

North Suburban Bar Association

NSBA News

Spring 2018

President's Message

Richard Pullano, Esq.

At our best, lawyers can serve as the bridge between injustice and justice. At our noblest, we are the first responders for the underserved and underprivileged, those who are indigent, do not have money and can be easily taken advantage of, by unscrupulous businesses, landlords and others who hold society's cards. But our honorable advocacy would sometimes come to naught if not for the wisdom of our founders in creating a system with a separation of powers and an independent judiciary that provides a thorough, impartial and fair-minded review of all matters. (Cont. Page 2)



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Save the Date *

May 30	NSBA Judges' Night Reception
June 12	Annual Meeting/Election
June 19	CLE--IP/Trade Secrets

*Please check the NSBA website (ilnsba.org) for details about event venues and starting times.

That separation of powers stands at the heart of our system of justice. To help ensure that young people in our local area fully appreciate and understand these concepts, we at the North Suburban Bar Association proudly presented the 5th Annual High School Mock Trial Invitational in January at the Skokie Courthouse. With nine judges and twenty-five attorneys taking their time to provide wonderful support in evaluating the competition, while sharing their experience and knowledge, young people from the fourteen participating high schools got a taste of the positive contributions the legal profession makes to society.

One of the most important and effective ways to encourage the best and brightest of the next generation to enter the legal profession is to share it with them. This tournament, in which students participate in two mock trials, is a fun and educational way to expose young adults to the justice system in the hopes they will pursue a career in the law in the future. Without the judges and attorneys who volunteered, the competition would not have been possible; but they know how important such events are to the profession, and to the wider community.

The mock trial experience underscored for these young people the importance of an independent, experienced judiciary that puts aside preconceived notions and clears its mind to be able to fairly administer justice. Our system is the fairest in the world because judges are impervious to influences from other branches of government, and they do not render decisions based on what the legislative or executive branches tell them to do. Judges follow the law and apply it to the facts in an accountable manner because no one branch rules over the other—we do not live in a monarchy, after all. Smart, dedicated, experienced judges and lawyers are constantly providing checks and balances on the other branches.

One recent example has come when the President Trump has nominated judges found to be manifestly unqualified, with not only the nonpartisan American Bar Association but even

members of his own party, like Senate Judiciary Committee Chairman Charles Grassley, urging that certain nominations be withdrawn. The importance of separation of powers also has been underscored in the tussle between the Trump Administration and municipalities like Chicago over the sanctuary city issue for undocumented immigrants. When the executive branch issues an order, and three days later the judicial branch says “no”—whatever one thinks about who is right on this particular issue—it is undeniable that the system of checks and balances, and thus separation of powers, is working as the Framers intended.

NSBA High School Mock Trial Invitational

The NSBA hosted its Fifth Annual High School Mock Trial competition on January 25, 2018 at the Second District Courthouse in Skokie. Volunteers from the NSBA as well as several judges and staffers from the Second District worked tirelessly to make this event a great success. This year, a record number of fourteen high schools and sixteen teams participated in the competition. Teams came from as far away as Bloomington, Illinois, as well as several of the far south and west suburban areas.

Each team participated in two mock trials, with experienced attorneys serving as evaluators and actual judges serving as the judges for the mock trials. All totaled, nearly fifty NSBA members, judges, assistant state's attorneys, and volunteers from the Second District facilitated the event. NSBA President Rick Pullano summed up his thoughts about the Mock Trial Invitational: "This tournament is a fun and educational way of exposing these young adults to the justice system in the hope they will pursue a career in law in the future." Presiding Judge Shelly Sutker-Dermer added: "We are so proud to participate in the Fifth Annual Mock Trial Competition at the Skokie Courthouse. The students are so well prepared and eager to learn trial skills. I am grateful to all of the judges who presided over these mock trials. The competition fosters outstanding collaboration with the bar, judiciary, and the community high schools. Working together on these events benefits everyone. We look forward to continuing this great tradition."

In this hotly contested competition, the team from Hinsdale Central High School earned First Place, with the teams from York Community High School and Evanston Township High School earning Second Place and Third Place, respectively.



WRITING AN ENFORCEABLE JUDGMENT ORDER

*Robert Markoff, Esq**

You have worked very hard to win your client's case or have received an award of attorney's fees. It is now time to memorialize your success by writing a judgment order. If done correctly, you will have an enforceable judgment order. If you fail to write an enforceable judgment order, you may, and often will, find yourself enmeshed in additional litigation over its enforcement.

In civil litigation where the court is entering an order for a sum of money, there are two possible orders: a finding that money is due one party from another or an order for one party to pay money to someone else.

A finding that one party is due money from another should result in an order that will allow enforcement of the order by way of garnishment, wage deduction, citation to discover assets, or sheriff's levy. It should clearly name the party to whom the money is due (judgment creditor), the party who is to make the payment (judgment debtor), and the amount of the payment. The preamble to the order should clearly state who is before the court and the court's finding that it has jurisdiction over the parties and subject matter of the litigation. It should also include the basis for entering the award: trial, judgment on motion, or default.

An order that directs one party to pay a sum of money to another party, although a "judgment order," is only enforceable through contempt proceedings. This type of order is frequently found in domestic relations matters where a party is ordered to pay attorney fees.

* Robert "Bob" Markoff is a partner in the Chicago law firm Markoff Law LLC. The firm concentrates its practice in commercial and consumer collection law. Bob's main concentration is judgment enforcement. He has shared knowledge in the area as General Editor and an author of *Creditors Rights in Illinois*, IICLE, 2014 and through lectures, seminars, and presentations to several bar associations for over 35 years. Bob can be reached at bob@markofflaw.com or (312) 698-7333.

In these situations, the recipient of the order/award must return to the court and seek enforcement through contempt proceedings. Enforcing orders through contempt proceedings is usually a long and time consuming exercise. It is not an efficient method of enforcement, although in some cases it may be the only method to achieve payment. Using enforcement tools such as a citation to discover assets or garnishment frequently results in a faster recovery.

Are there any magic words that must be used in writing an enforceable judgment order?

No. Years ago, most attorneys used the phrase “plaintiff shall have and recover of the defendant...” Plain English is all that is required today: " Judgment is entered in favor of Plaintiff A and against Defendant B in the sum of X plus costs." (Note: sometimes costs are added to the principal amount of the judgment.)

You must also be aware of Supreme Court Rule 304 (a) which establishes requirements for a final, appealable and enforceable judgment. The order must dispose of all issues and parties. If there are outstanding matters such as attorney fees, an unserved co-defendant or an additional count in the complaint, the order must include a finding that it is final, appealable and enforceable pursuant to Supreme Court Rule 304 (a).

Another source of confusion when entering a judgment order occurs in enforcement proceedings against third party garnishees/respondents. When a bank is ordered to turn over funds held in a defendant’s account, the turn over order should be written as an enforceable judgment order. Many attorneys simply write that the bank is ordered to turn over funds in the defendant’s account to plaintiff. If the bank fails to do so, the plaintiff must begin contempt proceedings against the bank. A proper turn over order should read: “Judgment is entered in favor of defendant and against bank in the sum of X for the use of plaintiff.” The wording may

seem torturous, but it is the correct legal statement as to what is being done. It also allows the plaintiff to garnish the bank's funds if the bank does not comply.

My firm limits its practice to creditors' rights and my personal concentration is in the area of judgment enforcement. I often am asked to assist other attorneys and their clients upon the entry of judgment. It is extremely disheartening to tell referring attorneys they have failed to write an enforceable judgment order and that they must return to court for a corrected order. Unfortunately, it happens all too frequently.

After working so hard and long on your case, is it not worth the extra few minutes to write a legible, clearly thought-out, and enforceable judgment order?

Gary Wild Dinner

Each year, the NSBA honors the memory of its past President and one of its most distinguished members, Gary Wild. Gary was a tireless and zealous advocate for the less fortunate, concentrating his practice in the areas of social services, disability, and juvenile matters. He also was active in the American Civil Liberties Union. Gary was a highly respected lawyer and he was uniformly regarded as a kind, thoughtful, and inclusive man.

At this year's Gary Wild Memorial Dinner, held on March 20th, the NSBA presented the Gary Wild Award (and honorarium) to two organizations. Both are well-known in the legal community and each provides substantial support services for the less fortunate members of our society.

The first recipient was Little City. Founded in 1959, Little City serves children and adults with intellectual and development disabilities. With a staff of over 400, Little City offers a full range of residential and non-residential programs and services aimed at empowering its participants to achieve their potentials, and to live hopeful, enriching, and productive lives. Little City's Executive Director, Shawn E. Jeffers, accepted the Gary Wild Award on behalf of the Little City community.

The second recipient was the Domestic Violence Legal Clinic (DVLC). Founded over 35 years ago, the DVLC provides free civil legal assistance to low-income individuals in Illinois. The DVLC is dedicated to keeping families safe, using the legal system to combat domestic violence. With a staff of ten attorneys and a large network of volunteer attorneys, the DVLC assists thousands of victims of domestic violence annually. The DVLC's Executive Director, Margaret R. Duval, accepted the Gary Wild Award on behalf of the DVLC.





NSBA Judges' Night Reception on Wednesday May 30, 2018

Judicial Honorees

Please make sure to mark your calendars for May 30th for the NSBA 2018 Judges' Night Reception. We are privileged to honor two outstanding jurists at this year's event—**Circuit Judge Catherine M. Haberkorn and Associate Judge Stuart P. Katz**. Both have made outstanding contributions to the bench and bar that make them deserving of these honors.

Judge Catherine Haberkorn has served on the bench since 1994. Prior to her election to the Circuit Court of Cook County, Judge Haberkorn was a respected and skilled prosecutor with the office of the Cook County State's Attorney. For thirteen years with the State's Attorney, she handled a wide range of civil and criminal matters, with the majority of her time invested in prosecuting violent felonies in the felony trial courts.

For over twenty years on the bench, Judge Haberkorn has served in the Felony Criminal Trial Division. She has earned the reputation as a fair and thoughtful judge. Judge Haberkorn also has utilized creative sentencing options for rehabilitation. Sun Times journalist Marc Brown lauded Judge Haberkorn's efforts in this regard in an article entitled “*Heroine Addict: ‘Loving Judge Saved My Life.’*” The article profiled a young defendant who credited Judge Haberkorn's kindness and creativity with saving her life. The defendant was so impressed with Judge Haberkorn that, years later, she wrote to Marc Brown and told him her story. Judge Haberkorn summed up one of her guiding principles as follows: “As judges, we are in a unique position. We not only rule on the facts and law before us, but we can use appropriate available services to better human lives.” Judge Haberkorn is a frequent and regular lecturer and presenter at criminal bar association meetings and at trial advocacy seminars. She has taught advanced trial advocacy

courses at the University of Chicago School of Law, Emory University School of Law, and other schools.

Associate Judge Stuart Paul Katz is our second honoree. Judge Katz enjoyed a twenty-three year career as a Public Defender in the Office of the Cook County Public Defender before serving on the bench. For the majority of his career as a Public Defender, Judge Katz represented defendants in capital murder cases, trying over 80 felony jury trials.

In 2007, Judge Katz was elected to be an Associate Judge of the Circuit Court of Cook County. He is known by many as a “Judge’s Judge.” Since 2009, Judge Katz has served in the Juvenile Justice Division. Judge Katz has earned the respect of litigants, lawyers, and his fellow jurists, each of whom recognize Judge Katz’s fair, thorough, and balanced approach to the cases he handles. More broadly, Judge Katz is known as a valued advocate for a number of juvenile justice initiatives. Judge Katz currently serves as the Chairperson of the Juvenile Justice Committee of the Illinois Judicial Conference. He has been at the forefront of several restorative justice initiatives, including crafting and implementing diversion programs. He is a frequent lecturer at bar association meetings and seminars, and he has served as a drafter of a number of rules relating to the administration of justice in the Juvenile Courts. Judge Katz also is a founding member and past President of the Alliance of Illinois Judges.

Revisions to the Multi-Board Real Estate 6.1 Contract

*Erica Minchella, Esq.***

I have been fortunate to be included on the drafting committee of the revisions to the Multi-Board contract. The sessions have been set up approximately every three to four weeks for four hour periods with sessions scheduled into June. The agreement is that we will see what additional time will be necessitated once we get closer to our final scheduled meeting.

The first Multi-Board Contract dates back to the 1990s. Illinois Real Estate Lawyers Association (IRELA) owns the copyright, so that if versions of the contract are found in the public with variations from the copyrighted form, a “cease and desist” letter can be issued. No one is *required* to use the contract, but using it assures a consistent understanding of the terms of the contract among the brokers and attorneys to the transaction.

The committee is made up of 13 brokers/broker instructors and 7 attorneys. One of the attorneys is the attorney for the Main Street Organization of Brokers, so he wears the dual hat of representing the interests of real estate brokers and, as a real estate lawyer, the interests of transactional lawyers. The Realtor associations involved span Illinois from McHenry County down to Kankakee. The attorney representatives cover Cook County west to Will, DuPage and Kane Counties and north to Lake County. The discussions have been professional and respectful; issues raised are fully vetted before a decision is made. We have had instances where we will discuss an issue for two hours and change only a few words in the paragraph, but, by the time we are done, we are confident that the changes are necessary and for the benefit of the parties to the contract.

**** Erica Minchella has practiced law for over 35 years and is well versed in all aspects of real estate law. She has handled a wide range of commercial and residential real estate matters during her career, including conventional and distressed real estate issues, foreclosure defense, short sale transactions, and investor consulting. She is a frequent lecturer and author on the subjects of real estate law. She serves as the President of the Association of Foreclosure Defense Attorneys, is a member of the Board of the IRELA, and is a member of the Illinois State Bar Association Real Estate Section Council. Erica can be reached at erica.minchella@gmail.com or (847) 677-6772**

Some of the changes that have been suggested are common sense modifications to the contract to put crucial information on the first page of the contract. In this way, all parties know that there are things to which they should be paying attention, instead of having to look for the information buried elsewhere in the contract. One of those changes is to indicate whether the property is a single family property or a multi-unit property. Since, very often, the items being transferred are merely checked rather than notated by the number of items being transferred, that check on the front of the contract, indicating a multi-unit building, may be the only indication to the attorney that we are dealing with multiples of personal property. It also advises the attorney to be concerned about potential leases and potential tenants about which the “possession” provisions of the contract might require special language in the attorney review letter.

Another common sense change is to mark on the first page whether there are closing cost credits. This assures that the credits are properly applied when the seller’s attorney prepares the closing statement.

We spent time discussing common items that are part of the fixtures and personal property transferred with the real estate. The list has been revised to put like items together and to clarify certain items (such as wall mounted brackets for televisions). Additionally, some items have been added to the list such as wine/beverage refrigerators and hardscape.

Another common sense change has been regarding the transfer of earnest money. Since contracts are often submitted electronically, buyers no longer provide a check for earnest money at the time the contract is tendered. There is now a time limit for providing the earnest money as well as an acknowledgement that the listing agent might not be the party holding the earnest money – and a way of notating who will hold those funds.

Most recently, we spent almost one entire four-hour session discussing the attorney review paragraph. There is a concern that the paragraph does not clarify the difference between when an attorney review letter is referencing “counterclaims” as opposed to “changes” to the contract. Asking for the contract to be contingent on the property appraising at the contract price is an example of a counterclaim (pursuant to paragraph 11(c)). Asking that the closing date be moved from a date that is a holiday is a change (pursuant to paragraph 11(d)). The competing interests of clarity and simplicity delayed us to the extent that we have still not finalized revisions to that paragraph.

When the revisions reach a point of conclusion, we will decide whether the changes are minimal enough to call the new version “6.2” or substantial enough to be called “7.0”. Irrespective of what it is called, the users can be sure that the next version will be brought up date with current practices in the industry and that every concern about the contract has been thoroughly considered.

2017-18 NSBA Officers and Directors**2017-2018 NSBA Officers & Directors:****Officers:**Richard Pullano, *President*Ann Pantoga, *4th Vice President*John Stimson, *1st Vice President*Barbara Lusky, *Secretary*Corinne Heggie, *2nd Vice President*Moria Bernstein, *Treasurer*Hon. Patrick Heneghan, *3rd Vice President* Molly Caesar, *Immediate Past President***Directors:**

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From the Editor's Desk:

We thank our photographer, Joe Perez, at OVC Lawyer Marketing for providing all of the photographs that accompanied the articles in this edition of the NSBA Spring Newsletter.

We extend our thanks to all who attended the NSBA events this past year and for willingly participating in the photos used in the Newsletter. If you have any recent articles or information that you would like to include in the newsletter, please forward them to us. We can always use more articles!

We also have had several new members join our ranks. We invite all new members 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 our newsletter editor, the Hon. Patrick Heneghan at heneghanpj@gmail.com.

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