THE

DOCKET

July 2013

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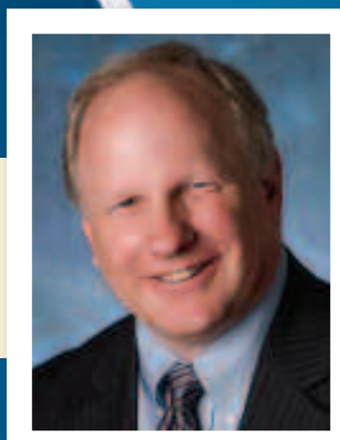
The Official Publication of the Lake County Bar Association

"Invite people to get involved with the LCBA."

Steven McCollum, 2013-2014 LCBA President



THE DOCKET

Inside this issue...

A publication of the

LAKE COUNTY BAR ASSOCIATION est. 1912

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In the Director's Chair by Christopher T. Boadt

Benefits of Membership

In addition to being summer, it's membership dues renewal season. I wanted to take a few moments to highlight some of the benefits that come when you participate in the Lake County Bar Association.

Featured on the back cover of the May issue of The Docket was a personalized membership card. This membership card is valid for use at the businesses listed inside that issue on the "membership discount pages." Do you know a business that would benefit from offering your fellow members an incentive/discount to lawyers, judges and other legal related professionals? Please feel free to share their contact information with me or have them contact me directly at cboadt@lakebar.org.

Continuing Legal Education
The LCBA offers CLE programs representing many different practice areas throughout the year. At least 30 hours of locally focused and practice relevant programs are offered annually. Members attend CLE programs at a discounted tuition.

Lawyer Referral Service
Qualified members of the LCBA can join our lawyer referral service, through which the LCBA sends referrals to your office based upon specific case types you select. You may participate as a standard or premium member. Contact the LCBA (847-0244-3143) for more information.

***The Docket* &Weekly E-news**
LCBA members are the first to know what's going on in the Lake County legal community via our monthly magazine *The Docket* and the weekly e-newsletter.

Bar Poll
The LCBA sends electronic surveys to LCBA attorney members inquiring about the character and experience of judicial applicants and those seeking retention. The results of this process are shared with the Court's Circuit Judges and are available to the public.

Most importantly, **THANK YOU FOR YOUR MEMBERSHIP**. As always, please let me know if there is something you would like us to explore to make your association the most relevant, useful, and best value bar.

The President's Page by Steven McCollum

Happy Lawyers Make for a Happy Court System

As I write this, I am in the middle of a felony jury trial. For those of us who do trial work, nothing is as daunting and invigorating all at once as is finally getting before a jury. Perhaps that is because nothing is so uncertain and carries the potential for total success or failure, especially when the stakes are high. That being said, while doing a trial is probably the most excitement you'll ever have as a lawyer, as a sole practitioner you are quickly faced with the knowledge that none of the many other things that need doing can really be put aside either. And for me this column is one of those things.

I mention this in a lame attempt to get you to cut me some slack if this column does not contain any of those profound, self-evident truths that should be written in a month celebrating our Declaration of Independence. Instead let me mention a few slightly less profound but important things that are coming up, or have been happening with the court system and your Board of Directors.

July 11th is the LCBA Golf Championship. This event, which, as always, promises to be a great time, will be held at Stonewall Orchard Golf Club. In speaking to the Chair of the event, Michael Ori, I understand that there are still openings for participants and sponsors. If you want to get your name or the name of your law firm out there, you can easily sponsor a hole or some other aspect of the Championship.

Since I last wrote we've seen progress as our Circuit Clerk, Keith Brin, has quickly made good on his promise to put the court's records online so we can all now look up our cases. Kudos to Keith. This has already been a great timesaver for my office assistants and me, since it has obviated the need to call the Clerk's office for case numbers, dates, and all the other information we need several times every day.

I quickly realized other benefits of this change when a prospective client called me the other day and I took the call on my cell phone. He couldn't tell me what he was charged with, whether it was a felony or misdemeanor, or which courtroom the case was in, which means he was a typical prospective client. So with the advent of the new system, I put him on hold, looked up the case on my iPhone on the clerk's website, and was able to then talk to him with some understanding of what was going to be involved. Did I thank you enough yet Keith? Welcome to the 21st Century Lake County.

In a recent meeting of the Executive Justice Council there was a discussion of the next step in the process of upgrading the Clerk's record keeping system that will allow attorneys, with an annual fee, even greater access. This next upgrade to the system should include the ability to electronically file documents, review court pleadings and orders, and other access that will greatly enhance our

Welcome New LCBA Members

Attorneys

Alfred Lee
Johnson, Westra, Broker, Whittaker & Newitt, P.C.

David C. Adams
Grund & Leavitt P.C.

Laura M Presto
Grund & Leavitt P.C.

Ruth Yacona
Grund & Leavitt P.C.

David I Grund
Grund & Leavitt P.C.

Michelle Rajfer
Grund & Leavitt P.C.

Ilene E. Shapiro
Grund & Leavitt P.C.

Justin D. Scheid
Law Offices of Debra A. Buetinger

Ryan M. Johnson
Warren Township

Rafael J. Guzman Jr
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Daniel Bilsky
Beermann & Ori Ltd.

Gary Hollander
Strauss & Malk LLP

Jeffrey Dovitz
Jutla & Dovitz, P.C.

Associates

Sarah Serdin
Fuqua, Winter & Stiles, Ltd

Victor Rigoni III
North Shore Capital Group

ability to represent our clients. I look forward to the day when we can file an appearance, a notice, or a motion and perhaps set up a court date from our offices.

On the court security front, which continues to be a subject that I'm often asked about by other attorneys, I can only say that the Sheriff has declared that he supports an improved identification system where attorneys can avoid the long lines at the magnetometers, as has Chief Judge Fred Foreman. I would like to think that having two of the most important players concerning this issue behind this idea will inevitably lead to a change we can embrace. But I've been in Lake County too long to be that naive.

The truth is that courthouse security is about more than just court security. It involves the type of access and possible bypass of security that will be allowed for the people who work in the entire building, not just the courts. It involves balancing the need for security against the inconvenience to those of us who repeatedly go in and out of the courthouse. If there is one thing I've realized, it is that our inconvenience will usually fail to overcome the need for security. And perhaps we should be okay with that and not forget that it is the lawyers who have often been the targets in other places when security has failed.

Months ago the LCBA Board of Directors formed a committee to work on the courthouse security issue and work with the Judges to improve the system. The Board supports a system in which the Bar Association is involved in issuing identification cards to lawyers who practice in our courts. Board Member Don Morrison is the Chair of that committee. He and the other members of the committee have gathered information about the systems in place in other areas. They are in the process of consulting with Chief Judge Foreman. Anyone who has constructive suggestions should speak to Don.

For the Court system to work properly, the lawyers who work in that system need to feel that the Courts are working with them and responding to their concerns. The Clerk's recent and upcoming changes will certainly help the general public, but no one will benefit more than the lawyers who will use the new access to the records. My message is simple — happy lawyers make for a happy, well-run court system. Right now we have a Circuit Clerk who is a lawyer who understands that, a Sheriff who is a lawyer who understands that, and a Chief Judge who was a practicing lawyer who understands that. We have an opportunity to work together and in the process make the system work better for everyone. The Bar Association must be a part of that.

As Independence Day draws near it should be remembered that when the signers of the Declaration of Independence chose to put their fortunes and lives in jeopardy, one of the crimes of the King listed in that Declaration was "for depriving us in many cases, of the benefits of Trial by Jury." Without independent lawyers, free to represent our clients without interference, that right to a jury trial would be meaningless.

And that gets me back to where I started, finishing my trial. Have a happy 4th of July everyone — as lawyers, you've all earned it.

The Chief Judge's Page by Chief Judge Fred Foreman

'Let Me Take This Opportunity...'

My job description as Chief Judge includes the responsibility for the administration of the oath of office for public officials and association leaders. Also, on behalf of my colleagues on the bench, I extend congratulations for a job well done and recognize the achievements of the members of our extended "Courthouse Family."

The current conflict between the media and the Federal government regarding privacy and "overreaching" government intrusions and our new experience with "Cameras in the Courts" caused me to reflect on the passing of the Daily Herald's Tony Gordon on August 6, 2012. Tony covered the courts for the Herald for 18 years and was highly regarded for his fairness and accurate reporting of courtroom events. Seldom was there drama or animosity in his effort to report a story. Tony also wrote a column entitled "Crime and Justice" which concluded with a personal view of happenings in the courts entitled "Heard in the Hallways." Tony and many of our colleagues left us far too early in their careers, but let us reflect upon their contributions as we relate recent events "heard in the hallways."

McCollum Installed as Bar President
Steven P. McCollum was installed as LCBA President on June 7, 2013, at the Deerpath Inn. The gala affair was kept on schedule by Master of Ceremonies Richard Kopsick and thank yous were extended to Rick Lesser, Scott Gibson, and Immediate Past President Marjorie Sher, for their years of service. Good luck to Carl Marcyan as he takes over as President of the Lake County Bar Foundation.

Ben Ori Award to Mike Schostok
State's Attorney Mike Nerheim presented the Ben Ori Award to Michael Schostok for his service as an Assistant State's Attorney and his distinguished career in private practice. Justice Mary Schostok and family accepted the award on Mike's behalf and joined Ben's son Mike and family in the celebration of Ben Ori's and Michael Schostok's achievements. They were giants in our legal community who left us much too early in life.

Justice Schostok Elected President of IJA
Also on June 7, Justice Mary Schostock was elected by her peers as President of the Illinois Judges Association for the next year. Fellow Judges and Board members, Foreman, Ortiz, Shanes, Waites and Mullen were present in Chicago with Mary and her family as Justice Robert Thomas administered the oath. Sworn in on the same day as Board Members of the Illinois Judges Foundation were Judges Foreman, Bridges, Mullen, Ortiz and Rochford.

Kudos to Judges Ortiz, Ukena And Rochford
Judge Jorge Ortiz received the Vanguard Award for access to justice and diversity, Judge Jay Ukena was reappointed to serve on the Child Support Committee for the State of Illinois and Judge Elizabeth Rochford was elected to the Board of Governors of the Illinois State Bar Association. Congratulations to all!

No Summer Vacations for Big Projects
Public access, E-Filing, and Criminal Court's Expansion move full speed ahead with ground breaking for the new Criminal Courts Building scheduled for later this summer. The Judiciary and Circuit

THANK YOU!

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

David Ganfield	Adrienne Packard
Lori Berdenis	Deena Rosenfeld
Burr Anderson	Paul Stanukinas
Deborah Goldberg	Ann Conroy
Howard Bernstein	Thad Gruchot
John Julian	Brian Wendt

To volunteer, please contact Susan Perlman at sperlman@pslegal.org or 847-662-6925.

Clerk Keith Brin plan enhancements to Public Access, E-Filing, and an RFP for a new Case Management System this fall.

Waukegan Elects New Mayor
The County and Judiciary look forward to working with Mayor Wayne Motley, the Aldermen, and his administration on the new courthouse, as jobs, economic development, and excitement return to downtown Waukegan. I renew the same request to "Da Mare" as I did to Mayors Sabonjian #1 and #2 – How about those trolley cars from the Lakefront and Metra Station to the Courthouse?

Lights, Action, Cameras!
Live coverage of court proceedings started in May as part of Lake County's participation in the Supreme Court's Extended Media Pilot Project. Thanks to Media Liaison Diane Flory and Media Coordinator Jennie Vana, we are "live" from downtown Waukegan.

Sheriff Shakes Up Security Detail
Sheriff Mark Curran recently appointed the following Lake County Sheriff's Office Personnel to Court Security responsibility: John Byrne, Chief of Operations; Jeff Burke, Lieutenant, Court Security; Jeff Lowery and Tim Jonites, Sergeants of Court Security; and, as members of the Court Emergency Response Team (CERT Team) Deputies Jon Triplett, Tom Sieber, Dave Sabourin and Brad Meister. Good luck and thank you to Wayne Hunter on his retirement and to Lt. Chris Thompson, now the supervisor of the afternoon shift and "back on the road." We all sleep better at night (and some during the day) knowing these guys are on duty.

Country Squire Demolished
On a sad note, the Country Squire Restaurant was torn down to make way for expansion of the Lake Forest Hospital at the corner of Routes 120 and 45. The Squire was the site for many LCBA and political events as well as the home of Wesley Sears and former Lake County State's Attorney Bob Nelson. Owners Crystal and Gus Govas have moved their hospitality and culinary skills to Bodega in Gurnee and host the Jefferson Inn for dinner in late June.

Hats Off to Chris Boadt and Virginia Elliott
We all owe a debt of gratitude for all Chris, Virginia, Priscilla, and Hiram do for the LCBA, Judges, and Courthouse family. Your professionalism and service are first class!

Do you have a speaker idea or suggestion for our business meetings?

We would love to hear from you! Just send a note to: **Chris Boadt (cboadt@lakebar.org)**

Regulator's Action Against LPL Financial Underscores Risks of Investing in Non-Traded REITs

The Massachusetts Securities Division has filed a regulatory action against LPL Financial, LLC ("LPL"), seeking full restitution and other relief for investors residing in Massachusetts who were sold non-traded real estate investment trusts (REITs) in violation of Massachusetts law. The regulatory action stands out because it finds fault with sales of several non-traded-REITS, finding faults with the entire product category. This approach contrasts with efforts of other regulators, such as FINRA's regulatory actions and sanctions imposed upon David Lerner Associates for its sale of just one non-traded REIT product, known as the Apple REITs. Let's examine the common threads that bind the multiplicity of non-traded REITs products which Massachusetts securities regulators allege as being problematic.

By James J. Eccleston

Allegedly motivated by 6% commissions, LPL advisers sold the non-traded REITs without, for example, providing a prospectus, as well as being in violation of particular REIT requirements, Massachusetts law, and LPL's own internal compliance procedures. Further, sales of non-traded REITs were not suitable for investors in view of their investment objectives, risk tolerance, income requirements and liquidity needs.

In particular, there were several general features applicable to all REITs (publicly traded, non-exchange traded, and privately traded) with which Massachusetts securities regulators took issue. First, REITs "are often entirely illiquid." Second, REITs must distribute at least 90% of their taxable income, "however in instances where income does not meet distribution demand, REITs often resort to paying distributions out of borrowed money." Those and other features of REITs, the regulators conclude, make the products "a widely misunderstood investment vehicle."

Non-traded REITs, the regulators allege, are more problematic still. They "are especially risky through limited redemption programs, high fees and commissions, and internal conflicts of interest." Commissions and fees can range from 15% to 18%. And regarding conflicts of interest, the regulators conclude, "At their core, non-traded REIT products operate through an immensely complex affiliated and subsidiary structure rife with conflict."

Those shortcomings require "comprehensive supervision and training," yet with that Massachusetts regulators conclude that LPL was like "a boat with many holes." While "on paper," LPL "set forth stringent requirements for the sale of non-traded REITs," in practice LPL allegedly failed in its review of sales of the product. The prospectus requirement "was overlooked" numerous times. And the regulators' complaint notes that the prospectus of many of the non-traded REITs contained a 10 percent concentration limitation (of net worth or liquid net worth). Likewise, certain non-traded REITs contained limitations with regard to income requirements. The regulator also points out that certain non-traded REITs contained even higher liquid net worth, net worth and annual income requirements for Massachusetts residents.

Yet, the regulators conclude, LPL advisers were "under-educated and under-supervised" with respect to non-traded REIT transactions. The regulators noted that LPL maintained on paper a document entitled "LPL's Alternative Investment Due Diligence Process," which purported to set forth a system of supervisory review and approval. Additionally, LPL compliance manuals provided specific requirements and were accompanied by LPL's written supervisory procedures. Yet the regulators conclude that, contrary to the LPL's claims, they were not followed.

The results of LPL's deficiencies are astounding. Of the 597 transactions that Massachusetts regulators reviewed, 569 of those transactions violated prospectus requirements, and 77 of those violated concentration requirements imposed by Massachusetts law. In short, 95% of the sales violated either prospectus requirements or Massachusetts law!

The regulators focused their review on the following non-traded REITs: Inland American, Cole Credit Property Trust II, Cole Credit Property Trust III, Cole Credit Property 1031 Exchange, Wells Real Estate Investment Trust II, W.P. Carey Corporate Property Associates 17, and Dividend Capital Total Realty.

Investors must beware of non-traded REITs. As the LPL decision demonstrates, they are alternative investments not worth the risk.

James J. Eccleston leads the Securities group at the Chicago law firm of Shaheen, Novoselsky, Staat, Filipowski & Eccleston, P.C., where he represents investors in recovering investment losses and financial services professionals in disciplinary, employment, and compliance matters. He has held numerous securities licenses and Chicago Bar Association leadership positions and serves as an arbitrator and mediator. He is a recipient of Martindale-Hubbell's highest rating (AV) for legal ability and ethics and is named to the Illinois Super Lawyer and Leading Lawyer lists. JEccleston@snsfe-law.com, 312.621.4400, www.snsfe-law.com, www.financialcounsel.com.

Lake County Bar Golf Championship

Thursday, July 11, 2013
Stonewall Orchard Golf Club
25675 West Highway 60 • Grayslake, IL

Over 100 lawyers and judges
18 –hole scramble • Pre-round luncheon
Post-round reception & awards

Player
$175

- Greens fee, cart and range balls
- Lunch, 2 beverage tickets and post play reception
- 1 Mullgan and 1 door prize ticket
- Raffle prizes and tournament contest

Eagle Sponsor
$1,200

- Choice of starting hole (first paid-first served)
- 4 players: green fees, cart and range balls
- 4 Mulligans, 4 door prize entries
- 12 drink tickets, pre-round luncheon and post-round reception
- Tee sponsorship benefits, event banner recognition
- Acknowledgement of sponsorship in August 2013 *The Docket*

Soar like an Eagle

Premium starting position

Premium publicity

Clubhouse Sponsor

Gold Tee: $1,000

Silver Tee: $500

Silver Tee:
- The name of your firm, organization or company displayed on an individual sign at one of the 18 tees. (Logos permitted, provide JPG file)
- Firm, organization or company prominently displayed throughout the championship
- 2 tickets to the: pre-round luncheon, post-round reception, 2 drink tickets per person
- 2 representatives permitted at sponsored hole
- Acknowledgement of sponsorship in player welcome packet
- Acknowledgement of sponsorship in August 2013 *The Docket*

Gold Tee:
- All of the above, plus naming rights to one of the following: (Please check)
  ☐ Luncheon ☐ Reception ☐ Beverage Cart ☐ Hole-In-One

Tee Sponsor
$150

- The name of your firm, organization or company displayed on an individual sign at one of the 18 tees (no logos on signs)
- Acknowledgement of sponsorship in player welcome packet
- Acknowledgement of sponsorship in August 2013 *The Docket*

LAKE COUNTY BAR ASSOCIATION est. 1912

NEW THIS YEAR

PADS LAKE COUNTY
Helping the Homeless Find a Way

A portion of the proceeds will benefit PADS Lake County

Lake County Bar Golf Championship

Thursday, July 11, 2013
Stonewall Orchard Golf Club
25675 West Highway 60 • Grayslake, IL

Stonewall Orchard Golf Club was designed by renowned golf course architect Arthur Hills. He has incorporated the natural rolling landscape of Lake County to dictate this magnificent 18-hole 7,124-yard, par 72 championship layout, each hole provides its own identity and challenge to golfers of all skill levels.

Golf & Sponsor Registration

MY FOURSOME:

1. _____ HDCP
2. _____ HDCP
3. _____ HDCP
4. _____ HDCP

Please try and place me with:

Name: _____

- ☐ **Individual Player:** # ____ @ $175 (includes golf, lunch & reception)
- ☐ Lunch & 1 Drink Ticket: # ____ @ $25
- ☐ Reception & 1 Drink Ticket: # ____ @ $25
- ☐ Eagle Sponsor (includes 4 players) $1,200
- Clubhouse Sponsor
  - ☐ Gold Tee $1,000
  - ☐ Silver Tee $500
- ☐ Tee Sponsor $150

Total $ _____

Contact Information

Sponsorship opportunities are availabe on a first paid, first serve basis. Sponsors will be recongized with signage at the event and a thank you ad in *The Docket*.

Name: _____ Firm: _____

Display Acknowledgement as: _____
(How the sponsor's name will appear)

Address: _____ City, State & Zip: _____

Phone: _____ Fax: _____

E-mail: _____

Payment method: ☐ Check enclosed ☐ Visa ☐ Mastercard ☐ Discover ☐ American Express

Number: _____ Expiration Date: ____/____/____ CVV2: _____

Signature: _____

PLEASE RETURN REGISTRATION TO:
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TEL (847) 244-3143 • FAX (847) 244-8259

The Difficulty in Understanding and Applying Section 5/513(a)(1) of the IMDMA

When attempting to calculate support for a disabled child, looking for guidance under the statute will leave you asking questions. This article will simplify how to calculate support and the options available to your client.

By Marc K. Schwartz

By Staci Balbirer

Section 750 ILCS 5/513 of the Illinois Marriage and Dissolution of Marriage Act is entitled, "Support for Non-Minor Children and Educational Expenses." Although the title of Section 513 may seem clear, the needs of the children receiving continuing Section 513 support could not be more different. When representing a client with children, Section 513(a)(2) is often referenced as it sets forth guidelines to determine each parent's respective contribution to a child's educational expenses. The recipient of continuing support under Section 513(a)(2) is a child who has the aptitude to attend a higher level education institution with the ultimate goal of becoming independent from his parents.

Alternatively, Section 513(a)(1) references an individual who, upon reaching the age of majority, is mentally or physically disabled and not otherwise emancipated. In most cases this is an individual who, unlike his 513(a)(2) counterpart, requires continuing support as he will never become entirely independent.

The clear focus of Section 513 is educational expenses. Section 513(a)(2) details the "educational expenses" which may be included and also sets forth relevant factors in determining the Court's allocation of educational expenses between parties. While the statute may be straightforward, explaining to your client the reasons he may be responsible for educational expenses can pose a challenge.

Although Section 513(a)(2) is clear, its (a)(1) corollary is not.

Section 513(a)(1) states in relevant part that:

> (a) The court may award sums of money out of the property and income of either or both parties... for the support of the child or children of the parties who have attained majority in the following instances: (1) When the child is mentally or physically disabled and not otherwise emancipated, an application for support may be made before or after the child has attained majority.

Section 513(a)(1) does not explain the precise calculation of support, its uses, or the length of time support continues. The ambiguity of 513(a)(1) leaves attorneys and their clients with many unanswered questions: How is support for an adult disabled child calculated? What expenses should be paid with the continuing support received? Is Supplemental Security Income (SSI) taken into consideration when determining an adult disabled child's expenses? What if expenses increase - is support modifiable? How does the judge usually rule in these types of cases? With so many unanswered questions, it is best to start at the beginning to explain Section 513(a)(1) to a client.

If a child is disabled prior to reaching the age of majority and a parent is seeking continuing support, a disability finding must be made by a Domestic Relations Court. Even if an individual has been adjudicated disabled in Probate Court, this is insufficient because an individual could be disabled within the meaning of the Probate Act and not be disabled within the meaning of section 513. In construing section 513, the courts have used dictionary definitions of disabled which, in contrast to the Probate Act's definition, concern the inability to manage one's affairs.[1] *Webster's Third New International Dictionary* defines, "disabled" as incapacitated by or as if by illness, injury or wounds.[2] The Probate Act defines "disabled person" as "a person 18 years or older who (a) because of mental deterioration or physical incapacity is not fully able to manage his person or estate, or (b) is a person with mental illness or a person with a developmental disability and who because of his mental illness or developmental disability is not fully able to manage his person or estate, or (c) because of gambling, idleness, debauchery or excessive use of intoxicants or drugs, so spends or wastes his estate as to expose himself or his family to want or suffering."[3]

A Petition for Disability Finding can be brought before the Court in both pre-decree and post-decree matters. If your case concerns an individual who has already reached the age of majority, it is both cost-

[1] In re the Marriage of Lerner, 316 Ill. App. 3d 1072, 1077, 738 N.E. 2d 183, 187 (1st Dist. 2000).
[2] In re the Marriage of Thurmond, 306, Ill. App. 3d 828, 832, 715 N.E. 2d 814, 816 (2nd Dist. 1999).
[3] In re the Marriage of Lerner, 316 Ill. App. 3d 1072, 1077, 738 N.E. 2d 183, 187 (1st Dist. 2000).

effective and time efficient to include an application for continuing support in your initial Petition. It is important to note that support can be awarded retroactively to the filing of your Petition, so time is of the essence. In post-decree litigation, the parties' Judgment for Dissolution of Marriage may contain language regarding an individual's disability and a Petition for Disability Finding may not be necessary. Still, the failure of such a finding in the underlying judgment does not preclude a post decree petition seeking a finding.

When the Court finds an individual to be disabled, the Court has discretion to order continuing support pursuant to section 513(a)(1). Though there is a plethora of case law regarding a parent's obligation to provide continuing support for a disabled individual after he reaches the age of majority, there is no case law that dictates the calculation of child support using the Illinois statutory guidelines as set forth in Section 505(a)(1) of the IMDMA, or based on the child's needs.

A "needs based approach" can be calculated utilizing the following factors as set forth in Section 505(a)(2):

> a) the financial resources of the child; b) the financial resources and needs of the custodial parent; c) the standard of living the child would have enjoyed had the marriage not been dissolved; d) the physical and emotional condition of the child, and his education needs; and e) the financial resources and needs of the non-custodial parent.

As disabled individuals may have specialized needs, calculating support using the Illinois statutory guidelines may not be in the best interest of the child. Utilizing a "needs based" approach, the Court will be able to review the individual's specific monthly needs and calculate a more accurate support amount.

When representing either the custodial or non-custodial parent of an adult disabled child, the arguments for appropriate expenses and each party's contribution will vary significantly. For a custodial parent, in addition to the cost of the individual's specific needs, there are expenses such as mortgage payments, groceries, electricity, etc. Should the individual's portion of these additional expenses be included in a needs-based support calculation? The non-custodial parent will certainly argue against supplementing the custodial parent's mortgage payments and electricity bills as arguably those are expenses that the custodial parent would incur regardless of the individual residing with them. However, because needs-based support is discretionary, being prepared to argue the inclusion of additional expenses may prove successful in some cases and before

MEMBERS ON THE MOVE

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some judges.

Although you will be hard pressed to find two judges who calculate Section 513 support in an identical manner, the Court should always consider the financial resources of the individual, specifically, whether or not a disabled child receives Supplemental Security Income (SSI). SSI provides funds for basic needs such as food, clothing, and shelter, so SSI received should be subtracted from the total monthly expenses of the individual. A simple example: if it is determined that an adult disabled child's needs-based expenses are $2,000 a month and said individual receives $694 in SSI, the total monthly expenses to be allocated between the parties is $1,306. If the individual receives any additional benefits, depending on the party you represent, you should be prepared to argue about the benefits to be included in calculating the child's expenses and each parent's respective support contribution.

Illinois courts have also held that Section 513 expenses are a form of child support to be read in conjunction with Section 505 and Section 510, and thus are modifiable.[4] Therefore, each parent's contribution to a disabled individual's expenses can be modified upon a substantial change in circumstance. This also means that the Court may interpret Section 513(a)(1) pursuant to statutory guidelines as set forth in Section 505(a) and not a needs-based analysis as discussed above. If the Court utilizes a statutory approach, the non-custodial parent may be ordered to pay 20 percent of his monthly net income for a child with special needs. If this family has more than one child with special needs, the percentage of the supporting party's net income to be paid will increase based on the number of special needs children. However, similar to child support under Section 505, practitioners will be hard-pressed to find case law that states when a needs-based analysis should be utilized versus statutory guidelines. This results in the Court having ultimate discretion.

Regardless of whether statutory guidelines or a needs-based analysis is utilized, the contribution of each parent to the individual's monthly expenses will be determined by the court or by agreement. Again, in applying a needs-based analysis, the court will review the financial resources of both parties, the financial resources of the child, the standard of living the child would have enjoyed had the marriage not been dissolved, the physical and emotional condition of the child, and his educational needs. As each case is fact specific, each outcome will differ. Alternatively, in applying statutory guidelines, a non-custodial parent shall pay a set percentage of his monthly net income based on the number of disabled children he was ordered to support. This approach is less fact specific and more in accordance with the idea of continuing child support.

In rare instances, you may represent a client with an adult disabled child who can be classified under both Sections 513(a)(1) and (a)(2). Issues arise when the non-custodial parent, who has been ordered to contribute to college, has also been making payments for the individual pursuant to Section 513(a)(1). Should the payments made pursuant to Section 513(a)(1) be included when calculating the total amount of college expenses paid by the non-custodial parent? Should a disabled child be entitled to receive benefits under both Sections 513(a)(1) and (a)(2)? These questions remain unanswered as case law and Section 513 are silent as to a disabled individual who attends a higher level educational institution.

Although case law is very clear that adult disabled children are entitled to continuing support, Section 513(a)(1) does not provide answers to important questions. When you represent a client with an adult disabled child, it is important to recognize the day-to-day challenges in caring and providing for an adult disabled child. It is also important to understand and correctly apply Section 513(a)(1) as the outcome of a Section 513 support hearing should ultimately result in a ruling that is in the best interest of the child.

Marc K. Schwartz (mschwartz@swbattorneys.com) and Staci Balbirer (sbalbirer@swbattorneys.com), of the law firm Schwartz Wolf & Bernstein LLP, concentrate their practice in the area of domestic relations and family law and have a special focus in assisting families who have children with special needs.

Staci Balbirer is an associate with Schwartz Wolf & Bernstein LLP. She concentrates her practice in the area of domestic relations and family law and has a special focus on assisting families who have children with special needs. Ms. Balbirer received her BA from Lehigh University in 2006 and her Juris Doctor from The John Marshall Law School in 2009.

4 In re the Marriage of Petersen, 955 N.E. 2d 1131, 1134 (2011).

2013-2014 Installation of Officers and Di

Friday, June 7, 2013 · Deerpath Inn ·

Recent Case Demonstrates Potential Perils for Subcontractors Under the Mechanics Lien Act

Imagine the frustration of having a set of strict statutory requirements for a cause of action, meeting those strict requirements, but still failing in the underlying cause of action. Such a frustrating result is entirely possible under the provisions of the Mechanics Lien Act[1] (the Act) and the case law interpreting the Act. The recent Second District Appellate Court opinion in *Doors Acquisition, LLC v. Rockford Structures Construction Company*[2] provides a classic example of how a mechanics lien claimant can fully comply with the provisions of the Act but still have its mechanics lien foreclosure action fall short. This article will examine the holding in *Doors Acquisition* and provide advice for practitioners and mechanics lien claimants seeking to avoid the unfortunate result of *Doors Acquisition*.

By Mark Van Doneselaar

Before examining the holding in *Doors Acquisition*, it is worthwhile to briefly examine what the Act requires for a subcontractor to perfect its mechanics lien rights. To be entitled to a mechanics lien, a subcontractor (1) must have a valid contract; (2) the contract must be with a party considered to be an original contractor under the Act; (3) the contract must be for the purpose of furnishing lienable materials or services; and (4) the subcontractor must substantially perform the contract or have a valid excuse for nonperformance.[3]

Meeting the first four prerequisites simply entitles a subcontractor to mechanics lien rights. To perfect those rights a subcontractor must send notice of its lien in accordance with section 24 of the Act.[4] Notice may be sent any time after the parties enter into a contract to perform work and must be sent within 90 days of the last day that work is performed.[5] Perfection of the lien also requires that the actual lien claim be recorded within four months of last performing work. The recorded lien claim must be verified by affidavit of the claimant, contain a brief statement of the claimant's contract, set forth the balance due, and provide a sufficiently correct description of the real estate involved.[6] As an alternative to recording the claim for lien, a lien claimant may also bring an action to enforce its lien within four months of last performing work.[7]

With an understanding of what a subcontractor must do to perfect its mechanics lien rights, we can venture into the facts of *Doors Acquisition*. The facts are not complicated. Norman J. Weitzel and Rockford Structures Construction Company entered into a contract for the construction of a hotel. Rockford Structures was the general contractor for the project. Rockford Structures contracted with D&P Chicago, Inc. to supply, install, and finish the drywall for the project. D&P employed members of District Counsel No. 30 of the International Union of Painters and Allied Trades, AFL-CIO (the Union) to perform work under D&P's contract with Rockford Structures.

In November of 2007, Rockford Structures terminated D&P. At the time D&P was terminated, D & P owed the Union $6,591.30 for wages and $17,003.98 for benefits. The unpaid wages and benefits were for work performed from August 2007 through November 9, 2007. On January 10, 2008, Rockford Structures provided a sworn statement to Weitzel stating that D&P had been paid in full for the work that it performed and that D&P's work on the project was complete. On March 6, 2008, the Union filed its mechanics lien in the amount of $23,595.28.

The lien was served on Weitzel, Rockford Structures, and D&P. When notice of the lien was received by Weitzel, he was unaware that D&P had failed to pay the Union for its wages and benefits. The opinion does not say when Weitzel received notice of the lien. We are left to assume that the notice was sent within 90 days of November 9, 2007, because if it was sent any later than that, the lien would have been defective for failing to comply with section 24 of the Act.

The circuit court ruled that the Union had a valid lien and ordered Weitzel to pay the Union or the sheriff would execute a judgment of foreclosure. The order included final and appealable language, and Weitzel appealed.

The only issue on appeal was whether the lien was valid. Weitzel argued that the lien was invalid because the Union could only recover the amount owed to its immediate

[1] 770 ILCS 60/1 et seq.
[2] 2013 IL App (2d) 120052
[3] *J&K Cement Const., Inc. v. Montalbano Builders, Inc.*, 119 Ill.App.3d 663, 678 (2d Dist. 1983).
[4] 770 ILCS 60/24
[5] *Id.*
[6] 770 ILCS 60/7; *Tefco Const. Co. v. Continental Comm. Bank & Trust Co.*, 357 Ill.App.3d 714, 719 (1st Dist. 2005).
[7] 770 ILCS 60/7

contractor, D&P, and that D&P had been paid in full when he received notice of the Union's lien. The Union argued that its lien was valid because, when Weitzel received notice of the Union's lien, Weitzel owed Rockford Structures money for work performed.

The appellate court began its analysis by examining sections 5, 21, 24, and 27 of the Act. Section 5 of the Act[8] provides that prior to any funds being paid to a general contractor, the general contractor shall provide the owner with a sworn statement of the names and addresses of all subcontractors involved in the project and the amount due or to become due each. Section 21[9] provides that subcontractors shall have a lien for the value of the services that they provide to the project and on the funds due or to become due from the owner under the original contract. Section 24[10] provides that at any time after starting work on the project and within 90 days of completing its work, subcontractors must send notice of their claim for lien. Such notice must be sent to the owner and any lender with an interest in the property being improved.[11] Finally, section 27[12] provides that when an owner has notice of a subcontractor's lien claim, he shall retain sufficient funds due or to become due to the contractor to pay the demands of the subcontractor.

The appellate court then looked to *Weather-Tite, Inc. v. University of St. Francis*, 233 Ill. 2d 385 (2009) for an example of how the foregoing provisions of the Act work in every day practice. In *Weather-Tite* the defendant, a university, hired a general contractor to renovate a residence hall. The general contractor hired a subcontractor, Excel, to perform electrical work. On five occasions the general contractor requested a payment from the owner and submitted a sworn statement pursuant to section 5 of the Act with each request. Each sworn statement to the owner listed Excel and the amount due to Excel. After receiving the first four requests, the university paid the general contractor the full amount owed it, including the amount owed to Excel. The general contractor paid Excel. However, the fifth pay request didn't go as smoothly as the first four requests. The university paid the general contractor, but the general contractor's bank applied part of the payment received to a debt that it was owed. As a result, Excel was not paid out of the fifth payment that the general contractor received.

Excel filed its mechanics lien, and the supreme court concluded that it was entitled to its lien. The supreme court found that the purpose of the sworn statement required by section 5 of the Act was to put

[8] 770 ILCS 60/5
[9] 770 ILCS 60/21
[10] 770 ILCS 60/24
[11] *Petroline Co. v. Advanced Environmental Contractors, Inc.*, 305 Ill.App.3d 234, 238 (1st Dist. 1999).
[12] 770 ILCS 60/27.

an owner on notice of a subcontractor's claim, and section 27 created a duty upon the owner to pay the claim of subcontractors named in the sworn statement. Thus, the university could not pay the general contractor and rely upon the general contractor to properly disburse the funds to its subcontractors without running the risk of being subject to a lien of a subcontractor who was not paid. Excel's lien was found validly perfected.

The appellate court also examined the holding in *Bricks, Inc. v. C&F Developers, Inc.*, 361 Ill. App. 3d 157 (1st Dist. 2005). In Bricks a material supplier for a subcontractor was not paid by the subcontractor and asserted a lien for the balance owed. The sworn statement that the general contractor provided to the owner did not list the material supplier and listed the subcontractor as being owed an amount much less than was owed to the material supplier. The material supplier did all that was required of it to perfect its mechanics lien rights. The court in Bricks found that the purpose of the Act is not only to protect the rights of those furnishing materials and labor to a project but also to protect owners from potential claims. The court was forced to rule between a lien claimant who had done all that was required to perfect its lien claim and an owner who had unknowingly been provided with incomplete sworn statements and had relied upon them. The court ruled in favor of the owner and limited the material supplier's lien to the extent owed the subcontractor – an amount less than was actually due the material supplier.

The Union relied upon *A.Y. McDonald Manufacturing Co. v. State Farm Mutual Automobile Insurance Co.*[13] and *Struebing Construction Co. v. Golub-Lake Shore Place Corp.*[14] in support of the validity of its lien. However, the court found the facts of both cases to be distinguishable. In *A.Y. McDonald*, the owner admitted that it had not obtained a sworn statement pursuant to section 5 of the Act. That fact was an important distinction from the facts in *Doors Acquisition* where the owner had obtained a sworn statement and it showed the lien claimant's immediate contractors to have been paid in full. In *Struebing* the lien claimant was not listed on the sworn statement provided to the owner. However, the owner still had notice of the lien claimant's involvement in the project. Again, this was a distinguishing fact from *Doors Acquisition* where the owner has not aware of the Union's role in the project until receiving notice of its lien.

Ultimately, the appellate court in *Doors Acquisition* found the reasoning in Bricks to be persuasive. The court found that the Act seeks to strike a balance between the rights of owners, contractors and subcontractors. The Court found that one way an owner's rights are protected is by allowing owners to rely upon sworn statements provided to them pursuant to section 5 of the Act. Thus, the balance will

[13] 225 Ill.App.3d 851 (4th Dist. 1992)
[14] 281 Ill.App.3d 68 (1st Dist. 1996)

be struck in favor of an owner who has properly received a sworn statement over an equally deserving subcontractor who has not been paid in full.

With the harsh result of *Doors Acquisition* in mind, we turn to what subcontractors can do to avoid such perils. The solution can be summarized in two words – provide notice. After an owner has received notice of a subcontractor's involvement in the project, the owner must retain sufficient funds to pay what is due the subcontractor. As stated above, section 24 of the Act allows a subcontractor to provide notice to the owner of their claim any time after making the contract with the general contractor. While section 24 allows notice to be sent up to 90 days after the completion of the work, it can also be sent much sooner. In practice, most subcontractors don't even think about providing notice of their lien until the project is complete. By waiting until the limits of time allowed by section 24 nears, intervening factors such as those present in *Doors Acquisition* can be fatal to a subcontractor's claim. The far safer practice is for subcontractors to provide owners with notice of their involvement and role in the project early on in the construction project.

Mark A. Van Donselaar is a partner at Churchill, Quinn, Richtman & Hamilton, Ltd. in Grayslake, Illinois. His practice is concentrated in the area of commercial litigation with a focus on construction and real estate litigation including mechanics lien claims, title insurance disputes and general construction litigation. Mark can be contacted at mvandonselaar@grayslakelaw.com.

The Perils of Briefing at the Trial Court Level

Navigating the various rules that govern the practice of law can be a difficult undertaking. Some of those rules are self-explanatory, like the prohibition on attorneys engaging in "dishonesty, fraud, deceit, or misrepresentation."[1] However, the rules that concern the substance of an attorney's written arguments and the use of legal authorities in court briefs are an altogether different matter. These can present a host of unseen snares that can trip up even highly experienced lawyers if they aren't careful.

By Alex Zagor

Since an attorney's "reputation for integrity, thoroughness and competence is his or her bread and butter,"[2] many assume the practice of mischaracterizing legal authority in court briefs is only attributable to inexperienced attorneys or unscrupulous writers. Earlier this year, that assumption was categorically debunked by several attorneys involved in the case of *Thul v. OneWest Bank, FSB*.[3] This article is about the larger lessons that can be learned from the court's response to those attorneys' arguments. At the very least, the court's two written opinions on the topic demonstrate there are multiple reasons for attorneys to take extra care when briefing legal issues at the trial court level.

A Cautionary Tale

Back in January, a post appeared on a popular legal blog about three accomplished litigators who landed in hot water after filing a motion to dismiss in the U.S. District Court for the Northern District of Illinois.[4] The presiding judge in Thul addressed the matter by issuing a detailed memorandum opinion and order denying the request for dismissal, directing the attorneys who signed the motion (two partners from Washington, D.C. and their associate in Chicago) to show cause in writing why they should not be sanctioned by the court, and requiring all of them to appear in person for a hearing on the matter.[5]

The court's stern reaction was based on its finding that the attorneys' core argument for dismissal "fl[ew] in the face of a recent and controlling Seventh Circuit decision that [the attorneys] did not bother to address or even mention until after the [plaintiffs] cited it in their response to the motion to dismiss."[6] In addition, the court noted the attorneys' failure to discuss that Seventh Circuit decision in their opening brief "likely amounted to conduct sanctionable under Federal Rule of Civil Procedure 11(b)(2) and 28 U.S.C. § 1927," and "almost certainly ran afoul of their obligation of candor" under Rule 3.3(a)(2) of the ABA Model Rules, as well as the corresponding rules in Illinois and the District of Columbia.[7]

Applicable Rules in Illinois State Court Proceedings

The Thul court's reference to Illinois rules serves as a valuable reminder of the fact that practitioners can find themselves in similar situations when briefing questions of Illinois state law. Much like their federal counterparts, Illinois courts view attorneys as "part of the machinery of law for the administration of justice" and therefore "rely upon their good faith and honesty."[8] For that reason, the Illinois Supreme Court has long cautioned that "[a]n attorney's zeal to serve his client should never be carried to the extent of causing him to seek to accomplish his purpose by a disregard of the authority of the court or by seeking to secure from a court an order or judgment without a full and frank disclosure of all matters and facts which the court ought to know."[9]

In accordance with these views, Rule 3.3(a) of the Illinois Rules of Professional Conduct specifically prohibits attorneys from knowingly making or failing to correct "a false statement of fact or law to a tribunal," or failing to disclose "legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel."[10] This means that any "[l]egal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal."[11] Attorneys must therefore walk a

[1] See Ill. R. Prof. Cond. 8.4(c) (West 2010).
[2] *FDIC v. Tekfen Construction and Installation Co., Inc.*, 847 F.2d 440, 444 (7th Cir. 1988).
[3] *Thul v. OneWest Bank, FSB*, No. 12 C 6380, 2013 WL 24599 (N.D. Ill. Jan. 2, 2013).
[4] See David Lat, *Benchslap of the Day: Skadden, Smacked, Eats Crow, Above The Law*, Jan. 15, 2013, http://abovethelaw.com/2013/01/benchslap-of-the-day-skadden-smacked-eats-crow/ (providing the full text of the court's order to show cause as well as counsels' response to the court's order with added commentary).
[5] *Thul, supra* at *3, n.4.
[6] *Id.* at *2.
[7] *Id.*
[8] *In re Alschuler*, 388 Ill. 492, 503 (1944).
[9] *People ex rel. Fahey v. Burr*, 316 Ill. 166, 182 (1925).
[10] Ill. R. Prof. Cond. 3.3(a)(1)-(2) (West 2010).
[11] *Id.*, cmt. 4.

narrow path in order to comply with their ethical obligations to a court while arguing the merits of their clients' cases.[12]

In contrast to the rules regarding statements of law or fact to a tribunal, which are controlled by the Illinois Rules of Professional Conduct, sanctions for improper court filings in Illinois state court are governed by Illinois Supreme Court Rule 137, which is almost identical to Rule 11 of the Federal Rules of Civil Procedure.[13] Rule 137 sanctions can be granted if a pleading, motion, or other paper is not "well grounded in fact" or is not "warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law." Under this standard, "[a] paper filed in the best of faith, by a lawyer convinced of the justice of his client's cause, is sanctionable if counsel neglected to make 'reasonable inquiry' beforehand."[14] In other words, an "empty head but a pure heart"[15] is no defense to Rule 137 sanctions for making an objectively meritless legal argument that flies directly in the face of a controlling authority.

At the trial court level, attorneys can get into trouble if their briefs only argue one Illinois appellate court district's position on an issue without taking the time to address contrary positions from other districts. To avoid these kinds of problems, it is imperative for attorneys to take the Illinois rules of stare decisis into consideration when researching case law. First and foremost, these rules state that "a circuit court must follow the precedent of the appellate court of its district, if such precedent exists; if no such precedent exists, the circuit court must follow the precedent of other districts."[16] At the same time, "the opinion of one district, division, or panel of the appellate court is not binding on other districts, divisions, or panels,"[17] and only the Illinois Supreme Court can abrogate, overrule, or reverse the decision of an Illinois Appellate Court.[18] Attorneys who keep all of these rules in mind while aggressively shepardizing the cases they plan to cite in their briefs should be able to safely and credibly argue their side of a legal issue without fear of inadvertently wandering into the crosshairs of Rule 137.

Consequences in the Courtroom

Overall, the federal rules and their Illinois analogs seem to operate in the same way when applied to written arguments that fail to disclose a relevant legal authority to a court. However, the severity of a court's response to those sorts of arguments appears to be largely fact-driven. As one Illinois appellate panel has observed,

[12] See Robert T. Park, *Rule 3. 3 and Honesty in Litigation New Rule 3. 3 Makes the Point More Economically Than Before - Don't Make or Fail to Correct A False Statement, Don't Offer False Evidence, and Don't Fail to Disclose Adverse Legal Authority*, 98 Ill. B.J. 272, 273 (2010).
[13] See *People v. Stefanski*, 377 Ill.App.3d 548, 551 (2nd Dist. 2007).
[14] *Id.* at 551-52 (quoting Mars Steel Corp. v. Continental Bank N.A., 880 F.2d 928, 931-32 (7th Cir. 1989)).
[15] *Chambers v. American Trans Air, Inc.*, 17 F.3d 998, 1006-07 (7th Cir. 1994).
[16] *Schramer v. Tiger Athletic Ass'n of Aurora*, 351 Ill.App.3d 1016, 1020 (2nd Dist. 2004).
[17] *O'Casek v. Children's Home & Aid Soc. of Ill.*, 229 Ill.2d 421, 440 (2008).
[18] See *Gillen v. State Farm Mut. Auto Ins. Co.*, 215 Ill.2d 381, 392 n.2 (2005) (noting one division of the First District appellate court's attempt to abrogate a prior

"[w]hen imposing sanctions, a court has several options, including 'a warm friendly discussion on the record, a hard-nosed reprimand in open court, compulsory legal education, monetary sanctions, or other measures appropriate to the circumstances.'"[19]

For instance, in dealing with the motion to dismiss filed in *Thul v. OneWest Bank, FSB*, the U.S. District Court ultimately declined to award monetary sanctions.[20] Instead, the court began its second memorandum opinion and order on the matter by vacating the previous order to show cause with respect to one attorney (the Chicago associate) in light of the fact that the two more senior attorneys took full responsibility for their briefs' contents.[21] The court also took note of the attorneys' sincere apology for failing to bring controlling case law to both the court's and opposing counsels' attention.[22]

While the court acknowledged the attorneys' position on the matter (i.e. that the Seventh Circuit case in question did not need to be cited because it was distinguishable from their case), it was unpersuaded by the attorneys' reasoning and found "no appreciable difference between the argument that the Seventh Circuit rejected ...and the argument that the attorneys for [the defendant] made here."[23] Since the attorneys were "aware" of the case "and because it was 'directly adverse to the position of the[ir] client' Ill. RPC 3.3(a)(2), they should have cited it. The fact that they cited...both older Seventh Circuit cases and non-binding precedent from trial courts, underscores the inappropriateness of their failure to cite [controlling Seventh Circuit precedent]."[24]

The court concluded its order by finding that no further sanctions were necessary in view of (i) the attorneys' earnest show of contrition in response to the court's prior order, (ii) the attorneys' financial contribution to the settlement of the underlying litigation, and (iii) the fact that the court's two written opinions and oral admonitions on the issue of sanctions were now matters of public record which identified the attorneys by name.[25] In doing so, the court noted that it fully understood "the impact that a finding of misconduct can have upon an attorney even without the imposition of additional sanction," and that it trusted that the attorneys identified in the opinion "will be more cautious in the future."[26]

Lessons Learned

Though the presiding judge in *Thul* opted to take a more measured approach in responding to the omissions in the litigants' briefs, the overall takeaway here is simple. Mischaracterizing a legal authority's precedential effect or misrepresenting the current state of the law on a contested issue can clearly have serious repercussions in a litigation setting. For starters, judges are not likely to be well disposed toward attorneys who fail to bring relevant case law to the court's attention. Judges also have a variety of options at their disposal when confronted with legal briefs that are less-than-forthright—especially since both the Illinois and federal court Rules allow unintentional lapses of this kind to serve as grounds for sanctions. Regardless of what approach a judge takes when dealing with deficient briefs, the end result can both diminish the drafting attorney's credibility as an officer of the court and undermine his or her client's position. These considerations plainly dictate that attorneys be extremely careful when shepardizing the citations they plan to use in their court briefs, and make sure that their final work product addresses any relevant splits of authority head-on.

Alex Zagor has worked as a Staff Attorney for the 19th Judicial Circuit Court since July 2010. He graduated from the University of Illinois at Chicago in 2006 with a Bachelor of Arts in Economics and Political Science, and received his Juris Doctorate from the Thomas M. Cooley Law School in 2009. Before that, he grew up in Highland Park, IL.

First District holding by a different division was improper because "[a] decision of our appellate court may only be reversed or overruled by this court.").

[19] *Heckinger v. Welsh*, 339 Ill.App.3d 189, 192 (2nd Dist. 2003) (quoting Thomas v. Capital Security Services, Inc., 836 F.2d 866, 878 (5th Cir. 1988)).

[20] See David Lat, *Benchslap Update: Skadden Partners Learn Their Fates, Above The Law*, Jan. 18, 2013, http://abovethelaw.com/2013/01/benchslap-update-skadden-partners-learn-their-fates/ (providing the full text of court's opinion on the issue of sanctions with added commentary).

[21] *Thul v. OneWest Bank, FSB*, No. 12 C 6380, 2013 WL 212926 *1 (N.D. Ill. Jan. 18, 2013).

[22] *Id.*

[23] *Id.* at *2.

[24] *Id.*

[25] *Id.* at *3.

[26] *Id.*

• VIEW FROM THE BENCH • JUNE 20, 2013 •

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JUDGES DON'T KNOW EVERYTHING

DON'T TRY TO GET THE LAST WORD

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WAIT YOUR TURN

CHECK YOUR CASE LAW

• READ THE LOCAL RULES • SUBMIT BRIEFS IN ADVANCE •

• DON'T ALL TALK AT ONCE THE JUDGE WON'T LISTEN •

• BE PREPARED • ENUNCIATE • BE ON TIME •

May 16, 2013

Board of Director's Meeting

Minutes By Michael Ori, Secretary

CONSENT AGENDA

- Minutes from April
- Consideration of new members
- Appointment to Executive Justice Counsel, Steve McCollum
- Appointment to Judicial Selection & Retention Committee to replace Judge Walter, Torrie M. Newsome
- LCSAO Indictments: sent weekly to Criminal Law Committee
- Installation Dinner
- 2013 Golf Championship

All items on the Consent Agenda were adopted without discussion.

DISCUSSION

Treasurers Report

Michael Conway reported that the Association is in excellent financial shape and its holdings are similar to the same time last year. The Association has not had to borrow from the Baytree Account to pay bills.

2013 2014 Budget

The proposed Budget was discussed at length after being presented by Michael Conway and Chris Boadt. The Board voted to adopt the Budget for 2013-2014.

Appointment of members to the Lake County Bar Foundation

Scott Gibson recommended several well qualified attorney's for positions within the Bar Foundation. All recommendations were approved by the Board and the Board will await the recommendations for Vice President and Treasurer to be named later.

Family Law Pro Se Guidebook

The Board discussed the proposed Family Law Pro Se Guidebook. The Hon. Charles D. Johnson presented to the Board and after a spirited discussion, it was resolved that the Board and the Association would support the concept going further. The Board discussed the need for the Guidebook to remain current and updated as to changes in the law.

Security Committee, Discussion of Next Steps

The security committee continues its examination of procedures in other counties.

Membership Committee, Membership Card & Discount Program

The program was rolled out in last month's issue of the Docket. Each member was provided a "membership card" which was located on the back cover of the Docket.

MEMBERS PRESENT

Marjorie Sher
President

Steven P. McCollum
First Vice-President

Keith Grant
Second Vice-President

Michael Conway
Treasurer

Michael Ori
Secretary

Perry Smith
Immediate Past President

Gary Schlesinger
Mark Van Donselaar
Donald Morrison
Hon. Daniel Shanes
Carey Schiever
Brian Lewis

Chris Boadt
Executive Director

This card will immediately qualify each member to redeem discounts at member vendors. The committee will continue to work on expanding the discount program.

Website/Database

The website is now generating revenue with the sale of some ad space. The website committee will continue its hard work.

Next meeting Thursday, June 13, 2013

LCBA Member Discounts

The Silk Thumb, Ltd.
1822 Second Street • Highland Park, IL 60035
Phone: (847) 432-7171 • Fax (847) 432-7193
julie@silkthumb.com

15% discount on silk trees, plants, and floral arrangements for offices and/or business areas. 10% off seasonal silk floral leasing program.

Discount taken off of material not labor

Emeric Facility Services
906 McAree Rd • Waukegan, IL 60085
Phone: (847) 623-6912
rita@emericservices.com

$100 discount off any annual commercial/ office contract and $25 off any residential project for the 1st time service

Must be for 1st time service

J. Hershey Architecture
615 E Park Ave, Ste 200 • Libertyville, IL 60048
Phone: (847) 549-5900
eh@jhersheyarchitecture.com

A $500 discount offer related to professional design or consulting services for the members of the LCBA as well as their clients

The discount may be applied with the mention of LCBA prior to cotract signing where the total fee exceeds $5,000

Lake County Movers, Inc-Bekins
2344 Ernie Krueger Cir • Waukegan, IL 60085
Phone: (847) 623-3329 • Fax: (847) 623-6859
lcmovers@aol.com

25% discount on new packing material, additional 10% discount on moving and packing services on interstate moves, guaranteed pricing on all moves with in-home estimate, free recycled packing material (when available)

Current Electrical Contractors, Inc
1946 Lehigh Ave • Glenview, IL 60025
Phone: (847)832-0700 • Fax: (847)832-1629
don@currentelec.com

A 10% discount on up to $2000 worth of work for a potential total of $200 savings

This is a first time/new customer only discount on labor and material

Murphy-French & Associates
736 N Western Ave, #243 • Lake Forest, IL 60045
Phone: (800) 494-1503
bonnie@murphyfrench.com

15% discount on custom suit or shirts

Work by appointments only
Muprhy-French comes directly to clients

Joseph Modica & Associate, Ltd
111 W Maple, Ste B • Mundelein, IL 60060
Phone: (847) 566-2240 • Fax: (847) 566-2280
joe@jmodicacpa.com

A 1 hr case consultation regarding valuation, forensic accounting, economic damages, and/or other financial issues at no charge

Limit 4 consultation per year

Mahoney Plumbing, Inc
501 Bank Lane • Highwood, IL 60040
Phone: (847) 432-0320 • Fax: (847) 432-0581
dan@mahoneyplumbing.com

$25 off any service call or $100 off new furnace installation

Offer cannot be combined. Offer only good in our service areas, within 20 mile radius of Highland Park

LCBA Member Discounts

Intelligent Office Lincolnshire
250 Parkway Dr, Ste 150 • Lincolnshire, IL 60069
Phone: (847) 325-5555 • Fax (847) 325-5566
dowen@intelligentoffice.com

10% off any virtual package

Contract must be for 6 months or longer

Little Tommy's Plumbing
P.O. Box 27 • Highwood, IL 60040
Phone: (847) 780-4620 • Fax: (847) 780-4632
info@littletommys.com

10% off all plumbing, heating, and cooling service

Payment at the time of completion is required for discount

CrossFit Northpoint
960 S. Northpoint Blvd • Waukegan, IL 60085
Phone: (847) 672-6740
barb@crossfitnorthpoint.com

Free fitness evaluation, 1 free class, and 1 free month with 6 month membership

New Members only
Free month is 7th month

C. Lawrence & Associates, Inc
482 Sumac Rd • Highland Park, IL 60035
Phone: (847) 579-0862
chrislawrenceinc@gmail.com

10% discount on residential construction crew, remodeling or repair

At Properties
600 W. Western Ave • Lake Forest, IL 60045
Phone: (847) 845-9348
jpawl@atproperties.com

Complimentary real estatevaluation service

For your Estate, Bankrupcy, Divorce, and Foreclosure/Short Sale Clients

COE Financial
1121 Lake Cook Rd • Deerfield, IL 60015
Phone: (847) 249-2830 • Fax: (847) 444-9445
rberstein@coefinancial.com
A comprehensive financial plan

Domicile Consulting
15216 W. Rockland Rd • Libertyville, IL 60048
Phone: (847) 652-6946
andrew@domicileconsulting.com
5% discount

Mi-Box Mobile Storage
2350 Ernie Krueger Cir • Waukegan, IL 60085
Phone: (847) 249-5050 • Fax: (847) 623-6859
lcmovers@aol.com
25% discount on Mi-Box pod delivery fee in Lake County

Leap Associates
223 Pond Ridge Rd • Libertyville, IL 60048
Phone: (847) 212-4903
phil@leapassociates.com
Discount on Innermeter • Advance Insights profile

Prudential Rubloff
1143 Church St • Northbrook, IL 60062
Phone: (847) 987-3400 • Fax: (847) 748-3270
jfviti@Rubloff.com
Free Professional Photo Shoot
Must, Buy, Sell or Lease Property

Jobs Printing & Mailing
1534 Washington St. • Waukegan, IL 60085
Phone: (847) 244-2272
KathyF@jobspm.com
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DOWNTOWN WAUKEGAN
Offices for Lease. 200 N ML King Ave. 1, 2 or 3 Offices. 280 to 685 Sq Ft. Office Building for Sale or Lease. 222 N County St. 11, 756 Sq. Ft. Will Divide. (847) 680-4740. www.tjproperties.com.

LAKE COUNTY BAR FOUNDATION

by

Carlton R. Marcyan

President, Lake County Bar Foundation

Participation Encouraged

A new Foundation board of officers and trustees is in place. The new board stands as follows:

Carlton Marcyan
President

Jennifer Cunningham Beeler
Vice President

Mark Peavey
Treasurer

Melanie Rummel
Secretary

Scott Gibson
Immediate Past President

Brian Wanca
Trustee

Phil Bock
Trustee

Gayle Miller
Trustee

Joann Fratianni
Trustee

Honorable Michael Nerheim
Trustee

Michael Waller
Trustee

Honorable Daniel Shanes
Liaison to the Lake County Bar

Chris Boadt
Executive Director

A meeting is scheduled to organize and plan numerous events for the upcoming fiscal year designed to raise the awareness to lawyers and community of what we do and our purpose. The new board has big shoes to fill following the excellent and forward thinking leadership of Mark Peavey, Rick Lesser and Scott Gibson setting the stage for the Foundation's growth and success. Each new board member willingly volunteered for the position and is highly motivated to take on responsibilities to continue the Foundation's success.

We encourage participation; if you would like to be a part of our mission please contact us and get involved. If you have any ideas for events, fundraising activities or worthwhile causes, get those ideas to us as soon as you are able.

It is a pleasure and honor to lead the Foundation for the next year, and we all look forward to it.

WHY ATG?

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LAKE COUNTY BAR ASSOCIATION
est. 1912
300 Grand Avenue, Suite A
Waukegan, IL 60085
Tel: 847-244-3143
Fax: 847-244-8259

AN EVENING WITH STING

RAVINIA • JUNE 8, 2013