NORTH SUBURBAN BAR ASSOCIATION

N S B A N E W S

WINTER 2015

In this Issue:

PRESIDENT'S MESSAGE – January 2015

By: Anna Morrison-Ricordati, President

Dear NSBA Members:

Happy 2015! I hope everyone had a great holiday season and is enjoying the new year.

First, thanks to all those able to attend the NSBA Holiday Party at Happ Inn (and if you missed it, please see the many photos in this newsletter). We received generous food and toy donations which were shared with the Greater Chicago Food Depository and the Child Life Team at NorthShore University Health Systems in Evanston. Thanks also to everyone who participated in the silent auction.

On January 13, 2015, Eldon Ham, a member of the faculty at IIT/Chicago-Kent College of Law where he has taught Sports, Law & Society since 1994, delivered an excellent talk on the role of the NFL in recent high publicity cases, intentional acts by players, and injury liability, among other exciting sports law topics. More information is available at http://eldonham.com/. You will not want to miss our upcoming CLEs featuring Justice Jesse Reyes on February 10, 2015, the NSBA's Annual Ethics CLE on April 21, 2015, and NSBA Member Ed Moor discussing Product Liability on June 9, 2015.

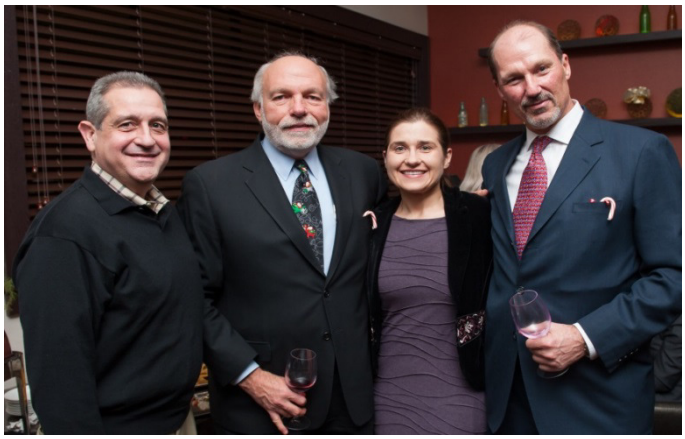
I hope you will join us for the annual Gary Wild Dinner, which will take place on March 10, 2015. This year's honoree is the YWCA Evanston/North Shore for its work in the community and dedication to eliminating racism, empowering women and promoting peace, justice, freedom and dignity for all. Please note that the NSBA is working with the YWCA's Legal Advocacy Program in efforts to present a comprehensive CLE training for attorneys providing pro bono assistance for victims of domestic violence. And, of course, please save the date of May 12, 2015 for the NSBA's annual Judges Night at the North Shore Country Club..

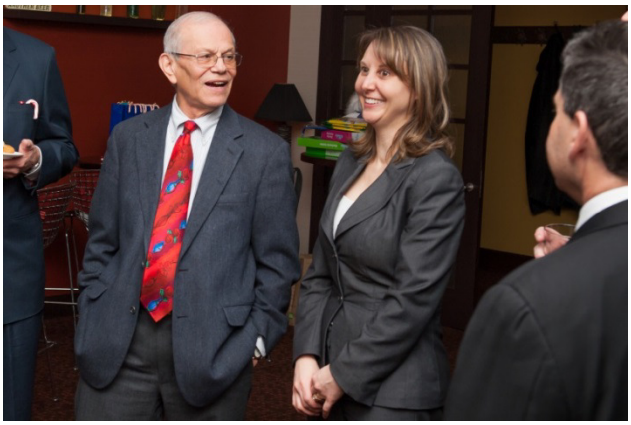
Our next big event is the 2nd NSBA Mock Court Invitational at the Skokie Court House on January 22, 2015 from 3:30 pm to 7:30 pm. Thanks to past president Jan Weinstein for her efforts in organizing and preparing for the competitions (and to our member volunteers for their time as judges). Several area high school teams will be competing this year, including: Niles West; Niles North; Main South; Evanston and York. Following the event, volunteers will provide student feedback at the pizza party. If you would like to participate, please contact Jan (asap) at jan@jsweinsteinatty.com.

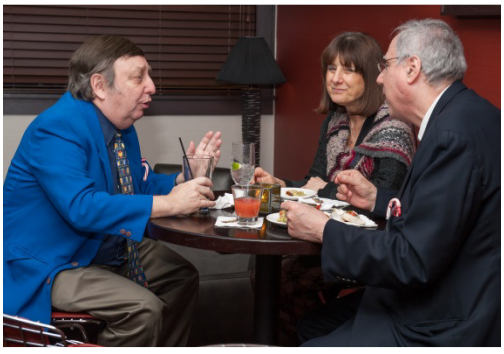
Your membership and participation in NSBA events is greatly appreciated! And please remember to follow Gandhi's lead and "be the change you wish to see in the world."

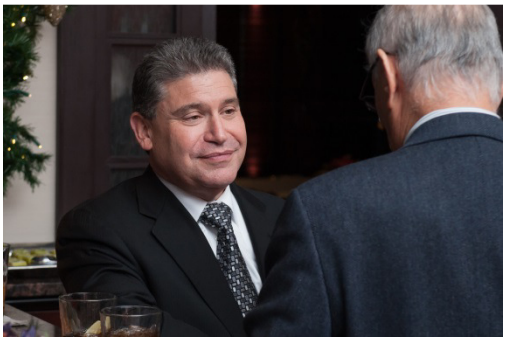
Very truly yours,

Anna







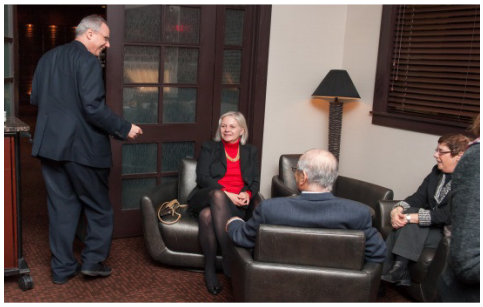


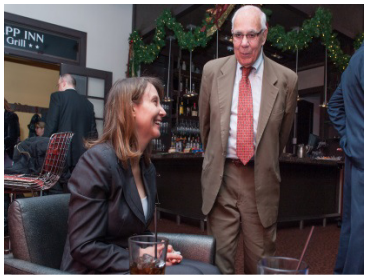
2015 Gary Wild Honoree:

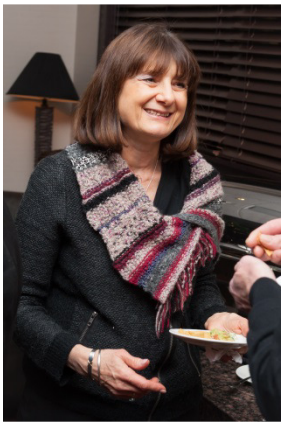
eliminating racism
empowering women
ywca

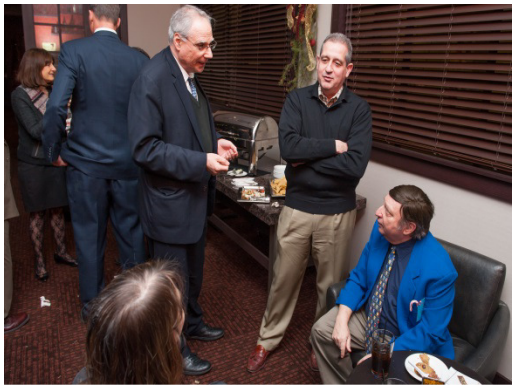
evanston/north shore

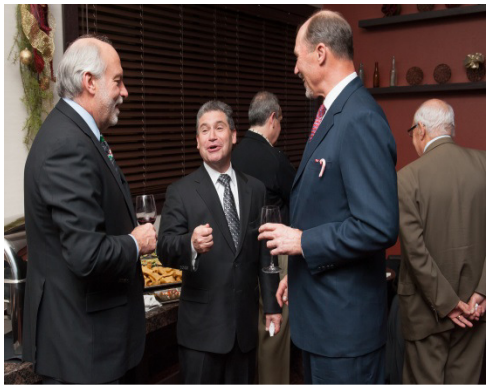
The YWCA is the largest provider of abused women's shelters and domestic violence (DV) services in the country, serving over 500,000 women and children annually. In 1983, the YWCA Evanston / North Shore opened a shelter for battered women and their children, and created the DV Legal Advocacy Program (LAP) at the Skokie (District 2) Courthouse in 1996 to provide legal assistance to pro se victims of domestic violence seeking civil remedies through the Illinois Domestic Violence Act (IDVA).











2013-2014 NSBA Officers & Directors:

Officers:

Anna Morrison-Ricordati, *President*
Ray Ricordati, III, *1st Vice President*
Molly Caesar, *2nd Vice President*
Rick Pullano, *3rd Vice President*
John Stimpson, *4th Vice President*
Michael Craven, *Secretary*
Vince Pinelli, *Treasurer*
Jan Weinstein, *Immediate Past President*

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Brian Clauss
William Ensing
Barb Lusky
Ana Pontoga
David Pasulka
Paul Plotnick
Hon. Jesse G. Reyes
Robert A. Romanoff
Phil Witt

From the Editor's Desk:

Thanks to those able to attend the NSBA events this past year and for willingly participating in the photos used in these Newsletters. For those of you that have not recently attended one of the NSBA's CLE programs, I strongly encourage you to do so. The qualities of the programs have been outstanding. If you have any recent articles or information that you would like to include in the newsletter, please let me know. We can always use more articles.

For those new members that have recently joined our ranks, I invite you to submit a short biographical statement (and photo) for inclusion in the newsletter to introduce yourself to the organization.

In addition, please send any suggestions for the newsletter to me at rlp@pullanolaw.com.

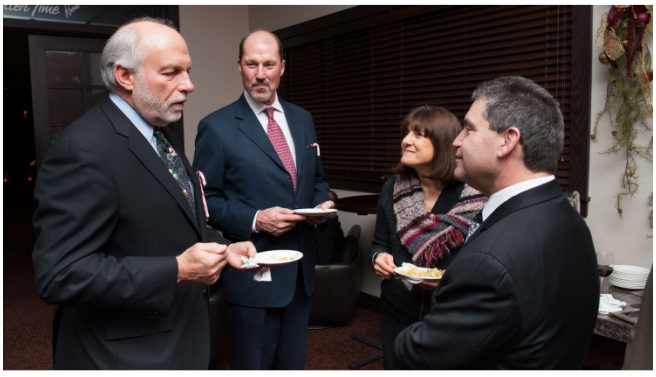
Thanks,

Rick Pullano

Pro Bono Project – YWCA Advocacy Program

The YWCA Evanston / North Shore is inviting experienced attorneys to join our panel of pro bono attorneys to represent victims of domestic violence in civil Order of Protection cases at the Skokie courthouse. Qualifications include minimum two years of litigation experience. Must complete free domestic violence training and pledge to take at least one case in subsequent 12 months. Attorneys will be provided with free CLE credits, valuable litigation experience and mal practice insurance coverage for their pro bono cases. Contact Betsy Minor at 847-470-5052 for more information.

eliminating racism
empowering women
ywca
evanston/north shore



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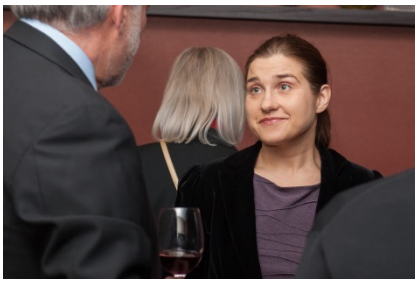
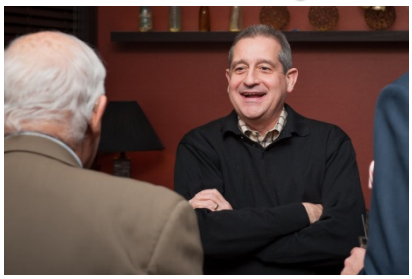
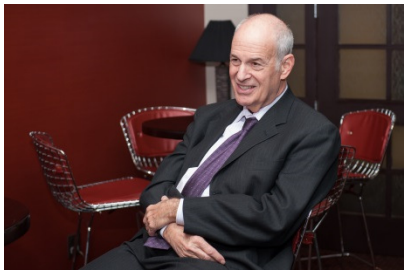
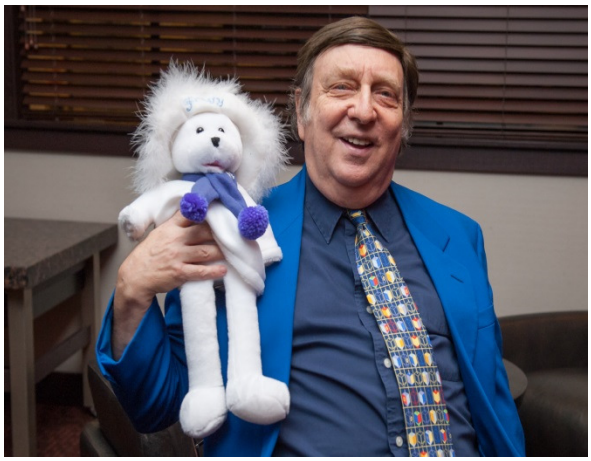








CALENDAR OF EVENTS

September 9, 2014 6:00-8:30 p.m.	**2014-2015 Officers Installation Dinner, and presentation of Sanford Blustin Award to Terrence Hake** **Location: North Shore Country Club, 1340 Glenview Road, Glenview, Illinois 60025**
October 21, 2014 6:00-8:30 p.m.	**Dinner CLE - Hon. Martin Molz, "Discussion on Recent Developments in Illinois and Federal Law"** **Location: Happ Inn Bar and Grill, 305 Happ Road, Northfield, Illinois 60093**
November 18, 2014 6:00-8:30 p.m.	**Dinner CLE - William Ensing, "Shoestring Asset Protection: An Overview of Less Exotic Forms of Asset Protection"** **Location: Happ Inn Bar and Grill, 305 Happ Road, Northfield, Illinois 60093**
December 16, 2014 6:00-9:00 p.m.	**Holiday Party** **Location: Happ Inn Bar and Grill, 305 Happ Road, Northfield, Illinois 60093**
January 13, 2015 6:00-8:30 p.m.	**Dinner CLE - Eldon Ham, "Recent Issues in Sports Law"** **Location: Happ Inn Bar and Grill, 305 Happ Road, Northfield, Illinois 60093**
February 10, 2015 6:00-8:30 p.m.	**Dinner CLE - Justice Jesse Reyes, Topic to be determined** **Location: Happ Inn Bar and Grill, 305 Happ Road, Northfield, Illinois 60093**
March 10, 2015 6:00-8:30 p.m	**Gary Wild Dinner - Honoree to be determined** **Location: to be determined**
April 21, 2015 Time: TBD	**Ethics CLE (6 hours) - Various Speakers, Topic to be determined** **Location: Skokie Courthouse, 5600 Old Orchard Road, Skokie, Illinois, 60077**
May 12, 2015 6:00-8:30 p.m.	**Judges Night** **Location: North Shore Country Club, 1340 Glenview Road, Glenview, Illinois 60025**
June 9, 2015 6:00-8:30 p.m.	**Annual Meeting/Elections** **Dinner CLE - Edward Moor, "Product Liability"** **Location: Happ Inn Bar and Grill, 305 Happ Road, Northfield, Illinois 60093**

CONDUCTING AND HANDLING PRE-LITIGATION INVESTIGATION IN AUTOMOBILE COLLISION CASES

By: Rick Pullano

When approached by a prospective client injured in an automobile collision, counsel should undertake a preliminary investigation before deciding whether to undertake or reject representation of the client. This decision should be based upon, amongst other things, liability and damages considerations. That is to say counsel should seek out more precise information about how the collision occurred, the nature of the claimant's injuries and the existence (or lack thereof) of insurance coverage to satisfy a potential judgment.

An important consideration when deciding to represent someone in an automobile collision is the financial ability of the potential Defendant to satisfy any judgment. Often, this hinges upon the existence of insurance coverage and the corresponding policy limits, if any. The name of the Defendant's insurance carrier and the policy number can be found on the police report. The Plaintiff's attorney has a statutory right to obtain the Defendant's liability limits prior to filing suit. If the Defendant's insurance company withholds this information, the relevant statute to cite to the adjuster is 215 ILCS 5/143.24(b). It states the following:

> Any insurer insuring any person or entity against damages arising out of a vehicular accident shall disclose the dollar amount of liability coverage under the insured's personal private passenger automobile liability insurance policy upon receipt of the following: (a) a certified letter from a claimant or any attorney purporting to represent any claimant which requests such disclosure and (b) a brief description of the nature and extent of the injuries, accompanied by a statement of the amount of medical bills incurred to date and copies of medical records. The disclosure shall be confidential and available only to the claimant, his attorney and personnel in the office of the attorney entitled to access to the claimant's files. The insurer shall forward the information to the party requesting it by certified mail, return receipt requested, within 30 days of receipt of the request.

General Investigation Considerations

The Plaintiff's attorney must immediately focus on gathering and preserving evidence. As time progresses, memories fade, witnesses move, disappear or otherwise become unavailable, and physical evidence could be altered, destroyed or lost. Failure to conduct a timely and thorough investigation will undoubtedly effect the value of a case. If witnesses who corroborate facts relevant to your theory of the case disappear or cannot recall specifics as time progresses, liability may be compromised. The value of the case will decline when liability is no longer certain. As a general rule of thumb, the sooner counsel begins the investigation process, the better!

Scene Inspection

A thorough understanding of the facts of every automobile collision case is essential to obtaining full compensation for your clients. Every attorney should make a personal visit to the scene of the collision. This will assist in understanding how the collision occurred and aid in questioning witnesses about the occurrence. If possible, the client should accompany you to the scene. This will aid in refreshing their recollection as to what happened and may clear up any inconsistencies.

Scene Photographs

It is extremely important to have a professional photographer take photographs of the scene of the collision as quickly as possible. As time passes, the collision site may change. Intervening weather conditions or corrective measures, including stop signs or roadway markings, could be altered soon after a collision. This may have a huge impact on proving liability. Photographs and videos are some of the best evidence that a Plaintiff's counsel will have at trial so there is no reason to delay. Professional investigators will know what pictures to take, the angles to shoot from to depict realistic conditions, and what kind of film, shutter speed and light to use.

It should also be determined if the police took photographs during the course of their investigation. If so, copies should be ordered to supplement your investigator's photographs.

Police Report

One of the most crucial methods of investigating an incident is obtaining a copy of the police report. In relatively minor automobile collisions, the police report may become available in as little as a few days. In major collisions where deaths or serious bodily injuries are involved, the police officers' investigation may take weeks to complete. Either way, it may be necessary to hire an investigator to obtain a copy of the police report.

Obtaining the documentary evidence is inexpensive and not time consuming either. Chicago Police Department Traffic Crash Reports can be obtained online for a fee of $6.00. For all other reports or inquiries, you may go to the Chicago Police Department Record Customer Service Section at 4770 South Kedzie Avenue, Chicago, Illinois, or you may call (312)745-5199.

Traffic crash reports and accident reconstruction reports from the Illinois State Police can be ordered directly from their website. There is a $5.00 fee for a crash report and a $20.00 fee for reconstruction reports. The reports can be emailed to you directly, or sent to you via regular mail. The turn-around is usually the same day. You can also submit a written request via regular mail to:

Illinois State Police Patrol Records
801 S. 7th Street, Suite 400-M
Springfield, IL 62703

Upon receipt, the attorney should immediately review the content of the report. Counsel should analyze the police report for the names and addresses of witnesses, statements given to the investigating officer at the scene and the investigating officer's opinion, if any, as to who was at fault. Additionally, a significant amount of potentially relevant information is contained in the numbered boxes that form the

outer border of the report. The boxes detail the weather conditions, traffic control devices, lighting conditions, pedestrian location (i.e. in a crosswalk), traffic conditions and a the contributory causes for the collision. There is a template available on-line to assist in deciphering the code. The template can be downloaded at http://www.actar.org/pdf/il_ovl1.pdf.

From a practical standpoint, police reports are generally not admissible in Illinois. The only two exceptions to the hearsay rule in which a police report can be used at trial are to refresh the recollection of a witness and as a recording of past recollections recorded. See Ill. S. Ct. Rule 236; Taylor v. City of Chicago, 114 Ill. App. 3d 715 (1st Dist. 1983). Aside from the rules of evidence at trial, the Defendant's insurance carrier will often analyze the report for the police officer's opinion regarding fault. While the report is not admissible at trial, the claims adjuster will often believe that a jury would arrive at a similar opinion as the police officer and evaluate liability accordingly.

Contact Witnesses

Determining early on what the Plaintiff, Defendant and eye witnesses will testify to enables the Plaintiff's attorney to analyze liability from the outset of the case. The Plaintiff's attorney's evaluation of liability will impact the value of the case. Therefore, the Plaintiff's attorney should make initial contact with key witnesses. For obvious reasons, it is important to accommodate witness' schedules and privacy as much as possible. You do not want to antagonize, annoy or cause a potential witness to flip sides. After all, you are essentially asking the witness to aid in your investigation. These citizens are taking the time out of their busy lives, their jobs and family time to discuss what they saw. Therefore, witnesses should be treated with great deference. The

A Plaintiff's attorney should also be aware that some witnesses may find it too intrusive for an attorney to call them following an accident. Sometimes a letter asking a witness to contact the attorney is the preferable method of making first contact. By making initial contact with witnesses, the Plaintiff's attorney can establish a rapport with the witness. The witness may provide the Plaintiff's attorney additional information that may not have been known otherwise.

Oral vs. Written Statements

In litigation, formalized witness statements are discoverable and will have to be produced to the Defendants. However, taking written statements of witnesses that are favorable to you may not be a good idea. At trial, you want favorable witnesses to have latitude to describe exactly what they saw and heard. A written statement by a favorable witness may inhibit their ability to expound upon their prior statement or deviate slightly therein. Remember, all witness statements can be used to impeach a witness at trial. You do not want a favorable witness to be impeached at trial by the Defense claiming that this information was not in their written statement.

On the flip side, it is generally preferable to take formal written statements from unfavorable witnesses. The written statement should be a reasonably concise statement of the pertinent facts which support your theory of the case. By doing so, you can pin down the unfavorable witness's version of the facts. Should subsequent testimony during formal discovery be inconsistent, the Plaintiff's attorney will have a powerful impeachment tool at trial.

This rule can also be applied to the potential Defendant in an automobile collision case. The usefulness of this tactic is obvious; one can obtain more candid admissions than would be revealed once the party retains an attorney. The Plaintiff's attorney must be cognizant of the ethical issues that arise when contacting individuals who are likely to become parties to litigation. There is no ethical prohibition on contacting a potential party personally and obtaining a statement therein until you learn that the potential party is represented by an attorney on the matter in controversy. Once you learn that the potential Defendant is represented by an attorney on the matter, the rules of ethics preclude anyone, including the Plaintiff's attorney and his/her investigators, from contacting said person. See Ill. Rules of Prof'l Conduct Rule 4.2.

Additionally, the person who takes the statement must be prepared to testify that the statement is a true reflection of the statement the witness made and that the witness in fact signed it or made the statement in question. Ethically, the Plaintiff's attorney should not put himself or herself in a position where the attorney will have to testify and thereafter argue his or her own credibility as a witness. See Ill. Rules of Prof'l Conduct 3.7(a), (b); Andrea Duman, Inc. v. Pittway Corp., 110 Ill. App. 3d 481 (1st Dist. 1982).

Photos and Video Footage

Photos and video footage of a collision can be extremely potent evidence to show a jury at trial. Video footage can show that a party is not truthfully testifying about how the collision occurred. Video footage can also be used to refresh a witness' recollection. But, video footage can also be used to show the force of impact and can be used in conjunction with expert testimony to render causation opinions. This type of evidence used to never be available for practitioners investigating the causes of a motor vehicle collision. However, in the digital age, this type of evidence is becoming more and more available. Witnesses often have cell phone cameras and they may have been recording at the time of the collision. Store fronts often have security cameras outside which may have captured footage of the incident. The Chicago Department of Transportation has red light cameras at certain intersections that may have recorded the incident as well. The videotapes are maintained for thirty days. The City of Chicago publishes a list of intersections with the red light cameras and it is available at http://webapps.cityofchicago.org/traffic/redlightList.jsp. Once a lawyer knows that the intersection does have a camera, he/she needs to write a letter to the City of Chicago pursuant to the Freedom of Information Act, 5 ILCS 140/1, requesting, inter alia, the photographs and video/camera recordings of the intersection in question, at or around the time of the collision.

The Chicago Police Department also has video footage of certain areas around the city. More and more "Blue Light Pod" cameras are being installed all over the city. However, these tapes are only maintained for 14 days. The first thing a practitioner should do is call to see if the police department has a Blue Light Pod camera at the intersection in question. If they do, then you need to get the "POD number", and send an email to the FOIA Unit at FOIA@chicagopolice.org asking whether or not they have any video footage from Blue Light Pod Number XXX for the date in question. Then, the lawyer needs to send a FOIA letter to the Records/Subpoena Division of the Chicago Police Department requesting that the footage be burned onto a DVD.

Driving History

Generally, a driver's prior driving record is not relevant to proving that the defendant drove in a negligent manner on the date of the incident. However, it can be relevant in certain circumstances. For

instance, presume a tow truck company hired an unfit driver that had a horrible driving record and that very driver was involved in a terrible collision where it was believed he was texting while driving. Under these facts, Plaintiff may be able to prevail on a Negligent Hiring and/or Negligent Entrustment theory. A full and complete driving record abstract will be critical to proving this case. In order to get a driving record abstract, the lawyer will need to fill out a request form that is available on the Secretary of State's website at www.cyberdriveillinois.com.

Traffic Signal Timing Sequence

It is not uncommon while investigating a traffic collision to speak to three eye witnesses and be told three very different versions of what occurred. One of the most common inconsistencies between eye witnesses is the color of the traffic light at the time of the collision. The plaintiff may claim they had a green arrow and the defendant may claim they had a green light at the time of the collision. Independent witnesses may not recall or may offer conflicting testimony. Either way, lawyers need not solely rely upon witness testimony to determine the color of the traffic light when your client was struck. A traffic signal sequence can provide additional evidence regarding the color of the traffic light. For instance, the sequence may tell you whether eastbound traffic will have a green arrow illuminated when westbound traffic faces a steady red light. If your client was turning with a green arrow, the traffic light sequence would disprove the defendant's theory of the case that they had a green light.

Traffic signal time sequence reports for Chicago only, are handled through the Chicago Department of Transportation (30 North LaSalle Street, Suite 1100, Chicago, IL 60602). A Freedom of Information Act letter should be sent to the above department requesting the traffic control time sequence in effect at the time of the occurrence and for the intersection in question.

Police Dispatch Tapes

Dispatch tapes can be very important in a variety of cases. In police chase cases, the dispatch tapes can show whether or not the officer chasing the felon had authority to do so. In automobile collisions, the defendant or an eyewitness may call 911 and offer an account of what occurred. If the defendant called 911, that is obviously an admission that will be very difficult to controvert at trial.

The dispatch tapes are generally saved for 30 days. RadioReference.com is a radio communications data provider. It is the largest broadcaster of public safety live audio communication feeds, hosting thousands of live audio broadcasts of Police, Fire, EMS, Railroad and aircraft communications. You can search the audio feed archives for broadcasts which may relate to your case on their website. In addition, the attorney can file an Emergency Motion for a Protective Order requesting that the communications for the date of the incident be preserved and protected.

The proper procedure for obtaining such an order first includes the filing of the Complaint at Law and immediately filing the Motion for a Protective Order thereafter. Under ordinary circumstances, the Plaintiff is not allowed to commence formal discovery until the time when all parties file their appearances or are required to appear. However, Illinois Supreme Court rule 201(c)(1) allows a court to enter a protective order regulating discovery in order to prevent unreasonable disadvantages to a party. In some instances, police departments and insurance companies will destroy evidence pursuant to record keeping policies. Unless a protective order is entered, the information that could have been obtained may be lost. The loss of this information will severely impact your ability to prove fault and ultimately

obtain full compensation for your client. Practically speaking, the court would enter the protective order when the failure to do so will result in the inability of the Plaintiff to discover evidence that may be critical to his or her claim.

Experts

In automobile collision cases, accident reconstruction experts may be able to assist in establishing which party is at fault by examining all the evidence. Accident reconstruction experts will analyze the scene of the accident, the damaged vehicles, and skid marks on the roadway. In major accidents, the police may send out their own accident reconstruction expert who will take detailed measurements of the resting points of the vehicles. All of this information can be used to determine the initial point of impact and the speed of the vehicles at impact as well. These are crucial facts that impact liability in motor vehicle collisions.

Some very helpful resources to aid in retaining a particular expert include jury verdict reporters and fellow attorneys. Not only will a jury verdict disclose the name of the expert used in a particular case, but you will also find out the name of the attorney who retained them. Calling the attorney to seek information about how this expert faired at trial may pay dividends at the end of your case. Fellow attorneys who have tried automobile collision cases in the past will undoubtedly have referrals to potential experts as well. In fact, colleagues are some of the best resources attorneys have to discuss not only expert referrals, but also the liability and damages issues to your automobile case.

Recovering Vital Physical Evidence

Most motor vehicle collisions involve physical evidence that must immediately be preserved. In more significant cases, immediate steps should be taken to locate the vehicles involved and to preserve them for examination and testing. If your client's vehicle is no longer in your client's control, you must immediately notify the custodian (which is probably a salvage/tow yard) not to move, destroy or otherwise alter the vehicle until further notice. The same can be said for the potential Defendant's automobile. Insurance carriers will frequently obtain ownership of the vehicle and pay for the damage of the vehicle if the vehicle is considered "totaled." The Plaintiff's attorney should immediately compose a demand letter requesting that the insurance company and the tow yard preserve and protect the vehicles. Thereafter, the Plaintiff's attorney should file a motion and obtain a court order instructing the insurance company and salvage/tow yard to preserve and to protect the evidence. Violation of the court order may be sufficient basis for the subsequent filing of a spoliation action.

For example, if the Plaintiff was involved in a collision with a police officer, some evidence that could prove to be very valuable in proving liability may be lost or destroyed in the course of the departments record purging policy. This evidence includes the police car involved in the collision, radio transmissions of police officers in the minutes leading up to the collision, video taken from the police car and black box data.

Determining Settlement Value

No two motor vehicle collision cases are alike. Each case has its own unique issues with respect to liability and damages. However, prior to filing suit there are certain factors that the Plaintiff's attorney should consider when making a settlement demand upon a potential Defendant's insurance company.

There is no one factor that the Plaintiff's attorney can point to and say "this is the value of this case". There are, however, sources that can be used to aid in the determination. Those sources include jury verdict reports and fellow colleagues. The settlement value will undoubtedly fall into a range. This range of values will be limited by the financial resources available to satisfy the claim. Thus, the potential Defendant's insurance policy limits and the personal assets must be considered when attempting to determine settlement value.

Once a range of settlement values are determined, the Plaintiff's attorney should put together a professional settlement demand package to be sent to the claims adjuster. At an absolute minimum, this package should include a thorough discussion on liability and damages and include copies of the medical records and bills related to the injury. However, the most persuasive demand packages will also contain any and all documents you received during the course of your investigation. This may include the police report, witness statements, photographs of the property damage, photographs of the injuries and even a medical illustration. With respect to witness statements, the Plaintiff's attorney must decide whether or not to disclose the statements during the course of pre-suit negotiations. If an adjuster believes that his insured is not at fault and makes a very low initial settlement offer, the Plaintiff's attorney may want to show the adjuster the witness statements that help to establish liability.

The initial settlement demand package is the first chance the Plaintiff's attorney will have to make an impression upon the claims adjuster. This is the first opportunity for the Plaintiff's attorney to convince the claims adjuster why their insured is at fault for the motor vehicle collision and why the settlement value of this case is significant. Not only do you have to convince an insurance adjuster why this case has significant value, but you owe it to your client to put their case in its most favorable light. Only then will you be able to maximize the Plaintiff's recovery and obtain full compensation for their injuries. Below you will find a sample demand package we recently utilized in order to obtain a great recovery on behalf of a client.

Final Thoughts

The aforementioned tactics can and should be undertaken as soon as possible. In fact, this should all be completed prior to sending the insurance company your letter of representation and attorney's lien. If an insurance company is on notice of the claim, they will commence their own investigation. This will include talking to their insured and any available witnesses. For the reasons discussed above, the Plaintiff's attorney ability to get the first bite of the apple is a huge advantage. It will not only help the Plaintiff's attorney prove their prima facie case, but it will put the insurance company on notice that they are dealing with a skilled litigator. By taking these relatively easy steps you should be able to maximize your client's recovery in automobile collision cases.

ON THE TIP OF YOUR TONGUE

By Angela Peters

FAMILY LAW

In re Marriage of Marsh, 2013 IL App (2d) 130423 (December 26, 2013)(HUDSON) Proceeds received by respondent husband from post-dissolution sale of shares of stock owned prior to the dissolution did not constitute "income" for purposes of child support under 750 ILCS 5/505(a)(3), using the plain and ordinary meaning of "income," and the cost basis of stock was $282,079 but sale price was $275,000 and therefore no increase in "wealth" was realized from the sale. Affirmed.

In re Custody of C.C., 2013 IL App (3d) 120342 (December 9, 2013) (WRIGHT). Child custody and support were determined based on voluntary acknowledgment of paternity executed by mother and first alleged father; two years later, intervenor alleged he was child's biological father. DNA testing established that intervenor was biological father. Intervenor filed notice of appeal on April 27, 2012, challenging three separate rulings by trial court: February 14, 2011 (order denying motion to vacate previous paternity order); August 5, 2011 (order denying request for downward deviation in child support); and March 28, 2012 (order requiring intervenor to pay one-third of mother's attorney fees).

The trial court abused its discretion in ordering intervenor biological father to pay one-third of petitioner mother's attorney fees incurred as a result of the complicated parentage proceedings: the trial court provided no specific finding that he was able to contribute and, in fact, suggested he secure a loan to pay the attorney fees. The appellate court declined to address intervenor's request for downward deviation in child support and his motion to vacate the earlier order establishing first alleged father's parentage, as intervenor had failed to file timely notice of appeal of each issue.

In Dumiak v. Kinzer-Somerville, 2013 IL App (2d) 130336, 996 N.E.2d 176, 374 Ill.Dec. 729, the trial court correctly ruled that the grandparents did not have standing to pursue a petition for custody of their grandson because the child's mother had physical possession of him at the time the petition was filed. Although the grandparents had physical possession and de facto custody of the child from August 2008 through October 2010, the child's mother assumed physical possession of the child at that point. The mother had continual physical possession from October 31, 2010, until the grandparents filed for custody 96 days later; during this time, she established a residence for the child and made all parental decisions for him, including when to allow his grandparents to see him. The grandparents had acquiesced to this arrangement and returned the child to the mother's home after they visited with their grandson and abided by the mother's decisions concerning when they could see the child.

The Approach in Illinois for Resolving a Dispute over the Disposition of Pre-Embryos Is To Honor the Parties' Mutually Expressed Intent. As a matter of first impression, in Szafranski v.

Dunston, 2013 IL App (1st) 122975, 993 N.E.2d 502, 373 Ill.Dec. 196, the appellate court dealt with the issue of who controls the disposition of cryopreserved pre-embryos created with one party's sperm and another party's ova when the relationship between the parties ends. After an extensive analysis of the approaches employed by other states, the First District chose to employ the contractual approach, which provides that the court will enforce contracts governing the disposition of the pre-embryos as long as they do not violate public policy. However, when there is no advance agreement regarding the disposition of the pre-embryos, then the balancing approach should be used, in which the relative interests of the parties in using or not using the pre-embryos must be weighed. The court declined to follow the mutual consent approach, which provides that no embryo should be used by either party, donated to another patient, used in research, or destroyed without the mutual consent of both parties who created the embryo. The court noted that Iowa is the only state that currently follows the mutual consent approach. The reason for adopting the contractual approach is that it allows the parties, rather than the courts, to make their own reproductive choices while also providing a measure of certainty necessary to proper family planning.

Premarital Agreement Found To Be Invalid and Unenforceable at the Time of Husband's Death. A husband and wife signed a premarital agreement the day before their marriage that prohibited either from renouncing the will of the other and asserting their statutory inheritance rights upon the other's death. In re Estate of Chaney, 2013 IL App (3d) 120565, 1 N.E.3d 1231, 377 Ill.Dec. 344. This was a second marriage for both parties, and they did not have children together. After more than 23 years of marriage, the husband passed away, and the wife sought to renounce and take her statutory share of the estate. The trial court held an evidentiary hearing on the husband's estate's petition for declaratory judgment, wherein the court was asked to hold the agreement valid and binding. The trial court correctly applied the legal standard set forth in *In re Marriage of Murphy,* 359 Ill.App.3d 289, 834 N.E.2d 56, 295 Ill.Dec. 831 (3d Dist. 2005), for agreements executed before Illinois' adoption of the Illinois Uniform Premarital Agreement Act, 750 ILCS 10/1, *et seq.,* which provides that, to be valid and enforceable, the agreement, among other things, had to be fair and reasonable. The trial court found that the agreement was not fair and reasonable because it did not provide an equitable settlement for the wife in lieu of her inheritance rights. The appellate court affirmed. Despite issues of whether certain arguments might have been waived on appeal, the court noted that even if it were to consider the merits of the argument, it would still have to uphold the trial court based on the relevant standard of fairness that needed to be applied. Justice Holdridge authored a strong dissent, arguing that the trial court erred because it determined the fairness of the agreement by comparing the amount of money the wife received with the value of the husband's estate, not by determining whether the agreement had been entered into knowingly and voluntarily.

Illinois Supreme Court Holds That the State's Failure To File Notice Pleading Under the Adoption Act Did Not Prejudice Mother. In child protection proceedings, the state filed a petition for the termination of a mother's parental rights. In re S.L., 2014 IL 115424. The trial court found the mother unfit under former §1D(m)(iii) of the Adoption Act, 750 ILCS 50/0.01, *et seq.,* and the appellate court reversed. The plain language of former Adoption Act §1D(m)(iii), 750 ILCS 50/1D(m)(iii), stated that a basis for the termination of parental rights is the finding of the unfitness of a parent who fails to make reasonable progress toward the return of a child to the parent during any 9-month period after the end of the initial 9-month period following the adjudication of neglect and abuse. In 2006, the legislature amended §1D(m) to provide that a petitioner in such a case "shall file with the court and serve on the parties a pleading that specifies the 9–month period or periods relied on." P.A. 94-563 (eff. Jan. 1, 2006). The state did not follow this procedure, but the Supreme Court held that its amended petition was

sufficient to state a cause of action to inform the mother as to the nature of the neglect charge, because the petition specified the initial 9-month period following the adjudication of neglect and it was apparent from the record that the mother understood exactly what 9-month periods were at issue. Therefore, the state's failure to file a separate notice was a pleading defect, not a failure to state a cause of action.

Cook County Now Issuing Marriage Licenses to Same-Sex Couples. On February 21, 2014, U.S. District Judge Sharon Johnson Coleman issued a ruling that provided that the Cook County Clerk could immediately issue marriage licenses to same-sex couples although the effective date of the same-sex marriage law is not until June 1, 2014. *See* Lee v. Orr, No. 13-cv-8719, 2014 WL 683680 (N.D.Ill. Feb. 21, 2014). The district court ruling does not apply to the collar counties of Will, Lake, DuPage, McHenry, and Kane, and they are still bound to follow the June 1, 2014, effective date for the issuance of same-sex marriage licenses.

In re Parentage of Rogan M., 2014 IL App (1st) 132765, March 7, 2014, Cook Co., 6th Div., REYES, Appeal dismissed. Mother filed parentage action as to parties' minor child, which parties resolved by agreement, but parties reached no formal decision on custody. Mother filed removal petition, to remove child to California where mother hoped to find work; father filed custody petition. Court denied removal petition in memorandum opinion and order, but without Rule 304(a) finding. As custody petition remained pending, order was not final and appealable within meaning of Rule 301.Removal order is not a custody judgment or modification of custody for purposes of jurisdiction. (HALL and LAMPKIN, concurring.)

In re Marriage of Ray, 2014 IL App (4th) 130326 (March 3, 2014) KNECHT. Wife filed petition for rule to show cause why husband should not be held in indirect civil contempt for failure to make court-ordered support payments. At the hearing on the rule to show cause, husband asserted his fifth-amendment privilege against self-incrimination and indicated he would continue to do so in response to any question that might incriminate him with respect to a federal criminal investigation for nonpayment of taxes.

The trial court found husband in contempt and set his purge amount at $1000. He appealed, arguing that he was held in contempt for asserting a constitutional privilege. In affirming the trial court's judgment, the appellate court held that the husband had the burden to show cause why he should not be held in contempt. By asserting his fifth-amendment privilege, he did not meet this burden. The trial court held him in contempt for failing to meet his burden, not for asserting his privilege. Affirmed.

In re Rocca, 2013 IL App (2d) 121147 (December 11, 2013) JORGENSEN. Attorney who represented mother in paternity action petitioned for attorney fees. On remand from appellate court, trial court held a contribution hearing where former client did not appear and attorney did not present evidence of reasonableness of his fees. The trial court denied contribution, denied attorney's petitions for supplemental and appellate attorney fees, and denied attorney's motion for sanctions. Attorney appealed.

The appellate court held that trial court did not abuse its discretion on remand. It was appropriate to hold a contribution hearing to consider the petition when the appellate court's prior mandate from the first appeal did not set the amount of contribution; the distinction between contribution and a contribution hearing would not preclude a hearing for the trial court to consider a contribution petition; when husband waived a contribution hearing with respect to his agreement with wife, that waiver did not apply to attorney's petition for contribution. Regarding the claims for supplemental and appellate fees, denial was proper when attorney did not represent the client on appeal and IMDMA did not

authorize award of fees by attorney seeking to collect from a former client. Sanctions were properly denied when nothing in the record indicated opposing counsel's arguments were frivolous. Affirmed.

In re Marriage of Heinrich, 2014 IL App (2d) 121333 (March 19, 2014)

JORGENSEN. Petitioner filed petition for dissolution of marriage and respondent filed motion for declaratory judgment seeking determination of parties' rights under premarital agreement. Trial court declared the premarital agreement valid and enforceable. After denying respondent's motion to reconsider filed 17 months later, the trial court also entered its finding of no just reason to delay enforcement or appeal or both, pursuant to Illinois Supreme Court Rule 304(a).

The appellate court held that the trial court's declaratory judgment was not final *and* appealable until it had entered its Rule 304(a) finding, so respondent's motion to reconsider was not untimely and appellate jurisdiction was proper. The fee-shifting ban in premarital agreement was unenforceable as to child-related issues because it violated Illinois public policy by discouraging both parents from pursuing litigation in their children's best interests. Affirmed in part, reversed in part, remanded.

In re Marriage of Tiballi, 2014 IL 116319 (March 20, 2014).

THOMAS. Father sought post-dissolution custody modification. Pursuant to 750 ILCS 5/604(b), a psychologist was appointed to conduct a custody evaluation. After the evaluator submitted his report, however, the father's petition was dismissed without prejudice and he was ordered to pay the evaluator's fees as court costs pursuant to the Code of Civil Procedure, 735 ILCS 5/2-1009(a).

The Supreme Court held that evaluator fees are not "court costs" within the meaning of either section 2–1009 or section 5–116 of the Code. The appropriate statutory basis for allocation of section 604(b) fees is section 604(b), itself. Therefore, the fees should be allocated between the parties based upon the financial ability of each party and any other criteria the court considers relevant, as provided in section 604(b). Reversed and remanded.

Lee v. Fosdick, 2014 IL App (4th) 130939 (March 20, 2014) APPLETON. After minor's mother died, maternal grandmother and father cross-petitioned for custody. Trial court initially ordered temporary custody to grandmother, but later awarded permanent custody to father (and substantial visitation to grandmother). Grandmother amended her petition, which father moved to dismiss for lack of standing. The trial court granted the motion to dismiss with respect to the count seeking custody and certified the following question for interlocutory review: "As a matter of law, is the Petitioner required to reestablish standing in order to modify a custody order where the Court previously found she had standing, ordered temporary custody to her, and granted substantial visitation when permanent custody was awarded to the child's father?"

The appellate court answered "no." Whether grandmother had standing depends on her status when she initiated the action for custody. At the time she initiated the action, she did have standing because the minor was not in the physical custody of either parent. Reversed and remanded.

In re Marriage of Baumgartner, 2014 IL App (1st) 120552, March 31, 2014, Cook Co., 6th Div., HALL. Affirmed. Court properly denied wife's petition to enforce post high school educational provisions of judgment for dissolution, finding that son, age 23 at time of hearing, was emancipated and capable of supporting himself and did not have requisite desire and ability to further his post high school education. Evidence established that son was not dependent upon mother, with whom he lived, for his support. Court properly struck wife's petition for indirect criminal contempt, as she failed to show that husband violated court's orders or that any violation was willful. (LAMPKIN and REYES, concurring.)

Brzowski v. Brzowski, 2014 IL App (3d) 130404, March 14, 2014, Will Co., McDADE, Affirmed in part and vacated in part; remanded with directions. (Court opinion corrected

3/17/14.) Law of the case doctrine and res judicata bar Respondent in OP proceeding from later attacking validity of divorce, entry of original OP, and extensions of OP, and related criminal proceedings. When a judge is disqualified from a case, by recusal or petition for substitution, that judge cannot enter any further substantive orders in the matter.(CARTER and O'BRIEN, concurring.)

Order granting exclusive possession of marital residence to one spouse immediately appealable. *In re Marriage of Engst,* 2140 IL App (4th) 131078. http://www.state.il.us/court/Opinions/AppellateCourt/2014/4thDistrict/4131078.pdf. Husband filed an interlocutory appeal pursuant to Supreme Court Rule (SCR) 307 after the trial court granted wife exclusive possession of the marital residence. The Appellate Court held that it had jurisdiction to hear the matter under SCR 307(a)(1) which provides that appeals may be taken from an order of the trial court granting, modifying, refusing, dissolving, or refusing to dissolve or modify an injunction. Because Section 701 of the IMDMA provides the court may enter orders of injunction, mandatory or restraining, granting exclusive possession to either spouse, an interlocutory appeal under Rule 307(a)(1) is appropriate.

Petition for exclusive possession is treated as a motion. The wife filed a Petition For Exclusive Possession. In it the only allegation was a conclusory statement that the mental wellbeing of the children would be jeopardized by continued occupancy of the marital residence by both spouses and that it was for her and the children's mental wellbeing that she be awarded exclusive possession. The husband presented a Motion To Dismiss stating that wife's Petition contained only conclusory allegations rather than specific allegations of fact enabling him to prepare a defense and did not state the factual basis for relief. The Fourth District Appellate Court affirmed the Trial Court's denial of the Motion To Dismiss holding that a Motion To Dismiss addresses only defects in "pleadings" and that the wife's "Petition" seeking temporary relief in the pending dissolution proceeding was a "motion" rather than a pleading.

The Appellate Court upheld a trial court's order granting wife exclusive possession of the marital residence and temporary custody of two minor children. The Court relied heavily on the trial court's finding that wife's testimony was credible that the children were being exposed to a highly negative situation. Although the trial court did not make specific findings with respect to Section 701 of the IMDMA, there was sufficient evidence in the record supporting a finding that the mental health of wife and/or the children was in jeopardy by both spouses' continued shared occupancy of the marital home. For example, wife testified to numerous instances when husband had been physically aggressive towards her by standing in the doorway to block her access to an area of the home; and moving towards her and then blaming her for running into him. She also testified that he swore at her, called her names in front of the children, and threatened to knock her head off. Husband did not deny the events occurred but characterized them differently. There was also ample evidence that some of the confrontations had occurred in the presence of the children. The Court noted in its opinion that a situation need not rise to the level of physical violence before exclusive possession could be granted.

The Hague Convention does not allow for the tolling of its time limits. A mother and father were living in the United Kingdom and in November 2008 the mother left with their three year old child and moved to her sister's residence in New York. The mother did not inform the father where she and the child were living. The father was unsuccessful in locating the child and obtaining any remedies in the United Kingdom. Thereafter, learning of the child's whereabouts in November of 2010, he filed in the United States District Court for the Southern District of New York an action for the return of the child pursuant to the Hague Convention. The mother raised the defense to being required to return the child that the child was "settled" in their new home and it would not be in the child's best interest to be returned to the United Kingdom for custody hearings. The defense of a child being "settled" in a new home to avoid a return to the place where the child had been a habitual

resident is only available under the Hague Convention if the action for return was not brought within 12 months from the abduction. The father argued although his application was filed more than 12 months after the abduction, the period for filing is tolled by the mother's conduct of concealing her and the child's location. The United States Supreme Court in a decision authored by Justice Clarence Thomas, held that equitable tolling applied to statutes of limitations under domestic law. An international treaty like the Hague Convention did not provide an exception to the 12 month time period so there would be none. *Lozano v. Alvarez*, 134 S. Ct. 1224, 188 L.Ed.2d 200 (2014).

In re Marriage of Iqbal, 2014 IL App (2d) 131306, May 6, 2014, Du Page Co., SCHOSTOK, Affirmed. Postnuptial agreement (PNA) signed by parties was unenforceable as it violates public policy. PNA gives counselor sole power to determine which parent will have custody of children, as counselor has sole power to declare whether party seeking divorce is doing so reasonably, and is sole arbiter of whether either party has violated any part of PNA so as to forfeit any claim to custody. PNA is substantively unconscionable, and thus unenforceable, as its terms are significantly one-sided. Court's grant of sole custody to wife not against manifest weight of evidence, as husband often spoke negatively of wife and was found likely to interfere with children's relationship with wife.(ZENOFF, concurring; BURKE, specially concurring.)

Marzouki v. Najar-Marzouki, 2014 IL App (1st) 132841, May 15, 2014, Cook Co., 4th Div., EPSTEIN, Affirmed. French citizens were married in Tunisia, and lived in Illinois, where their two children were born, from 1999 to 2010. Husband filed for divorce in France in 2011, and couple and children returned to U.S. later in 2011. Family judge of French court entered judgment of dissolution in 2012. Circuit court properly denied husband's motion to stay wife's motion to allocate marital assets, as French court already issued its judgment and husband instituted Illinois action to register and enroll foreign judgment in Cook County. (FITZGERALD SMITH and LAVIN, concurring.)

In re Marriage of Cozzi-Digiovanni, 2014 IL App (1st) 130109, June 27, 2014, Cook Co., 5th Div., PALMER, Reversed and remanded. During pendency of dissolution proceeding, husband's former attorney filed petition against wife seeking contribution for attorney fees and costs owed him by husband. Court erred in granting summary judgment for wife. Circuit court had jurisdiction to hear and determine attorney's claim as it was among general class of cases to which courts constitutionally granted original jurisdiction extends. Court does not lose jurisdiction to consider a pending contribution petition once judgment for dissolution is entered. Neither party can waive by agreement an attorney's statutory right to pursue or request hearing on claim for attorney's fees. Where attorney's fees are contested, court must conduct hearing to allow attorney to present evidence in support of petition, including evidence of opposing spouse's ability to pay fees. (GORDON and McBRIDE, concurring.)

Collins v. The Department of Health and Human Services, 2014 IL App (2d) 130536, No. 2-13-0536, June 26, 2014. Once the obligor, the obligee, and the minor children subject to a support order no longer reside in Illinois, the issuing Illinois court loses continuing exclusive jurisdiction to modify that order, as Illinois then lacks a sufficient nexus with the parties to justify modification of order. (SCHOSTOK and SPENCE, concurring.)

In re Marriage of Abu-Hashim, 2014 IL App (1st) 122997, No. 1-12-2997, June 25, 2014. Trial court has considerable discretion to exercise judgment in resolving matrimonial financial matters. Court properly found that marital residence and its liabilities were part of the marital estate and were within its discretion in distributing marital debt on residence. The parties' stipulation as to deposits of their daycare business, that alone is insufficient to determine value of business, and neither party presented meaningful evidence of value of business. Court within its discretion in ordering husband to

pay child support retroactively for the 18 months before he started to pay. (PUCINSKI and MASON, concurring.)

In re Marriage of Iqbal, 2014 IL App (2d) 131306, May 6, 2014, 2d Dist., Du Page Co., SCHOSTOK, Affirmed. (Court opinion corrected 6/27/14.) Postnuptial agreement (PNA) signed by parties was unenforceable as it violates public policy. PNA gives counselor sole power to determine which parent will have custody of children, as counselor has sole power to declare whether party seeking divorce is doing so reasonably, and is sole arbiter of whether either party has violated any part of PNA so as to forfeit any claim to custody. PNA is substantively unconscionable, and thus unenforceable, as its terms are significantly one-sided. Court's grant of sole custody to wife not against manifest weight of evidence, as husband often spoke negatively of wife and was found likely to interfere with children's relationship with wife.(ZENOFF, concurring; BURKE, specially concurring.)

In re Marriage of Virdi, 2014 IL App (3d) 130561, June 24, 2014. Wife's significant withdrawals of money from her retirement account, and husband's continuing withdrawals from his retirement account, are not change in circumstances sufficient to result in modification of maintenance. Wife did not pursue avenues to become self-sufficient, and continued to operate two businesses at a consistent loss for 20 years, and drained her retirement account to pay property taxes.(O'BRIEN, concurring; CARTER, specially concurring.)

In re Marriage of Turk, 2014 IL 116730, Illinois Supreme Court, June 19, 2014. Section 505 of Illinois Marriage and Dissolution of Marriage Act expressly confers on courts the option to order either or both parents owing a duty of support to a child to pay child support. The Act does not confine the obligation to pay child support to noncustodial parents. Section 505(a) of the Act was intended to protect rights of children to be supported by their parents in an amount commensurate with the parents' income. Under Section 505 of the Act, a court may order the custodial parent to pay child support to the noncustodial parent where circumstances and the best interest of the child warrant it. (GARMAN, FREEMAN, KILBRIDE, and BURKE, concurring; THEIS and THOMAS, specially concurring.)

Attorneys for the litigants in a dissolution proceeding are considered parties in interest in an action for attorneys' fees to the extent that the fees properly belong to the attorney. In re Marriage of Cozzi-DiGiovanni, 2014 IL App (1st) 130109. Although §503(j) of the Illinois Marriage and Dissolution of Marriage Act (IMDMA), 750 ILCS 5/101, *et seq.,* provides that, before judgment is entered, a party's petition for contribution shall be heard and decided, the appellate court has held that this timing provision, while mandatory, is not a jurisdictional prerequisite and may be waived. The husband's former counsel filed a petition for contribution against the wife the day after his former client filed for bankruptcy. The trial court dismissed counsel's petition for contribution and counsel filed a motion for reconsideration. Before that motion was heard, the court entered a judgment for legal separation. Thereafter, the court vacated the dismissal of the husband's counsel's petition for contribution, and the wife filed a motion for summary judgment, arguing that the court was now without subject-matter jurisdiction to consider the contribution petition after judgment. The court granted the motion for summary judgment, but the appellate court reversed and remanded, holding that the trial court did have subject-matter jurisdiction to hear the contribution petition because nothing in the plain language of 750 ILCS 5/503(j) states that, once a judgment is entered, the court loses jurisdiction to consider a pending contribution petition. Furthermore, the parties' legal separation agreement's allocation of attorneys' fees was not binding on former counsel. The court also noted that an interesting issue remained before the trial court on remand — what affect the bankruptcy discharge has on the contribution petition.

Illinois entered an original child support order as well a subsequent order providing that a mother would contribute certain percentages to her child's health insurance, uninsured medical expenses, and

travel expenses for the child to see the father during visitation. Collins v. Department of Health & Family Services ex rel. Paczek, 2014 IL App (2d) 130536. The mother and the child moved to Tennessee, and the father subsequently relocated to Ohio. After the father moved, he filed (in Illinois) a motion to reduce support due to loss of employment and a petition for a rule to show cause against the mother for her failure to contribute to the medical and travel expenses. The trial court *sua sponte* dismissed the pleadings after learning that no party remained in Illinois and ruled that the proceedings should proceed in Tennessee. The appellate court reversed the order dismissing the petition for a rule to show cause because, under the Uniform Interstate Family Support Act (UIFSA), 750 ILCS 22/101, *et seq.,* Illinois maintains continuing exclusive jurisdiction to enforce its own orders. However, Illinois does not have jurisdiction to modify a support order when neither the parties nor the child remain in the state.

An appellant husband did not meet his burden of showing that the trial court abused its discretion when it divided the parties' property, allocated the debt, and set child support. In re Marriage of Abu-Hashim, 2014 IL App (1st) 122997. The appellate courts give great deference to the trial courts in dissolution of marriage proceedings because of the trial court's familiarity with the spouses, their counsel, and their understanding of the evidence in the entire proceeding. The trial court did not abuse its discretion when it (a) awarded the marital residence to the husband but also allocated him the entire home equity line of credit, even though the wife had used more funds from the line of credit; (b) equally divided the retirement account subject to equal advances taken by both parties; (c) placed its own value on the couple's daycare business by multiplying the wife's salary by three, which was the number of years the business was deemed reasonably viable, and then subtracting rent and damages when neither party presented any evidence relating to the fair market value of the business; and (d) setting child support guidelines based on the husband's net monthly income of $5,219.68.

The Second District has held that the McHenry County Conservation District, which is a public entity, is immune from the penalties for failing to properly withhold child support payments from employees' paychecks under the Local Governmental and Governmental Employees Tort Immunity Act (Tort Immunity Act), 745 ILCS 10/1-101, *et seq*. In re Marriage of Murray, 2014 IL App (2d) 121253. In this case, the conservation district failed to properly withhold five different payments in two and one-half years, which amounted to 4,077 violations and over $400,000 in penalties. The trial court capped the penalty at $10,000 for each violation, and the conservation district appealed. The appellate court held that the purpose of the Tort Immunity Act was to prevent public funds from being diverted from their intended purpose of running local governments to the payment of damages. Because the court held that the Act absolved the conservation district of liability, the court did not need to address whether the conservation district knowingly failed to perform its withholding duties under §35 of the Income Withholding for Support Act, 750 ILCS 28/1, *et seq*.

A wife claimed that a substantial change of circumstances had occurred warranting an increase in her maintenance after her husband retired and maintenance was reduced from $10,000 to $1,500 per month because she had to deplete her retirement account from $219,000 to $2,500 to meet her expenses. In re Marriage of Virdi, 2014 IL App (3d) 130561. However, the evidence showed that the wife received $1.7 million in property in the dissolution case and that she continued to operate a business at a loss each year rather than pursuing activities that would give her a positive income. The evidence was also overwhelming that she had financially mismanaged her own funds, including failing to pay her property taxes and pouring money into a failing business. The court noted that the divorce decree had taken into account the timing of the husband's retirement and gave her an ample property settlement and $10,000 per month in maintenance for ten years to prepare her for the husband's eventual retirement.

In re Parentage of K.E.B., 2014 IL App (2d) 131332, July 24, 2014, Kane Co., JORGENSEN, Reversed and remanded with directions. Court abused its discretion in entering order, in Parentage Act case, allowing for supervision of mother and son only if she and father agreed on time and place of visitation. Order gives father control of mother's access to child, and although order provides that mother will have a minimum of two visits per month, it is not sufficient to ensure that mother will receive visitation when parties fail to agree given parties' history of discord and inability to agree. (HUTCHINSON and ZENOFF, concurring.)

In re Marriage of Lasota, 2014 IL App (1st) 132009, August 13, 2014, Cook Co., 3d Div., HYMAN, Affirmed. Couple was married in Poland, and settled in Illinois. Husband obtained judgment of dissolution in Poland, and Polish court judgment was registered in Cook County. Wife then sought her share of marital property, temporary maintenance, and attorney fees in Cook County. Cook County circuit court properly held that it had jurisdiction because husband failed to serve wife with process and wife never submitted herself to jurisdiction of Polish court for purposes of divorce. Wife objected to Polish court's jurisdiction, and did not thereby acquiesce to its jurisdiction. (NEVILLE and MASON, concurring.)

In re Marriage of Pratt, 2014 IL App (1st) 130465, August 12, 2014, Cook Co., 2d Div., HARRIS, Affirmed. Court modified husband's child support payments to $4,697 per month; MSA had originally provided that husband would pay unallocated maintenance and family support of $4,400 per month for 48 months. Court properly focused on husband's income for the year in which hearing was held in determining his income for child support purposes. Court properly estimated husband's dividend earnings for year in which hearing was held. Court was within its authority in modifying provision in MSA stating that stock options awarded as part of marital estate shall not be deemed income, as it is against public policy to exclude certain income from consideration for child support. Court found that wife is unable to pay her full attorneys' fees but is able to pay more than she has to date, and was within its discretion in ordering husband to contribute $25,000 toward her attorney's fees and costs. (SIMON and LIU, concurring.)

P.A. 98-961 (eff. Jan. 1, 2015), which concerns maintenance, creates permissive guidelines for the trial court to apply in situations in which the parties' combined gross incomes are $250,000 or less and no multiple family situations exist. 750 ILCS 5/504(b-1)(1).

See www.ilga.gov/legislation/publicacts/fulltext.asp?name=098-0961&ga=98. Pursuant to the amendments, in all cases the court must first determine if maintenance is appropriate under the factors enumerated in §504(a). 750 ILCS 5/505(a)(3)(g-5). If the court makes such a finding, it then turns to the guidelines to make the calculation by (1) taking 30 percent of the payor's gross income less (2) 20 percent of the payee's gross income. 750 ILCS 5/504(b-1)(1)(A). However, the maintenance award may not result in the payee receiving a total that is in excess of 40 percent of the combined gross income after the maintenance payment is made. Id. The duration of the maintenance is calculated by multiplying the length of the marriage by whichever factor applies: 0 – 5 years (0.20); 5 – 10 years (0.40); 10 – 15 years (0.60); or 15 – 20 years (0.80). 750 ILCS 5/504(b-1)(1)(B). For a marriage longer than 20 years, the court has discretion to order either permanent maintenance or maintenance for a period equal to the length of the marriage. Id.

The appellate court overturned a trial court's ruling that provided a wife with maintenance of $3,700 per month plus 20 percent of the husband's future bonuses for a period of seven years with a review. In re Marriage of Micheli, 2014 IL App (2d) 121245. The husband argued on appeal that the uncapped portion of the bonus had no relation to the wife's standard of living during the marriage. The appellate court agreed and stated that an uncapped amount based on a percentage of his future bonuses

could set up a windfall for the wife and has no evidentiary relation to the wife's present needs or the standard of living during the marriage.

Illinois had jurisdiction to award temporary maintenance and attorneys' fees when a wife had never been properly served with process of proceedings in Poland nor submitted herself to the jurisdiction of Poland. In re Marriage of Lasota, 2014 IL App (1st) 132009. The parties had married in Poland but later moved to Illinois. The husband filed a petition for the dissolution of his marriage in Poland, and the wife filed in Illinois weeks later. The Polish court entered a judgment for dissolution of the marriage, but it did not address the division of the parties' property or the issue of maintenance. The wife later filed a petition to register the Polish judgment in Illinois, which was granted. She then filed a petition under §503(d) of the Illinois Marriage and Dissolution of Marriage Act (IMDMA), 750 ILCS 5/101, et seq., requesting the Illinois court to allocate the parties' property. 750 ILCS 5/503(d) permits the trial court to dispose of marital property following the dissolution of a marriage by a court that lacked jurisdiction over the absent spouse or to dispose of the property. The husband filed a motion to dismiss this petition on the grounds that the court lacked jurisdiction to dispose of the parties' property under §503(d), that a postnuptial agreement signed by the parties set forth the parties' interests in the marital estate under Polish law, and because the wife had a pending petition for support in Poland. The trial court denied the motion to dismiss and ordered temporary maintenance and attorneys' fees, which the husband refused to pay. He was subsequently held in contempt and appealed the trial court's rulings. The appellate court affirmed and stated that in fact the record did not reflect that the wife had submitted herself to the Polish courts. In fact, the orders in the Polish court demonstrated that the issue of the jurisdiction of the Polish court was in fact an area of dispute between the parties. Therefore, the court's finding that it had authority under IMDMA §503(d) to enter orders regarding temporary support and attorneys' fees was not against the manifest weight of the evidence.

Section 201 of the Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA), 750 ILCS 36/101, et seq., establishes a procedural framework under which a court may exercise subject-matter jurisdiction but does not establish subject-matter jurisdiction itself. The Fourth District held, in a paternity action, that the UCCJEA itself does not confer subject-matter jurisdiction on a trial court to hear a child custody matter. McCormick v. Robertson, 2014 IL App (4th) 140208. This is because a circuit court's subject-matter jurisdiction is conferred entirely by the Illinois Constitution. The court relied heavily on the Supreme Court case of Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc., 199 Ill.2d 325, 770 N.E.2d 177, 264 Ill.Dec. 283 (2002), which stated that while the legislature was free to create new justiciable matters by enacting legislation, the creation of such matters does not mean that the legislature is conferring subject matter on the courts since such jurisdiction is derived only from the Constitution. The Fourth District acknowledged the confusion that has ensued because of the UCCJEA's use of the word "jurisdiction" in 750 ILCS 36/201. McCormick, supra. The court concluded that §201 should simply be read to mean that the statute provides a procedural framework within which a trial court may exercise its subject-matter jurisdiction.

In a post-judgment modification proceeding, the appellate court upheld the trial court's inclusion of many income items for calculating support. In re Marriage of Pratt, 2014 IL App (1st) 130465. First, the ex-husband argued that the court erred when only using one year of income to calculate his net income. However, the appellate court held that the court properly focused on the ex-husband's earnings in the year in which the court held the modification hearing because the relevant focus for determining income under §505 of the IMDMA, 750 ILCS 5/505, is the parent's economic situation at the time the calculation is made. Second, the ex-husband argued that the court should not have included $5,000 of income, which was an amount he converted from a traditional individual retirement account (IRA) to a Roth IRA, but the appellate court did not find that to be an abuse of discretion because the IMDMA

defines "net income" as the total income from all sources, and the transaction was a taxable event. Next, the ex-husband argued that the court improperly estimated his annual dividend income for the entire year when it only had the first-quarter figures and multiplied that number by four. The appellate court ruled that the trial court had the authority to make such an estimation and noted that he could earn more dividend income in a subsequent year. Finally, the ex-husband argued that the court should not have included earnings from his sale of restricted stock options that he was awarded as a property settlement in his income for support purposes because the parties' marital settlement agreement precluded this from being considered when setting support. However, because a provision that precludes certain income from consideration for child support purposes is against public policy, the appellate court refused to enforce it. Therefore, it was properly included as income for calculating support.

Thank you for contributions this month from IICLE Family Law Flashpoints, by Donald C. Schiller and Michelle A. Lawless, Schiller DuCanto & Fleck LLP

In re Marriage of Foster, 2014 IL App (1st) 123078, August 22, 2014, Cook Co., 6th Div., REYES, Affirmed in part and reversed in part; remanded. In dissolution proceeding, court properly found that husband's Scottrade account is his nonmarital property. Husband presented clear and convincing evidence that funds never lost their identity and were never transmuted into marital income, and marital income was insufficient to provide for all marital expenses and debts. Court properly determined that husband did not dissipate marital assets, but instead used his nonmarital income for his own expenditures and properly considered husband's nonmarital income in its determination of maintenance. (ROCHFORD and LAMPKIN, concurring.)

In re Marriage of Akbani, 2014 IL App (5th) 130266, August 26, 2014, St. Clair Co., GOLDENHERSH, Affirmed. Court properly entered order confirming separation and divorce agreement entered into between husband and wife, and properly entered order finding that handwritten agreement of two years later is not binding on parties. Handwritten agreement prepared during voluntary mediation was unenforceable as it contained an attorney review clause, which was a condition precedent to completion of that agreement, and that condition was not met. Husband took no action to contest terms of divorce agreement until a week prior to hearing, and both parties proceeded as if agreement was in effect; no showing of mutual mistake of fact warranting setting aside of agreement.(WELCH and STEWART, concurring.)

In re Parentage of Rogan M., 2014 IL App (1st) 141214, September 12, 2014, Cook Co., 5th Div., REYES, Reversed and remanded. Court denied mother's petition to remove her minor child from Illinois to California. As a removal petition is not a petition to modify custody under Section 610 of the Marriage Act, court should apply preponderance of evidence standard, not the more stringent clear and convincing evidence standard. (PALMER and McBRIDE, concurring.)

Nonmarital Inheritance. In In re the Marriage of Foster, 2014 IL App (1st) 123078, 17 N.S.3d 781, 384 Ill.Dec. 799, the husband did not transmute his nonmarital inheritance into marital property by depositing it into a checking account containing marital property. The husband opened a Scottrade account in his own name during the marriage as well as a Chase checking account, also in his sole name. He deposited both his employment earnings and inheritance income into the Chase account. Thereafter, he would routinely transfer funds from the Chase account into the Scottrade account. At trial, he corroborated the specific transfers through both testimony and bank statements. The trial court ruled that the Scottrade account was marital property and the appellate court reversed, relying heavily on the cases of In re the Marriage of Heroy, 385 Ill.App.3d 640, 895 N.E.2d 1025, 324 Ill.Dec. 310, (1st Dist. 2008), and In re the Marriage of Steel, 2011 IL App (2d) 080974, 977 N.E.2d 761, 364 Ill.Dec. 852. The court held that just because both marital and nonmarital income are commingled in one account does not

necessarily establish that the nonmarital inheritance income was transmuted into marital property under §503 (c)(1) of the Illinois Marriage and Dissolution of Marriage Act (MDMA), 750 ILCS 5/101, et seq. Because the husband's inheritance income was easily identifiable in the Chase account and his marital income was exhausted each month after he paid his temporary support obligations, the funds remaining in the Chase account must constitute his nonmarital income. Furthermore, because the transfers to the Scottrade account were made within days of the deposits into the Chase account, the Chase account merely acted as a conduit for the husband to deposit the money and then transfer a portion of his inheritance to the Scottrade account.

Nonmarital income. In In re the Marriage of Foster, supra, a spouse's nonmarital income was considered when determining maintenance. The wife appealed the trial court's maintenance award which provided her with 30 percent of the husband's gross income on the grounds that she should have been allowed the same standard of living as the husband and be awarded 50 percent of his gross income. The husband cross-appealed, arguing that 30 percent of his gross income required him to pay the wife a percentage of his nonmarital inheritance income. Because the case was reversed and remanded on the issue of the character and value of certain assets, the court directed the trial court to review the maintenance award in light of that ruling. However, it did state, in determining the amount of maintenance, that the court should consider the parties' income at the time of dissolution as well as their potential incomes. A spouse is entitled to maintenance in an amount sufficient to maintain the standard of living the parties enjoyed during the marriage if the providing spouse has the means to provide for the other spouse without compromising his own needs. Furthermore, the IMDMA does not state that maintenance must be paid only from marital income and, therefore, the trial court did not err in considering the husband's nonmarital income when it originally determined the maintenance award.

In In re Marriage of Schlichting, 2014 IL App (2d) 140158, the trial court erred in awarding the wife's marital, limited liability company (LLC) membership interest to the husband pursuant to a judgment for dissolution of marriage. The appellate court reversed the trial court's judgment (1) awarding the wife's marital membership interest in an LLC to the husband and (2) requiring the husband to purchase the interest from the wife in the amount of $19,500. The wife held a 20 percent membership interest in an LLC with family members of the husband and the husband held no interest in the company. The LLC operating agreement contained a clause restricting the wife's ability to transfer or sell her interest to the husband (specifically named) unless there was unanimous consent of the other members. The husband had a history of litigating against his family which was, presumably, the reason for such a clause. The agreement also contained a buy-sell provision that included valuation formulas and procedures in the event of a member's divorce. By awarding the wife's interest to husband, the wife would have been required to violate the terms of the operating agreement which the appellate court called an "untenable resolution, particularly where other options were available." 2014 IL App (2d) 140158 at ¶45. The appellate court reversed the trial court's ruling because: (1) an existing policy favors finality in divorce proceedings and discourages future conflict; (2) an LLC operating agreement is to be enforced according to general contract principles; and (3) courts should be mindful of the caselaw concerning the avoidance of potential conflicts between divorce orders and business operating agreements. The court repeatedly stated that while the trial courts are not bound by limitations on transfers imposed in a shareholder or operating agreement, the failure to follow can be an abuse of discretion, and, in this case, it was.

In In re the Marriage of Kiferbaum, 2014 IL App (1st) 130736, correlative orders of protection were permitted under the Domestic Violence Act (DVA), 750 ILCS 60/101, et seq., and, therefore, the wife's petition for an order of protection should not have been dismissed. In a matter of first impression, the appellate court held that while the DVA prohibits mutual orders of protection, it does allows for

correlative orders; therefore, the DVA did not require that the trial court dismiss the ex-wife's petition just because the ex-husband had already received an order of protection against the ex-wife. In its decision, the court distinguished mutual and correlative orders. Typically, mutual orders (1) occur within the same document, (2) arise from a singular pleading and proceeding even though one party did not even desire an order of protection, and (3) are clearly prohibited under the DVA. By contrast, correlative orders are allowed under the DVA and arise from separate pleadings: notice and proof of abuse by each party seeking a separate order of protection. Section 215 of the DVA provides that correlative orders may be issued when both parties (1) have properly filed written pleadings, (2) proved past abuse by the other party, (3) given prior written notice (unless excused), (4) satisfied all prerequisites for the type of order and each remedy granted, and (5) otherwise complied with the DVA.

Thank you for this month's contributions from IICLE Family Law November 2014 Flash Points, Donald C. Schiller & Michelle A. Lawless, Schiller DuCanto & Fleck LLP.

In re Marriage of Dhillon, 2014 IL App (3d) 130653, November 7, 2014, Peoria Co., CARTER, Affirmed in part and reversed in part; remanded with directions. In dissolution proceeding, court erred in finding that husband did not dissipate account (into which large amounts of money had been deposited during marriage) during irreconcilable breakdown of marriage; wife testified as to her unhappiness at the time, including that husband was physically abusive and refused to purchase plane ticket for her to attend her cousin's wedding in London although he knew wedding was very important to wife. Funds contributed to husband's 401(k) account prior to marriage were nonmarital property. (McDADE and WRIGHT, concurring.)

Robinson v. Reif, 2014 IL App (4th) 140244, November 24, 2014, Macon Co., STEIGMANN, Affirmed. Maternal grandparents filed petition for permanent and temporary grandparent visitation of their two minor grandchildren, who they had taken care of in their home for 18 months after car accident in which children's mother was killed and their father was severely injured. Children were age 3 and age 7 months at time of accident. Court's judgment, granting petition and setting visitation schedule, was not against manifest weight of the evidence. Plaintiffs presented expert testimony that young children develop attachments to primary caregivers, and opined that children formed attachment to Plaintiffs during this critical development stage and that children would be damaged emotionally if deprived of all visitation with Plaintiffs. (APPLETON and TURNER, concurring.)

In re Marriage of Saracco, 2014 IL App (3d) 130741, November 25, 2014, Will Co., McDADE, Reversed and remanded with directions. Judgment for dissolution of marriage reserved issue of college contribution, and later court entered order as to one of the parties' children that mother would be responsible for 60% of his college expenses and father would be responsible for 40% of college expenses. Court erred in terminating mother's required contribution toward son's college expenses; court did not specifically find a substantial change in circumstances, and evidence did not support substantial change. Son is an average student who has accepted all available types of financial assistance. Neither his strained relationship with his mother, nor his decision not to work during college (consistent throughout college career) alone supports finding of substantial change. (CARTER and O'BRIEN, concurring.)

In re Marriage of Harnack, 2014 IL App (1st) 121424, November 21, 2014, Cook Co., 5th Div., PALMER, Affirmed and remanded with directions. Court entered default judgment dissolving marriage and apportioning parties' assets, and held that all shares of stock held by husband or his enterprises were marital property, and awarded wife half of shares of stock as her marital portion. Eight months later, husband moved to set aside judgment per Sections 2-1301(e) and 2-1401(a) OF Code of Civil Procedure. No exceptional circumstances exist to warrant relaxing due diligence requirements of Section

2-1401 for husband, and court properly denied Section 2-1401 petition and denied Section 2-1301(e) motion to vacate judgment. Cause remanded for court to amend judgment to clarify provisions for transfer of shares of stock to escrow. (McBRIDE and GORDON, concurring.)

Bjorkstam v. MPC Products Corporation, 2014 IL App (1st) 133710, Nov. 13, 2014. Plaintiffs were injured while they were bystanders to a plane crash in Mexico. Plaintiffs initially filed complaint against manufacturers of allegedly faulty airplane parts. Court dismissed suit on forum non conveniens grounds, finding that Texas was a more convenient forum. Plaintiff then filed suit in Texas, but Texas court dismissed case, finding that Plaintiffs failed to exercise diligence by failing to serve it with suit. Illinois Supreme Court Rule 187(c)(2), which states that a defendant must accept service of process from that court, means service of process as defined by law of forum state. Texas ruling finding lack of diligent service is preclusive, and thus Plaintiffs were not entitled to refile suit in Illinois. Defendants' knowledge of suit did not act as substitute for service of process. (HOWSE and TAYLOR, concurring.)

In re Marriage of Dhillon, Third District, Docket No. 3-13-0653, November 7, 2014. In dissolution proceeding, court erred in finding that husband did not dissipate account (into which large amounts of money had been deposited during marriage) during irreconcilable breakdown of marriage; wife testified as to her unhappiness at the time, including that husband was physically abusive and refused to purchase plane ticket for her to attend her cousin's wedding in London although he knew wedding was very important to wife. Funds contributed to husband's 401(k) account prior to marriage were nonmarital property. (McDADE and WRIGHT, concurring.)

CIVIL MISCELLANEOUS LAW

Ferris, Thompson, and Zweig, LTD. V. Esposito, 2014 IL App (2d) 130129, February 5, 2014, Lake Co., BIRKETT, Affirmed. Plaintiff law firm referred two workers' compensation cases to an attorney, with Plaintiff to receive 45% of attorney fees with Defendant attorney to receive 55% of fees, but Defendant never paid Plaintiff. Workers' Compensation Commission has authority to set amount of fees to be awarded to attorneys representing claimants before the Commission, and to resolve disputes as to fees, but is without authority over breach of contract dispute as to referral agreement between two attorneys. (HUDSON and SPENCE, concurring.)

Lorenz v. Dayton, 2014 IL App (3d) 130137, February 5, 2014, McDonough Co., O'BRIEN, Reversed and remanded. Personal injury and wrongful death claims filed against sheriff's department and deputy for damages after car accident between minivan and squad car. Court erred in admitting defense line-of-sight video, as video does not meet test for admissibility of experimental evidence, as defense failed to establish that essential conditions of line-of-sight experiment were substantially similar to those existing when accident occurred. Improper admission prejudiced Plaintiffs, as Plaintiff driver's negligence was critical issue, and video had potential to confuse and mislead jury. (CARTER, concurring; SCHMIDT, dissenting.)

In re Vincent K., 2013 IL App (1st) 112915, December 12, 2013, Cook Co., 4th Div., FITZGERALD SMITH, Affirmed. (Court opinion corrected 2/4/14.) Post-Conviction Hearing Act does not apply to juveniles. Respondent, convicted of first-degree murder in a juvenile court proceeding (designated extended juvenile jurisdiction) for stabbing death of fellow 8th-grade student in altercation after, has no access to remedy of Post-Conviction Hearing Act. (HOWSE and LAVIN, concurring.)

Green v. Papa, 2014 IL App (5th) 130029, February 5, 2014, 5th Dist., St. Clair Co., SPOMER Affirmed. Court properly entered judgment for law firm in legal malpractice action. Plaintiff claimed negligence by attorney who did not serve notice of evidence deposition on her treating physician who

her attorney deposed, and Court of Claims excluded deposition testimony, finding that it was a discovery deposition. Plaintiff failed to prove that exclusion of physician's deposition at underlying trial before Court of Claims was proximate cause of her damages. Court of Claims' decision was based on its erroneous conclusions of facts and law, and it had no basis to exclude Plaintiff's subsequent treatment from her damage award irrespective of whether her physician's testimony was admitted. (STEWART, concurring; CATES, specially concurring.)

In re Estate of Feinberg, 2014 IL App (1st) 112219, February 3, 2014, Cook Co.,1st Div., CUNNINGHAM, Affirmed in part and reversed in part; remanded. After bench trial, court entered judgment, pursuant to citation to recover assets filed by bank as trustee, against son $788,957, and against daughter and her husband for $1.91 million, for misappropriation of funds. Court within its discretion in awarding $100,000 to granddaughter in attorney fees, to compensate for fees incurred from date her attorneys retained through date the bank's recovery citation was issued; bank was well able and well-equipped to litigate its citations, and granddaughter's complaint was largely duplicative of bank's actions. Court properly denied bank's request for prejudgment interest, as bank failed to demonstrate actual fraud to establish respondent's delay in returning funds was unreasonable and vexatious.(HOFFMAN and DELORT, concurring.)

In re Charles W., 2014 IL App (1st) 131281, February 7, 2014, Cook Co., 5th Div., PALMER, Affirmed. Respondent, age 79 and diagnosed with dementia and Alzheimer's, became adoptive father of his two minor grandsons; adoptive mother was deceased. Respondent's condition significantly impaired his ability to provide necessary care and parenting of minors. No ineffective assistance of counsel, as Respondent failed to show prejudice by failure to object and by other conduct of his counsel. Court did not err in finding minors dependent and making minors wards of the court. Courts are given wide latitude in admitting evidence in dispositional hearings.(McBRIDE and TAYLOR, concurring.)

Evanston Insurance Company v. Riseborough, 2014 IL 114271, February 21, 2014,1st Dist., BURKE, Appellate court reversed; circuit court affirmed. Six-year statute of repose for actions against attorney arising out of act in performance of professional services applies to tort or contract action, including claim brought by nonclient. Statute of repose bagan running on date of act or omission alleged in complaint. Although Plaintiff's initial complaint was dismissed per Section 2-615, and Plaintiff was granted leave to refile, Plaintiff never requested a stay of the proceedings until underlying litigation was resolved. (GARMAN, FREEMAN, THOMAS, and KARMEIER, concurring; KILBRIDE and THEIS, dissenting.)

Glens of Hanover Condominium Association v. Carbide, 2014 IL App (2d) 130432, March 12, 2014, 2d Dist., Du Page Co., ZENOFF, Affirmed. Circuit court properly ruled that it was without jurisdiction to decide Defendant's motion for turnover of possession of condo unit and rents. A reversal without remand does not revest trial court with jurisdiction, where no case remains pending after reversal. (BURKE and SCHOSTOK, concurring.)

Kalven v. The City of Chicago, 2014 IL App (1st) 121846, March 10, 2014, Cook Co.,1st Div., CONNORS, Affirmed in part and reversed in part; remanded with directions. Plaintiff filed suit per FOIA, seeking disclosure of certain documents related to complaints of police misconduct: Repeater Lists (RLs), of officers who amassed the most misconduct complaints, and Complaint Register files (CRs), related to police department's completed investigations into allegations of police misconduct against five officers. Section 7(1)(n) of FOIA does not exempt CRs from disclosure, as CRs are not an "adjudication" or grievance or disciplinary case. RLs are subject to FOIA, as police department

prepared, used, possesses, and controls RLs, and no FOIA exemption applies. CUNNINGHAM, concurring; DELORT, specially concurring.)

The Illinois Department of Transportation v. Raphael, 2014 IL App (2d) 130029, February 19, 2014, 2d Dist., Du Page Co., McLAREN, Affirmed in part and vacated in part; remanded. (Summary corrected.) In condemnation proceeding, court properly barred testimony of landowner's appraiser, as his valuation method was improper, because it misrepresented the value of the specific land portion to be taken. Appraiser assigned uniform square-foot value to entire property, although part taken was a 10-foot-strip with only parts of lawn and driveway, but land also included single-family home. Trial court should have barred testimony of IDOT's appraiser, as appraiser failed to consider contributory value of improvements within the remainder, including house, when valuing the part taken.(HUTCHINSON and SPENCE, concurring.)

Wheeling Park District v. Arnold, 2014 IL App (1st) 123185, February 26, 2014, Cook Co., 3d Div., PUCINSKI, Affirmed. Executive director of a park district entered into a binding severance agreement terminating an employee, after giving employee choice to voluntarily resign rather than be discharged for poor performance, without prior written approval of Park District Board per Section 4-6 of Illinois Park District Code. Severance agreement was not subject to Section 4-6 because, as a settlement agreement, it did not create any debt, obligation, claim or liability but instead settled and compromised an existing dispute. Agreement was also a binding and valid contract, as employee signed and delivered contract to Board and Board fully performed. (HYMAN and MASON, concurring.)

Powell v. American Service Insurance Company, 2014 IL App (1st) 123643, February 18, 2014, Cook Co.,1st Div., DELORT, Affirmed. Court properly dismissed with prejudice complaint for bad-faith failure to settle within policy limits. Plaintiff had demanded $20,000 policy limits of adverse driver's insurer for car accident injuries, but insurer rejected demand. Jury awarded Plaintiff net verdict of $47,951 plus costs. As Plaintiff admitted that he made a potentially illegal U-turn in front of other vehicle, and given nature of accident, Plaintiff did not sufficiently plead facts showing reasonable probability of liability against adverse driver at time of settlement demand, which is when duty to settle arises. (HOFFMAN and CUNNINGHAM, concurring.)

Whitten v. Luck, 2014 IL App (5th) 120513, March 13, 2014, Montgomery Co., WELCH, Affirmed. Plaintiff was injured when he lost control of his motorcycle when dog ran into his path on trail adjacent to Defendants' farm. Dog was owned by tenant of Defendants. Court properly entered summary judgment for Defendants after finding that as matter of law Defendants were not owners of dog per Animal Control Act, as Defendants were absentee landlords who did not own, possess, or have right to care for or control the dog, even though it was harbored in barn on their property, and tenants were not allowed to have pets inside house. (SPOMER, concurring; GOLDENHERSH, dissenting.)

O'Leary v. America Online, Inc., 2014 IL App (5th) 130050, March 17, 2014, St. Clair Co., SPOMER, Affirmed. Plaintiff attorney filed suit against law firm for one-third attorney fees in class action case. Court ordered defendant law firm to reissue payment of $50,000 check, as court found that parties had agreed to a payment of $50,000 to plaintiff attorney. Although court had earlier expressly found that there was no evidence of agreement between parties as to division of fees, and that plaintiff attorney had done no work entitling him to payment, court's order was modification of earlier conclusion, to conclude that parties had agreement for payment, regardless of whether joint venture existed. (WELCH and CHAPMAN, concurring.)

Donald W. Fohrman & Associates, Ltd. V. Marc D. Alberts, P.C., 2013 IL App (1st) 123351, March 14, 2014, Cook Co., 6th Div., ROCHFORD, Affirmed. Dispute over attorney fee-

sharing based on referrals. Court properly entered summary judgment in favor of Defendant attorney to whom cases were referred, as attorney-client agreement did not comply with Rule 1.5(e) of Rules of Professional Conduct, as it did not inform client of details of attorney responsibility and how fees would be split, as Rule requires, and the referral agreement and attorney liens were thus unenforceable. Public policy places rights of clients above and beyond attorneys' remedies in seeking to enforce fee-sharing arrangements.(LAMPKIN and REYES, concurring.)

Harris v. Vitale, 2014 IL App (1st) 123514, March 18, 2014, Cook Co., 2d Div., HARRIS, Affirmed. Court properly granted Respondent attorney's motion to dismiss citation to recover assets filed against him by County Public Guardian. Petitioner filed petition for guardianship of elderly woman, and her son filed cross-petition for guardianship one month later, and hired respondent attorney to represent him on his cross-petition. Attorney did not owe a duty to elderly woman, as no facts alleged clearly show that son and his attorney intended to confer direct benefit upon her through attorney-client relationship. (SIMON and PIERCE, concurring.)

Koerner v. Nielsen, 2014 IL App (1st) 122980, March 17, 2014, Cook Co.,1st Div., CUNNINGHAM, Affirmed. Court properly found that Plaintiff had given a dog to Defendant as a valid inter vivos gift and that Defendant was thus rightful owner of dog. Parties were cohabiting when Plaintiff expressed sentiment in poem she wrote and presented to Defendant on Christmas Day. No evidence that poem included any language indicating that gift was conditional, or in contemplation of marriage. Defendant established Plaintiff's donative intent, which is determined at time of alleged transfer of property and is controlled by what parties said or did at time of transaction, not what is said at a later time.(CONNORS and HOFFMAN, concurring.)

Fakes v. Eloy, 2014 IL App (4th) 121100, March 12, 2014, Macon Co., STEIGMANN, Reversed and remanded with directions. Court is not obligated to sua sponte prevent Defendant from arguing substantively evidence admitted for a limited purpose. Opposing party should request limiting instruction to be read immediately after court admits evidence for limited purpose. Court abused its discretion by admitting evidence of defendant physician's family circumstances, in violation of motion in limine. No evidence showed that juror was biased or would fail to heed instructions on her role as juror, and thus court did not err in refusing to strike her for cause. Court erred in denying sanctions for Defendant's failure to timely disclose his opinion stated at trial, inconsistent with his deposition testimony, as to decedent's cause of death. Defendant was a controlled expert and strict adherence to Rule 213 is required. (POPE and HOLDER WHITE, concurring.)

Davis v. The City of Chicago, 2014 IL App (1st) 122427, March 12, 2014, Cook Co., 3d Div., PUCINSKI, Reversed. Plaintiff filed wrongful death suit for death of her son who was shot by police officer. Court granted Plaintiff's motion for new trial based on defense's references to decedent's pending gun charge at time of shooting in opening statements. Plaintiff waived objection to remarks about pending gun charge, and later opposed granting of mistrial based on same issue. Court abused its discretion in granting new trial, as at time of remarks court had ruled evidence admissible and there was no bad faith by defense in making the remarks, and as there was no showing by Plaintiff of substantial resulting prejudice to Plaintiff. Court within its discretion in giving self-defense instruction, as evidence at trial presented evidence as to self-defense theory. Court did not err in modifying willful and wanton definition instruction to add phrase "without legal justification", as it correctly stated applicable law. (HYMAN and MASON, concurring.)

Messerly v. Boehmke, 2014 IL App (4th) 130397, March 11, 2014, Macoupin Co., KNECHT, Reversed. Purchasers sued sellers alleging violation of Residential Real Property Disclosure Act in failing to disclose material defects in home's foundation and plumbing system. Buyers did not waive

their right to recovery based on their acceptance of an incomplete Disclosure form from sellers. Buyers presented evidence raising question of fact as to seller's knowledge at closing of a material defect in plumbing system, and as to foundation defects.(TURNER and STEIGMANN, concurring.)

West Bend Mutual Insurance Company v. 3RC Mechanical and Contracting Services, LLC, 2014 IL App (1st) 123213, March 20, 2014, Cook Co., 4th Div. LAVIN, Affirmed. Court was within its discretion in vacating a default judgment entered against contractor, per Section 2-1401 petition. Defendant contractor had filed Chapter 7 bankruptcy petition less than three months prior to subrogation action filed by insurer for owner of house damaged during lifting project done by defendant. Court reasonably concluded that based on conduct of both parties, any lack of due diligence by Defendant was an excusable mistake, and Defendant was unaware of suit. Liberal standard exists for vacature under Section 2-1401 petition for relief from judgment, invoking equitable powers of the court. (FITZGERALD SMITH and EPSTEIN, concurring.)

People v. Guzman-Ruiz, 2014 IL App (3d) 120150, March 6, 2014, Rock Island Co., WRIGHT, Reversed and remanded. Court's admonishments as to collateral immigration consequences,upon guilty plea to unlawful possession of cannabis did not overcome ineffective assistance of defense counsel, as court minimized concerns about risk of deportation and thus reinforced counsel's deficient advice.Court should determine whether Defendant knew, based on defense counsel's advice, that admitting a certain offense would accelerate deportation. (O'BRIEN, concurring; SCHMIDT, dissenting).

Huang v. Brenson, 2014 IL App (1st) 123231, March 5, 2014, Cook Co., 3d Div., HYMAN, Affirmed. Lawyer and his firm filed legal malpractice claim against lawyer who defended him in a legal malpractice claim brought by a former client who retined him for INS proceedings. Court properly decidee that defense attorney did not proximately cause Plaintiff's damages as a matter of law, as trial court's misapplication of the law served as intervening cause. Plaintiffs pleaded existence and breach of fiduciary duty, but did not plead facts showing Defendants' breach proximately caused any damage. Plaintiffs did not allege facts showing that insurer would have or should have accepted client's settlement demands, and thus failed to plead that Defendants' failure to relay client's settlement demands proximately caused damage.(NEVILLE and PUCINSKI, concurring.)

People v. J.F., 2014 IL App (1st) 123579, May 7, 2014, Cook Co., 3d Div., HYMAN, Affirmed in part and vacated in part. Respondent, then age 15, was adjudicated delinquent for a forcible felony, for attack by group of girls on another girl on CTA el train. Court violated one-act, one-crime doctrine by finding Respondent delinquent of both aggravated battery and simple battery for striking and biting victim. As both adjudications resulted from same physical act, court should not have found her delinquent of both, but should have vacated less serious offense of battery. Mandatory minimum probation term of five years for robbery does not violate equal protection clause, as Respondent cannot establish she is similarly situated to juveniles who commit non-forcible felonies or that a criminal conviction of adult offender equates to a finding of delinquency. (NEVILLE and MASON, concurring.)

Benford v. Everett Commons, LLC. 2014 IL App (1st) 131231, May 2, 2014, Cook Co., 5th Div., PALMER, Reversed and remanded. Court erred in awarding Defendant landlord reimbursement of its attorneys fees and costs in defending it in tenant's complaint for damages alleging that Defendant's failure to repair water leaks in her rental ruined her belongings, caused mold to grow, and caused her to suffer respiratory problems, in violation of City Ordinance (RLTO)and implied warranty of habitability. Jury verdict for Plaintiff, but zero damages awarded, and jury found in favor of Defendant as to its affirmative defenses. As Defendant never filed counterclaim, and its eviction action was a separate

proceeding, Defendant was not the prevailing plaintiff and is thus not due attorney fees and costs under lease or RLTO.

Tenant filed action for damages for landlord's failure to maintain rental apartment in compliance with Chicago Residential Landlord and Tenant Ordinance (RLTO) and implied warranty of habitability. Plaintiff claimed damage to her used clothing, furniture, and electronics due to water leak. Jury verdict for Plaintiff but with zero damages. Court properly entered judgment on jury verdict and denied Plaintiff's motion to reconsider, finding that Plaintiff failed to present evidence of fair market value of her clothing and property at time of loss. Plaintiff's testimony as to original price of items was insufficient to establish value at time of loss. That jury awarded Plaintiff zero damages does not mean that it found for Defendant as to liability, but means that Plaintiff did not prove her damages. (GORDON and McBRIDE, concurring.)

In re N.M., 2014 IL App (4th) 131281, April 17, 2014, Champaign Co., HOLDER WHITE, Affirmed in part and vacated in part. Court erred by ordering DCFS employees to appear at all juvenile court hearings even where DCFS had assigned private-agency caseworkers to the minors' cases. Per plain language of Juvenile Court Act, court must make an individualized finding that DCFS's appearance is in best interests of the particular minor before requiring DCFS's appearance at hearings. Trial courts are entitled, as required by Act, to have appearing before them private-agency caseworkers who have personal and thorough knowledge of facts of case.(TURNER and HARRIS, concurring.)

In re J.M., 2014 IL App (5th) 120196, April 18, 2014, St. Clair Col, GOLDEN-

HERSH, Reversed and remanded. Court found that evidence produced by State against minor, age 13 at time of incident, sufficient to prove minor guilty beyond a reasonable doubt of arson, aggravated arson, residential arson, theft, and burglary, for participating with another minor in setting fire to a residence. Minor, who was mildly mentally retarded and read at a first-grade level, could not knowingly and intelligently waive his Miranda rights. Thus, court erred in denying minor's motion to suppress his statement to police. (CHAPMAN and SCHWARM, concurring.)

Segovia v. Romero, March 28, 2014, Cook Co., 5th Div., PALMER, Reversed and remanded. (Court opinion corrected 4/18/14.) Plaintiff filed suit against Defendant for rear-ender auto accident; insurer for Plaintiff's husband had already filed and settled subrogation case against Defendant. Jury verdict for same medical bills that insurer had already paid on Plaintiff's behalf and for which insurer had brought and settled subrogation action against Defendant. Defendant was entitled to setoff of $5000 med-pay benefits claimed by Plaintiff's insurer that was settled for $2500 in subrogation action. Plaintiff is bound by agreement between her husband's insurer and Defendant's insurer, which compromised and released claim. (McBRIDE and TAYLOR, concurring.)

People v. J.F., 2014 IL App (1st) 123579, May 7, 2014, 1st Dist., Cook Co., 3d Div., HYMAN, Affirmed in part and vacated in part. Court opinion corrected 5/13/14.) Respondent, then age 15, was adjudicated delinquent for a forcible felony, for attack by group of girls on another girl on CTA el train. Court violated one-act, one-crime doctrine by finding Respondent delinquent of both aggravated battery and simple battery for striking and biting victim. As both adjudications resulted from same physical act, court should not have found her delinquent of both, but should have vacated less serious offense of battery. Mandatory minimum probation term of five years for robbery does not violate equal protection clause, as Respondent cannot establish she is similarly situated to juveniles who commit non-forcible felonies or that a criminal conviction of adult offender equates to a finding of delinquency. (NEVILLE and MASON, concurring.)

County of Cook v. Village of Bridgeview, 2014 IL App (1st) 122164, Cook Co., 6th Div., HALL, Affirmed. Two conflicting ordinances regulate feral cat colonies in Cook County: one

adopted by county, and the other adopted by Village. Section 24 of Animal Control Act gives municipalities authority to adopt provisions prohibiting feral cats from running at large or can impose further, stricter requirements than county has imposed. Village exceeded its authority under Section 24 of Animal Control Act by making it unlawful to operate feral cat colonies within its corporate limits, and lacked home rule authority and statutory authority to do so. (ROCHFORD and REYES, concurring.)

Federal National Mortgage Ass'n v. Tomei, 2014 IL App (2d) 130652, April 25, 2014, Lake Co., BURKE, Appeal dismissed. Court granted Plaintiff's motion to vacate Dismissal for Want of Prosecution. Appellate court lacks jurisdiction under Rule 304(b)(3) because motion to vacate was brought under Section 2-1301(e) of Code of Civil Procedure, and lacks jurisdiction under Rule 301 because order granting motion was not a final and appealable order. (McLAREN and HUDSON, concurring.)

Warren County Soil and Water Conservation District, 2014 IL App (3d) 130087, April 29, 2014, Warren Co., WRIGHT, Affirmed. Court entered default judgment against Defendants for alleged wrongful cutting of timber belonging to Plaintiff. Court denied motion to vacate default judgment, filed by new counsel, finding that Defendants had not demonstrated due diligence in original action due to negligence of Defendants' original trial counsel, who had failed to answer complaint, failed to appear at court hearings, and failed to file motion to vacate default judgment within 30 days. Defendants cannot demonstrate due diligence, as they failed to personally check on their original attorney's progress for more than one year after retaining him, and 14 months after entry of default judgment. (CARTER, concurring; HOLDRIDGE, dissenting.)

Burman v. Snyder, 2014 IL App (1st) 130772, April 30, 2014, Cook Co., 3d Div., HYMAN, Affirmed. Plaintiff filed petition to revive judgment almost 7 years after obtaining judgment, but did not effectuate service of petition until 14 years later. Judgment became dormant, and by operation of Illinois law expired when it was not timely revived, and as statute of limitations had run the judgment could no longer be revived. A one-time revival petition does not make a judgment viable indefinitely into the future. Seven years after Plaintiff filed his initial petition to revive, judgment became dormant when he failed to file another petition to revive in the 7th year after filing the first petition, or before the 20th anniversary of date of judgment. (NEVILLE and MASON, concurring.)

Paluch v. United Parcel Service, Inc., March 26, 2014, Cook Co., 3d Div. HYMAN, Reversed and remanded. Modified upon denial of rehearing 4/30/14.) Workers' compensation settlement agreement is ambiguous as to total amount employer owed to employee. Court remanded case for evidentiary hearing as settlement agreement is ambiguous, contains conflicting clauses, and is open to more than one interpretation. Employer interprets agreement as requiring a lump-sum payment of $400,000; and employee interprets agreement as requiring a lump-sum payment of $400,000, in addition to payment of a Medicare Set-Aside, in annuity form.(PUCINSKI and MASON, concurring.)

In re Tajannah O., 2014 IL App (1st) 133119, April 24, 2014, Cook Co., 4th Div., FITZGERALD SMITH, Affirmed. Ample evidence was presented to support court's finding that termination of mother's parental rights was in minor's best interest. Mother's long-term heroin addiction and multiple relapses have severely interfered with her ability to parent, and minor, age 12, is in need of permanency. Only if court had first determined that it was not in minor's best interest to terminate mother's parental rights would court have been able to then consider option of a custodial alternative, such as alternative guardianship arrangement. (HOWSE and LAVIN, concurring.)

Feliciano v. Geneva Terrace Estates, 2014 IL App (1st) 130269, June 25, 2014, 1st Dist., Cook Co., 3d Div., HYMAN, Affirmed. Plaintiffs filed declaratory judgment action seeking declaratory judgment that there was no enforceable driveway easement between the vacant lot they purchased and

adjoining lot. Court properly granted summary judgment for Plaintiffs, concluding that no driveway easement had been created, as there was no evidence of driveway easement in later filed association declarations, which include extensive description of other easements in planned development but do not mention this specific driveway easement. Court properly granted summary judgment for Defendants on alleged breach of fiduciary duties and indemnification. Plaintiffs failed to present sufficient facts for finding of breach of fiduciary duties or that breach was proximate cause of their damages, and proximate cause could not be shown, as a matter of law.(NEVILLE and PUCINSKI, concurring.)

Dohrmann v. Swaney, 2014 IL App (1st) 131524, June 26, 2014, 1st Dist., Cook Co., FITZGERALD SMITH, Affirmed. Circumstances of unfairness in executing of contract wherein 89-year-old widow, who was diagnosed with Alzheimer's two years later, and who had no immediate family, gave her neighbor, a 40-year-old neurosurgeon with a family, her apartment and its contents and $4 million, without consulting her long-time attorney. Decedent's statements to others as to her suspicion that physician was after her property were admissible under state of mind exception to hearsay rule. Court properly granted summary judgment for Estate and found contract unenforceable. (HOWSE and LAVIN, concurring.)

Butler v. Harris, 2014 IL App (5th) 13-0163, June 27, 2014, 5th Dist., Madison Co., GOLDENHERSH, Affirmed in part and reversed in part; remanded with directions. Plaintiff homebuyers sued sellers for fraud and violations of Residential Real Property Disclosure Act, alleging failure to disclose septic system defects. Proper standard of proof to determine violations of Disclosure Act is clear and convincing evidence. Court properly found for Defendants on fraud count, as evidence as a whole suggested no reliance or no reasonable reliance. Court properly found for Defendants on Disclosure Act count, as evidence as to Defendants' knowledge was insufficient. Defendants are not entitled to attorney's fees, as Plaintiffs' suit was not meritless; two witnesses testified that Defendants should have been aware of problems with septic system. (WELCH and CATES, concurring.)

Xeniotis v. Satko, 2014 IL App (1st) 131068, June 30, 2014, 1st Dist., Cook Co., 1st Div., HYMAN, Affirmed. Court properly denied Plaintiff's motion for partial summary judgment on informed consent allegation in dental malpractice case, and properly granted Defendant dentist's motion for summary judgment on same issue. Court properly struck treating dentist-expert's affidavit as improper attempt to change his deposition testimony. Plaintiff then had no expert testimony on informed consent claim, and thus could not meet her burden to establish proper standard of care through expert evidence.(PUCINSKI and MASON, concurring.)

15th Place Condominium Association v. South Campus Development Team, LLC, 2014 IL App (1st) 122292, June 26, 2014, 1st Dist., Cook Co., 4th Div., HOWSE, Affirmed in part and reversed in part; remanded. Development company's express indemnity claim is governed by 10-year statute of limitations applicable to written contracts, as nature of claim is for failure to indemnify rather than any act or omission relating to construction activity. Sophisticated parties entering into contract for more than $34 million in construction work clearly intended to create accrual date for all statutes of limitations to limit liability and eliminate effect of discovery rule. Contract provisions were bargained for and thus enforceable. (McBRIDE and PALMER, concurring.)

In re A.S., 2014 IL App (3d) 140060, July 3, 2014, 3d Dist., Peoria Co., LYTTON, Affirmed. After hearing, circuit court found Respondent mother unfit for failing to make reasonable progress toward return of her three minor children during nine-month period. Court's finding was not against manifest weight of evidence, as Respondent missed several drug drops during that period and continued to reside with minors' father despite caseworkers' warning that doing so could prevent her from

becoming fit. Respondent was not prejudiced by court's delay in providing her court-ordered tasks as to one child, as they were the same tasks as to her other children. (O'BRIEN and SCHMIDT, concurring.)

People ex rel. Madigan v. Burge, Illinois Supreme Court, 2014 IL 115635, July 3, 2014, 1st Dist., Cook Co., BURKE, Appellate court reversed; circuit court affirmed. Decision whether police officer's pension benefits should be terminated when he commits a felony is within the exclusive, original jurisdiction of Retirement Board of Policemen's Annuity and Benefit Fund of Chicago, under Section 5-189 of Pension Code. (THOMAS, KIARMEIER, and THEIS, concurring; GARMAN, KILBRIDE, and FREEMAN, dissenting.)

Beardsley v. Colvin, Federal 7th Circuit Court, No. 13-3609, July 10, 2014, N.D. Ind., Ft. Wayne Div., reversed and remanded. Record failed to support ALJ's denial of claimant's application for Social Security disability benefits, where ALJ rejected agency's examining physician to conclude that plaintiff could perform range of light work that was sufficient to defeat her claim. ALJ erred in rejecting claimant's contention that she could perform only limited daily activities where ALJ found that said claims could not be objectively verified. Moreover, fact that claimant could provide assistance to her mother did not require different result. Also, ALJ did not provide valid explanation for discounting opinion of agency examining physician, and ALJ could not penalize claimant for not undergoing recommended surgery without determining claimant's reason for not doing so.

Suesz v. Med-1 Solutions, LLC, Federal 7th Circuit Court, No. 13-1821, July 2, 2014, S.D. Ind., Indianapolis, Div., reversed and remanded. Dist. Ct. erred in dismissing plaintiff-debtor's lawsuit alleging that defendant-creditor violated section 1629i of FDCPA by filing debt collection claim in Indiana township small claims court, even though contract that formed basis of debt was not signed in said township and plaintiff did not live there. While Dist. Ct. found that relevant "judicial district" included all township small claims courts within county that plaintiff lived so as to give defendant wide choice of venues, Ct. of Appeals, in overturning Newsom, 76 F.3d 813, found that "judicial district or similar legal entity" as contemplated in section 1692i of FDCPA is smallest geographic area that is relevant for determining venue in court system in which case is filed. As such, for cases brought in Indiana, defendant was required to bring its debt collection action in plaintiff's township small claims court. This en banc opinion replaced earlier panel opinion that had upheld Dist. Ct.'s dismissal of plaintiff's action.

Salata v. Weyerhaeuser Co., Federal 7th Circuit Court, No. 13-3136, July 7, 2014, N.D. Ill., E. Div., Affirmed. Dist. Ct. did not abuse its discretion by granting defendant's motion to dismiss for want of prosecution plaintiff's personal injury action after plaintiff had failed to comply with certain discovery orders. Record showed clear pattern of delay, where, after series of extensions of time to serve discovery requests, plaintiff failed to comply with court-ordered deadline to serve said responses and failed to appear at either subsequent status hearing or hearing to argue defendant's motion to dismiss. Moreover, while plaintiff eventually tendered some, but not all of requested discovery responses in conjunction with her motion to reinstate case, Dist. Ct. was not required to grant plaintiff's motion, where plaintiff's belated tender of responses was simply too late to warrant reinstatement of her case.

Konfrst v. Stehlik, 2014 IL App (1st) 132113, June 20, 2014, Cook Co., 5th Div., PALMER, Affirmed. (Court opinion corrected 7/24/14.) Independent executor of decedent's estate filed citation proceeding against decedent's niece to recover proceeds from checking account and money market account. Niece claimed that funds belonged to her as she and decedent held accounts in joint tenancy with right of survivorship. Joint Tenancy Act requires joint bank account holders to sign a written agreement permitting payment of account to survivor to create joint tenancy with right of survivorship in account. Existence of required written agreement can be proved by evidence other than a

signature card, and outside factors can be considered to determine if account held in joint tenancy.(GORDON and McBRIDE, concurring.)

Bormes v. U.S., No. 13-1602, July 22, 2014, N.D. Ill., E. Div., Affirmed. In action by plaintiff-lawyer alleging that defendant-federal govt. violated FCRA, when it sent him email receipt of his filing fee that contained last four digits of his credit card's number, as well as his card's expiration date, Ct. of Appeals found that language in section 1681a(b) of FCRA waived United States sovereign immunity from damages for violation of FCRA. However, plaintiff's claim lacked merit since FCRA requires that receipt with credit card information actually be printed at point of sale, while record indicated that defendant did not "print" any receipt, but rather sent plaintiff's receipt to his email account, such that defendant's conduct was not covered by FCRA.

Jones v. Beck, 2014 IL App (1st) 131124-U, July 24, 2014, Cook Co., 4th Div., LAVIN, Affirmed. Jury verdict for defendant internist in medical malpractice case for colonic perforation occurring postoperatively as complication from spinal surgery. Experts' general opinions disclosed in Rule 213(f) interrogatory answers prior to trial were sufficient to put Plaintiffs on notice as to details emerging during trial testimony. Court properly dismissed a juror for saying "bless you" to Plaintiff while leaving courtroom, and gave a "thumbs up" to Plaintiff during sidebar, as prudent means to ensure fair trial. Court erred in giving long form IPI instruction on sole proximate cause, but error not reversible, as jury gave general verdict with no special interrogatory to test this issue. (HOWSE and EPSTEIN, concurring.)

Steenes v. Mac Property Management, LLC, 2014 IL App (1st) 120719, July 23, 2014, Cook Co., 3d Div., PUCINSKI, Affirmed. Move-in fee charged to apartment tenant was neither a security deposit nor prepaid rent, under Chicago Residential Landlord and Tenant Ordinance (RLTO). Fee was a one-time upfront charge relating to tenant's move into apartment with full knowledge that it was nonrefundable. (HYMAN and MASON, concurring.)

Lake Environmental, Inc. v. Arnold, 2014 IL App (5th) 130109, July 10, 2014, St. Clair Co., SPOMER, Reversed and remanded. A trial judge ruling on a Rule 137 motion for sanctions must provide specific reasons for ruling, regardless of whether sanctions are granted or denied. (WELCH and CHAPMAN, concurring.)

Wanandi v. Black, 2014 IL App (2d) 130948, June 27, 2014, Lake Co., HUDSON, Affirmed. In deciding what newly raised claims are barred by claim preclusion, court must consider not validity of any prior claims, but what claims were before the court. Affidavits are the only proper evidence to support a section 2-619 motion to dismiss, but affidavits are not necessary when other evidence, such as court documents, is more direct and relevant. Illinois claim was a compulsory counterclaim in Kentucky case filed by Illinois Defendant against Illinois Plaintiff, and thus court properly ruled that it was barred. The two claims were part of a single transaction, as the claims described the single event of Defendant's departure from employment with Plaintiff's company.(HUTCHINSON and JORGENSEN, concurring.)

American Family Mutual Insurance Company v. Plunkett, 2014 IL App (1st) 131631, June 27, 2014, Cook Co., 5th Div., GORDON, Certified question answered. Equitable tolling is not proper basis to deny motion to dismiss based on statute limitations per Section 13-214(b) of Code of Civil Procedure. Insurer's inability to file subrogation complaint on behalf of homeowner against builders and architects was based entirely on its failure to obtain executed assignment when it paid homeowner under policy, and no extraordinary circumstances prevented insurer from filing suit. (McBRIDE and TAYLOR, concurring.)

Shoup v. Gore, 2014 IL App (4th) 130911, June 26, 2014, McLean Co., APPLETON, Affirmed. Court was within its discretion in applying doctrine of judicial 37stoppels, and granting summary

judgment for Defendants. Plaintiff took two different positions (by impliedly representing to bankruptcy court he had no pending suit while actually pursing damages in state court suit), in two separate court proceedings, under oath, and received discharge in bankruptcy, and received benefit from representing two totally inconsistent positions. And TURNER and STEIGMANN, concurring.)

Hartmann Realtors v. Biffar, 2014 IL App (5th) 130543, June 25, 2014, St. Clair Co., WELCH, Affirmed and remanded. Landlord filed small claims complaint against tenant seeking damages for cleaning and repairing apartment. Tenant filed counterclaim alleging that landlord had painted or altered premises without advance notice. Tenant could not show causation link for her spoliation of evidence claim, as she cannot show that but for landlord's cleaning and repairing of the apartment, she had a reasonable probability of succeeding in underlying suit as no underlying suit had been filed. (CHAPMAN and SPOMER, concurring.)

In re: Shru. R., 2014 IL App (4th) 140275, August 25, 2014, McLean Co., TURNER, Affirmed. State filed petition for adjudication of wardship for two minor children, and court found Respondent mother unfit and terminated her parental rights, finding it in best interest of minors . Mother abandoned children by returning to India, without telling anyone, while children were in foster care, and subjected minors to sexual abuse. Lack of adoptive goal did not weigh against termination, as it is only one factor, and foster family did not foreclose possibility of adoption but sought different options to maximize minors' chance to receive financial aid for college. (HOLDER WHITE and STEIGMANN, concurring.)

McCarthy v. Taylor, 2014 IL App (1st) 132239, August 22, 2014, Cook Co., 5th Div., GORDON, Affirmed. Court properly found that a handwritten amendment to trust naming successor trustee is valid and enforceable. Where language of a trust is ambiguous and settlor's intent cannot be determined, court may rely on extrinsic evidence to aid construction. If petition to construe trust states facts that, if proven, show latent ambiguity, then hearing with extrinsic evidence will be held to determine possible existence of latent ambiguity. Trial properly considered extrinsic evidence, as trust's amendment clause is ambiguous. (McBRIDE and TAYLOR, concurring.)

In re Marriage of Sheth, 2014 IL App (1st) 132611, August 22, 2014, Cook Co., 5th Div., GORDON, Dismissed. Court entered order changing custodian of four bank accounts belonging to Defendant's children; order was entered while Defendant was incarcerated on federal conviction for healthcare fraud. Defendant signed "Certificate of Service" on his notice of appeal, but signature was not notarized, and thus appellate court has no jurisdiction as Certificate of Service cannot be considered an affidavit, as Rule 12(b)(3) requires certification of attorney or affidavit of nonattorney. (PALMER and TAYLOR, concurring.)

In re E.F., 2014 IL App (3d) 130814, September 4, 2014, LaSalle Co., SCHMIDT,

Affirmed in part and reversed in part. State filed petition to involuntarily commit Respondent to treatment facility for inpatient mental health treatment and petition for administration of psychotropic medication. Court properly granted petition remanding Respondent to care and custody of medical providers and DHS, as court's findings of fact and law were sufficient per Section 3-816(a) of Mental Health and Developmental Disabilities Code. Court erred in allowing medical providers to administer psychotropic medications, based on court's failure to specify exact medications and their dosages to be administered. (McDADE and O'BRIEN, concurring.)

CitiMortgage, Inc. v. Moran, 2014 IL App (1st) 132430, August 29, 2014, Cook Co., 5th Div., GORDON, Affirmed. Bank filed mortgage foreclosure action, and one Defendant filed Section 2-619 motion to dismiss for lack of standing, on grounds that bank did not produce valid assignment of note and mortgage. Court properly entered default order against that Defendant. Although Defendant had never set his motion for hearing, motion had no merit, as he failed to provide appellate court with

transcript of proceedings, and it is reasonable to conclude that trial court reviewed note and mortgage attached to complaint. Illinois Mortgage Foreclosure Law does not require plaintiff to submit any specific documentation demonstrating that it owns the note or right to foreclose on mortgage, other than copy of mortgage and note attached to complaint. (PALMER and TAYLOR, concurring.)

Roach v. Union Pacific Railroad, 2014 IL App (1st) 132015, September 5, 2014, Cook Co., LAMPKIN, Affirmed. Widow filed suit for survival and wrongful death claims against decedent's former employer, claiming that his death, at age 57, was result of injuries sustained while working at rail yard. Jury verdict of $1.589 million. Court did not abuse its discretion by barring Defendant from asking widow about fact that she and decedent lived in separate residences. Court properly allowed decedent's family physician to offer opinion about decedent's cause of death, as physician's discovery deposition gave Defendant sufficient notice that physician believed decedent's hypertension was aggravated by trauma of accident and led to his stroke and death. Even though physician had not treated decedent for 17 months prior to his death, he was his primary physician for 10 years and treated him for hypertension before and after accident. (ROCHFORD and REYES, concurring.)

Sherer v. Sarma, 2014 IL App (5th) 130207, September 5, 2014, Montgomery Co., SCHWARM, Affirmed. (Court opinion corrected 9/11/14.) Plaintiff filed wrongful death and survival actions alleging negligent treatment of her deceased daughter and daughter's husband. Defendant psychiatrist had provided treatment for depression and schizophrenia through county mental health department to daughter's husband, who stabbed his wife to death. Psychiatrist had no duty to protect and warn wife under the circumstances, as there was no evidence that husband had ever made any specific threats to harm his wife. That husband and wife were both patients of Defendant did not change the duty owed, and to expand duty would be contrary to case law and public policy. (WELCH and CHAPMAN, concurring.)

BLTREJV3 Chicago, LLC v. The Kane County Board of Review, 2014 IL App (2d) 140164, September 3, 2014, Kane Co., McLAREN, Affirmed. Tax appeals sent to Kane County Board of Review are not timely when deposited with a third-party commercial carrier (such as FedEx) on due date for filing appeal of property tax assessment. Board had adopted and published rules of procedure that incorporated the Statute on Statutes, which has a "mailbox rule" providing that a document is deemed "filed" as of date of mailing via U.S. mail. Board rules state that "mailbox rule" does not apply to communications delivered by FedEx or other commercial or non-commercial delivery entity. Had Petitioners sent tax appeals via U.S. mail, the postmark would have served as date of filing, and Board would have considered appeals timely.(BURKE and JORGENSEN, concurring.)

In re Daveisha C., 2014 IL App (1st) 133870, August 27, 2014, Cook Co., 3d Div,

HYMAN, Affirmed. Juvenile court entered protective order barring, without leave of court, the public guardian (who was attorney and GAL for minor) from copying his copy of Victim Sensitive Interview (VSI) of sexual abuse victim whose mother and stepfather were charged with abuse and neglect. Court was within its discretion in granting protective order which allowed all parties' counsel to receive copy of minor's VSI on signing acknowledgement of protective order. Court recognized sensitive nature of VSI and the need for strict protective measures, and order did not impermissibly impede parties' ability to prepare for trial.. (NEVILLE and MASON, concurring.)

Hayashi v. Illinois Department of Financial & Professional Regulation, 2014 IL 116023, October 17, 2014, Cook Co., BURKE, Appellate court affirmed. Department of Financial and Professional Regulation permanently revoked Plaintiff chiropractor and physicians' health care licenses as a result of prior misdemeanor convictions for batter and criminal sexual abuse of patients. Plain language of Department of Professional Regulation Law applies to convictions imposed prior to its effective date.

Law's impact on Plaintiffs is solely prospective, as it affects only present and future eligibility of Plaintiffs to continue to use their health care licenses, and is not impermissibly retroactive. Revocation of licenses pursuant to Law does not violate substantive or procedural due process. Res judicata does not apply, as issues in disciplinary proceedings pursuant to Medical Practice Act were different from those in revocation proceedings. (GARMAN, FREEMAN, THOMAS, KILBRIDE, KARMEIER, and THEIS, concurring.)

In re Lance H., 2014 IL 114899, October 17, 2014, 5th Dist., Randolph Co., GARMAN, Appellate court reversed; circuit court affirmed. Circuit court entered order of involuntary commitment to Mental Health Center for 180 days. Mental Health Code does not vest circuit court with authority to rule for or against voluntary admission to a mental health facility, based on an in-court request for voluntary admission during hearing for involuntary admission. Mental Health Code does not require circuit court to sua sponte continue a proceeding for involuntary admission upon request for voluntary admission, but court may grant continuance to file application for voluntary admission, upon motion by Respondent's counsel. (FREEMAN, THOMAS, KILBRIDE, KARMEIER, and THEIS, concurring; BURKE, dissenting.)

White v. The Retirement Board of the Policemen's Annuity and Benefit Fund of the City of Chicago, 2014 IL App (1st) 132315, August 29, 2014, Cook Co., 6th Div., REYES, Affirmed and remanded with directions. (Court opinion corrected 10/17/14.) Police officer filed petition with Pension Board seeking pension credit for two prior service periods with City under sections 5-214(b) and 5-214(c) of Pension Code. Officer had previously worked for office of corporation counsel and as administrative assistant/police aide for City Police Department. Amended version of Section 5-214(b) of Pension Code does not expressly prescribe that amendment be applied retroactively to already pending petitions. Amendment is substantive in nature, as it limits pension service credit to police officers who are on leave and continue to remain in sworn status. Thus, amendment should not be applied retroactively to officer's claim. Officer's work as a police aide consisted of investigative work, and she presented sufficient evidence to satisfy requirements of Section 5-214(c) of Pension Pension Code, and should be awarded applicable pension service credit. (HALL, concurring; LAMPKIN, dissenting.)

American Service Insurance v. Miller, 2014 IL App (5th) 130582, October 17, 2014, St. Clair Co., SPOMER, Affirmed. (Court opinion corrected 10/20/14.) Insurer filed declaratory judgment action against insured for sued filed against insured for auto accident in which insured struck a bicyclist. Court's award of Rule 137 and Rule 219 sanctions against insurer (but not against insurer's counsel) for failure to produce correct insurance policy was appropriate ($20,000 policy limit, plus interest, and $60,000 in attorney's fees and $3900 in litigation expenses), and court found no evidence of intentional concealment or willful misconduct by insurer to warrant further sanctions. (STEWART and CATES, concurring.)

SABA Software, Inc. v. Deere & Company, 2014 IL App (1st) 132381, September 30, 2014, Cook Co., 5th Div., GORDON, Affirmed. (Court opinion corrected 10/17/14.) When a party places a waiver of venue provision in a contract and the other party agrees, fundamental fairness requires that the party who placed it in the contract cannot later complain that the clause is void as against public policy. When a venue waiver clause is placed in a form contract and affects the due process rights of others, the waiver can be void contrary to public policy.(McBRIDE and TAYLOR, concurring.)

Garland v. Sybaris Club International, Inc., 2014 IL App (1st) 112615, October 16, 2014, Cook Co., 4th Div., FITZGERALD SMITH, Affirmed in part and reversed in part. Surviving spouse filed action for wrongful death of passenger in small plane which crashed while en route from Kansas to Palwaukee Airport. Plaintiff alleged that flight instructor was negligent in entrusting plane to pilot,

alleging that pilot was not qualified to fly that kind of plane; and alleged that other passenger was de facto owner of plane and negligently supervised pilot. NTSB found probable cause of crash was pilot's failure to maintain airspeed during landing approach. Genuine issues of fact on negligent entrustment claims and vicarious liability/respondeat superior claims, sufficient to withstand Section 2-619 dismissal. Court properly dismissed negligent supervision and de facto ownership claims. (HOWSE and TAYLOR, concurring.)

Hayenga v. The City of Rockford, 2014 IL App (2d) 131261, October 30, 2014, Winnebago Co., McLAREN, Affirmed. Defendant City, a non-home-rule unit of government, impounded Plaintiff's vehicle, after police found drug paraphernalia in vehicle during traffic stop made while Plaintiff's boyfriend was driving. Plaintiff brought administrative action. Court reversed decision of administrative hearing officer, and court properly found that City did not have authority to impound vehicle. Section 11-208.7 of Vehicle Code does not grant authority for non-home-rule entities to impound vehicle, but only to enact ordinances and establish procedures for release of properly impounded vehicles. Officer was not required to arrest boyfriend, but could have issued him a notice to appear per section 107-12 of Code of Criminal Procedure, without taking him into custody.(JORGENSEN and SPENCE, concurring.)

People v. Porter, 2014 IL App (1st) 123396, November 12, 2014, Cook Co., 3d Div., HYMAN, Affirmed in part and vacated in part. Defendant was convicted of retail theft after bench trial. Defendant's ineffective assistance of counsel claim was insufficiently specific to support the duty to conduct further inquiry under case law standard of People v. Krankel. Defendant's claim focused on her continuing profession of innocence rather than allegation of incompetence.(LAVIN and MASON, concurring.)

Smith v. Greystone Alliance, LLC, No. 14-1758, November 13, 2014,Federal District: N.D. Ill., E. Div., Vacated and remanded. Dist. Ct. erred in dismissing for lack of jurisdiction plaintiff's Fair Debt Collection Practices Act claim after finding that defendant's settlement offer of $1,500 rendered her claim moot because it exceeded any potential recovery she could have obtained. Under Gates, 430 F3d 429, instant dismissal would only be proper if defendant's offer satisfied plaintiff's monetary demand, and record showed that plaintiff demanded more than $1,500. Moreover, Dist. Ct. cannot determine merits of plaintiff's claim and then determine that it lacked jurisdiction where defendant had offered more than what Dist. Ct. believed to be value of claim.

In re Duckworth, Nos. 14-1561 & 14-1650 Cons., November 21, 2014, Federal District: C.D. Ill., Reversed and remanded. In action by lender seeking to enforce its security interest in property held by debtor, Dist. Ct. erred in enforcing said security interest where security agreement contained wrong date of promissory note signed by debtor, and where Dist. Ct. considered parole evidence to obtain correct date of said promissory note. Although lender could use parole evidence to correct instant mistake when seeking to enforce security interest directly with debtor, lender could not use parole evidence against bankruptcy trustee. As such, instant security agreement did not give lender security interest in specified collateral that could be enforced against trustee.

Carroll v. Akpore, 2014 IL App (3d) 130731, November 25, 2014, Knox Co., HOLDRIDGE, Reversed and remanded. Inmate filed pro se mandamus petition against warden and director of DOC, alleging they were not in compliance with statutory requirements for sanitary food preparation. Trial court must follow procedural framework in Code of Civil Procedure and mandamus statute, and cannot dismiss sua sponte a petition for mandamus relief, unless relief sought was cognizable in a postconviction petition, even if petitioner did not proceed under Post-Conviction Hearing Act. Relief sought in this mandamus petition was not an issue that could be addressed in a postconviction petition,

and thus trial court erred in dismissing petition without allowing it to be served on Defendants. (SCHMIDT and O'BRIEN, concurring.)

In re F.O.,2014 IL App (1st) 140954, November 21, 2014, Cook Co., GORDON, Affirmed. Juvenile court properly determined that nine-year-old minor was not subject to Indian Child Welfare Act (ICWA) prior to terminating Respondent mother's parental rights. Mother admitted that she stated that she had "Seminole Creek" heritage and that "Seminole Creek" is not a tribe recognized by Bureau of Indian Affairs. State complied with its duties under the ICWA by sending notices to BIA. No letters from various Indian tribes with whom Respondent claimed heritage were part of record, and notices sent by State to tribes were sufficient under ICWA. (PALMER and McBRIDE, concurring.)

Boyer v. Buol Properties, 2014 IL App (1st) 132780, November 20, 2014,Cook Co., 4th Div., TAYLOR, Affirmed in part and reversed in part; remanded. After bench trial, court entered judgment in tenant's favor against landlords for violations of Chicago Residential Landlord and Tenant Ordinance, for total of $8,063.40. Plaintiff tenant cashed a check sent to her by landlords, labelled "Return of Sec. Deposit", with letter listing deductions from her security deposit. When landlords sent the check, they were not aware that tenant disputed the amount or the listed deductions, and thus did not intend check as compromise and settlement of disputed claim . Thus, tenant's act of cashing the check was not an accord and satisfaction. Tenant's silence during statutory compliance period does not estop her from filing suit (FITZGERALD SMITH, specially concurring; EPSTEIN, concurring in part and dissenting in part.)

In re Estate of Ostern, 2014 IL App (2d) 131236, November 20, 2014, 2d Dist., Kane Co., SCHOSTOK, Reversed and remanded. Court granted motion of Petitioners, two adult children of disabled adult, to create a trust for estate of their mother. However, Petitioners failed to inform court of a pre-existing trust for mother's estate, which included the children of a third adult child (who had been convicted, in Pennsylvania, of statutory equivalent of financial exploitation of an elderly person and who thus, per Illinois Probate Code, could not receive benefit from victim's estate), who should have received notice of Petitioners' motion. Trial court had jurisdiction to vacate order allowing trust, with result of returning to status quo existing prior to creation of that trust, where court could properly adjudicate parties' rights as potential heirs or beneficiaries of estate of mother, who died after order was entered. (JORGENSEN and BIRKETT, concurring.)

Shipley v. Hoke, 2014 IL App (4th) 130810, November 24, 2014, McLean Co., STEIGMANN, Affirmed. Plaintiff's failure to serve Defendant law firm with a separate citation to discover assets precluded trial court from exercising personal jurisdiction over it in supplementary proceedings against defendant, a defunct manufacturer of asbestos fibers. The restraining provision of a citation to discover assets is binding only upon party cited. A judgment creditor's right to relief under Section 2-1402(f)(1) of Code of Civil Procedure expires with termination of supplementary proceedings. Termination provisions of Supreme Court Rule 277(f) provides incentives for judgment creditor to discover and reach all available property to satisfy judgment during limited time allotted. Plaintiff's failure to request extension of supplementary proceedings beyond default six-month time limit doomed his right to invoke Section 2-1402(f)(1) after termination of proceedings. (HARRIS and HOLDER WHITE, concurring.)

CRIMINAL LAW

People v. Shanklin, 2014 IL App (1st) 120084, January 31, 2014, Cook Co., 6th Div., Affirmed. Defendant was convicted, after jury trial, of first-degree murder, home invasion, and aggravated criminal sexual assault.Court properly held Frye hearing and determined that GSS (Gudjonsson Suggestibility Scale) method of testing for susceptibility to interrogation techniques did not meet Frye standard for reliability and admissibility. Court properly denied Defendant's motion to suppress, as

Defendant did not exhibit signs of severe heroin withdrawal that would render his statement unknowing and involuntary.(LAMPKIN and REYES, concurring.)

People v. Croft, 2013 IL App (1st) 121473, November 26, 2013, Cook Co., 2d Div., QUINN, Affirmed. (Modified upon denial of rehearing 2/4/14.) Defendant, then age 17, was convicted, after bench trial, of murder, aggravated kidnapping, and sexual criminal sexual assault of 16-year-old victim. At sentencing hearing, trial court expressly considered Defendant's PSI, which included his age. Court exercised its discretion in sentencing Defendant to natural life imprisonment, and natural life sentence was not unconstitutional, as it was discretionary, not mandatory; and court properly considered his youth as a mitigating factor, as well as heinous nature of offense. (SIMON and PIERCE, concurring.)

People v. Williams, 2013 IL App (1st) 112693, December 26, 2013, Cook Co., 4th Div., LAVIN, Reversed and remanded. (Modified upon denial of rehearing 12/13/14.) Defendant was convicted, after bench trial, of first-degree murder based on accountability theory. Evidence was insufficient to sustain conviction for first-degree as Defendant did not share any common criminal intent or design with any codefendants. Court's finding that Defendant was conspiring with shooter conflicted with State's theory of crime and court's finding that Defendant was not in a gang. Thus, inference, which was sole legal basis for culpability, was demonstrably unreasonable. (HOWSE and FITZGERALD SMITH, concurring.)

People v. Williams, 2014 IL App (3d) 120240, January 23, 2014, Peoria Co., WRIGHT, Affirmed in part and remanded with directions. (Modified upon denial of rehearing 2/11/14.) Defendant was convicted of possession of a controlled substance with intent to deliver. Court must properly calculate fines, fees, assessments, costs, and charges; court's written order does not recite a sum certain, and it is unclear whether Defendant received a copy of clerk's calculations at time of sentencing.(LYTTON and McDADE, concurring.)

People v. Hunter, 2014 IL App (3d) 120552, January 16, 2014, Will Co., WRIGHT, Vacated and remanded with directions. (Modified upon denial of rehearing.) Defendant was convicted of aggravated battery. At sentencing, court did not address any financial obligations with sentence, but later signed judgment ordering defendant to pay costs of prosecution. Court systems charge is a fee. Both parties should be allowed to address calculations of fees and costs, and court should enter written order as to amount and nature of each charge. (CARTER and O'BRIEN, concurring.)

People v. Fields, 2014 IL App (1st) 110311, February 11, 2014, Cook Co., 2d Div., PIERCE, Affirmed in part and reversed in part. Defendant was convicted, after jury trial, of armed robbery and being an armed habitual criminal. Defendant was not denied effective assistance of counsel by his counsel failing to move for severance of charges against him. Decision whether to seek severance is generally a matter of trial strategy, and Defendant failed to overcome that presumption. Defendant's Class 4 AUUW conviction cannot stand, as it has been found unconstitutional, as predicate offense for armed habitual criminal conviction. 15-year enhancement for use of firearm is constitutional. (NEVILLE and MASON, concurring.)

People v. Cregan, 2014 IL 113600, February 21, 2014, 4th Dist., McLean Co., GARMAN, Appellate court affirmed. Warrantless search of laundry bag Defendant was carrying over his shoulder, and wheeled luggage bag he was carrying when exiting train, upon arrest for failure to pay child support, were reasonable, as bags searched were personal effects immediately associated with his person. Court properly denied motion to suppress cocaine found inside hair gel container. Personal items may be searched incident to arrest because they are in such close proximity to the individual at time of arrest. If arrestee is, at time of arrest, in actual physical possession of a bag, it is immediately associated

with the arrestee and is searchable. (THOMAS, KILBRIDE, KARMEIER, and THEIS, concurring; BURKE and FREEMAN, dissenting.)

People v. Trzeciak, 2013 IL 114491, November 15, 2013, 1st Dist., BURKE, Appellate court reversed and remanded. Dissent upon denial of rehearing.) Defendant was convicted, after jury trial, of murder. Trial court admitted statement of Defendant's wife that he had, while beating her, threatened to kill her and the victim. Statement was properly admitted, as marital privilege did not apply, because Defendant did not make statement in reliance on the confidences of marriage, and statement was not motivated by reliance on intimate special trust and affection of marital relationship. Thus, statement was not confidential and was not protected by the marital privilege. (GARMAN, FREEMAN, THOMAS, and KILBRIDE, concurring; THEIS and KARMEIER, specially concurring. THEIS, KILBRIDE, and KARMEIER, dissenting upon denial of rehearing.)

People v. Tousignant, 2014 IL 115329, February 21, 2014, 4th Dist., Livingston Co., FREEMAN, Appellate court affirmed. (Court opinion corrected 2/24/14.) Counsel's 604(d) certificate, in which counsel certified that he consulted with Defendant only as to Defendant's contentions of error in the sentence, did not strictly comply with the rule. Certificate requirement of Rule is meant to enable trial court, before appeal is taken, to ensure that counsel has reviewed Defendant's claim and considered all relevant bases for motion to withdraw guilty plea or to reconsider sentence. (GARMAN and BURKE, concurring; THOMAS, specially concurring; KARMEIER, KILBRIDE, and THEIS, dissenting.)

People v. Rivera, 2014 IL App (2d) 120884, February 19, 2014, 2d Dist., McHenry Co., McLAREN, Affirmed. Court properly dismissed post-conviction petition of Defendant (who had been convicted of aggravated arson) alleging ineffective assistance of counsel as his trial counsel failed to tender jury instruction on lesser-included offense of criminal damage to property rather than letting Defendant decide whether to tender that instruction. Defendant failed to establish prejudice, as in his affidavit he does not state that he would have chosen to submit the instruction if he had been given the choice. (HUTCHINSON and HUDSON, concurring.)

People v. Sanchez, 2014 IL App (1st) 120514, February 26, 2014, Cook Co., HYMAN, Affirmed. Charge for aggravated battery of a peace officer embodied all necessary elements for lesser-included offense of resisting a peace officer. As both offenses require that a defendant act with knowledge that the person who he or she is striking or resisting is an officer acting within official capacity, aggravated battery broadly defines offense of resisting a peace officer. Officers were trying to interview Defendant about neighborhood shooting, and thus engaged in authorized act within their official capacity. Defense counsel's decision not to raise affirmative defense of self-defense is a matter sound trial strategy, thus no ineffective assistance of counsel.(NEVILLE and PUCINSKI, concurring.)

People v. Stull, 2014 IL App (4th) 120704, February 21, 2014, Sangamon Co., STEIGMANN, Affirmed. Defendant was convicted of sexually abusing his six-year-old daughter. Offense of aggravated criminal sexual abuse is not a lesser-included offense of predatory criminal sexual assault of a child, as it is possible to commit the latter offense without necessarily committing the former offense. Counselor testified that she posed open-ended questions to child to determine subsequent treatment. Court within its discretion by admitting her hearsay testimony under Section 115-13 of Criminal Procedure Code. Court properly allowed admission of initial statements victim made to forensic interview to permit trier of fact to evaluate victim's later hearsay statements against her brother in proper context. (POPE and HOLDER WHITE, concurring.)

People v. Dodds, 2014 IL App (1st) 122268, February 27, 2014, Cook Co., 4th Div., FITZGERALD SMITH, Judgment reversed; reversed and remanded with instructions. Defendant pled guilty to one count of possession of child pornography with 18 months probation and requirement that he register as sex offender for 10 years. Defendant and his counsel, State, and judge all mistakenly believed that he was required to register only for 10 years, although Illinois Sex Offender Registration Act (SORA) required registration for natural life. Defendant's guilty plea was involuntary because his counsel was ineffective, as he failed to advise Defendant, that lifetime SORA registration was a certain and mandatory consequence of guilty plea to sex offense.(LAVIN and EPSTEIN, concurring.)

People v. Wlecke, 2014 IL App (1st) 112467, February 5, 2014, Cook Co., 3d Div., MASON, Reversed. (Court opinion corrected 3/12/14.) After jury trial, Defendant was convicted of failing to register as a sex offender, under Sex Offender Registration Act. Under the Act, a fixed residence includes any and all places where an offender resides for aggregate period of five days or more in a calendar year. Offenders who are in voluntary inpatient treatment are not excused from registration requirements, and inpatient facility may be considered a fixed residence for those residing there at least five days per year Offender who presents himself for registration and is turned away for lack of form of ID the Act does not require is not in violation of Act's registration requirements.(NEVILLE and PUCINSKI, concurring.)

People v. Kronenberger, 2014 IL App (1st) 110231, March 10, 2014, Cook Co.,1st Div., CUNNINGHAM, Affirmed. Defendant was convicted, after jury trial, of first-degree murder. Court properly denied Defendant's motion to suppress his incriminating statements to police. During initial interrogation by police, it was unclear from Defendant's response whether he wished to invoke his right to remain silent. When Defendant unequivocally invoked his right to counsel later, police scrupulously honored that, and did not talk to him until Defendant reinitiated conversation with detectives, who again advised him of his Miranda rights.Under totality of circumstances, Defendant's videotaped confession was voluntary, as theme of questioning was urging Defendant to tell the truth, and police never misrepresented to him that he would escape legal consequences if he confessed.(CONNORS and HOFFMAN, concurring.)

People v. Hobson, 2014 IL App (1st) 110585, March 12, 2014, Cook Co., NEVILLE, Reversed and remanded. Defendant was convicted, after bench trial, of murder, affirmed by appellate court. Defendant made a substantial showing, in his postconviction petition, that he received ineffective assistance of trial counsel by failing to object to substantive use of out-of-court statements by Defendant's sister and the father of her children, and by failing to discover and present at trial available evidence impeaching detective and showing the extent of favors two witnesses received from State immediately after their grand jury testimony. (HYMAN and MASON, specially concurring).

People v. Boling, 2014 IL App (4th) 120634, March 12, 2014, Coles Co., STEIGMANN, Reversed and remanded. Defendant was convicted, after jury trial, of predatory criminal sexual assault of a child. State committed error by introducing unduly prejudicial out-of-court statements for the purported purpose of explaining the steps of an investigation. Court should have sua sponte conducted a Cameron hearing, to determine appropriate extent to which State could use potentially prejudicial evidence in its case. Nurse, who was allowed to testify as expert, should not have been allowed to offer opinion that child victim's complaints were credible, and prosecutor improperly commented that jury should defer to nurse in determining credibility of child's claims; and prosecutor improperly expressed his own personal opinion on child's credibility. (APPLETON and HOLDER WHITE, concurring.)

People v. Boswell, 2014 IL App (1st) 122275, March 19, 2014, Cook Co., 3d Div., MASON, Reversed; sentence vacated. Defendant was convicted, after jury trial, of possession of a controlled substance. Officer's protective pat-down, made after observing what officer believed to be hand-to-hand narcotics transaction on street, was improper. It was insufficient for probable cause that area was known for narcotics activity, and that officer believed "drugs and guns go together". No officer observed any drugs in Defendant's possession, nor furtive movements, attempt to run, or bulges in clothing, and evidence does not support articulable suspicion that protective pat-down was necessary. (NEVILLE and PUCINSKI, concurring.)

People v. Mauricio, 2014 IL App (2d) 121340, March 17, 2014, Kane Co., HUTCHINSON, Sentence vacated; remanded. Court improperly considered, in imposing 60-year sentence for first-degree murder, the personal traits of the victim. At sentencing, court noted that victim was a World War II veteran and was of great value to his family and to society, and thus improperly considered these traits as aggravating factors.

People v. Clark, 2014 IL 115776, March 20, 2014, Kane Co. GARMAN, Circuit court affirmed. Pro se defendant in child support proceedings was indicted for using eavesdropping device to record conversation with his wife's attorney, without her consent, in courthouse hallway, and also conversation in courtroom with wife's attorney and judge, without their knowledge or consent. Eavesdropping statute is unconstitutional, as its blanket ban on audio recordings is overly broad as it criminalizes much wholly innocent conduct, in relation to purpose and legitimate scope of statute, as it prohibits recording in absence of consent of all parties. (FREEMAN, THOMAS, KILBRIDE, KARMEIER, BURKE, and THEIS, concurring.)

People v. Easley, 2014 IL 115581, March 20, 2014, KILBRIDE, Circuit court affirmed. Defendant surreptitiously recorded three phone conversations with administrator in county court reporter's office about her efforts to get a court transcript changed to reflect that she was not present in court and that arraignment did not take place, in unrelated case where Defendant was charged with computer tampering. Eavesdropping statute is too broad, as it criminalizes the recording of conversations that cannot be deemed private, and does not distinguish between open and surreptitious recording. The recording provision of the eavesdropping statute burdens substantially more speech than is necessary to serve a legitimate state interest in protecting conversational privacy, and thus a substantial number of its provisions violate the first amendment. (GARMAN, FREEMAN, THOMAS, KARMEIER, BURKE, and THEIS, concurring.)

People v. Fiveash, 2014 IL App (1st) 123262, April 22, 2014, Cook Co., 2d Div., LIU, Reversed and remanded. Defendant was indicted, at age 23, for criminal sexual assault of his 6-year old cousin, for offenses alleged to have occurred when Defendant was 14 and 15 years old. Section 5-120 of Juvenile Court Act, given its plain and ordinary meaning, does not prohibit criminal prosecution of an adult defendant for crimes that occurred when he was under age 17.(HARRIS and SIMON, concurring.)

People v. Beasley, 2014 IL App (4th) 120774, April 25, 2014, Vermilion Co.. KNECHT, Reversed. Defendant was charged with three counts of first degree murder. Evidence supporting involuntary manslaughter instruction is not as strong as evidence supporting second degree murder instruction, but jury could rationally accept that Defendant acted recklessly and did not intend to shoot victim based on evidence presented. Weighing credibility of Defendant and other witnesses is task for jury, not trial judge, and judge's failure to instruct jury on involuntary manslaughter was abuse of discretion. (APPLETON and POPE, concurring.)

People v. Sims, 2014 IL App (1st) 121306, April 30, 2014, Cook Co., 3d Div., HYMAN, Reversed. Officer, while responding to unrelated situation, saw Defendant, while sitting

in front of a building, stuff unknown object into his crotch area. Officer recognized Defendant and knew he had arrest for unlawful use of a weapon, and stopped and searched Defendant based on his belief that his movement was indicative of someone who could be armed. Stop was not supported with sufficient reasonable suspicion that a crime had been or was about to be committed, and thus plastic bag of cocaine found during search should be suppressed. Officer did not see Defendant engage in illegal activity, and did not know outcome of Defendant's prior arrest for use of weapon. (NEVILLE and PUCINSKI, concurring.)

People v. Wilbourn, 2014 IL App (1st) 111497, April 30, 2014, Cook Co., 3d Div., NEVILLE, Affirmed. Defendant was convicted, after bench trial, of unlawful use of a weapon by a felon. State was not required to notify Defendant, in charging instrument, of State's intention to seek enhanced sentence, as notice provision applies only when prior conviction that would enhance sentence is not already an element of the offense. Court properly used Defendant's prior conviction first as element of offense and second as grounds for enhancing his sentence, and did not doubly enhance his sentence by doing so. (HYMAN and PUCINSKI, concurring.)

People v. Thompson, 2014 IL App (5th) 120079, April 25, 2014, Hamilton Co., GOLDENHERSH, Reversed and remanded. Defendant was convicted, after jury trial, of illegal procurement of anhydrous ammonia and tampering with equipment in violation of Methamphetamine Control Act. Defendant was denied a fair trial by court admitting lay opinion testimony identifying him from surveillance recordings, where still image from video and video were unclear depictions. Personal convictions of officers as to Defendant's character, and their prior encounters with him, were irrelevant and highly prejudicial.(SPOMER and CATES, concurring.)

People v. Fiveash, 2014 IL App (1st) 123262, April 22, 2014, Cook Co., 2d Div., LIU, Reversed and remanded. Defendant was indicted, at age 23, for criminal sexual assault of his 6-year old cousin, for offenses alleged to have occurred when Defendant was 14 and 15 years old. Section 5-120 of Juvenile Court Act, given its plain and ordinary meaning, does not prohibit criminal prosecution of an adult defendant for crimes that occurred when he was under age 17.(HARRIS and SIMON, concurring.)

People v. Campbell, 2014 IL App (1st) 112926, April 23, 2014, Cook Co., 3d Div., HYMAN, Affirmed. N o ineffective assistance of counsel where Defendant's trial counsel's decision to withdraw motion to suppress statement Defendant gave to police after invoking right to counsel but before being in police custody, and questioning was only at police station and only after Miranda warnings were given. Decision to withdraw motion was matter of trial strategy, as motion had very low probability of success. Felon-based firearm bans such as UUWF and AHC statutes do not violate second amendment. Defendant suffered no prejudice from having two convictions based on possessing two different guns where multiple indictment counts detailed various firearms and ammunition, and one-act, one-crime doctrine was not violated.(NEVILLE and PUCINSKI, concurring.)

People v. Howard, 2014 IL App (1st) 122958, March 17, 2014, Cook Co.,1st Div., HOFFMAN, Affirmed in part and reversed in part; remanded with directions. Court opinion corrected 4/18/14.) Defendant was convicted of possession of a controlled substance and unlawful use of a weapon by a felon (UUW). Court exposed Defendant to double jeopardy by finding him not guilty of two counts of UUW at trial based on State's failure to prove parole status and then rescinding finding at sentencing when State brought forward proof of said status. Two convictions for UUW are thus vacated, and case remanded for resentencing. Regardless of basis for court's decision, State is precluded from using Defendant's parole status on remand to re-establish Class 2 UUW, as that would be second prosecution for same offense of which Defendant was already acquitted. Statute allows for multiple

convictions based on single act of possessing a firearm containing ammunition.(CONNORS and DELORT, concurring.)

People v. Fleming, 2014 IL App (1st) 113004, June 25, 2014, 1st Dist., Cook Co., 3d Div., HYMAN, Affirmed. (Court opinion corrected 7/9/14.) Two Defendants were charged with armed robbery as to one victim, and aggravated discharge of a firearm and attempted armed robbery as to another victim on same date and time. Court within its discretion in finding that charges in both cases were related temporally and physically and thus combined to form one comprehensive transaction, and thus joinder of two cases was proper. Charges against a defendant may be joined if the offenses are based on two or more acts which are part of the same comprehensive transaction under defendant will be prejudiced by joinder of separate charges. Evidence supports jury's finding that a common criminal purpose existed between two Defendants during commission of offenses such that Defendant could be found accountable for the other Defendant's actions.(NEVILLE and PUCINSKI, concurring.)

People v. Lewis, 2014 IL App (1st) 122126, June 30, 2014, 1st Dist., Cook Co., 6th Div., REYES, Affirmed.(Court opinion corrected 7/9/14.) Defendant was convicted, after jury trial, of unlawful use of a weapon by a felon, and sentenced to 5 years as a Class 2 offender. No error in jury instructions, as jury was informed of stipulation to Defendant's prior felony conviction, apprised of meaning and significance of stipulations, elements of offense, and how to consider Defendant's prior felony conviction in light of his testifying on his own behalf, and gave a limiting instruction directly after stipulation was submitted. Defendant's Class 2 sentence was based on prior conviction for aggravated robbery, which was an element of the charged offense, and required by statutory provisions of Section 24-1.1(e). Thus, Section 111-3(c) notice provision, requiring State to notify a defendant of intent to seek Class 2 sentence, does not apply. (ROCHFORD and HALL, concurring.)

People v. Downs, 2014 IL App (2d) 121156, May 30, 2014, 2d Dist., Kane Co., BIRKETT, Vacated and remanded. (Court opinion corrected 7/2/14.) Jury in first-degree murder trial asked, "What is your definition of reasonable doubt, 80%, 70%, 60%?". Court answered, "We cannot give you a definition it is your duty to define." Jury then asked if it could have transcripts of three witnesses' testimony, court responded yes but that it would take several hours to prepare. Jury then delivered guilty verdict before transcripts ready. The term "reasonable doubt" is self-defining and does not need any further defining in court instructions. Jury's questions and timing of verdict indicate substantial likelihood that jury convicted Defendant by standard of less than reasonable doubt, and thus court's response was erroneous definition of "reasonable doubt" and was plain error, and evidence was closely balanced.(HUTCHINSON and SPENCE, concurring.)

People v. Douglas, 2014 IL App (4th) 120617, July 2, 2014, 4th Dist., Champaign Co., POPE, Affirmed in part and vacated in part; remanded with directions. Because Defendant was under age 21 when charged in this case, he should not have been sentenced as a Class X offender, and his sentence of 10 years is thus void. Based on Defendant's criminal history, he was eligible for extended-term sentence. Thus, plea agreement can be reformed so a valid sentence of 3 to 10 years may be entered on remand, so both parties receive the benefits they each bargained for. (HARRIS and HOLDER WHITE, concurring.)

People v. Perez-Gonzalez, 2014 IL App (2d) 120946, June 26, 2014, 2d Dist., Kane Co., SCHOSTOK, Affirmed. Respondent was convicted of direct criminal contempt of court for refusal to answer questions at pretrial hearing, contrary to his own plea agreement, in another person's first-degree murder trial. Substitution of judge as of right pursuant to Section 114-5(a) is available in a criminal contempt proceeding. A sentence of life imprisonment would be disproportionate to nature of offense, and a sentence of death for contempt is not permissible. Thus, Defendant was not entitled to name two judges who he believed were prejudiced in his motion for substitution of judge. Sentence of 10 years

was not excess, as Respondent's refusal to testify was willful and deliberate and hindered prosecution of Defendant in murder case. (BURKE and BIRKETT, concurring.)

People v. Donahue, 2014 IL App (1st) 120163, June 27, 2014, Cook Co., 5th Div., GORDON, Affirmed. Defendant was convicted, after jury trial, of first degree murder. Evidence was sufficient for conviction; all weaknesses in eyewitnesses' testimony were presented clearly to factfinders for them to make judgment about credibility. Prosecutors' remarks, that the victim would have been safer in war zone than in Chicago streets, and that military death rate was lower than in Chicago, were improper but so completely unrelated that it is unlikely they tipped scales of justice at trial. Prosecutors' argument in closing that defense theory was a police conspiracy, over objection, was improper attempt to shift burden of proof onto Defendant, but was so outlandish that it was of little prejudice and did not deprive Defendant of a fair trial. (McBRIDE and TAYLOR, concurring.)

People v. Kennebrew, 2014 IL App (2d) 121169, June 30, 2014, Winnebago Co., SPENCE, Affirmed. Defendant was convicted of sex crimes as to his live-in girlfriend's daughter, age nine at time of trial. A witness's inability at trial to remember or recall events does not automatically render witness unavailable under confrontation clause. Confrontation clause generally guarantees not that cross-examination is effective as defense might wish, only that defense has opportunity for cross-examination. If a declarant is physically present at trial and willing to answer questions, confrontation clause does not preclude or restrict use of hearsay evidence. (HUTCHINSON, concurring; SCHOSTOK, specially concurring.)

People v. Littleton, 2014 IL App (1st) 121950, June 26, 2014, Cook Co., 4th Div., EPSTEIN, Affirmed. Defendant was convicted, after bench trial, of robbery. Evidence of Defendant's pattern of robbing elderly women on southwest side of Chicago was properly admitted to prove his modus operandi. Defendant's counsel was not ineffective for failure to file fruitless motions. Statement of police officers as to other crimes was hearsay, as those officers did not witness the crimes, error was harmless as that evidence did not significantly contribute to conviction. Based on robbery victim's prior observation and identification of Defendant in broad daylight for several minutes, face-to-face and 7-10 feet away, trial outcome would not likely have changed even if suggestive lineup identification been suppressed. (HOWSE and FITZGERALD SMITH, concurring.)

People v. Abdur-Rahim, 2014 IL App (3d) 130558, August 20, 2014, LaSalle Co., LYTTON, Reversed. Court improperly denied motions to suppress of Defendant was was charged with unlawful possession of cannabis with intent to deliver. Fifty-minute detention after initial traffic stop for following too closely and improper lane usage was unlawful extension of stop. Upon issuing warning tickets and resolving issue of Defendant being on terrorist watch list, troopers needed independent reason to lawfully extend duration of stop. Trooper failed to supply articulable facts necessary to support a fourth amendment intrusion, as he was vague as to whether he smelled odor of burnt cannabis. Facts support only hunch or suspicion of illegal activity, and not reasonable and articulable suspicion of trafficking cannabis. (McDADE and O'BRIEN, concurring.)

People v. Esparza, 2014 IL App (2d) 130149, August 19, 2014, Kane Co., BURKE, Affirmed. Defen- dant was convicted, after jury trial, of escape and resisting or obstructing a peace officer. It was proper for Defendant, who was 16 when he initially fled from home detention but was 17 when arrested, to be prosecuted in criminal court. Escape is a continuing offense, which encompassed Defendant's removal of his electronic home monitoring ankle device at age 16, and also his failure to return to custody until age 17. Court properly imposed 180-day jail term on both offenses, and 30-month probation sentence only on escape offense. (HUTCHINSON and BIRKETT, concurring.)

U.S. v. Vance, No. 13-1812, August 19, 2014, N.D. Ill., E. Div., Affirmed. In prosecution on series of bank robbery charges, Dist. Ct. did not err in admitting evidence of defendant's participation in uncharged three restaurant robberies conducted shortly before charged bank robberies, where: (1) restaurant robberies were committed in same fashion that bank robberies were committed in that defendant in both charged and uncharged robberies rushed up to employees and demanded money while another individual who also was involved in restaurant/bank robberies, served as look-out; and (2) evidence of restaurant robberies was relevant to establish that defendant was one of two masked bank robbers in charged offenses. Moreover, other evidence from bank teller and girlfriend of defendant's accomplice, as well as DNA evidence, linked defendant to charged bank robberies.

People v. Chai, 2014 IL App (2d) 121234, August 19, 2014, Du Page Co., JORGENSEN, Reversed in part and affirmed in part. Jury convicted Defendant of criminal trespass to real property and resisting a peace officer, after he lost his temper and swore after DMV staff refused to allow his wife to take road test. Evidence was insufficient to support criminal-trespass conviction, as State failed to prove notice element of offense, that Defendant had received prior notice from owner or occupant that his entry upon property was forbidden. State failed to provide evidence that an owner or occupant authorized or requested police to provide Defendant with notice that he was never to return to DMV. No error in court refusing to define "knowingly" as to charge of resisting a police officer, as "knowingly" was within common knowledge of jury.(BURKE and McLAREN, concurring.)

U.S. v. Vance, No. 13-1812, August 19, 2014, N.D. Ill., E. Div., Affirmed. In prosecution on series of bank robbery charges, Dist. Ct. did not err in admitting evidence of defendant's participation in uncharged three restaurant robberies conducted shortly before charged bank robberies, where: (1) restaurant robberies were committed in same fashion that bank robberies were committed in that defendant in both charged and uncharged robberies rushed up to employees and demanded money while another individual who also was involved in restaurant/bank robberies, served as look-out; and (2) evidence of restaurant robberies was relevant to establish that defendant was one of two masked bank robbers in charged offenses. Moreover, other evidence from bank teller and girlfriend of defendant's accomplice, as well as DNA evidence, linked defendant to charged bank robberies.

People v. Flemming, 2014 IL App (1st) 111925, August 15, 2014, Cook Co., 5th Div., PALMER, affirmed and remanded. Defendant was convicted, after bench trial, of second degree murder and aggravated battery. A rational trier of fact could find evidence supports finding that Defendant's belief that circumstances justified using self-defense against stabbing victim was unreasonable. Thus, State proved first degree murder and disproved self-defense beyond a reasonable doubt. Rational trier of fact could find that other stabbing victim suffered great bodily harm, as victim testified that his injuries were severe enough to warrant medical treatment; and evidence supports finding that Defendant committed battery with a deadly weapon (knife) and thus is guilty of aggravated battery. Defense counsel's failure to present information as to victim's previous aggressiveness and criminal history was a legitimate trial strategy. (McBRIDE and TAYLOR, concurring.)

People v. Baldwin, 2014 IL App (1st) 121725, August 15, 2014, Cook Co., 6th Div., ROCHFORD, Affirmed. Defendant was convicted, after bench trial, of aggravated criminal sexual assault and aggravated criminal sexual abuse. Court engaged in meaningful analysis of all three statutory factors in line with established case law. Thus, no abuse of discretion in admission of other-crimes evidence of Defendant's aggravated criminal sexual assault charge as to another victim six months prior. Two attacks were factually similar: Defendant approached each victim at night in his car, forced them into car and gunpoint and then robbed and assaulted them. Acquittal on prior charge under "beyond a reasonable doubt" standard of proof did not bar subsequent admission of other-crimes evidence,

governed by lower "more than a mere suspicion" standard of proof. (LAMPKIN and REYES, concurring.)

People v. Lerma, 2014 IL App (1st) 121880, September 8, 2014, Reversed and remanded with directions. Defendant was convicted, after jury trial, of first degree murder, personally discharging firearm that caused death, and aggravated discharge of weapon in connection with murder. Only one living eyewitness to shooting identified Defendant. Court refused to allow testimony of Defendant's expert on eyewitness identification whose report directly addressed effects of eyewitness identification when eyewitness identifies an acquaintance in certain circumstances. Trial courts must carefully consider and scrutinize proposed expert eyewitness identification testimony. (SIMON and LIU, concurring.)

People v. Gonzalez-Carrera, 2014 IL App (2d) 130968, September 2, 2014, Du Page Co., SCHOSTOK, Affirmed. Defendant was stopped based on officer seeing pickup truck for driving with one red taillight, as officer observed one taillight to have a hole the size of a couple inches in the red plastic covering, so that taillight emitted both red and white light when brakes were activated. State failed to establish valid basis for traffic stop, as it was daylight, dry, clear visibility, and none of the conditions requiring use of two red taillights existed at time of stop. Court thus properly granted Defendant's motion to suppress evidence found in his vehicle during traffic stop. (ZENOFF and HUDSON, concurring.)

People v. Gooch, 2014 IL App (5th) 120161, September 3, 2014, Williamson Co.,

GOLDENHERSH, affirmed. (Court opinion corrected 9/11/14.) Defendant entered plea of guilty to one count of criminal sexual assault of his daughter. Assault occurred over 8 years, beginning when daughter was age 5, and Defendant was sentenced to 12 years. Sentence was not excessive, as Defendant committed assault repeatedly, over 8 years, and never stopped until victim reported abuse to her mother. Where a plea agreement reached between a defendant and the State is silent as to sentencing, a defendant is not required to move to withdraw guilty plea before challenging his sentence. A concession of charges in plea agreement is not negotiated, but is an open plea, where it does not directly speak to sentence imposed. (CHAPMAN and CATES, concurring.)

U.S. v. Zuniga, No. 13-1557, September 11, 201, Federal District: N.D. Ill., E. Div., Affirm. In prosecution on unlawful possession of firearm charge, Dist. Ct. did not err in admitting out-of-court statement by individual who claimed that he saw defendant point gun at victim’s head in backyard area of tavern. Said statement qualified as excited utterance, where individual witnessed event, came back into tavern within one minute and whispered to another to call police. Fact that defendant whispered utterance did not detract from startling nature of incident. Moreover, declarant need not be completely incapable of deliberative thought at time of utterance in order for it to be admissible under excited utterance exception to hearsay rule. Also, any error was harmless since there was other evidence to support finding that defendant unlawfully possessed weapon.

People v. Warren, 2014 IL App (4th) 120721, June 6, 2014, Champaign Co., KNECHT, Affirmed in part and vacated in part; remanded with directions. Modified upon denial of rehearing 8/29/14.) Defendant was convicted, after jury trial, of unlawful possession with intent to deliver. Defendant's sentence was void to extent the street-value fine ordered by court was less than street-value of all the crack cocaine recovered. Court must ensure that amended sentencing judgment contains $2,000 mandatory assessment per Section 411.2(a)(2) of Controlled Substances Act, and $100 crime-lab analysis fee. As Defendant submitted a DNA sample for analysis in 2005, the DNA analysis fee imposed by clerk is void. (APPLETON and POPE, concurring.)

People v. Madison, 2014 IL App (1st) 131950, August 27, 2014,Cook Co., 3d Div., HYMAN, Appeal dismissed. Court entered order finding her unfit to stand trial, but after she filed notice of appeal she was found fit to stand trial with medication. Order did not require her to take medication, but only referred her for treatment. Defendant reported that she had not been taking her medication, and thus by her own voluntary act alleviated any arguable collateral consequences related to court's finding of unfitness. Collateral consequences exception to mootness doctrine does not apply, and thus appeal is moot. (NEVILLE and MASON, concurring.)

People v. Green, 2014 IL App (3d) 120522, August 26, 2014, Will Co., McDADE,

Affirmed. Defendant was convicted of first degree murder. Court properly denied Defendant's motion to quash arrest and suppress, as investigatory stop leading to arrest was proper, and defense failed to shift burden to State. Information relied upon by police stemmed from various sources armed with incriminating facts; Defendant had history of domestic violence toward murder victim and had sent her threatening text messages; seizure of his vehicle was based on reasonable and articulable suspicion. Length of custodial interview was extended because Defendant's version of events continued to change, and thus duration of his interview does not render his statements involuntary or unreliable. (HOLDRIDGE and O'BRIEN, concurring.)

People v. Ford, 2014 IL App (1st) 130147, Cook Co., 2d Div., PIERCE, Affirmed in part and vacated in part; remanded with directions. Defendant was convicted of possessing contraband (dangerous weapon) in a penal institution, and sentenced as Class X offender to 14 years in prison. Although MSR was never mentioned at sentencing hearing, after commitment DOC added three-year MSR term. A term of MSR is part of every qualifying sentence regardless of whether term is mentioned during sentencing or omitted from sentencing order.(SIMON and LIU, concurring.)

People v. Patterson, 2014 IL 115102, October 17, 2014, 1st Dist., Cook Co., KILBRIDE, Appellate court reversed; remanded. Defendant was 15 years old when he was charged with three counts of aggravated criminal sexual assault. Pursuant to the Illinois automatic transfer statute (705 ILCS 405/5-130 (West 2008)), his case was transferred from juvenile court to criminal court, where defendant was tried as an adult, convicted by a jury of all three counts, and sentenced to a total of 36 years in prison. On appeal, the appellate court reversed defendant’s convictions and remanded the cause for a new trial, holding that the circuit court of Cook County had erred by admitting defendant’s confession. 2012 IL App (1st) 101573. The court also concluded that evidence of the victim’s sexual history was admissible on remand under the “constitutional necessity” exception to the state rape shield statute (725 ILCS 5/115-7(a) (West 2008)). (GARMAN, FREEMAN, THOMAS, KARMEIER, and BURKE, concurring; THEIS, dissenting.)

People v. Hernandez, 2014 IL App (2d) 131082, October 20, 2014, Lake Co., JORGENSEN, Affirmed. Defendant was convicted, after bench trial, of first-degree murder, and sentenced to 84 years and 3 years MSR. Defendant and his brother, in gang-related crime, set fire to a home, killing a boy and seriously injuring family members. Court properly denied postconviction petition as frivolous and patently without merit, as allegations are directly contradicted by the record and Defendant cannot establish prejudice by any failure of counsel to communicate off the record State’s offer of 20-60 years, as any error was clearly remedied by numerous on-record explanations of offer. Defense counsel's decisions to not object during State's remarks at sentencing hearing, and to not present all possible witnesses at trial due to language barrier, were matters of trial strategy and thus not ineffective assistance of counsel. (SCHOSTOK and BIRKETT, concurring.)

People v. Hall, 2014 IL App (1st) 122868, October 30, 2014, Cook Co.,1st Div., HARRIS, Affirmed in part and vacated in part; remanded for resentencing. Court entered summary dismissal of

pro se postconviction petition. Because Defendant was subject to improper double enhancement at sentencing, as a prior conviction was used both as element of instant offense and to find him eligible for Class X sentence, his sentence is void, and this issue may be raised at any time. (DELORT and CONNORS, concurring.)

U.S. v. Campbell, No. 12-3724, October 21, 2014, N.D. Ill., E. Div., Affirmed. Record contained sufficient evidence to support jury's guilty verdict on charges of harboring illegal aliens in scheme to use said aliens in prostitution ring, where: (1) term "harboring" required showing that defendant provided shelter to illegal aliens in place where authorities were unlikely to find them; and (2) record established requisite harboring activities where defendant had confiscated all of said aliens' identifying documents, forced them to live and commit prostitution under assumed name in controlled environment and prohibited them from communicating with anyone outside his control. Ct. rejected defendant's claim that he took actions that heightened risk that aliens would have been detected by immigration authorities. Ct. also rejected defendant's claim that record did not support interstate element of his Hobbs Act convictions, where defendant used Internet and long-distance telephone calls to extort money and maintain control over said illegal aliens.

U.S. v. Schmitt, No. 13-2894, October 20, 2014, S.D. Ind., Evansville Div., Affirmed. In prosecution on unlawful possession of firearm charge, Dist. Ct. did not err in denying defendant's motion to suppress rifle found in plain view in defendant's basement during execution of arrest warrant. While defendant argued that instant seizure was improper because it had occurred after defendant had been arrested on first floor of his home, seizure was proper, where rifle was discovered during protective sweep of defendant's home. Fact that rifle was in locked basement did to require different result. Ct. also did not err in admitting certain evidence of defendant's uncharged drug dealing/possession, where defendant had contested issue of his possession of rifle, and where such evidence was relevant on issue of defendant's motive to possess instant rifle, which govt. claimed was used to support his drug dealing activities.

U.S. v. Sinclair, No. 12-2604, October 21, 2014, N.D. Ind., S. Bend Div., Affirmed. In prosecution on drug and firearm charges, Dist. Ct. did not err in denying defendant's motion to continue his trial in order to obtain new counsel, where said motion was considered on day prior to start of trial. While last-minute nature of defendant's continuance request was insufficient by itself to deny said request, Dist. Ct. properly could consider last-minute nature of request, along with fact that any continuance would have caused inconvenience to 34 jurors who were told to report for jury duty, as well as to court personnel and witnesses. Moreover, defendant failed to establish that proposed new counsel would have actually accepted case or would have been able to be prepared for trial within time frame set forth in continuance motion.

U.S. v. Mayfield, No. 11-2439, November 13, 2014, Federal District: N.D. Ill., E. Div., Vacated and remanded. In prosecution on charge of conspiracy to rob drug stash-house, Dist. Ct. erred in granting govt.'s motion in limine to prevent defendant from presenting entrapment defense. Dist. Ct. improperly made credibility finding when granting instant request, and defendant otherwise presented enough evidence to justify giving entrapment instruction to jury, where defendant testified that govt. informant: (1) appealed to his friendship when requesting that he assist him in instant staged robbery; (2) gave money to defendant in order to create debt that he knew defendant could not repay; (3) exploited said debt by alluding to his status as gang member; and (4) repeatedly pestered defendant over substantial period of time. Also, although defendant had extensive prior criminal history, he presented sufficient evidence with respect to his lack of predisposition to commit instant robbery given his repeated rejections of informant's request. Fact that defendant subsequently participated in planning of

robbery and in recruiting of other members of alleged conspiracy did not require different result. (Dissent filed.)

People v. Salazar, 2014 IL App (2d) 130047, November 20, 2014, Kendall Co., BIRKETT, Affirmed. Defendant was convicted, after jury trial, of first-degree murder and two counts of attempted first-degree murder, all based on theory of accountability. Evidence supported jury's guilty verdicts, as it was clear from testimony that Defendant piloted his vehicle in manner to aid in commission of shooting and kept vehicle in a stationary position until firearm was emptied while passenger fired semiautomatic weapon, firing each round individually, 11 separate times. Jury could infer that Defendant, after piloting vehicle to put passenger in a good position to shoot at victims in vehicle, waited till shooting was over before fleeing the scene. Jury instruction for attempted murder was not confusing or misleading, as there were two attempted murder charges involving two different victims whose names were listed on the instruction. (BURKE and HUTCHINSON, concurring.)

People v. Breeden, 2014 IL App (4th) 121049, November 25, 2014, Champaign Co., HARRIS, Affirmed in part and vacated in part; remanded with directions. Court sentenced Defendant to 58 months imprisonment for failure to register as a sex offender. Sentence was not an abuse of discretion, as court considered his criminal history, including 14 convictions for driving while license suspended revealing a contemptuous attitude toward the law, and his failure to attend court-ordered sex offender risk assessment. (KNECHT, concurring; APPLETON, concurring in part and dissenting in part.)

People v. Hasselbring, 2014 IL App (4th) 131128, November 24, 2014, Champaign Co., POPE, Reversed and remanded. Defendant was convicted, after jury trial, of aggravated driving with a drug, substance, or compound in his breath, blood, or urine. State's expert testified benzoylecgonine is not a drug listed as a controlled substance, and State did not argue or present evidence showing that it is a compound. Jury asked whether it qualified as a substance. Trial judge's answer, "yes, cocaine metabolite qualifies as a drug, substance, or intoxicating compound" was incorrect, in conflict with evidence presented, and served to direct verdict in State's favor, could have confused the jury, and resolved ultimate issue for jury. No double jeopardy impediment to retrial, as rational jury could have found that a substance resulting from Defendant's use of cocaine before driving was present in Defendant's system. (KNECHT and TURNER, concurring.)

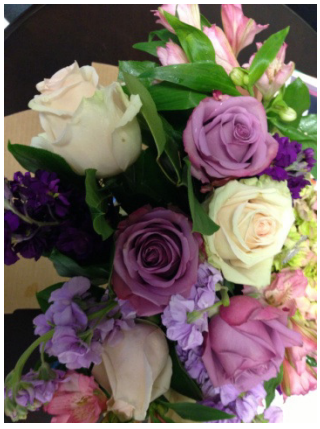
People v. Clark, 2014 IL App (1st) 123494, November 20, 2014, Cook Co., 4th Div., EPSTEIN, Vacated and remanded. Defendant was convicted, after bench trial, of uncharged offenses, finding they were lesser-included offenses of charged offenses of aggravated vehicular hijacking while armed with firearm and armed robbery while armed with firearm. Offenses of which Defendant was convicted, aggravated vehicular hijacking with a dangerous weapon other than a firearm and armed robbery with a dangerous weapon other than a firearm were not lesser-included offenses because charging instruments did not permit inference that Defendant used a weapon other than a firearm during the offense. Thus, convictions are reduced to vehicular hijacking and robbery, and remanded for resentencing. (FITZGERALD SMITH and HOWSE, concurring.)

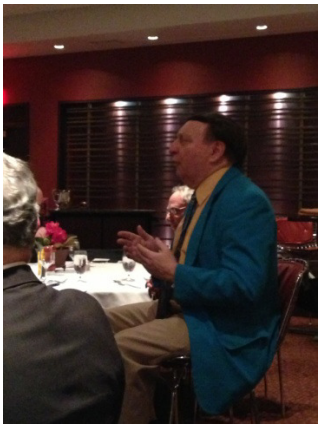
People v. Guillen, 2014 IL App (2d) 131216, November 25, 2014, Du Page Co., SCHOSTOK, Reversed and remanded. Court erred in dismissing charges of aggravated DUI on basis that charges placed Defendant in double jeopardy. State and trial court realized, during initial plea hearing, that offense was felony DUI rather than misdemeanor which which Defendant had been charged. Jeopardy had not attached at the point when State nol-prossed the misdemeanor charges. Judge had never finally or unconditionally accepted the plea, as would be required for true acceptance of plea, and judge's intention and ruling were clear that he would not accept guilty plea. (ZENOFF, specially concurring; HUDSON, dissenting.)

People v. Bradford, 2014 IL App (4th) 130288, November 24, 2014, McLean Co., HARRIS, Affirmed. Defendant was convicted, after bench trial, of burglary, for knowingly and without authority remaining within Walmart with intent to commit therein a felony or theft. A defendant who develops an intent to steal after his entry into a public building may be found guilty of burglary by unlawfully remaining. Just as a defendant's entry is "without authority" if accompanied by a contemporaneous intent to steal, a defendant's remaining is "without authority" if it also is accompanied by an intent to steal. State sufficiently proved Defendant remained in Walmart "without authority" as he moved through the store and stole merchandise. Any authority Defendant may have had to remain in store was implicitly withdrawn once he formed intent to steal from store. Thus, evidence was sufficient to convict Defendant of burglary as charged. (POPE and TURNER, concurring.)

People v. Hensley, 2014 IL App (1st) 120802, November 24, 2014, Cook Co.,1st Div., HARRIS, Affirmed. Defendant was convicted, after jury trial, of first-degree murder, attempted first-degree murder, and aggravated battery with a firearm in shooting that killed one person and injured another. Court within its discretion in admitting proof of other crimes, as they were part of continuing narrative of crime charged. Defendant failed to show that State knowingly used perjured testimony or that State's closing rebuttal argument resulted in reversible error. Defendant's right to confrontation was not violated when State presented testimony from medical examiner who did not perform autopsy of victim, as autopsy report was prepared in normal course of business. Appellate court refuses to department from Illinois precedent addressing doctrine of transferred intent, which is applicable to attempted murder cases where unintended victim is injured. (DELORT and CONNORS, concurring.)

Thank you to ISBA e-clips and Family Law Section cases for this month’s contributions.





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