____ $50
Prenuptial agreements for Domestic Partnerships

Session 5: _____ $50**
Planning Issues for Unmarried Domestic Partners

Session 6: _____ $50**
Bullying Prevention and Awareness

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Public Sector Employment Issues

Session 8: _____ $50
Employment Law in the Private Sector: Plaintiff's Issues

Session 9: _____ $50
Legal Issues with Problem Managers: Bullies and Wimps

Session 10: _____ $50**
Sexual Harassment

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In the Months Ahead...

October 5, 2011
Membership Luncheon:
Featuring Justice Thomas L. Kilbride

October 21, 2011
Family Law Seminar

October 25, 2011
LCBA Halloween Blood Drive

October 26, 2011
Membership Luncheon:
Featuring Jim Grogan, ARDC

November 8, 2011
Diversity Seminar

November 10, 2011
Estate Planning Conference

November 16, 2011
Membership Luncheon:
Featuring ISBA President
John G. Locallo

November 18, 2011
Foundation Dinner Dance Gala

December 16, 2011
LCBA Holiday Party
The Forge Club

Please call (847) 244-3143 to confirm dates, time and location of event before you attend

BLOOD DRIVE
OCTOBER 25, 2011
7 A.M. - 2 P.M.

Every two seconds someone needs a blood donation and on Oct. 25 the LCBA & LifeSource will be here to take it!

The March of Pekin Insurance Company to Limit Additional Insured Coverage

and the Surprising Fork in the Road Along the Way

Spreading the risk of potential lawsuits is part of doing business. A general contractor typically spreads its risk by requiring its sub-contractors to list the general contractor as an additional insured on the sub-contractor's Commercial General Liability policy, with the intent of tendering lawsuits arising from the work of the sub-contractor back to the sub-contractor. In turn, the insurer of the sub-contractor spreads its risk by writing additional insured endorsements with language limiting the scope of additional insured coverage. These divergent interests have culminated in the following additional insured endorsement:

By
Janelle Christensen

> Such person or organization is an additional insured only with respect to liability incurred solely as the result of some act or omission of the named insured and not for its own independent negligence or statutory violation.

This endorsement agrees to provide additional insured status to general contractors, but only with respect to the liability incurred by the general contractor *solely* as the result of some or act or omission of the sub-contractor. In other words, it does not provide coverage to the general contractor for its own independent negligence.

At first blush, the endorsement makes sense. After all, why should the sub-contractor agree to defend and indemnify the general contractor for the independent negligence of the general contractor, since the general contractor has its own insurance policy to insure it for that risk? From the sub-contractor's standpoint, a contractual requirement to name the general contractor as an additional insured should not constitute a "get out of jail free" card for the general contractor such that the general contractor may act with impunity on the job site knowing that its sub-contractors will be there to pick up the liability pieces (and in fact, such a contract would likely violate the Construction Contract Indemnification for Negligence Act, 740 ILCS 35/1 *et al.*).

The endorsement limits additional insured status to those general contractors who are sued under a theory of vicarious liability for the acts of theirits sub-contractors. However, upon closer examination, the endorsement affords little to no protection for the general contractor; after all, rarely does a plaintiff sue the general contractor solely under a theory of vicarious liability, particularly where the fault lies with the sub-contractor, who is the employer of the injured worker. Since the plaintiff cannot sue the employer directly, and where the *Kotecki* cap is firmly in place, it benefits the plaintiff to plead a separate theory of liability against another party—usually the general contractor or another sub-contractor—to ensure a pocket or two for indemnity. *Kotecki v. Cyclops Welding Corp.*, 585 N.E.2d 1023 (Ill. 1991). Thus, the plaintiff has every motivation to sue the general contractor under a general theory of negligence, rather than a more limited theory of vicarious liability. Consequently, the endorsement is caught between the competing interests of the general contractor, who wants to widen its net, and the sub-contractor, who wants to narrow its net.

In the past three years, Pekin Insurance Company has been marching its Additional Insured endorsement through the First District with great success. In three separate decisions, the First District has held that the Additional Insured endorsement did not trigger a duty to defend the general contractor where the complaint alleged a theory of liability based upon the general contractor's own fault. *Pekin Ins. Co. v. Beu*, 876 N.E.2d 167 (Ill. App. 1st Dist. 2007); *Pekin v. United Parcel Service*, 885 N.E.2d 386 (Ill. App. 1st Dist. 2008); *Pekin Ins. Co. v. Roszak LLC*, 931 N.E.2d 799 (Ill. App. 1st Dist. 2010). In other words, unless the cause of action pled against the general contractor was limited to a theory of vicarious liability, the first three times the First District encountered the Additional Insured endorsement the court held that the insurer of the sub-contractor had no duty to defend or indemnify the general contractor.

In an interesting twist, as Pekin continued to push its Additional Insured endorsement through the Illinois courts, the legal analysis began to shift away from a narrow interpretation of the language of the endorsement and, instead, moved to a broader analysis regarding what materials the court may consider when determining whether the insurer has a duty to defend. As discussed below, once the courtcourt's broadened the baseline as to what information it may consider when analyzing the duty to defend, Pekin's march came to an abrupt halt.

To understand the evolution of the case law, we start with *Pekin v. Beu*, the first step of Pekin's march. 876 N.E.2d 167 (Ill. App. 1st Dist. 2007). In this case, Roger and Linda Beu entered into a contract with Castle Builders regarding the construction of a home. Pekin issued a policy to Castle Builders in which Roger Beu was listed as an additional insured. An employee of a sub-contractor was injured on the job, and that employee brought a lawsuit sounding in negligence against Castle Builders, the Beus, and several sub-contractors. Count IV of the complaint was directed against the Beu's and sounded in negligence.

The court applied the endorsement to the facts pled within the four corners of the complaint and held that since "the allegations in [the underlying complaint] were not based solely on the acts of or omissions of the named insured, but also were predicated on the additional insured's' [the Beus'] alleged independent acts of negli-

gence, plaintiff has no duty to defend the additional insured under the terms of the policy." The court held that the Beus did not qualify as an additional insured under the Pekin endorsement because the complaint failed to allege that the Beus' fault was *solely* a result of the acts of Castle Builders.

In the next case, *Pekin v. United Parcel Service*, the plaintiff worked for Swan Machinery,. 885 N.E.2d 386 (Ill. App. 1st Dist. 2008). UPS hired Swan to install some machinery in its Palatine facility. While performing the work, the plaintiff borrowed a ladder from UPS and was injured when the ladder broke. The plaintiff sued the manufacturer of the ladder under a theory of product liability and he sued UPS under a theory of negligence. UPS brought the plaintiff's employer (Swan) into the suit via a third-party complaint for contribution. UPS was listed as an additional insured on Swan's policy with Pekin.

When UPS tendered its defense to Pekin, Pekin denied that it had a duty to defend and indemnify UPS because the complaint alleged that UPS was at fault for failing to maintain its ladder. UPS prevailed at the trial court level by arguing that irrespective of the allegations of the complaint, Pekin's defense obligation was triggered because UPS could have vicarious liability for the acts of Swan Machinery under § 414 of the Restatement of Torts. Section 414 provides:

> One who entrusts work to an independent contractor, but who retains the control of any part of the work, is subject to liability for physical harm to others for whose safety the employer owes a duty to exercise reasonable care, which is caused by his failure to exercise his control with reasonable care.

The court acknowledged that § 414 provides that the where the contractor retains sufficient control over the operative details of its sub-contractor's work, the general contractor may become vicariously liable for the sub-contractor's negligence. But the court further held that in the alternative, even in absence of such control, the general contractor may be directly liable for not exercising his supervisory control with reasonable care. Thus, § 414 cuts both for and against vicarious liability.

The appellate court determined that there were no facts pled which would support a theory that the general contractor had control over the sub-contractor's work such that § 414 would implicate a theory of vicarious liability and, correspondingly, trigger a duty to defend under the Additional Insured endorsement. UPS urged the court to review the allegations of the third-party complaint, wherein it sought contribution from Swan. The court responded that the third-party complaint simply sought to name Swan as an additional party at fault, rather than supporting a finding that UPS was only vicariously liable.

In dissent, Justice McNulty cited to *Ill. Emcasco Ins. Co. v. Northwestern Nat'l Cas. Co.*, 785 N.E.2d 905 (Ill. App. 1st Dist. 2003), for the proposition that where the facts of the complaint raise the possibility of coverage, the insurer has a duty to defend unless the allegations in the complaint demonstrate that the plaintiff will not be able to prove the insured liable under any theory supported by the complaint. Justice McNulty argued that since there was a possibility that the jury could find that UPS was only vicariously liable for the actions of its independent contractor, Swan, the allegations were sufficiently broad to trigger Pekin's duty to defend. Although Justice McNulty was in the minority, as discussed below, both the Second District and the Illinois Supreme Court would later echo this position within their majority opinions.

For round three, Pekin stepped out of the First District and litigated the application of the endorsement in the Second District. *Pekin Ins. Co. v. Hallmark Homes, LLC*, 912 N.E.2d 250 (Ill. App. 2d Dist. 2009). Unlike the First District, the Second District held that Pekin owed the contractor a duty to defend. As with the other cases, here, Hallmark was named an additional insured under a policy issued by Pekin to MC Builders. A sub-contractor on the project was injured and sued, among others, Hallmark Homes and MC Builders. Hallmark was sued under two theories of negligence: § 414 and § 343 of the Restatement (Second) of Torts. Section 343 asserts a theory of premises liability.

Hallmark tendered its defense to Pekin, and Pekin denied on the basis that the complaint alleged that Hallmark's own negligence made it liable to the plaintiff, and therefore MC Builders could not be solely at fault as required by the endorsement. The appellate court, in affirming the trial court, held that pursuant to the claim arising under section § 414, the contractor could be held vicariously liable for the acts of the sub-contractor, despite the fact that the complaint did not allege vicarious liability. Moreover, under § 343, based upon the manner in which plaintiff pled the complaint, it was possible that Hallmark could only be vicariously liable for the actions of MC Builders. For, as the court held, "The test is not whether the complaint directly alleges facts that show that the claim is within the coverage provided by the policy. Rather, the insurer owes a duty to defend

unless, 'the insurance cannot possibly cover the liability arising from the facts alleged' and the terms of the policy clearly preclude coverage under all of the facts consistent with the allegation." (citing to *Ill. Emcasco Ins. Co v. Northwestern Nat. Cas.*, 785 N.E.2d 905 (Ill. App. 1st Dist. 2003).

Furthermore, in response to *Beu* and *UPS*, the Second District held that the First District's holding that the complaint must explicitly identify the claim that is within the "additional insured" coverage represents an unduly narrow reading of the applicable test. The court wrote that, "This approach ignores the Supreme Court's statements that the duty to defend exists where the facts alleged in the complaint are consistent with liability under the policy, thereby giving rise to at least one scenario in which there would be coverage." The court concluded that despite the fact that *UPS* and *Beu* involved similar policy language, "We reject Pekin's reliance on *UPS* and *Beu* and find that, despite the fact that those cases involved similar language, the holding of those cases does not control here."

In round four, Pekin returned to the First District. *Pekin Ins. Co. v. Roszak LLC.*, 931 N.E.2d 799 (Ill. App. 1st Dist. 2010). The facts were identical to *Beu* and *UPS* in that the complaint alleged an independent theory of negligence against the general contractor and did not allege a separate theory of vicarious liability. Riding on the coattails of the dissent of the *UPS* case, the general contractor cited to *Ill. Emasco Ins. Co. v. Northwestern Nat. Cas. Co.* for the proposition that the facts in the complaint raised the possibility of coverage, such that at a minimum, Pekin had a duty to defend. Although the trial court held that the facts in the complaint were sufficient to trigger a duty to defend, the appellate court reversed.

The appellate court rejected the general contractor's argument that so long as a complaint does not preclude or foreclose the possibility of a theory of liability that would be covered by an insurance policy, the insurer would owe a duty to defend. "While we must construe the complaint liberally in favor of the insured, we are still tied to the words of the complaint. . . . However, we will not read into the complaint facts that are not there." 931 N.E.2d at 806. While the general contractor raised the specter of illusory coverage, the court found this argument unpersuasive. The court held that while the endorsement does not cover situations of the additional insured's own negligence, it does cover situations where the additional insured retained sufficient control over the operative details of the named insured's work such so as to become vicariously liable for the acts or omissions of the named insured." *Id.* at 809. The First District further held that the Second District misread § 414 of the Restatement in that a general contractor has the right to stop work being performed dangerously without becoming vicariously liable. In disagreeing with the Second District, the First District wrote that the facts pled in the *Hallmark* complaint were not sufficient to allege vicarious liability, but instead fell within the contractor's own negligence, thereby defeating coverage.

Round 5 (the final round to date) was again fought by Pekin in the First District, where, in a surprising turn of events, the First District found a duty to defend. *Pekin Ins. Co. v. Pulte Home Corp.*, 935 N.E.2d 1058 (Ill. App. 1st Dist. 2010). Here, the plaintiff was injured when he fell into an open sewer hole. Plaintiff sued the sewer contractor, Kunde Construction, as well as the general contractor, Pulte. Pulte tendered to Kunde's carrier, Pekin, and Pekin denied a duty to defend based on the fact that the complaint did not specifically plead that Pulte was vicariously liable for the acts of its sub-contractor, Kunde.

Instead of relying solely upon the facts pled within the four corners of the pleading, the court considered outside facts, including a request to admit the contractor served on the plaintiff, as? well as the contract between the sub-contractor and the contractor. The court acknowledged that the Roszak court held that its analysis on the duty to defend was "tied to the words of the complaint," but held that the Roszak analysis ran counter to the Supreme Court's decision in *Pekin Ins. Co v. Wilson*, 930 N.E.2d 1011 (Ill. 2010), wherein the Supreme Court held that a court may look beyond the four corners of the pleading when considering the duty to defend. In response to the request to admit, the plaintiff admitted that he was seeking all theories of liability against the contractor, including vicarious liability under § 414 of the Restatement of Torts. Additionally, the contract between the contractor and the sub-contractor provided that the sub-contractor would indemnify the contractor "unless such claims have been specifically determined by the trier of fact to be the sole negligence of Pulte." Since a finding as to whether Pulte was solely liable could not be made until after a trial had been held, and since the facts supported a finding that the sewer contractor was at fault, the court declared Pulte to be an additional insured under the contract and ordered that Pekin had a duty to defend.

The court distinguished *Beu* and *UPS* on the basis that those cases did not look beyond the pleadings, and, thus, the courts in those cases did not consider the contract between the contractor and the sub-contractor. Moreover, with respect to *UPS*, neither the complaint nor the third-party complaint alleged that the named insured (the sub-contractor) was in any way liable for the accident, whereas in the case under consideration, the facts alleged made it possible, if not likely, that the sub-contractor would be found solely liable for leaving an open manhole. Although the court expressly acknowledged that it reached the same result as the Second District in *Hallmark*, it chose not to address the holding in *Hallmark*, but simply distinguished it based on "the specific terms of the subcontractor agreement as well as the facts giving rise to the underlying litigation."

When Pekin first marched its Additional Insured endorsement through the First District, the Court's analysis was limited to

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TOPICS

- **Introduction to the new probate forms and Probate Mediation Project**
  Thomas A. Pasquesi, Pasquesi Associates, P.C.
- **Trust and Estate Statute and Case Law Updates**
  John P. Richtman, Churchill, Quinn, Richtman & Hamilton, Ltd.
- **Contested Claims in Probate Estates**
  David M. Lutrey, Lesser, Lutrey & McGlynn, LLP
- **International Estate Planning**
  H. Randolph Williams, Williams & Baerson, LLC
- **Impact of Civil Unions on Estate Planning and Administration**
  Elizabeth A. Garlovsky, Elizabeth A. Garlovsky & Associates, LLC
- **Interstate Income Tax Return Considerations in Trust and Estate Administration**
  Stacy E. Singer, The Northern Trust Company
- **Comments from the Bench**
  The Honorable Diane E. Winter, 19th Judicial Circuit

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an overlay of the facts to the language of the endorsement. If the complaint alleged any theory against the general contractor other than vicarious liability, the result was no coverage, as showcased by the decisions in *Beu* and *UPS*. In these cases, plaintiff pled a generic complaint, which alleged that the contractor and the sub-contractor were liable, *and each of them*. Given the broad language, the court concluded that because the complaint did not allege that the sub-contractor was solely at fault, nor did the complaint allege that the contractor was only vicariously liable, therefore the terms of the additional insured endorsement were not met and the insurer had no duty to defend.

During the course of Pekin's journey, however, the issue shifted away from a literal interpretation to the more complex question regarding the duty to defend. The Supreme Court's decision in the *Wilson* case marked the turning point. By broadening the consideration of the duty to defend beyond the four corners of the complaint, the end result was a greater likelihood of triggering the defense obligation and toppling the precedent established by Pekin in the First District. Both insureds and insurers spread their risk,. Ttkhe first by purchasing insurance and the second by limiting the breadth of coverage. Here, Pekin has spread its risk by limiting the scope of additional insured coverage from a sub-contractor to a contractor to one cause of action: vicarious liability. While the decision in the *Wilson* case cannot broaden the scope of indemnity (which, under the endorsement will always be limited to indemnifying for only vicarious liability) nevertheless, *Wilson* and *Pulte* benefit the general contractor by offering a mechanism to implicate the duty to defend. Thus, while Pekin may end up not being required to indemnify the general contractor (where, for example, a jury finds that the general contractor was negligent rather than vicariously liable), Pekin can no longer march away from the endorsement and decline coverage based solely upon the fact that the underlying pleading does not plead a count for vicarious liability. The savvy insured will expand the body of facts for the court to consider in the coverage action by referring to its answer, affirmative defenses, counterclaims, third-party complaints, and, as in the *Pulte* case, requests to admit. By broadening the web, it is more likely that Pekin will have to defend the general contractor during the underlying litigation while reserving on the issue of indemnity.

In the end, to some extent, the court's decision on the duty to defend ends up equalizing the endorsement. After all, through its endorsement, Pekin has successfully limited its duty to indemnify the General Contractor's vicarious liability, which, in terms of risk, is fairly low. Nevertheless, with a more expansive trigger on the duty to defend, the additional insured may at least gain the ability to shift its defense costs to its subcontractor's liability carrier, which, in turn, has the impact of lessening the contractor's risk.

Janelle K. Christensen is an Assistant State's Attorney in the Civil Trial Division of the Lake County Illinois State's Attorney Office. Ms. Christensen was a partner in the Chicago Office of the law firm of Tressler, Soderstrom, Maloney and Priess, LLC with a practice area in insurance defense and insurance coverage litigation. Ms. Christensen sat on the Board of Directors for the Illinois Association of Defense Trial Counsel (IDC) from 2003-2006.

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What's Up at the Jail?

Local lawyers who work in criminal practice already know much about the programs offered for inmates at the Lake County Jail. But even many of them, as well as most attorneys in civil practice, may be surprised to learn the extent of services available to inmates. These programs are all intended to promote better lives for inmates and to reduce the recidivism rates among those who have been released.

By Ann Conroy

Certainly, the jail confines inmates, feeds them, gives them places to sleep and to shower, launders the "uniforms" they wear and gets them to and from court appearances, all the while maintaining order and cleanliness. What happens otherwise? The once prevalent view that jail inmates just sit in cells wishing they were elsewhere is no longer true for the "average" inmate in Lake County Jail.

Upon entry to the jail for a determined period of confinement, inmates are examined by medical personnel to learn their general health and specific medical needs. Thereafter, medical assistance is available 24/7, as warranted, or as deemed appropriate by the Court or Corrections officers. In addition, inmates can participate voluntarily in a variety of health and well-being programs. There are substance abuse counseling, both Narcotics and Alcoholics Anonymous meetings, anger management classes and general health issues discussions regularly set and mentoring in these areas provided. Exercise time and equipment are available for inmate use on a regulated basis if the inmate is in compliance with routine rules of behavior in the pod in which he or she is situated.

That's the beginning. Other voluntary activities include religious worship services and Bible study. Protestant, Catholic or Muslim chaplains come daily for personal conferences and mentoring. Jewish chaplains can be provided upon request. Educational opportunities abound. The College of Lake County provides teachers for GED classes and testing at the jail, as well as tutoring for GED studies. English language classes in reading and speaking for non-native speakers, literacy training to improve reading levels, computer studies, work skills development, life and parenting skills, and even some theater, poetry and writing classes, are all on tap to assist inmates to upgrade their personal interactive abilities.

A series of family life programs enables inmates to relate better within their families, particularly with their children. Notable among these are the Fatherhood Initiative and Malachi Dads, two efforts to nurture fa-

ther and child relationships, and the "Read to Me Mom/Dad" project, in which inmates are recorded on CDs reading a book aloud to their children (one to nine years old) and the CD and book are sent to the child as a gift.

The Reentry programs at Lake County Jail are in place to assist inmates upon release to establish healthy connections outside that can guide them toward stability and non-criminal lifestyles. These programs cover housing, jobs, educational referrals and mentoring after their release from incarceration. It is the aim of Reentry to reduce recidivism, to the benefit of the inmate and society. Maintaining positive ways of learning and acting is supported through these programs.

On average, 160 inmates take part in voluntary programs and classes every day. More than 200 inmates each week use the jail's library, which is organized and staffed by a former librarian from the Waukegan Public Library. As of January, 2011, over 200 children had received personal recordings and books from absent parents, strengthening relationships between them. Each year about 100 inmates pass GED tests and receive certificates from the state, sometimes the first positive academic achievement for the inmate. It is one which opens new employment opportunities and also positions a released parent to present a positive standard for his or her own children regarding their educations.[1]

Perhaps the best news is that much of this works and almost all of it is financed by others – College of Lake County, the Public Library, Lake County Health Department, NICASA, over a hundred volunteers and other public-spirited persons and groups. They certainly have my gratitude and admiration.

For further information about specific programs, it is possible to contact Mr. Richard Riddle, Director of Inmate Programs at the jail or to speak with others in the Jail Library Office, each one of whom is well-versed and active in these programs.

In Lake County, anyone can emerge from a stint in jail a more informed citizen, a better parent and a person with the tools to improve his or her life.

Retired from practice after serving 21 years with the State's Attorney Office, Ann Buche Conroy now volunteers for Prairie State Legal Services and tutors female inmates at the Lake County City Jail. Ann is the Co-Chair of the Community Outreach Committee and a member of the Docket Editorial Board.

[1]As a tutor with women studying for the GED certificate, this writer can attest that achieving that certificate is no mean feat.

Thank You!

The following attorneys have accepted Pro Bono cases through Prairie State Legal Services in August 2011.

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Federal Judge Reflects on Life and Career

On Friday, July 22, 2011 the New Hope Missionary Baptist Church of Waukegan celebrated its 70th Anniversary with a Gala Dinner at the Ramada Inn in Waukegan, Illinois. The Reverend Percy Johnson hosted the event and the Honorable Curtis Collier, Chief Judge of the United States District Court of the Eastern District of Tennessee was the evening's keynote speaker.

By Nancy S. Waites

Judge Collier was able to paint a picture of his life and his career... that African American children attending segregated schools and chopping cotton is not ancient history.

It was my pleasure to attend along with Chief Judge Victoria Rossetti and Judges Jay Ukena, Margaret Mullen and George Bridges. It was an evening of fellowship that we all enjoyed. Much of the evening was spent talking about the history of the New Hope Missionary Baptist Church and its connection to the citizens of Waukegan. It was clear that New Hope has played an integral part in the life of the community and in the lives of its parishioners.

New Hope was founded 70 years ago by Reverend William Ivy Jenkins and has been served by three pastors. In addition to Rev. Jenkins the congregation has been led by Reverend John Patterson and its sitting Pastor, Reverend Percy l. Johnson. The Church continues its work through a variety of ministries and programs.

Judge Rossetti welcomed Judge Collier and expressed the best wishes of our Lake County judiciary on this special occasion. Judge Bridges had the honor of the introducing the keynote note speaker and did a terrific job.

Judge Collier's address focused on his personal history and the role that church plays in the community. By combining those topics, he was able to paint of picture of his life, and his career that made me realize that African American children attending segregated schools and chopping cotton is not ancient history. As a child, Judge Collier did exactly that.

Born in Arkansas in 1949, Judge Collier was one of nine children. He worked in the fields alongside his family and attended Arkansas schools prior to the United States Supreme Court decision in Brown v. Board of Education. Despite a severe stutter, he excelled in school and was able, with some help from the United States Air Force to complete his Bachelor of Science degree at Tennessee State University and his law degree at Duke University.

As a member of the Judge Advocate General's Office he fell in love with trial work and knew that the Courtroom was his future.

Judge Collier has served as an Assistant United States Attorney for the Eastern District of Louisiana and was appointed to the federal bench by President Bill Clinton in 1995. He became Chief Judge of the United States District Court for the Eastern District of Tennessee in 2005.

Listening to Judge Collier I could not help but reflect on the fact that but for a bit of luck many of us practicing today could have experienced the same struggles. Perhaps we were born into a family of lawyers, or perhaps our parents had the ability to assist us with our education. Either way, it's my guess that Judge Collier would say that he was the lucky one for undoubtedly his early life; education and connection to his Church have helped him to become the success he is today.

Judge Waites received her B.A. from DePaul University and her J.D. from John Marshall Law School. Prior to be appointed an Associate Judge in 2005, she was a Lake County Assistant State's Attorney and in private practice. She is currently assigned to the branch court in Park City.

August 2011

Board of Director's Meeting

Minutes By Keith Grant, Secretary

Prior Minutes
A motion was duly made, seconded, carried and it was resolved that the minutes from the July, 2011 Board Meeting were approved.

New Members
A motion was duly made, seconded, carried and it was resolved that the Board approved new members to the Lake County Bar Association. The Board, on behalf of the bar, welcomes the following members:

Attorney Membership
Jeffrey O'Kelley
Tim Johnston
Oleg Feldman
James L. Simon
Richard Albanese
Andrew Prindable

Associate Membership
Joseph M. Menges
Patrice Evans

Treasurer's Report
As of July 31, 2011, the bar is holding $67,293.74 in its accounts. The Association recently made its annual loan payment to the Bar Foundation, bringing the outstanding balance to $17,438.03. The golf tournament is projected to generate a profit of just over $7,100 and continues to spark positive feedback from its participants.

While Association finances have recently been less than robust, July finds the cyclical trend towards increase supported by dues collection, the golf outing and reduced mid-year expenses.

A motion was duly made, seconded and carried and it was resolved to approve the Treasurer's Report.

Membership & Dues
Consistent with last month's discussion, the Board continues to analyze dues payment rules and practices. At present there are 104 current members delinquent in their dues. Over the past calendar year, there have been several instances of delinquent members applying to attend seminars at the discounted "Members Rate." The Board feels that discounted attendance fees should be reserved for members in good standing for the entire year in which they attend the program. This issue is referred to the CLE Committee for further study and with a suggestion that program discounts be explicitly linked to full year membership and dues payment.

A motion was duly made, seconded and carried and it was resolved that Life Attorney Member status was approved for recent member applicants reflecting their 30+ years of LCBA Membership and their withdrawal from the active practice of law.

Staffing Update
Executive Director Boadt reports that the Association has hired two part-time staff members who will ensure that the Association Office is staffed and open for business from 8am to 5pm, Monday through Friday.

This staffing increase will also permit the digitization of membership records project to once again move forward. This project (beginning with deceased members, moving to inactive and finally to active membership) involves scanning all membership records into a fully searchable and interactive database which will both ensure the preservation of the history of the LCBA and vastly enhance the accuracy and immediacy of membership records.

MEMBERS PRESENT

Perry Smith
President

Marjorie Sher
First Vice-President

Michael Conway
Treasurer

Keith Grant
Secretary

Elizabeth Rochford
Immediate Past President

Hon. Joann Fratianni
Donald Morrison
Michael Ori
Gary Schlesinger
Hon. Daniel Shanes
Mark Van Donselaar

Chris Boadt
Executive Director

Speakers Programs
On October 5, Illinois Supreme Court Justice Thomas Kilbride will address the Membership Luncheon. Because of this unique event, the Volunteer Lawyers Program luncheon will be held immediately following the Membership Luncheon.

Immediately after the Membership Luncheon, U of I Law Professor Jennifer Robbennolt will present "The Psychology of Negotiation". Professor Robbennolt (a professor of law and psychology) will be offered jointly with Prairie State Legal Services and the LCBA Volunteer Lawyers Program. MCLE credit for this program will be offered by Prairie State and, on their request, this program will be offered at no cost to attendees willing to accept a single pro bono case in the next twelve months or who are currently

The Grapevine

Achievements & Other Notables:

Nicole Slobe and her husband Stephen had a little girl, Sabrina Grace Slobe, on September 8.

Erin Cartwright and **David Weinstein** married on August 19.

Samantha Aronow joined the Lake Forest law firm Lesser, Lutrey & McGlynn. The firm also recently launched its new website: www.llmlegal.com.

Judge **Margaret Mullen** was recently featured in the Chicago Daily Law Bulletin for her role in the Illinois Judges Foundation, of which she is the President. The article, which featured quotes from Justice Mary Schostok, highlighted Judge Mullen's goal of marshaling support for the Foundation from all judges in Illinois. The Foundation annually supports several programs, including law-related scholarships and informational programs throughout Illinois.

Former Lake County Assistant State's Attorney **Matt Chancey** has announced his candidacy for Jackson County State's Attorney. Mr. Chancey worked in the Lake County State's Attorney's Office for 23 years before moving nearer to his hometown in 2007 and taking a position with the Fayette County State's Attorney's Office.

An article by retired Judge **Raymond McKoski** was published in the spring edition of the Baylor Law Review (63 BLRLR 368). The article is titled *Judicial Disqualification After Caperton V. A.T. Massey Coal Company: What's Due Process Got To Do With It?*

Justice **Mary Schostok** was awarded the The Judge Robert S. Smith, Jr. Humanitarian Award For Faith, Compassion, and Commitment to the Community. The award was bestowed by the Lake County Justinians at a reception at Marytown following the 11th Annual Red Mass on September 25, 2011.

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volunteers with the VLP. Attorneys unable to make this commitment may still receive the 1.5 hours of Professionalism & Ethics MCLE credit by paying a $50 attendance fee.

On October 26, ARDC Chief Counsel Jim Grogan will address the LCBA Membership luncheon. It is proposed that the LCBA will solicit written questions from our membership before the event, which can be posited to Mr. Grogan during his presentation. An electronic solicitation to members for questions will be sent via e-mail in the future.

2011's Membership Luncheon series will conclude in November when ISBA President John Locallo presents the results of his recent fact-finding and comparison trip to Cuba, analyzing their legal system.

LCBA Programs

The Chief Judge's Page in the September Docket spurred a spirited discussion of the potential for the Association to offer Traffic School or Parenting Classes which are currently offered by the College of Lake County. It was the sense of the Board that further discussion of this topic is best postponed pending the development of actual proposed programs, rather than continuing the hypothetical path these discussions currently take.

LCBA programs often spark inquiry from member speakers as to whether they are required to pay to attend the seminar. It is the sense of the Board that, particularly in multi-hour, multi-speaker programs, the individual LCBA member speakers obtain both the benefit of hearing the other speakers present and the added benefit additional MCLE hours for presenting. Attracting high-profile, high-caliber non-member speakers is often accomplished by offering them no-cost attendance at the rest of the program. As the Association is generally unable to bear the cost of transportation or lodging for speakers, this small benefit is often an important consideration for potential non-member speakers. Therefore, no-cost seminar attendance will be reserved for non-member speakers who are invited to speak.

The Association Holiday Party is in the planning stages. Executive Director Boadt is empowered to explore and report back venue options. His progress will be reported to future board meetings.

President Smith being compelled to depart due to conflicting scheduling, First Vice President Marjorie Sher assumed the Chair.

Candidate Debate

Board Members Michale Ori, Joann Fratianni and Daniel Shanes refrained from participating in the following discussion and abstained from the resultant vote.

The 2012 general election cycle in Lake County will see races for Circuit Clerk and State's Attorney without an incumbent candidate. Because of the importance of these two offices to the practices of many Association members, it is the sense of the Board that it would be an important service if the Association were able to offer a forum in which LCBA members could evaluate the candidates. It was determined that the greatest value would be derived from a debate between duly registered candidates held after the primary elections but before the general election. Other organizations, such as the League of

Women Voters should be contacted regarding joint sponsorship of such an event.

It was noted that, while there are a number of judicial elections (several contested) also underway, the prohibitions against judicial candidates establishing or stating policy platforms would make judicial debates impractical.

A motion was duly made, seconded and carried (with abstentions) and it was resolved that the Association will continue to explore the possibility of co-sponsorship of candidate debates in the post-primary races for Lake County Circuit Clerk and Lake County State's Attorney.

Announcements & Events
The Criminal Law Committee has scheduled its Annual Conference for September 22-23, to be held at the Pfister Hotel in Milwaukee, Wisconsin. The program will feature 8 hours of MCLE credit with approval of as many as 4.5 hours of Professionalism credit pending. The program will cover recent courthouse practice updates, boutique court developments, caselaw update, ARDC & Criminal Practitioners, Ethics & Social Media and other important issues.

The September Board of Directors Meeting is scheduled for September 15th.

The 2nd Annual Shred Event will be held on September 9th from 8am to 11am at the LCBA Office.

On October 5, the Association will hold a Membership Luncheon featuring guest speaker Illinois Supreme Court Chief Justice Thomas Kilbride.

On October 25, the LCBA will hold a Blood Drive from 7am to 2pm at the LCBA Office.

On October 26, the Association will hold a Membership Luncheon featuring guest speaker ARDC Chief Counsel Jim Grogan.

The Estate Planning Committee will hold its annual Conference on November 10th.

On November 16, the Association will hold a Membership Luncheon featuring guest speaker ISBA President John Locallo.

The Bar Foundation will hold its Dinner Dance Gala on November 18th.

The LCBA Holiday party has been scheduled for December 16th.

There being no additional business, it was duly moved, seconded and carried and it was resolved that the meeting was adjourned.

LAKE COUNTY BAR ASSOCIATION est. 1912

Visit the LCBA Website:
lakebar.org

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Continued from page 28

tution of these exciting new (and expanded) committees of the LCBF:

- A newly worded overall Statement of Goals to successfully achieve a foundation structure that ensures more than one time gifts and donations from our LCBF. We are now in a position to establish permanent committees and "giving" avenues regarding the funding of the specific goals of the LCBF.
- To establish a Community Committee with the goal of supporting Lake County legally related charities with donations of a set minimum amount to be given annually for a set number of years. This committee would have flexibility to award a greater amount on a particular year but never less than the minimum to be determined by the financial strength of the LCBF after further deliberations and votes.
- Education Committee, a sub-committee of the existing Awards, Scholarships, Education and Memorials Committee, to manage a fund with the goal of distributing an annual scholarship of a set minimum amount annually for a set a number of years in the future. The Education Committee would also have the flexibility to increase giving in a particular year and to establish the criteria for judging the successful recipient of scholarship applications.
- The existing Finance and Building Committee to establish a separate fund and Committee with the goal of obtaining a permanent home for the Lake County Bar Foundation which would then also include the LCBA renting from the Bar Foundation.
- An Organization Committee, to be a subcommittee of the existing Finance and Building Committee, which would administer the remaining funds and provide the financial support for the ongoing expenses of the LCBF, staffing, additional grants and awards etc. as deemed appropriate by the Board of Trustees.

It is important for donors from all walks of life to be able to have flexibility to direct their charitable giving to a specific interest of theirs within the LCBF umbrella. The purpose of establishing the various committees and funds is to truly segregate the unique individual purpose of each committee and allow donors to specifically fund a particular interest.

It is with great cheer that we look forward to such an exciting year. Once again we thank our members Phil Bock and Brian Wanca for their tireless work not only on behalf of their clients but also on behalf of our LCBF.

The Gala is coming up November 18th. It is already selling out – please support our LCBF at our largest single fund raising event of the year by becoming a sponsor, donating a Silent or Live Auction gift and bring your guests to our wonderful annual black tie event. On behalf of your Board of Trustees we will look forward to seeing all of you at the Genesee Theater on November 18th!

Foundation Dinner Dance Gala
Genesee Theatre, Waukegan
Friday, November 18, 2011

LAKE COUNTY BAR FOUNDATION

by

Scott B. Gibson

President, Lake County Bar Foundation

Brain Wanca, Christopher Boadt, Phil Bock and Scott Gibson celebrate the recent Cy Pres award.

Paying it forward

We are very pleased to announce that the LCBF was recently certified by a Circuit Judge in the Circuit of Cook County, Chancery Division, as a bona fide recipient of a recent Cy Pres award. Once again "FLAME" award recipients Phil Bock and Bryan Wanca were very successful in winning a class action suit on behalf of thousands of consumers in the state of Illinois. At the conclusion of the case, Phil contacted me to discuss his proposed petition for the LCBF to be one of the two recipients of the remaining Cy Pres funds available from the class action suit. When presented with the petition, the Judge requested a significant amount of further information and verification as to the "Bona Fides" of our newly resurrected LCBF. Executive Director Chris Boadt and myself quickly assembled all of the documents and verified our status as a bona fide charity meeting the purposes of the Cy Pres award and the desire of the Judge to enter an order on behalf of a well recognized legal bar foundation that would primarily use the funds for legally related charitable purposes. Judgment was then entered splitting the award in half resulting in our LCBF recently receiving $139,000.

By the time you read this issue of the *Docket* the LCBF board will have met to deliberate and vote on specific plans and the institution of new committees to further support the goals and missions of our LCBF. It is contemplated that the following new board actions will be discussed and I will be able to report in our next issue the results of our board's vote regarding the insti-

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Annual Criminal Law Conference

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