NORTH SUBURBAN BAR ASSOCIATION

N S B A N E W S

Fall 2013

In this Issue:

PRESIDENT'S MESSAGE – November 2013

By Jan S. Weinstein, President

Wow! What a great start to the 46th NSBA year!

Our installation dinner was attended by over 70 people and we were regaled by the Take One Choir of Niles North High School under the leadership of Dan Gregerman, whom I just learned won Jazz Music Educator of the Year, deservedly so.

We were particularly privileged to have Chief Justice Thomas Kilbride swear in the Officers and Board. I was personally gratified to bestow upon him the L. Sanford Blustin award for his abundant significant contributions to the legal profession. Please read my article as to why it was so meaningful that he performed this role for our organization.

We kicked off our CLE programming in October with a timely and trenchant presentation by Board Member Erica Minchella educating us on ethical issues in representing a client in real estate transactions including short sales. This was followed up by another edifying CLE in November by former NSBA president Daniel O'Brien, partner at Winters Salzetta & O'Brien LLC, on personal injury law and medical malpractice. Dan also informed us about ethical issues and considerations in accepting cases, thereby affording broad applicability of his comments. I am pleased to say we had nearly 100% attendance by our officers and board members.

Our 1st VP for CLE, Anna Morrison-Ricordati, not wasting any time, has already lined up the

remainder of our 1 hour CLE dinner meeting programming for the year. Don't miss hearing Judge Marty Moltz on January 14, Justice Jesse Reyes on February 11 and Ray Ricordati (IP attorney) on June 10. Our 6 hour ethics CLE April 8, 2014 will look back 30 years at Operation Greylord, with speakers who were there. It should be fascinating.

We welcome new Treasurer Richard Pullano to the team. Thanks for stepping up, Rick!

Be sure not to miss our December 10 holiday party at Zhivago's Restaurant in Skokie. I promise a great time, including some surprises. Admission is $25 plus a bag of non-perishable food for the Niles Township Food Pantry, a wrapped child's toy or a silent auction donation.

My theme for the year of "Reach Outside the Box" is meant to involve our members in more projects, collegiality and enhanced community involvement. I look forward to making this a hallmark year for the NSBA–a year of consolidation of our gains as well as expansion into new areas so that we can better serve the community and create greater opportunities for fellowship and renown of our organization.

Whichever ones you celebrate, may your holidays be safe, warm and filled with laughter

Jan






Thanks To Our Installation Dinner Sponsors!!!

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PAUL W. PLOTNICK

Why I Chose Justice Thomas L. Kilbride for the Swearing-In

I wanted myself, my officers and board to be sworn in by the former Chief Justice Thomas L. Kilbride because of who he is, what he stands for and what he accomplished..

Justice Kilbride comes from a unique set of circumstances. He went from sole practitioner to Illinois Supreme Court justice without taking the customary route of trial to appellate judge to the highest court of our state.

That was unusual enough. But the story of how he came to lawyering is stunning–a testament to how a caring adult who intercedes at a critical moment can influence one's world view and life trajectory.

Justice Kilbride's initial career goal, though not humble–wanting to play in the NBA–was a far cry from where he ultimately landed. His high school math teacher in Bradley, Illinois, (near Kankakee) introduced him to a priest working with migrant farm workers in Iroquois County, Texas. The plight of the migrant workers' lives deeply moved him. Later, he dropped out of college and signed on with an organizer to support Cesar Chavez' efforts on behalf of farm workers in California. The organizing work he participated in had the salubrious result of enactment of a major piece of legislation--the Agricultural Labor Relations Act, which established the right to collective bargaining for farm workers.

This experience inspired his career path to become a lawyer. He put himself through school at St. Mary's University in Winona, Minnesota (graduating magna cum laude) and then Antioch School of Law in Washington, DC. During law school, he served as a judicial intern for the Administrative Assistant to the Chief Justice of the United States (now known as the Counselor to the Chief Justice of the United States) and to Judge Joyce Hens Green of the United States District Court for the District of Columbia.

Justice Kilbride's initial vocational objective was to work in legal aid. His first job after law school was at Prairie State Legal Services in Rock Island. He is remembered for his passion and compassion. Having practiced in nearly all areas of civil law, he left Prairie State after 7 years to take a job in a general practice firm in the Quad Cities, handling everything from family law to criminal defense. He also worked as a city attorney, learned local government law and took numerous appeals.

In 1993, he went solo, hanging out his shingle on a storefront in Rock Island. During his practice, he served as volunteer legal advisor for the Community Caring Conference and the Quad-City Harvest and was a member of the Rock Island Human Relations Commission, among other volunteer activities.

Justice Kilbride, with no prior experience as a sitting judge, was elected to the Illinois Supreme Court in 2000 for the Third District for a ten year term and won retention in 2010. That year, he was elected chief justice for a three year term which just ended.

Justice Kilbride has left an indelible imprint on the Illinois Supreme Court in numerous significant ways drawing from his ethical core and belief in serving the underserved and making the courts universally accessible, relevant and technologically up to date.

On the tech side, he spear headed an e-filing pilot project for Supreme Court filings, moved the official Illinois Reports publication to the Court's website, thereby eliminating the printed reporters, published the pattern jury instructions on the Court's website, and initiated online publication of non-precedential, previously unpublished appellate court opinions.

Under the Justice, cameras are now in the courtroom on a trial basis pursuant to stringent safeguards.

He promoted the formation of a committee to study and make recommendations on how to encourage all Illinois attorneys to provide pro bono services.

In 2007, at a conference in Chicago, Justice Kilbride met former Supreme Court Justice Sandra Day O'Connor, who decried the lack of civics education in school. This insight spurred him to travel to schools within the Third District, explaining the Illinois judicial system to students at all grade levels. Further, at his request, the Illinois Appellate Court for the Third District has held oral arguments at colleges and universities in the district, thereby making the legal system more comprehensible and not so distant to the public at large.

An advocate of involving more people in the judicial process and promoting transparency, he championed a process to fill interim judicial vacancies by giving local communities a voice through an independent evaluation committee made up of community representatives, lawyers and non-lawyers.

Like Justice Kilbride, many of our members are sole practitioners. Also, like the Justice, our members are committed to service, to justice and to transparency of the legal system.

Thomas L. Kilbride is a role model for us all and I am proud to say that he is the judge who swore in the NSBA officers and board under my presidency.

[Content derived from “He Remembers His Roots,” Gunnarson, Helen W., ISBA Journal, February 2011 and program notes, Unity Award Dinner & 11th Annual Swearing-In of Bar Presidents Ceremony.]

2013-2014 NSBA Officers & Directors:

Officers:

Jan S. Weinstein, *President*
Anna Morrison-Ricordati, *1st Vice President*
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Ray Ricordati, *3rd Vice President*
Molly Caeser, *4th Vice President*
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Richard Pullano, *Treasurer*
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Brian Clauss
Erica Crohn-Minchella
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Paul Plotnick
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John Stimson
Phil Witt

From the Editor's Desk:

Thanks to all members (and new members) who have submitted articles and information for the NSBA Newsletters! Thanks also to those able to attend the NSBA events this past year and for willingly participating in the photos used in these Newsletters.

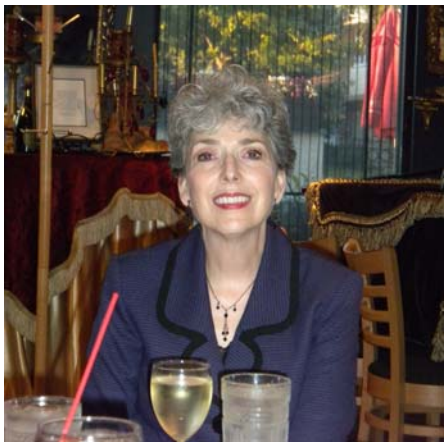
If you have any recent articles or information you would like to include in the newsletter, please let me know. We can always use more articles!

In addition, as the NSBA website is still being re-designed/reconstructed, please send any suggestions and/or updated contact information to me at raymond.ricordati@huschblackwell.com.

I look forward to serving as the newlestter editor this year and hope to see everyone at the holiday party.

Thanks.

Ray Ricordati



CALENDAR OF EVENTS

September 24, 2013 **5:30-8:30 p.m.** 	**2013-2014 Officers Installation Dinner, and presentation of Sanford Blustin Award to Honorable Thomas Kilbride, Chief Justice of the Illinois Supreme Court** **North Shore Country Club, 1340 Glenview Road, Illinois 60025**
October 8, 2013 **6:00 – 8:00 p.m.**	**Dinner CLE – Erica Crohn-Minchella, "Ethical Issues Facing Attorneys In Conventional And Short Real Estate Transactions"** **The Skokie Club , 4741 Main Street, Skokie, Illinois 60076**
November 12, 2013 **6:00 – 8:00 p.m.**	**Dinner CLE – Dan O'Brien, "Personal Injury and Medical Malpractice"** ***Happ Inn Bar and Grill, 305 Happ Road, Northfield, Illinois 60093**
December 10, 2013 **6:00 – 9:00 p.m.**	**Holiday Party** **Zhivago Restaurant, 9925 Gross Point Road, Skokie, IL 60076**
January 7, 2014 **6:00 – 8:00 p.m.**	**Dinner CLE – Hon. Martin Moltz, Topic TBD** ***Happ Inn Bar and Grill**
February 11, 2014 **6:00 – 8:00 p.m.**	**Dinner CLE – Justice Jesse Reyes, Topic TBD** ***Happ Inn Bar and Grill**
March 11, 2014 **6:00 – 8:00 p.m.**	**Gary Wild Dinner – Honoree TBD** **Glenview Park Center, 2400 Chestnut Ave., Glenview, IL 60026**
April 8, 2014	**Ethics CLE (6 hours) – Various Speakers, "*Where Are We Going & Where Have We Been … Examining Misconduct in the Courts*"** **Skokie Courthouse, 5600 Old Orchard Road, Skokie, IL 60077**
May 13, 2014 **6:00 – 8:30 p.m.** 	**Judge's Night!** **North Shore Country Club, 1340 Glenview Road, IL 60025**
June 10, 2014 **6:00 – 8:00 p.m.**	**Dinner CLE – Ray Ricordati, "Intellectual Property Law Principles Every Lawyer Should Know"** ***Happ Inn Bar and Grill**

***NSBA CLEs** are held at the Happ Inn, 305 Happ Road, Northfield, Illinois 60093. Cost: $31.00 for dinner and 1 hour CLE credit. Food choices include (1) Vegan/Vegetarian, (2) Fish or (3) Chicken/Beef. RSVP to Jan Weinstein: president@ilnsba.org

PLEASE NOTE!!! $25.00 cancellation fee will be charged for no-shows, unless you substitute someone else in your place.

ON THE TIP OF YOUR TONGUE,

By Angela Peters

FAMILY LAW

In re Marriage of Wendt, 2013 IL App (1st) 123261, August 16, 2013, Cook Co., 6th Div., GORDON, Affirmed. In dissolution proceeding, court properly found that husband's bonus from his employer was not marital property. Bonus was speculative until actually awarded by the employer, and was not a contractually enforceable right, as it was issued at employer's discretion. (LAMPKIN and REYES, concurring.)

In re Marriage of Murugesh, 2013 IL App (3rd) 110228, August 8, 2013, Will Co., LYTTON, Certified question answered. Court opinion corrected 8/20/13.) The doctrine of forum non conveniens, principles of comity, and the interest in avoiding duplicative litigation do not require trial court in Illinois to dismiss an Illinois dissolution action involving two Illinois residents when there is also a divorce action pending in India. As the parties' child has resided in Illinois her entire life, and is thus her "home state", under the UCCJEA only an Illinois court can make an initial child custody determination. As Indian courts would not recognize an Illinois divorce decree, under principles of comity it is inappropriate for an Illinois court to recognize an Indian divorce decree. (CARTER, concurring; McDADE, specially concurring.)

In re Marriage of Dianovsky, 2013 IL App (1st) 121223, Cook Cty., Respondent father's amended petition for rule to show cause, in which issue of payment is related to court's order addressing petitioner's motion to modify or abate support, remains pending, and court has not yet entered a contempt order imposing sanction on that petition. Thus, petition is a claim within meaning of Rule 304(a) of Marriage and Dissolution of Marriage Act, and an appeal filed before the resolution of the contempt petition, without a Rule 304(a) finding, is premature. As petition is not a separate claim independent of underlying action, a Rule 304(a) finding is required to appeal the order and the order granting petitioner's motion to reconsider. (CONNORS and SIMON, concurring.)

In re Marriage of Lonvick, 2013 IL App (2d) 120865, DuPage Cty., Court properly admitted into evidence custody evaluator's Section 604(b) report; trial court specifically explained basis for its finding and noted that even without written evaluation, evaluator's testimony was credible and corroborated by other witnesses. Court properly admitted evaluator's testimony; expert stated that he made his recommendations based on personal observation, and interviews with others. Court properly denied motion for substitution of judge for cause, as court gave issue of child custody utmost consideration without input from extrajudicial source. (BURKE and HUTCHINSON, concurring.)

In re Marriage of McCormick, 2013 IL App (2d) 120100, Winnebago Cty., Husband brought second post-decree contempt proceedings for violations of underlying visitation order. First proceeding alleged that father had missed numerous visits with each of his three sons, due to wife prioritizing children's wishes for activities and time with friends over visitation with their father. Circuit court initially found no contempt, but appellate court reversed. Appellate court, in reviewing second alleged violations in light of trial court's initial ruling of no contempt, finds that trial court, in finding no contempt, misled wife by suggesting that she could legitimately second-guess the visitation schedule, and thus wife did not willfully disrespect order of court in second period of time. (BURKE and SCHOSTOK, concurring.)

In re Marriage of Turk**,** 2013 IL App (1st) 122486, September 6, 2013, Cook Co., 5th Div., GORDON, Reversed and remanded. Per parties' agreement, father had sole custody of their two children. Court was within its authority in ordering father, the custodial parent, to pay child support to the mother, the custodial parent. However, evidentiary hearing must be conducted as to amount of support to which noncustodial parent is entitled, taking into account her parenting expenses and requirements of Section 505 of Marriage and Dissolution of Marriage Act. Court was within its discretion in ordering father to pay all uncovered medical expenses. (HALL and REYES, concurring.)

In re Marriage of Earlywine, 2013 IL 114779, October 3, 2013,2d Dist.,Stephenson Co.,BURKE,Appellate court affirmed; circuit court affirmed in part and vacated in part. In ruling on interim fee petition in dissolution proceeding, trial court had discretion to order husband's attorney to turn over to wife's attorney funds received from husband's parents and held in an advance payment retainer. Marriage and Dissolution of Marriage Act leaves to discretion of court whether, and in what amount, interim attorney fees may be awarded. (KILBRIDE, FREEMAN, THOMAS, GARMAN, KARMEIER, and THEIS, concurring.)

In re Marriage of Patel, 2013 IL App (1st) 122882, October 11, 2013, Cook Co., 5th Div., PALMER, Affirmed. In dissolution proceeding, court properly ordered husband to pay wife’s interim attorney’s fees, and found him in indirect civil contempt, with sanctions for failure to pay. Court considered financial statements of parties in its ruling, and appellate court presumes sufficient basis for ruling, as statements were not admitted into evidence and thus were not part of record on appeal. Court had jurisdiction to award interim fees to wife in amount equal to, with money wife had already paid to her attorneys, the amount paid to husband’s attorneys. Husband failed to provide justification for his failure to pay, and party cannot refuse to pay under guise of “friendly contempt” just because party disagrees with order to pay. (McBRIDE and HOWSE, concurring.)

Merrilees v. Merrilees, 2013 IL App (1st) 121897, September 27, 2013, Cook Co., 6th Div.,LAMPKIN ,Affirmed. Plaintiff, who was allocated $18 million cash plus $1 million home tax-free in negotiated settlement in divorce action, then sued her former attorneys, ex-husband, and ex-fiancé, alleging RICO violations, fraud, conspiracy, and legal malpractice. Court properly dismissed fourth amended complaint, for failure to plead specific facts to support elements of her causes of action; and failure to allege knowledge and voluntary participation in fraud, and knowingly false statement of material fact or reliance on truth of statement. Plaintiff failed to allege why she was entitled to larger recovery of assets and sole custody of children, and how husband's trading company was marital property, and its fair market value. (ROCHFORD and HALL, concurring.)

In re Marriage of Arjmand, 2013 IL App (2d) 120639 (October 28, 2013), SCHOSTOK, It was not against the manifest weight of the evidence for the trial court to find that the parties' marital settlement agreement was unconscionable ,when the vast majority of assets were retained by husband and, even if some of those assets were classified as non-marital, the distribution of assets was "substantially disparate"; husband failed to disclose all assets; and provision for $2,000 per month in child support payments did not meet the statutory child support guidelines. Affirmed.

CIVIL MISCELLANEOUS LAW

Zamora v. Montiel, 2013 IL App (2d) 130579, August 19, 2013, Du Page Co., HUDSON, Appeal dismissed. Plaintiff's failure to file notice of appeal, pursuant to Rule 304(a), within 30 days of trial court's resolution of motion to reconsider dismissal of claims against Defendants deprives appellate court of jurisdiction over appeal. Obtaining leave to file a claim does not trigger the need for a new Rule 304(a) finding. (HUTCHINSON and SCHOSTOK, concurring.)

800 South Wells Commercial, LLC v. Horwood Marcus and Berk Chartered, 2013 IL App (1st)123660, August 22, 2013, Cook Co., 4th Div., FITZGERALD SMITH, Affirmed. Court properly granted Defendant law firm's motion to dismiss with prejudice Plaintiff's claim against it for aiding and abetting Plaintiff's manager and vice president in breaching their fiduciary duties to Plaintiff. Two-year statute of limitations in Section 13-214.3(b) applies to legal malpractice claims but is not restricted to those claims, and applies to actions arising out of provision of legal services. (LAVIN and PUCINSKI, concurring.)

Pontiac National Bank v. Vales, 2013 IL App (4th) 111088, May 24, 201, McLean Co., CATES, Reversed and remanded. Modified upon denial of rehearing 8/19/13.) Jury verdict for all Defendants in medical malpractice/wrongful death action, in death of 3-year-old boy who stopped breathing due to massive mediastinal tumor around his airway, from non-Hodgkin's lymphoma. Court abused its discretion in permitting defense to inquire into Plaintiff's expert's earnings as expert for past 8 years, and in denying Plaintiff to rebut attacks with evidence showing that Defendants' attorneys had retained him as expert in several prior cases; rulings unfairly prejudiced Plaintiff. Court abused its discretion in allowing defense to use Internet copy of BLS publication on Occupational Employment and Wages, to cross-examine Plaintiff's expert about his consulting work income. (WELCH and GOLDENHERSH, concurring.)

Wellness International Network, Ltd. v. Shariff, No. 12-134, August 21, 2013, N.D. Ill., E. Div., Affirmed and vacated in part and remanded. Bankruptcy Ct. did not err in entering default judgment in favor of creditor as sanction in adversary action in instant Chapter 7 bankruptcy case, where creditor sought to prevent discharge of debtor's debts that included $650,000 sanction arising out of debtor's failure to engage in discovery in prior lawsuit between instant parties. Record showed that debtor had similarly failed to respond to at least 15 of creditor's discovery requests in adversary action, and Dist. Ct. could properly enter default judgment, even though debtor had partially complied with other discovery requests, where plaintiff had been warned of possibility of entry of default judgment for non-compliance of creditor's discovery requests. Dist. Ct., though, lacked constitutional authority to enter default judgment on creditor's separate claim that certain trust of which debtor was trustee was in fact debtor's alter ego. On remand, Dist. Ct. must determine whether alter ego claim is "core or non-

core" proceeding, such that if it is determined that alter ego claim was non-core proceeding, it can treat said default judgment as recommended disposition to be reviewed de novo. Otherwise, if Dist. Ct. determines that alter ego claim was core proceeding, it must conduct fresh discovery proceedings on said claim.

Fox v. Gauto, 2013 IL App (5th) 110327, September 5, 2013, Williamson Co., STEWART, Certified questions answered; remanded. Court's exercise of discretion where a plaintiff moves to amend or file new Section 2-622 documents, in medical malpractice case, is not evaluated under same "good cause" standard used to extend Section 2-622's 90-day deadlines, but depends on whether proposed amendments or substitutions would cause "prejudice" to the defense. Inconvenience or delay alone is insufficient to establish any prejudice that could justify denying a medical malpractice leave to amend; instead, the delay must operate to hinder the defendant's ability to present his case on the merits. (WEXSTTEN and CATES, concurring.)

Settlement Funding, LLC v. Brenston, Illinois Appellate Court, 2013 IL App (4th) 120869, August 26, 2013, CATES, Reversed and remanded with directions. Respondent settled medical negligence case for lump-sum payment of $864,228 and structured periodic payments. "Settlement Funding" company filed petition seeking approval of transfer of settlement payment rights from Respondent, based on "Absolute Assignment and UCC Article 9 Security Agreement", with discounted present cash value of $264,088. Structured Settlement Protection Act did not apply because of antiassignment clause in settlement agreement and annuity contract, and thus court was without authority to approve Settlement Funding's petition under the Act. Settlement Funding company's fraudulent pleadings were intended to deceived court into finding that it had authority to consider and rule on petitions under the Act, and thereby frustrated purposes of bargained-for antiassignment provisions in annuity.(STEWART and WEXSTTEN, concurring.)

Bruns v. The City of Centralia, Illinois, 2013 IL App (5th) 130094, September 23, 2013, Marion Co.,CATES, Reversed and remanded. Plaintiff, age 80, sued City for injuries after tripping over raised section of a public sidewalk, part of path used to aqccess front entrance to eye clinic where she was going for scheduled appointment. Court erred in granting summary judgment for City. It is reasonable to foresee that an elderly patient of clinic might be focused on pathway forward to door and steps of clinic, as opposed to path immediately underfoot. City knew that pedestrians would be walking on sidewalk, and City had knowledge, for several years, of danger on pathway to clinic. For distraction exception to apply, all that is required is defendat's awareness that those in proximity to open and obvious hazard are likely to become distracted in some way and forge about presence of hazard.(WELCH and STEWART, concurring.)

In re Abel C.,2013 IL App (2d) 130263, August 20, 2013, Winnebago Co., McLAREN, Remanded.(Court opinion modified 10/3/13.) DCFS took seven-day-old infant into protective custody, and State then filed petition alleging neglect due to injurious environment. Respondent mother refused appointed counsel, and was pro se in adjudicatory hearing. Court properly allowed mother to proceed pro se, as court thoroughly explained procedures for hearing, and advised her of her continuing right to counsel. Remanded for trial court to enter clear and sufficient findings of fact, and express factual basis supporting court's finding of neglect. (JORGENSEN and HUDSON, concurring.)

Shehadeh v. Madigan,2013 IL App (4th) 120742,October 4, 2013, Sangamon Co.,HOLDER WHITE,Affirmed. FOIA request that Attorney General's office produce any documents that could be used for guidance by any public body in complying with FOIA was patently broad on its face. FOIA does not require that FOIA respondent prove adequacy of its search for records in claiming Section 3(g) exemption from compliance, where breadth of request is evident from face of request. AG's response that employees would have to hand-sort 9,200 documents was sufficient description of extent of burden to respond. (STEIGMANN and HARRIS, concurring.)

Rettig v. Heiser, 2013 IL App (4th) 120985, October 4, 2013, Champaign Co.,KNECHT,Affirmed. Plaintiff filed suit for injuries from car accident, against driver who swerved to avoid head-on collision vehicle which had lost control while merging, but then collided with rear of Plaintiff's vehicle. Court properly entered summary judgment for Defendant, finding that he was in middle of accident and that evidence did not show that he was negligent. A rear driver is not precluded from prevailing on summary judgment. No genuine issue of material fact exists as to whether driver breached duty of care to Plaintiff, and thus Plaintiff cannot establish Defendant is liable for negligence. (STEIGMANN and HARRIS, concurring.)

Rodgers v. Cook County, Illinois, 2013 IL App (1st) 123460, September 30, 2013, Cook Co., 5th Div., GORDON, Reversed and remanded. Son filed suit for medical malpractice and negligence, against physician and mental health specialist, alleging that his father died as a result of denial of his prescription medicine while an inmate at Cook County Jail. Court dismissed suit per Section 2-619(a)(3), finding that state suit was duplicative of a Section 1983 action pending in federal court, filed against County and County Sheriff. There is inherent social value in a plaintiff's ability to bring a cause of action against particular defendants who allegedly committed wrongful acts. Court's dismissal of state court sued is stayed until federal court decides question of statute of limitations as to Plaintiff's request to add individual defendants to federal suit. (McBRIDE and PALMER, concurring.)

Fiorito v. Bellocchio, 2013 IL App (1st) 121505, Cook Co., 4th Div., HOWSE, Affirmed. Plaintiff's counsel filed, without Plaintiff's knowledge, a personal injury action for car accident. Plaintiff filed a second, identical case against same defendant arising from same incident six weeks later, and Plaintiff voluntarily dismissed it per Section 2-1009 on March 24, 2004. Plaintiff filed a third case against Defendant on May 16, 2011. One-year period to re-file began to run from first voluntary dismissal (3/24/04) rather than second one. Thus, re-filing on 5/16/11 was untimely, as it was well beyond the one year refiling period from the date of 3/24/04. (PALMER and TAYLOR, concurring.)

Rosestone Investments, LLC v. Garner, 2013 IL App (1st) 123422, November 7, 2013, Cook Co., 4th Div., FITZGERALD SMITH, Affirmed. Former homeowner appealed pro se from order confirming sale of foreclosed property. Foreclosure complaint which would be void ab initio because plaintiff did not have legal standing at time of filing can be cured with amendment naming proper plaintiff. As standing is affirmative defense, burden is on defendant to prove that plaintiff does not have standing. That a copy of note is attached to complaint is prima facie evidence that plaintiff owns the note. Plaintiff properly filed motion to shorten redemption period to 30 days from date of judgment, asserting that property had been abandoned, as Defendant had up to then refused to answer complaint

and then denied any interest in property; however, court denied motion and redemption period remained three months from date of entry of foreclosure. (LAVIN and EPSTEIN, concurring.)

Majunder v. House of Spices (India), Inc., 2013 IL App (1st) 130292 November 22, 2013. Plaintiff's employment with Defendant company was terminated 15 months into a 5-year employment contract. Court found Plaintiff was terminated without cause and awarded him lost wages for violation of employment contract. However, court properly found that Plaintiff was not entitled to relief pursuant to Illinois Wage Payment and Collection Act. Unpaid future compensation for remainder of a terminated contract, where there is a question as to whether employee was terminated for cause, does not fall under Act's definition of "final compensation". (PALMER and TAYLOR, concurring.)

Mansfield v. The Illinois Workers' Compensation Commission, 2013 IL App (2d) 120909WC (November 21, 2013). There is sufficient evidence supporting Workers' Compensation Commission's finding that claimant's low back condition after April 2004 was not causally related to September 2004 workplace accident. Commission awarded claimant permanent disability of 10% loss of persona as a whole, which was not against manifest weight of evidence. Claimant's income from her side business should not be included in calculation of average weekly wage as it does not represent "wages" earned while working for employer. (HOLDRIDGE, HOFFMAN, HUDSON, and STEWART, concurring.)

State Treasury v. The Illinois Workers' Compensation Commission, 2013 IL App (1st) 120549WC (November 18, 2013). Claimant filed for workers' compensation benefits for wrist injuries sustained while working as caregiver and companion in a private home. As her employer was uninsured for workers' compensation, claimant sought compensation from Injured Workers' Benefit Fund. State Treasurer appealed arbitrator's decision to Workers' Compensation Commission. As Treasurer did not file appeal bond under Section 19(f)(2) of Workers' Compensation Act, circuit court did not have jurisdiction to review Commission's decision. (HOFFMAN, HUDSON, TURNER, and STEWART, concurring.)

Illinois Insurance Guaranty Fund v. Liberty Mutual Insurance Co., 2013 IL App (1st) 123345 (November 12, 2013). Court correctly granted borrowing employer's insurer's motion to dismiss for failure to state a claim in action filed by Illinois Insurance Guaranty Fund for reimbursement for workers compensation benefits Guaranty Fund paid to injured worker after insurer for lending employer was liquidated. Language in Guaranty Fund enabling statute does not establish Fund's status as excess over all other insurers, and cannot alter terms of insurance policies by inserting a new insured and converting policy into a primary one for that new insured. Established insurance law, and not the enabling statute, governs equitable subrogation and workers' compensation law as it applies to a lending employer/borrowing employer relationship.(HARRIS and PIERCE, concurring.)

CRIMINAL LAW

People v. Marcella, Illinois Appellate Court, 2013 IL App (2d) 120585, September 10, 2013, 2d Dist., Du Page Co., SCHOSTOK, Affirmed. State failed to establish probable cause for search and seizure of small plane by agents landing in military helicopter, after Defendant had landed and placed his airplane inside hangar. Defendant did nothing to avoid radar detection, and was at all times

identifiable and trackable by air traffic controllers. Agents had no independent basis to believe that a crime had been committed. Defendant's dated criminal history, flight path, and proximity to Mexican border (in Arizona) were insufficient to establish probable cause. Illegal seizure and subsequent consent to search plane were so inextricably connected in time that consent was tainted. (McLAREN and SPENCE, concurring.)

People v. Porter-Boens, 2013 IL App (1st) 111074, September 5, 2013, Cook Co., 4th Div., HOWSE, Affirmed. Defendant was convicted, after bench trial, of aggravated battery and resisting a police officer. Court correctly quashed Defendant's subpoena for records of civilian complaints against arresting officer, who had 19 prior complaints filed against him. Court properly found that 3 complaints were too remote in time to be relevant, and the remaining concerned generalized misconduct. In determining whether prior allegations of misconduct is admissible, question of relevancy is a determination to be made by trial court after considering temporal proximity of past misconduct, whether there is a repetition of similar misconduct, and similarity of past conduct to conduct at issue. (PALMER and TAYLOR, concurring.)

U.S. v. Scott, Federal 7th Circuit Court, No. 12-2962, September 10, 2013, N.D. Ind., Ft. Wayne Div., Affirmed. In prosecution on drug and firearm offenses, Dist. Ct. did not err in denying defendant's motion to suppress evidence seized from his home pursuant to search warrant, where application for said warrant contained one sentence of defendant's recorded statement with third-party in his driveway, and where defendant contended that said statement was obtained secretly in violation of his 4th Amendment rights. Ct. failed to reach issue as to whether defendant had reasonable expectation of privacy in his driveway conversation, which was recorded by device in car parked in said driveway, where other evidence apart from said conversation contained in search warrant application, including police surveillance during two controlled purchases involving defendant that resulted in receipt of drugs by confidential informant, supplied sufficient probable cause to support issuance of search warrant.

U.S. v. Hodge, Federal 7th Circuit Court, No. 12-2458, September 6, 2013, S.D. Ind., Evansville Div., Affirmed. Dist. Ct. did not err in sentencing defendant to 1,380-month term of incarceration on multiple child pornography offenses, even though Dist. Ct. had failed to specifically mention fact that defendant's psychiatrist opined that defendant's prior history of sexual and psychological abuse as child contributed to his decision to commit charged offense, or that defendant was unlikely to re-offend. Record showed that Dist. Ct. could properly discount psychiatrist opinion, where defendant had filtered information to said psychiatrist, and that Dist. Ct. had actually made reference to said opinion. Moreover, Dist. Ct. did not need to address every discrete point in psychological report tendered on behalf of defendant.

U.S. v. Hernandez, Federal 7th Circuit Court, No. 12-1719, September 10, 2013, N.D. Ill., W. Div. Affirmed. Dist. Ct. did not err in entering defendant's guilty plea to three drug conspiracy charges after defendant submitted "Petition to Enter Guilty Plea" that acknowledged he was subject to mandatory minimum sentence of five years. While defendant argued that his guilty plea was not voluntary, where he lacked both education and language fluency to understand nature of conspiracy charge, record reflected that Dist. Ct. conducted thorough plea colloquy and allowed defendant to discuss said charges with counsel prior to accepting plea. Moreover, Dist. Ct. provided interpreter for

defendant, and defendant ultimately agreed with fact summary of charges provided by govt. Dist. Ct. could also impose 210-month sentence based, in part, on finding that defendant's conduct involved more than 150 kilograms of cocaine, even though charged offense only concerned 500 grams of cocaine, since Dist. Ct.'s relevant conduct finding did not have effect of increasing any minimum mandatory sentence.

People v. Denson, 2013 IL App (2d) 110652, No. 2-11-0652, Kane Cty, Affirmed. Opinion filed May 23, 2013This case presents question as to whether defendant properly preserved for appellate review issue regarding admission of certain statements made by two co-conspirators where, although defendant did not object to said statements once they were admitted at trial, defendant filed written objection to admission of said statements in response to State's motion in limine seeking their admission, and where defendant included said issue in his post-trial motion. Appellate Court found that: (1) defendant had forfeited said issue because he had not objected to said evidence at trial; and (2) defendant could not rely on his written objection to State's motion in limine as means to preserve issue for of conspiracy.

People v. Stevens, 2013 IL App (1st) 111075, First District, Sixth Division, June 14, 2013, affirmed. This case presents question as to whether, in instant prosecution on aggravated criminal sexual assault charge, trial court properly allowed State to cross-examine defendant on details of separate pending sexual assault case involving different victim. Appellate Court, in upholding admission of such evidence, noted that defendant raised issue that sexual encounter was consensual, and that instant cross-examination was permissible to challenge defendant's consent defense. Fact that defendant had not addressed separate sexual assault case in his direct examination did not require different result since defendant's decision to take witness stand did not limit State's ability to impeach him with relevant evidence.

People v. Jenkins, No. 115979, 1st Dist. Rule 23 Order. This case presents question as to whether automatic transfer provision of Juvenile Court Act, 705 ILCS section 405/5-130(1)(A), is constitutional, where defendant, who received 50-year sentence, was prosecuted as adult on first degree murder charge under circumstances, where defendant was 15 years old at time of charged offense. Appellate Court rejected defendant's claims that automatic transfer provision violated due process clause because it prevented trial court from making individualized assessment of defendant's capacity to commit charged offense, and that said provision violated 8th Amendment's prohibition against cruel and unusual punishment, as well as proportionate penalties clause of Ill. Constitution.

People v. Perez, 2013 IL App (2d) 110306, March 19, 2013, Kane Cty., Reversed and Remanded. This case presents question as to whether trial court properly dismissed at first stage of proceedings defendant's post-conviction petition, where said dismissal order was entered more than 90 days after filing of said petition. Appellate Court, in reversing trial court and remanding matter for second-stage proceedings, found that dismissal was void because it was not rendered within applicable 90-day period for doing so. In its petition for leave to appeal, State argued that dismissal order was timely since it had been signed by trial court on 90th day. Appellate Court, though, found that it was untimely since it had not been file-stamped or docketed by circuit court clerk until 91st day after filing of post-conviction petition. (Dissent filed.)

People v. Gayton, 2013 IL App (4th) 120217, May 21, 2013, McLean Cty., Reversed. This case presents question as to whether trial court properly denied defendant's motion to suppress cannabis that was seized from defendant, who was passenger in vehicle stopped for alleged violation of section 3-413(b) of Ill. Vehicle Code, where parts of trailer hitch on vehicle obscured some numbers on license plate. Appellate Court, in reversing trial court, found that officer should not have stopped vehicle because section 3-413(b) only prohibits obstructive objects that are attached to license plate and does not pertain to obstructions, like trailer hitch, that are not attached to license plate. Appellate Court further noted that officer had conceded that he was able to clearly see entire plate once he had stopped and approached vehicle.

People v. Hale, 2013 IL 113140, October 3, 2013,1st Dist.,Cook Co., KARMEIER, Appellate court reversed; circuit court affirmed. Defendant did not establish prejudice prong for his claim of ineffective assistance of counsel during plea negotiations with the State, when his trial counsel failed to inform him that he would receive mandatory consecutive sentences, if convicted of both counts of attempt (first-degree murder) with which he was charged. Defendant has not shown that he would have accepted State's plea offer if not for his trial counsel's alleged erroneous advice. (KILBRIDE, FREEMAN, THOMAS, GARMAN, BURKE, and THEIS, concurring.)

People v. Anderson,2013 IL App (2d) 121346,October 3, 2013, Du Page Co., McLAREN, Reversed and remanded. Defendant's arrest for DUI was supported by probable cause, as facts were ample for a reasonably cautious person to believe that Defendant had committed DUI. Defendant admitted that he was drunk and that he had just been driving, and admissions were corroborated in numerous substantial respects Defendant was swaying, he had been in unexplained one-car accident, officer saw that vehicle was damaged. (SCHOSTOK and SPENCE, concurring.)

People v. Rubalcava, 2013 IL App (2d) 120396, September 30, 2013, Boone Co., JORGENSEN, Reversed. Defendant was convicted, after bench trial, of unlawful contact with street-gang members. Evidence was insufficient to sustain conviction. Officers' testimony and descriptions and interpretations of photographs are not facts generally known within territorial jurisdiction of court are not information subject to judicial notice, as they are not capable of accurate and ready determine by resort to authoritative sources. Taking judicial notice of matters of record cannot result in admitting hearsay evidence otherwise prohibited. State presented no evidence, beyond a civil finding, that a person with whom Defendant had contact was a gang member. (BURKE and HUTCHINSON, concurring.)

People v. Cruz, 2013 IL App (1st) 091944, September 24, 2013, Cook Co., 2d Div., QUINN, Affirmed. (Court opinion corrected 9/30/13.) Defendant filed untimely post-conviction petition and claim that late filing was due to his reliance on a prison law clerk's erroneous advice as to time requirements of statute. Defendant's claims of illiteracy, poor comprehension, and lack of fluency in English are incredible, given his ability to proceed pro se at trial, and at arraignment when he told court he spoke English. (PIERCE, concurring; NEVILLE, dissenting.)

People v. Hutchinson, 2013 IL App (1st) 102332, November 8, 2013, Cook Co., 5th Div., PALMER, Affirmed. Defendant was convicted, after bench trial, of DUI. Court properly admitted results of lab report showing Defendant's blood alcohol level as a business records exception to hearsay

rule. Statutory provision allowing introduction of medical records in prosecution of DUI cases in Section 11-501.4 of Illinois Vehicle Code survives enactment of Illinois Rules of Evidence, and is not affected or modified by those Rules. State met its burden of establishing probability that evidence (Defendant's blood which was drawn and tested) was not compromised, and Defendant produced no actual evidence of tampering, alteration, or substitution, and thus any alleged deficiencies in chain of custody went to weight and not admissibility of blood tested. (GORDON and McBRIDE, concurring.)

People v. Daheya, 2013 IL App (1st) 122333, November 8, 2013, Cook Co., 5th Div., GORDON, Affirmed. Defendant was convicted, after bench trial, of aggravated discharge of a firearm. Evidence was sufficient for a finding of guilty of aggravated discharge of a firearm. One witness testified that he actually observed Defendant firing the handgun somewhere between the second and third gunshots, and another witness testified that she observed Defendant aiming handgun at their vehicle and heard four gunshots. As court found witnesses credible and their testimony sufficient to convict, State was not required to present additional physical evidence linking Defendant to shooting.(PALMER and TAYLOR, concurring.)

People v. Kibayasi, 2013 IL App (1st) 112291, November 6, 2013, Cook Co., 3d Div., HYMAN, Affirmed. Defendant was convicted of first degree murder of his five-month-old son, after shaking the crying baby in a fit of anger. From circumstances surround incident, Defendant's conduct, and nature and severity of victim's injuries that Defendant acted knowing of a strong probability of death or great bodily harm. Court within its discretion in sentencing Defendant to 35 years in prison. (NEVILLE and PUCINSKI, concurring.)

People v. Colbert, 2013 IL App (1st) 112935, November 8, 2013, Cook Co., 6th Div., HALL, Affirmed. Defendant was convicted, after jury trial, of first degree felony murder based on predicate felony of mob action in beating death, and sentenced to 32 years in prison. Defendant's conduct in participating in mob action arose from ongoing feud between two factions of high school students from rival neighborhoods; it not arise from and was not inherent in murder, but involved conduct with independent felonious purpose other than the murder itself Sentence was within statutory range, and no evidence that judge failed to consider Defendant's rehabilitative potential or other mitigating factors. (ROCHFORD and REYES, concurring.)

People v. Hutchinson, 2013 IL App (1st) 102332 (November 8, 2013) Defendant was convicted, after bench trial, of DUI. Court properly admitted results of lab report showing Defendant's blood alcohol level as a business records exception to hearsay rule. Statutory provision allowing introduction of medical records in prosecution of DUI cases in Section 11-501.4 of Illinois Vehicle Code survives enactment of Illinois Rules of Evidence, and is not affected or modified by those Rules. State met its burden of establishing probability that evidence (Defendant's blood which was drawn and tested) was not compromised, and Defendant produced no actual evidence of tampering, alteration, or substitution, and thus any alleged deficiencies in chain of custody went to weight and not admissibility of blood tested. (GORDON and McBRIDE, concurring.)

*Thank you to ISBA e-cases for contributions to this month’s column.






Annual Ethics CLE

The NSBA Annual Ethics CLE Seminar, "*Where Are We Going & Where Have We Been … Examining Misconduct in the Courts*" will be held at the Skokie Courthouse on ***April 8, 2014***(*). Marking the 30 year anniversary of the first conviction in "Operation Greylord," this seminar will examine ethics from behind the bench and beyond. The morning session will include speaker Kathleen Field Orr (Kathleen Field Orr & Associates) to address ALJ ethics in light of recent advisory opinions highlighting breaches of professional conduct, along with Kathy Twine (Judicial Inquiry Board) to aid attorneys in recognizing and responding to suspected judicial misconduct, among others. The afternoon session will include a special presentation by Terrence Hake (Cook County Sheriff's Office), a Cook County prosecutor who witnessed the bribery and corruption in the criminal preliminary hearing courtrooms and subsequently worked undercover with the FBI on the monumental, public corruption sting known as "Operation Greylord." This presentation will be followed by a panel discussion including attorneys Mark Damisch (Damisch & Damisch, Ltd.), Irv Miller (The Miller Firm, P.C.), and NSBA's own Paul Plotnick (Law Offices of Paul Plotnick) all of whom will share their experiences in practice during "Operation Greylord" and their take on the positive impact of ethical rule changes on the practice of law in Cook County.

*(Pending MCLE ethics approval, a total of 6 hours ethics credit is anticipated for the day long program).

Submitted by Anna Morrison-Ricordati, NSBA 1st Vice President

"Why Did the Urban Chicken Cross The Road?" How chickens are making "inroads" into urban communities.

By: Melissa Anne Maye

As more people are becoming interested in consuming foods that are organic, pesticide-free and grown locally, a new trend is emerging in healthy eating – the return of the home-based chicken operation. Keeping backyard chickens is more than just a yuppie hipster fad. With increased diagnoses of digestive disorders, allergies and other alarming health trends that can be traced, in some part, to the over-consumption of processed foods, as well as people's concerns about the short- and long-term effects of consuming hormone-injected or genetically-modified food sources, many people view raising backyard chickens as a commons-sense alternative to mass-produced chicken and egg products.

For some, raising chickens is a statement against the inhumane treatment that chickens receive in mass-production facilities. For others, it's a healthy eating lifestyle choice. Still others start out viewing chickens as food sources, and later come to consider them as companion animals – pets, with their own distinct personalities and characteristics. Whether stemming from a desire for farm-fresh eggs, an interest in educating children that food doesn't originate pre-packaged at the grocery store, or just a love of avian personalities, urban chicken-keeping is on the rise.

"Urban chicken-keeping" is an inexact term, but in general it means to allow citizens to keep and raise chickens for food, for eggs, or for companionship, within a municipality that has an ordinance allowing (and usually restricting) chicken-keeping within its city limits. Towns as small as Pana (pop. 5847) and as large as the City of Chicago (2.7 million) allow for chicken-keeping within their city limits. If you are in doubt whether you or your client can keep chickens, it would be best to check your local municipal ordinances. The restrictions and requirements vary widely from town to town.

Chicken-keeping ordinances approach chicken regulation from various different angles. Some ordinances are affirmative guidelines as to what types of chickens you can keep, how many you can keep, whether you need a permit, the limitations on the size and location of chicken coops, whether roosters are allowed and whether the animals can be raised for slaughter. Other ordinances approach chicken-keeping from the perspective that within city limits, chickens will be deemed a nuisance unless citizens comply with certain restrictions. Interestingly, some ordinances deal specifically with chickens; other ordinances lump chickens in with other avian species, such as ducks and geese; while other ordinances address them as a livestock species, such as cattle, horses and goats. One municipality does not address chicken-keeping directly, but instead disallows the sale of baby chicks which have been dyed, and also does not allow baby chicks to be given away as novelties or as a prize or inducement to enter into any contest.

Thus, municipal ordinances vary widely. Some ordinances do not restrict the location of chicken coops, others maintain that the chicken coops must located anywhere from 25 feet of the property line to 300 feet from the nearest residence. Some ordinances restrict how close the chicken coop can be to a school, church or public way. Some require the consent of all neighbors before a chicken coop may be

built. Some require that the chickens must remain enclosed; i.e., the chickens are not allowed to "free-range." Others merely outline broader restrictions, such as chickens must have access to water, feed must kept in rodent-free containers, and coops must be maintained in a manner that is clean, sanitary and free from refuse.

Naturally, not everyone is in favor of urban chickens. Neighbors may be concerned about waste, noise, insects, bacteria and smells. Chickens and chicken feed may attract rodents. Chickens also may attract predators. Predators can include a wide variety of species, including hawks, foxes, opossums, raccoons, coyotes, and even dogs and cats. And, of course, people. While common chicken-wire is adequate to keep chickens in, it offers little protection against keeping predators out.

Moreover, some chickens can handle the Midwest heat and cold and humidity better than others. Chicken-keepers should educate themselves regarding what breeds are good keepers, and what is necessary to protect chickens from the elements.

Many resources are available to assist would-be chicken-aficionados in getting started with their project. For example, "Home To Roost," (http://urbanchickenconsultant.wordpress.com/) a blog written by Jennifer Murtoff, provides a wealth of information and links to address issues regarding local ordinances, public concerns, and chicken-keeping how-to's, including how to keep chickens healthy and happy.

Jennifer also worked with Cook County Sheriff Tom Dart to bring a unique chicken-keeping program to the inmates of the Cook County Jail. In July of 2013, Home to Roost assisted in moving 30 hens into the Cook County Jail. Home to Roost consulted with the Sheriff's Office to assist in selecting birds, designing a coop, and creating a chicken-keeping program. The goals of the program are to:

- Create marketable products (eggs, coops) for CCSO;
- Provide inmates with marketable skills/experience (animal husbandry, carpentry, management);
- Provide inmates with discipline and respect for nature;
- Implement a "green," eco-friendly program at CCSO; and
- Integrate chicken-keeping with the existing gardening program.

Home to Roost also routinely conducts Coop Tours, where interested persons can visit several different coops throughout the city. These tours are a great educational resource for would-be chicken owners and their neighbors, as well as alderman or city councilmen who are concerned about the negative impact that urban chickens might have on their community.

Because chicken husbandry in the United States is almost entirely commercialized, sadly, many of our heritage chicken breeds are in danger of extinction. In the United States, primarily only three breeds -- the White Leghorn, the Hubbard Isa Brown, and the Cornish Rock -- are currently used as commercial food sources. However, there are over 60 breeds of chickens recognized in the United States – chickens which can range in size from the tiny Malaysian Serama Bantams (which weigh in at around 1.25 pounds) to the aptly-named Black Jersey Giants, which average between 11 to 13 pounds. This diversity of chicken-ness is at risk of dying out entirely, as fewer private individuals cultivate a variety of chickens at their homes and farms. Poultry clubs and private chicken husbandry are probably the only things that will protect our heritage-breed chickens from extinction.

Chicken-keeping is no longer strictly the purview of the rural attorney. Urban chicken-keeping is on the rise, and suburban attorneys should familiarize themselves with local ordinances in order to properly advise their clients of the requirements of their local municipality.

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