AGENDA
MEETING OF THE ASSEMBLY
OF THE ILLINOIS STATE BAR ASSOCIATION
The Abbey Resort
269 Fontana Boulevard
Fontana, Wisconsin

June 16, 2012

9:00 a.m.

Note: Lunch will be available for the Assembly on the Abbey lawn.

1. **Call to Order** - President John G. Locallo

2. **Report of the Secretary** – Russell K. Scott

   A. Report on Notice of the Meeting.
   B. Review of the Rules of Procedure which are attached.
   C. Introduction of Newly Elected Members of the Assembly.
   D. Minutes of December 10, 2011 Meeting of the Assembly are attached.

3. **Report of the Agenda & Program Committee** – Letitia Spunar-Sheats, Chair, Assembly Agenda & Program Committee

4. **President's Report** – John G. Locallo

5. **Report of the President-Elect** - John E. Thies

6. **2012-13 Proposed Budget** – Timothy E. Moran, Chair, Assembly Finance Committee

   A. Proposed Budget for 2012-13 - attached.

   B. Operating Statement for April 30, 2012 - attached.

7. **Report on Legislation** - James R. Covington III, Director of Legislative Affairs

   A. Report on Legislative Activities

   B. HB 5170 – Religious Freedom and Marriage Fairness Act (Information Only)

      The Assembly Agenda and Program Committee and the Board of Governors have agreed that HB 5170 will be circulated to all ISBA standing committees and section councils for review and comment with the request that comments be submitted by October 1, 2012.

8. **Election of Assembly Agenda and Program Committee Members**

   The Assembly Agenda and Program Committee has primary responsibility for the preparation of agendas for meetings of the ISBA Assembly.

   The Assembly will select at the June 16th meeting three Assembly members to fill vacant seats on the Committee. Members of the Committee serve for two years and may not serve consecutive terms.

   The vacancies are:

   A. Outside Cook Seat – 2 year term
   B. Cook Seat – 2 year term

C. Cook Seat – 2 year term

Please note that policy prohibits more than one member residing in the same Board Electoral Area outside Cook County. Given the current composition of the Committee, the Assembly member who fills the outside Cook vacancy may not reside in the following Board Electoral Areas:

A. Area I – 18th Circuit
B. Area IV – 10th, 14th, and 15th Circuits

Katherine Amari O'Dell of Chicago has filed as a candidate. Biographical information for Ms. O'Dell is attached. The Assembly Rules also permit nominations from the floor and contested elections will be conducted by secret ballot.

9. American Bar Association

A. Report on Ethics 20/20

B. Resolution on Due Process and Comprehensive Dog Laws

Please refer to attached request from the Animal Law Section Council

10. Report on Illinois Bar Foundation

11. Resolutions

A. Retiring Assembly Members
B. 2011-12 President

Information Items (attached)

ISBA Mutual Insurance
ISBA Professional Ethics Opinions Adopted Since December, 2011

Informational Items (handouts available at Assembly Meeting)

Lawyers Trust Fund

Assembly

June 16, 2012

Agenda Item 2B
Rules of Procedure

Assembly Rules of Procedure
As amended December 14, 1996
As further amended on December 8, 2007

RULE 1
Meetings of the Assembly

Rule 1.1. Unless otherwise ordered by the Assembly, the times and places selected for sessions of the Assembly during or in connection with the Annual and Midyear meetings of the Association, shall be determined and announced by the Board of Governors. Notification thereof shall be sent by the Secretary of the Assembly not later than 30 days before the time fixed for the first session, to each member of the Assembly.

Rule 1.2. Notification of the time and place of a meeting of the Assembly, other than those convened during or in connection with the Annual and Midyear meetings of the Association, duly called pursuant to Section 4.2 of the Bylaws, shall be sent by the Secretary of the Assembly not less than 14 days before the time fixed for the first session, to each member of the Assembly. When such a meeting is called the purposes of the meeting shall be set forth at the call of the meeting and the business transacted at such meeting shall be limited by such notice, provided that any Assembly member
within five days of the mailing of said notice may require additional items of business to be placed on the agenda, by so advising the executive director of the Association by telephone (with confirmation in writing to follow forthwith), whereupon the Secretary will not later than six days before said meeting furnish each Assembly member in writing with the additional agenda items and name of the member proposing same.

Rule 1.3. Notice of any meeting of the Assembly shall be deemed to be sufficiently given if written notice of the time and place thereof is mailed, postage prepaid, by the Secretary of the Assembly, to all members of the Assembly at their last known address.

Rule 1.4. The Secretary of the Assembly shall include with the notice of any meeting an agenda of the business of the meeting. If such agenda is not available when the notice of the meeting is sent, the Secretary shall send it to the members of the Assembly not less than 14 days prior to the meeting.

Rule 1.5. At all meetings of the Assembly, members of the Assembly shall be seated by circuit. Other members of the Association who are not members of the Assembly shall be seated separately from the members of the Assembly.

Rule 1.6. Members of the Assembly desiring to have a particular matter placed on the agenda of a regular meeting shall notify the executive director of the Illinois State Bar Association in writing thereof not less than 21 days before said regular meeting. Any committee or section has the right to have placed on the next Assembly agenda any item considered by the Board of Governors, by notifying the executive director in the same manner.

Rule 1.7. At any meeting of the Assembly, additional agenda items may be added upon request of 2/3 of the members present, provided a quorum is present.

Rule 1.8. A quorum of the Assembly shall be as set forth in the Bylaws. Upon the initial roll call of an Assembly session, if a quorum is absent, no adjournment motion will be in order for two hours following the scheduled time of the session.

RULE 2
Roster of Members

Rule 2.1. The executive director of the Association shall maintain a roster of the membership of the Assembly determined in accordance with the provisions of Sections 4.3, 4.4, 4.5, 4.8 and 4.9 of the Bylaws and shall certify such roster to the presiding officer of the Assembly at the opening of each session. Such roster shall be open for examination by any member of the Assembly.

Rule 2.2. A census of the Association's members shall be taken under the direction of the executive director during each even-numbered year and prior to the Annual Meeting effective December 31 of the preceding odd-numbered year and any change in apportionment of delegates from judicial districts other than the 1st Judicial District as provided under Section 4.4 of the Bylaws shall be reflected in the next following election for the seats to be filled at the beginning of the Association year commencing at the Annual Meeting in even-numbered years.

RULE 3
Order of Business

The presiding officer shall consult with the Committee on Agenda and Program and determine the order of business and the written agenda, which shall be made available to each member of the Assembly prior to the meeting.

RULE 4
Debate

Rule 4.1. When members of the Assembly desire to speak, they shall rise and address the presiding officer. Upon being recognized, such members shall state their name and capacity. In sessions of the Assembly a member may speak but once on a subject unless by unanimous leave of the Assembly, provided that the member who proposed the pending proposition shall have the right to close debate. The previous question shall be ordered only by the affirmative vote of 2/3 of the members present. In committee of the whole, a member may speak more than once on a given subject but not more than five minutes at a time and the previous question shall not be in order.

Rule 4.2. No person shall speak more than 10 minutes at a time except in presenting a committee or section report or with the unanimous consent of the Assembly members present.

Rule 4.3. If any matter is or may come before the Assembly, as to which nonmembers of the Assembly desire to submit their views or recommendations to the Assembly, the Assembly may by vote refer such matters to its Committee on Hearings, which shall give a hearing to such nonmembers and report thereon to the Assembly.

Rule 4.4. No nonmember of the Assembly shall be heard by the Assembly except,
(a) those representing committees or sections whose reports are on the Assembly agenda,
(b) those invited by the presiding officer,

(c) those recommended by the Commit-tee on Hearings, and
(d) those invited by a majority of the Assembly present.

Rule 4.5. Wherever practicable, any member intending to present a motion or resolution shall cause it to be distributed in writing to all members of the Assembly prior to or at the meeting. Any pending resolution or motion may be referred by the Assembly to the Committee on Resolutions. The Assembly or the presiding officer may require that copies of any resolution shall be made available to members of the Assembly before a vote is taken thereon.

Rule 4.6. Wherever practicable, copies of each Majority report and, if any, Minority report by a committee or section of the Association or of the Assembly shall be made available to each member of the Assembly before the presentation of such report or before the subject of the report is called for debate.

Rule 4.7. When a question is under debate, no motion shall be received except:
1. To amend the calendar and agenda.
2. To fix the time to which to adjourn.
3. To adjourn.
4. To take a recess.
5. To reconsider.
6. To lay on the table.
7. To move the previous question.
8. To suspend any debate.
9. To postpone to a day certain.
10. To commit.
11. To amend.
12. To postpone indefinitely.

The motions listed in this rule shall take precedence in the order in which they stand arranged and all shall be decided by a majority of those present, except the previous question which requires 2/3 of those present. Upon the passage of a motion to limit debate any member not having been heard at the expiration of the limitation shall have five minutes to speak notwithstanding such limit.

A motion to table (or to postpone indefinitely) shall not be in order with regard to a matter arising on the agenda until the person originally presenting such matter shall have concluded his or her initial presentation or debate.

Motions to reconsider must be made in open meeting on the same session day as the principal action was taken, and must be put to a vote by the presiding officer prior to adjournment of any regular or special meeting.

Rule 4.8. The executive director shall, in connection with each meeting of the Assembly or its committees, make available sufficient staff, supplies and equipment to carry out the orderly business of the Assembly.

RULE 5
Voting

Voting will normally be by voice vote. At the discretion of the presiding officer, voting may also be by division of the house or roll call. Any member may request and obtain a division immediately after the result of a voice vote is announced and before it is recorded. A roll call may be requested by 10 percent of the total Assembly membership in office before a vote is taken. A written ballot shall be taken upon the request of 2/3 of the members present.

RULE 6
Committees of the Assembly

Rule 6.1. The Assembly shall have the following committees:

(a) The Committee on Credentials and Admissions shall have jurisdiction to consider and report on all questions which arise as to the roster of members of the Assembly, and their qualifications, selection and credentials.

(b) The Committee on Rules and Bylaws shall have jurisdiction to consider and report to the Assembly as to proposals to amend the Bylaws of the Association or the Rules of the Assembly, which may have been referred to it by the Assembly, or by its presiding officer when the Assembly is not in session.

(c) The Committee on Hearings shall have the duty upon reference by the Assembly of holding hearings upon any matter upon which nonmembers of the Assembly ask an opportunity to present their views. (Reports of Association committees or sections placed on the agenda by the presiding officer, Board of Governors or Assembly are excluded from this provision.) If the Assembly is in session when the nonmember requests are to be heard, the committee, wherever practicable, shall meet at a time and place designated during an open session of the Assembly and shall report during that session of the Assembly. The committee shall promptly designate the time and place for all other meetings (which may be at any time during the year) at which the committee will hold a requested hearing and shall give notice 14 days in advance thereof to the person or persons requesting that hearing. The committee or those requesting the hearing may invite a reasonable number of persons to attend any hearing conducted by the committee. The committee shall promptly file its report and recommendations on any hearing with the presiding officer of the Assembly. If the Assembly is in session when such report is made, the report shall be distributed to members and calendared for prompt consideration by the Assembly. If the Assembly is not in session when the committee's report is filed, the presiding officer of the Assembly shall cause copies of such report to be distributed to the members of the Assembly for consideration at its next meeting.

(d) The Committee on Resolutions and Drafting shall have a duty of considering and reporting to the Assembly concerning any resolutions, reports, recommendations or other matters referred to it by the Assembly as promptly as is practicable consistent with the Assembly's instructions, and shall review each substantive action of the Assembly and draft or correct language and phraseology to the end that the substantive intent of the Assembly is properly expressed and recorded.

(e) The Committee on Finance shall periodically review all financial matters of the Association and make such recommendations to the Assembly as may be appropriate. The committee shall have full access to all books and records of the Association.

(f) The Committee on Agenda and Program shall consult with the presiding officer and Association staff as to the preparation of the agenda and order of business for the meetings and with the various agencies, committees and sections of the Association as to future actions and functions of the Association. The responsibility for establishing a meaningful agenda for the Assembly is delegated to the Agenda and Program Committee which shall designate one or more policy issues of interest to the Association and facilitate the necessary educational background information to support debate on the issue. The Committee is further charged with determining meaningful procedures to stimulate participation and involvement by the members of the Assembly and the Association in designating topics and issues of concern to be placed on the agenda.

(1) The Committee shall consist of five Assembly delegates, none of whom may be officers or members of the Board of Governors.

(2) Committee members shall be elected by secret ballot at the annual meeting of the Assembly for two-year terms. (Notwithstanding the foregoing, the first elected Committee members shall draw lots for their terms such that three members shall serve two-year terms and two members shall serve one-year terms.)

(3) Committee members are ineligible to serve consecutive terms.

(4) No more than two members may be from Cook County and no more than one member may be from any Board of Governors area.

(5) Candidates for election to the Committee on Agenda and Program may file a written statement of candidacy not less than 21 days before the Annual Assembly meeting. Advance notice of these requirements shall be provided to Assembly delegates.

(6) Nominations may be made from the floor of the Assembly.

(7) The Committee will elect its chair from among its members. In addition to the traditional responsibilities of a chair, the chair of the Committee on Agenda and Program shall monitor the agenda of the Board of Governors for items that may be of interest to the Assembly and shall be reimbursed for expenses when attending meetings of the Board of Governors.

Rule 6.2. The Assembly may from time to time create such other standing or special committees as it may deem desirable for the furtherance of its business.

Rule 6.3. Unless otherwise directed by the Assembly as to a particular committee, the presiding officer of the Assembly shall appoint the members of the standing committees and special committees and fill all vacancies. The presiding officer shall appoint at least five members of the Assembly to each standing committee and shall make appointments that are in general geographically representative of the entire state. The presiding officer shall be an ex-officio member of all committees of the Assembly.

Rule 6.4. Unless otherwise directed by the Assembly, all committee members shall serve at the pleasure of the presiding officer.

Rule 6.5. For the purpose of furthering the consideration of a subject at any meeting of the Assembly, the presiding officer may, in his or her discretion and in advance of such meeting, appoint a special committee to consider such subject and report to the Assembly concerning it. Unless otherwise ordered by the Assembly, any committee so appointed shall not continue beyond the adjournment of that meeting of the Assembly.

RULE 7
Persons in Attendance of Sessions of the Assembly

Rule 7.1. Sessions of the Assembly shall be open to the public.

Rule 7.2. The Assembly may at any time rise and resolve itself into a committee of the whole.

Rule 7.3. The Assembly may while sitting as a committee of the whole do so in executive session, during which time all nonmembers (except ISBA members and staff) shall be excluded from the meeting room.

Rule 7.4. Nonmembers of the Assembly (except Association staff) shall not at any time enter that portion of the house reserved for members of the Assembly.

RULE 8
Parliamentary Authority

The chair of the Rules and Bylaws Committee, or such person as the presiding officer may appoint, shall serve as parliamentarian at all meetings of the Assembly. Such person need not be a member of the Assembly but may have full access to the presiding officer. In instances not covered by these rules, the latest edition of Robert's Rules of Order shall apply to proceedings of the Assembly.

RULE 9
Amendment and Suspension of Rules

By a two-thirds vote of the members present at a session of the Assembly, any rule may be suspended. Proposals to amend the rules shall be referred by the Assembly, or when the Assembly is not in session by the presiding officer, to the Committee on Rules and Bylaws for prompt consideration and report.

Association Bylaws
As amended by the ISBA Assembly on June 18, 2011

SECTION 1
Membership

Sec. 1.1. Classification of Members. Members of the Association are classified as follows:

(a) Active members, consisting of members of the legal profession licensed to practice or under an Order of Suspension in effect not in excess of 12 months, who either reside or practice in the State of Illinois.

(b) Nonresident members, consisting of members of the legal profession in good standing in any state who neither reside nor practice in the State of Illinois.

(c) Privileged members, consisting of members who have paid dues to the Association continuously for 25 years and who have reached the age of 75 years.

(d) Retired members, consisting of former active members of at least five consecutive years who are designated as being in retired status by the Attorney Registration and Disciplinary Commission. A judge of any court, a member of a law school faculty or a person otherwise gainfully employed is not eligible for retired membership while so employed.

(e) Inactive members, consisting of former active members of at least two consecutive years, who are designated as being in inactive status by the Attorney Registration and Disciplinary Commission.

(f) Honorary members, consisting of the judges of the Supreme Court of Illinois, the judges of the United States Court of Appeals for the Seventh Circuit, former judges of those courts not in practice, present and former justices of the Supreme Court of the United States resident or assigned in this state, and the former presidents of the Association, and also of such distinguished persons as may, by vote of the Board of Governors or the Assembly, be elected to honorary membership.

(g) Law student members, consisting of regularly enrolled students in a law school, graduation from which under Supreme Court rule would qualify them for admission to the Bar of Illinois, may be admitted to law student membership upon certification of their dean.

(h) Life members, consisting of members who attained that status before November 10, 1984 and any member of the Association who thereafter makes a lump sum payment equal to 20 times the highest regular dues rate then in effect shall receive such free section enrollments as the Board shall from time to time set as a matter of Association policy.

(i) Nonlawyer members, consisting of such persons as hereinafter described who have been sponsored and recommended for membership by an ISBA member lawyer in good standing:

1. Law office administrators, consisting of nonlawyers who are qualified through education, training, or work experience, and are employed by a law firm, government agency, or other entity to supervise nonlegal administration, finance, or accounts pertaining to the practice of law.

2. Legal assistants, consisting of nonlawyers who are qualified through education, training, or work experience, are employed or retained by a lawyer, law office, governmental agency, or other entity in a capacity or function which involves the performance, under the direction and supervision of a lawyer of specifically-delegated substantive legal work, which work, for the most part, requires a sufficient knowledge of legal concept such that, absent that legal assistant, the lawyer would perform the task.

Sec. 1.2. Admission of Active Members Admitted to the Bar More Than One Year.

(a) Applications for membership in the Association shall be filed with the executive director. Applicants or members shall provide a signature upon request.

(b) Applicant shall provide such evidence as may be requested to show that applicant is in good standing with all states in which the applicant is licensed to practice law. Membership shall be deemed granted when the applicant has been approved for membership by the executive director.

Sec. 1.3. Admission of Active Members Admitted to the Bar of Illinois Less Than One Year. Persons admitted to the Bar of Illinois for less than one year shall automatically be granted a complementary membership for a period of time, which is determined by the Assembly as Association policy.

Sec. 1.4. Admission of Law Student Members. Regularly enrolled students in a law school, graduation from which under Supreme Court rule would qualify them for admission to the Bar of Illinois, may be admitted to law student membership upon certification of their dean.

Sec. 1.5. Admission of Nonresident Members. Applications for this membership category are the same as for admission of active members. An active member in good standing who no longer resides nor practices in the State of Illinois, shall, upon request, be transferred to nonresident membership.

Sec. 1.6. Admission of Nonlawyer Members. Upon recommendation and sponsorship by a lawyer member in good standing, a nonlawyer as defined in Section 1.1 may be admitted as a nonlawyer member so long as the applicant remains employed, retained, or supervised by an ISBA lawyer member.

Sec. 1.7. Rights of Members. Subject to the other provisions of these Bylaws, all members have equal rights and privileges except:

(a) for the years 2005-2010 law student members may only vote for their law school's student representative to the Assembly and may only hold office as a representative from their law school to the Assembly. Law student members may not vote in any other election nor may they hold any other elective office; and

(b) nonlawyer members may not vote or hold elected office.

While a member is suspended from the practice of law, the member may not vote or hold elected office during said suspension.

Sec. 1.8. Resignation. A member may resign upon written notification to the Association.

Sec. 1.9. Disbarment or Suspension from the Practice of Law. If a member is disbarred or suspended from the practice of law for a period in excess of 12 months, he or she ceases to be a member. A member who is suspended from the practice of law may remain a member during the first 12 months of such suspension.

Sec. 1.10. Member Relations with the Association. Any member may be censured or expelled from the Association by the Board of Governors for good cause. The Board of Governors shall refer charges to a committee of the Board or a committee of the Association for investigation, hearing and report, and may act upon the report of the committee whose recommendation shall be based upon the preponderance of the evidence as required in civil cases. The Board, by a two-thirds majority of members present, may censure or expel the member without further evidence or report. Members charged as herein provided shall be given at least 14 days notice, by mail directed to them at their address appearing on the records of the Association, of the nature of the charges against them and of the time and place at which they may be heard thereon.

Sec. 1.11. Voting Address. For purposes of voting and candidacy for ISBA elected office, a member's voting address shall be their primary legal office as designated by the member. If a member's primary legal office is not within the State of Illinois, such member may designate their Illinois residence as their voting address; if no Illinois voting address is designated, the member shall be considered a nonresident member.

Sec. 1.12. Notice to Members. Official notice to members required pursuant to these Bylaws may be accomplished through publication in the Illinois Bar Journal, The ISBA Bar News, or by mail directed to the member's address appearing on the records of the Association.

SECTION 2
Dues and Funds

Sec. 2.1. Amount of Dues. Privileged, life and honorary members are exempt from the payment of dues. The dues of other members shall be fixed by the Assembly.

Sec. 2.2. Payment of Dues. Dues shall be payable in advance upon billing, semiannually or annually. Members who fail to pay their dues within two months after the beginning of their membership period (July 1 or January 1) are dropped from membership. Dropped members may not hold office in the Association, serve as a member of any section or committee, receive reimbursement of expenses, receive member benefits, participate in members-only Association functions, or have any other privileges of membership. Dropped members who pay their dues within two months of their drop date may be reinstated as active members without reapplying for membership. No member shall be dropped due to nonpayment of dues without reasonable and sufficient written notice.

Sec. 2.3. Fiscal Year. The fiscal year of the Association commences July 1 and ends on the succeeding June 30.

Sec. 2.4. Deposit and Withdrawal of Funds. All money of the Association shall be deposited in the name of the Illinois State Bar Association in such accounts and in such banks as the Board of Governors designates and may be withdrawn in accordance with procedures established by the Board.

SECTION 3
Officers and Their Duties

Sec. 3.1. President. The President is the principal executive officer of the Association. Subject to the direction of the Assembly, the President shall supervise and direct the activities of the Association and, unless he or she temporarily delegates that authority to another member of the Board, presides at all meetings of the Association, the Assembly and the Board of Governors.

Sec. 3.2. Absence or Disability of President. In the absence or disability of the President, his or her duties shall be discharged by such of the First Vice-President, and Second Vice-President or the Third Vice-President, in that order, as shall be able to serve.

Sec. 3.3. Vice-Presidents. The Third Vice-President shall be elected at-large annually by the voting members. The First Vice-President, who shall also hold the title of President-Elect, shall at the conclusion of his or her term automatically succeed to the office of President. The Second Vice-President shall at the conclusion of his or her term automatically succeed to the office of First Vice-President, and the Third Vice-President shall at the conclusion of his or her term automatically succeed to the office of Second Vice-President except when they have been elected to fill a term by the Board.

Sec. 3.4. Treasurer. The Treasurer is ex officio, a member of the committee charged with the preparation of the annual budget and has general supervision of the financial operations of the Association. A Treasurer shall be elected by the Board of Governors from among the 20 governors described in Section 5.2.

It is the policy of the Association that the office of Treasurer be rotated in alternate years between those residing in the 1st Judicial District and those residing in the 2nd, 3rd, 4th, or 5th Judicial Districts. The Treasurer shall be elected from the same division of the state as the President.

Sec. 3.5. Secretary. The Secretary shall supervise the preparation of the minutes of the meetings of the Board of Governors, the Assembly, and the Association and shall supervise the keeping of all records and archives of the Association. A Secretary shall be elected by the Board of Governors from among the 20 governors described in Section 5.2.

It is the policy of the Association that the office of Secretary be rotated in alternate years between those residing in the 1st Judicial District and those residing in the 2nd, 3rd, 4th, or 5th Judicial Districts. The Secretary shall be elected from the same division of the state as the First Vice-President.

Sec. 3.6. Term. The President is ineligible for reelection for the term succeeding his or her term of office. The Secretary and Treasurer shall be elected for one-year terms.

Sec. 3.7. Association Policy. No statement or action of any officer, delegate or member or groups thereof shall establish a policy of the Association unless it has first been approved by the Assembly or Board of Governors.

Sec. 3.8. Approval of Section and Committee Statements. No section, section council, or committee or member thereof, shall assume to represent the Illinois State Bar Association before any legislative body, in any court, or before any other tribunal unless authorized to do so by the Board of Governors or the Assembly.

No report or recommendation or any action of any section or council thereof, or of any committee of the Illinois State Bar Association, shall be considered as the action of the Illinois State Bar Association unless and until it has been approved by the Board of Governors or the Assembly in accordance with the Bylaws of the Association.

Reports, recommendations, or other actions of any section, section council or committee of the Illinois State Bar Association may be released, announced, or published as the action of such section, section council, or committee, only when it is determined by the President of the Illinois State Bar Association that the report, recommendation, or action:

(1) Is germane to the business of the section, section council, or committee;

(2) Has been approved by a majority of the full membership of the section, section council, or committee after notice to the members thereof;

(3) Reveals that notice was given and the vote on the matter;

(4) Is not contrary to any prior action of or overruled by the Assembly or the Board of Governors, and

(5) Indicates, in a form approved by the President, that it is the action of the section, section council, or committee only, and does not represent the view or action of the Illinois State Bar Association unless and until the Board of Governors shall have taken an approving action with respect thereto in accordance with the Bylaws of the Association.

Sec. 3.9. Executive Director. The Board of Governors shall employ an executive director, who shall receive such compensation as the Board may fix, to perform such duties for the Association as are customarily performed by a person holding such position, and further, to perform such other specific duties as the Board of Governors may from time to time specify. The executive director shall be the chief operating officer and manage and direct the administrative and staff activities of the Association, all in accordance with a structure, budget and policy established by the Board, and shall serve during the pleasure of the Board.

SECTION 4
The Assembly

Sec. 4.1. Powers. The legislative and governing body of this Association shall be the Assembly. The Assembly shall be the supreme authoritative body of this Association and shall determine the policies that shall govern this Association in all of its activities. Among other things, it shall have authority to amend the Charter and Bylaws, recommend action on state and federal legislation, and levy dues and assessments on members of the Association.

Sec. 4.2. Meetings. The Assembly shall meet at least twice each year. One meeting shall be held at the time of the Annual Meeting of the Association. Other meetings shall be determined by the Assembly but shall normally be held in conjunction with other meetings of the Association. The President or the Board of Governors may call a special meeting of the Assembly. Twenty-five delegates of the Assembly may also call a special meeting upon a written petition to the executive director that sets forth the purpose of the meeting and such meeting shall be held within 30 calendar days unless a later date is specified in the written petition.

Sec. 4.3. Delegates in General. The number of delegates other than voting members of the Board of Governors shall be 176, 88 of whom shall be from the 1st Judicial District and 88 of whom shall be from the other judicial districts.

Sec. 4.4. Term and Election of Delegates.

(a) From each judicial circuit in judicial districts other than the 1st Judicial District there shall be a number of delegates that bears the same ratio to 88 as the number of voting members in good standing of the Association from such circuit bears to the total number of voting members of the Association from districts other than the 1st Judicial District. If the number of delegates from a circuit so determined is other than a whole number, the fractional part of the number shall be disregarded unless it amounts to one-half or more, in which case the number (determined without regard to the fraction) shall be increased by one; provided, however, that (1) if the total number of delegates from all such circuits so determined is more than 88, then those circuits determined to have the number (other than a whole number) with the smallest such fractional parts that amount to one-half or more shall each have one less delegate than they would have determined without regard to this proviso, until the total number of delegates is reduced to 88, and in the event two or more of such circuits have an equal number of voting members in good standing of the Association, those who shall lose a delegate shall be determined by lot, and (2) if the total number of delegates from all such circuits so determined (without regard to this proviso) is less than 88, then those circuits determined to have the number (other than a whole number) with the largest such fractional parts that amount to less than one-half shall each have one more delegate than they would have determined without regard to this proviso, until the total number of delegates is increased to 88, and in the event two or more of such circuits have an equal number of voting members in good standing of the Association, those who shall gain a delegate shall be determined by lot. Delegates from such circuits shall be elected for a term of three years and no delegate shall be eligible to be elected for more than two consecutive full terms.

(b) Delegates from the 1st Judicial District shall be elected for staggered terms of three years. No delegate from the 1st Judicial District shall be eligible to be elected for more than two consecutive three-year terms.

Sec. 4.5. Board of Governors. In addition to the delegates elected as provided above, the voting members of the Board of Governors shall also be voting members and delegates of the Assembly.

Sec. 4.6. Quorum. One-third of the members of the Assembly in office shall constitute a quorum for the transaction of business at any meeting.

Sec. 4.7. Vacancies. A seat in the Assembly shall be declared vacant if a member is absent from three successive meetings even if such absences span more than a single term or if the member moves his or her residence as defined in Section 1.11 from the circuit or district from which the member was elected. Any member whose Assembly seat has been declared vacant due to absence from three successive meetings shall be ineligible to serve in the Assembly for the remainder of the term affected by the declaration of such vacancy and for the term next following the declaration of such vacancy.

Sec. 4.8. Officers. The President and Secretary of the Association shall also preside as the President and Secretary of the Assembly. In the absence of the President, the First, Second or Third Vice-President, in that order, shall preside. In the absence of the Secretary, the presiding officer shall appoint a Secretary of the Assembly, pro tem.

Sec. 4.9. Judicial Districts and Circuits. The judicial districts and circuits referred to in these Bylaws are those designated from time to time by the Constitution and statutes of the State of Illinois.

Sec. 4.10. Rules. The Assembly shall adopt its own rules of order and its own rules concerning due notice for meetings, appointments and other matters. In instances not covered by these Bylaws or Rules adopted by the Assembly, the latest edition of Robert's Rules of Order shall apply to proceedings of the Assembly.

SECTION 5
Board of Governors

Sec. 5.1. Powers. The Board of Governors shall be the administrative and managing body of this Association and is vested with full power to conduct all business of the Association subject to the laws of the State of Illinois, the Articles of Incorporation, the Bylaws, and the mandates of the Assembly. The Board of Governors, when the Assembly is not in session, shall have and may exercise all of the general and specific powers of the Assembly not inconsistent with any action taken by the Assembly.

Sec. 5.2. Composition. The management of the Association shall be vested in a Board of Governors of 27 members, consisting of the President, the last retiring Past President, three Vice-Presidents, two members of the Association appointed by the First Vice-President as provided below in Section 5.5, and 20 other members of the Association elected as governors.

Sec. 5.3. Terms and Limitations. The terms of governors shall be three years and they shall be elected for staggered terms. A governor shall be ineligible to election to more than two consecutive full terms. Notwithstanding the foregoing, a governor who has been elected to two consecutive full two-year terms may seek election to a third consecutive term, but in no event may a governor serve longer than six consecutive years. When a governor who has been elected for a full three-year term is ineligible to serve the full-term due to the limitation on consecutive service or any other reason, that governor's seat shall be filled by election to a full three-year term at the election immediately preceding the expiration of said governor's last year of service. In no event shall governors be eligible for a term that begins immediately following the expiration of their term that completes six or more consecutive years on the Board of Governors. No person who has served six years as a governor will be eligible to serve as a governor by election or selection until the expiration of three full ISBA fiscal years after the end of the person's last date as a governor. The foregoing shall not apply to a person who has served six years as governor and who is elected third vice-president or otherwise selected to fill an office as vice-president as defined in Sec. 3.3.

Sec. 5.4. Election. Eight governors shall be elected from among and by the voting members residing in the 1st Judicial District. Eight governors — one from each area — shall be elected from among and by the voting members residing in the following areas:

Area I (DuPage), 18th circuit,
Area II (North East), 17th, 19th, and 22nd circuits,
Area III (North Central), 12th, 13th, 16th and 21st circuits,
Area IV (North West), 10th, 14th and 15th circuits,
Area V (East Central), 5th, 6th and 11th circuits,
Area VI (West Central), 7th, 8th and 9th circuits,
Area VII (South East), 1st, 2nd and 4th circuits.
Area VIII (South West), 3rd and 20th circuits.

Two governors who are under the age of 37 years at the commencement of their terms shall be elected by and from among all voting members residing in the 1st Judicial District (one each year), and two governors who are under the age of 37 years at the commencement of their terms

shall be elected by and from among all voting members residing in the four other judicial districts (one each year).

Election from Areas I, III, V and VII shall be conducted in odd-numbered years and for Areas II, IV, VI and VIII in even-numbered years.

Sec. 5.5. Appointment. Two at-large Governor positions shall be filled by persons who will, in the judgment of the hereinafter described First Vice-President, make the composition of the Board of Governors more representative of the Illinois practicing bar, or who otherwise, in the judgment of such First Vice-President, have the experience and knowledge of the needs of those lawyers whose membership is or may be under-represented in Association governance

No later than the last Board meeting immediately preceding the assumption of the Presidency by the First Vice-President, the First Vice-President shall appoint, with the advice and consent of the Board, one Association member to fill one of the at-large Governor positions. The appointment may be based upon such under-represented status as, but not limited to, age, race, gender, ethnicity, sexual orientation, disability, geography, areas and types of practice, and years of practice. As provided in Section 7.1 of these Bylaws, the term of the at-large Governors shall commence at the opening of the Annual Meeting of the year in which they are appointed and continue until the opening of the Annual meeting of the year in which their term expires or until their successors are appointed.

Association members appointed as at-large Governors under this section shall serve with full rights and privileges as any other Governor. However, at-large Governors shall serve no more than a single two-year term. At-large Governors may not at any time be reappointed as an at-large Governor. Service as an at-large Governor shall not be counted toward the limitation on years of consecutive service by a Governor as set out in Section 5.3 above.

To ensure participation of two at-large Governors on the Board at the beginning of the 2011-2012 fiscal year, as well as to ensure an appointment by each succeeding First Vice-President, the President for the 2011-2012 fiscal year shall make two at-large appointments in accordance with this Section except that one appointment shall only serve one year. Both appointments shall become effective upon approval of these Bylaw amendments.

No later than the 2016-2017 fiscal year, the Board of Governors shall review and reexamine the at-large Governor positions, report its findings, and, if applicable, make recommendations to the Assembly. No at-large Governor positions will be appointed after the First Vice-President's appointment for the 2020-2021 year, unless such appointments are authorized by the Assembly.

Sec. 5.6. Special Meetings. Special meetings of the Board may be called by the President or any three members of the Board, which three members may call a special meeting upon written petition filed with the executive director who shall make arrangements for the meeting within 20 calendar days unless a later date is specified by the members requesting the meeting. Any meeting called pursuant to this section of the Bylaws may be conducted by the use of telephonic communication, subject to the other provisions set forth in Section 5.7.

Sec. 5.7. Notice of Meetings. Meetings of the Board may be held on not less than five or more than 30 days' notice to each member of the Board, either personally or by telephone, mail or

telegram. The notice need not state the purpose of the meeting or the business to be transacted. Notice may be waived in writing before or after the meeting. Attendance of a member of the Board at any meeting is a waiver of notice of the meeting unless the member attends for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Any meeting called pursuant to this section of the Bylaws may be conducted by the use of telephonic communication, subject to the provisions set forth in Section 5.8.

Sec. 5.8. Telephonic Meetings. In any meeting called pursuant to Section 5.5 or 5.6 of these Bylaws, the Board of Governors may participate in and act in the same manner as if they were gathered together in a single place, through use of a conference telephone or other communication equipment by means of which all persons participating in the meeting can hear each other and provided that a recording is made of the meeting and maintained until such time as the minutes of the meeting have been reduced to writing and officially approved as part of the Association's records at the next regularly scheduled meeting where the members meet in person. Participation in such a meeting shall constitute attendance and presence at the meeting of the persons who are participating.

Sec. 5.9. Executive Action of the Board of Governors. There shall be an Executive Committee of the Board of Governors consisting of the President, the Immediate Past President, the First Vice-President, the Second Vice-President and the Third Vice-President. When the President or a majority of the Executive Committee (exclusive of the President) concludes that an urgent situation exists, determines that a position or action should be considered, and has provided notice to all members of the Executive Committee of the purpose of the meeting, the votes as to such situations of at least three members of the Executive Committee (who shall have met together in person or by telephonic conference) will constitute action on behalf of the Board of Governors. When an Executive Committee meeting is called by a majority of its members exclusive of the President, the action of the Executive Committee shall not take effect if the President shall call, within one business day before or after the Executive Committee meeting, a special meeting of the Board of Governors on the subject considered or to be considered by the Executive Committee. Notwithstanding the provisions of Section 5.5 or 5.6, such special meeting of the Board of Governors shall be held within five business days after the meeting of the Executive Committee. Action under this section of the Bylaws shall immediately be reported to the Board of Governors and reported in the minutes of the next meeting of the Board of Governors.

Sec. 5.10. Advisory Board Members. Past Presidents of the Association shall have the right to attend any meeting of the Board and participate in discussion, but may not vote unless they are members of the Board.

Sec. 5.11. Quorum. A majority of the members of the Board of Governors in office shall constitute a quorum for the transaction of business at any meeting.

Sec. 5.12. Parliamentary Authority. In instances not covered by the Bylaws of the Association, the latest edition of Robert's Rules of Order shall apply to proceedings of the Board of Governors.

SECTION 6
Election of Delegates, Officers, and Board of Governors

Sec. 6.1. Elections. Election to ISBA offices by members shall be governed by the "ISBA Policy and Procedures on Association Elections" as adopted by the ISBA Assembly.

Sec. 6.2. Electronic Voting. Election to ISBA offices may be conducted via paper ballot and/or via a secure electronic voting system.

SECTION 7
Terms, Vacancies and Succession of Officers, Delegates, and Governors

Sec. 7.1. Term. The terms of the officers commence at the close of the Annual Meeting of the year in which they are elected and continue until the close of the Annual Meeting of the year in which their terms expire or until their successors are elected and qualified. The terms of Assembly and Board members commence at the opening of the Annual Meeting of the year in which they are elected and continue until the opening of the Annual Meeting of the year in which their terms expire or until their successors are elected and qualified. The President, First Vice-President, Second Vice-President and Third Vice-President and Immediate Past President, who succeed to such respective offices at the close of the Annual Meeting become members of the Board as of the opening of that Annual Meeting.

The Immediate Past President of the Association shall be the last retiring president of the Association who shall have completed his or her term of office, or, in the event a person who is President of this Association should for any reason not complete his or her term of office, then such person may, at the pleasure of the Board, be elected to and fill the office of Immediate Past President, such term to commence at the conclusion of the term of the then Immediate Past President. In the event such person shall not be so elected by the Board, then at the conclusion of the term of the then Immediate Past President, such office shall remain vacant and unfilled for that term.

Sec. 7.2. Succession of President and Vice-Presidents. It is the policy of the Association that the office of President be rotated in alternate years between those residing in the 1st Judicial District and those residing in the 2nd, 3rd, 4th or 5th Judicial Districts, except as may result pursuant to the balance of this section. It is further the policy of the Association that each candidate for any vacancy in the office of any Vice-President be chosen in a manner consistent with this policy.

If a vacancy occurs in the office of President, the First Vice-President shall perform the duties of President as President Pro Tem, without vacating his or her own office, unless and until the Board of Governors selects the Second or Third Vice-President to perform the duties of President as President Pro Tem, without vacating their office, or until the Board of Governors selects (with the consent of the person chosen) the First, Second or Third Vice-President as President to fill the unexpired term of President, in which case the Vice-Presidential office of the one so chosen shall be vacated.

If a vacancy occurs in the office of First Vice-President, the Second Vice-President shall become First Vice-President and the Third Vice-President shall become Second Vice-President. If a vacancy shall occur in the office of Second Vice-President, the Third Vice-President shall become Second Vice-President. If a vacancy occurs in the office of Third Vice-President, it shall remain vacant until the next regular election by the members, at which time there shall be elections for both the Second and Third Vice-Presidential offices. The ballots for such elections shall be distributed in the same manner as heretofore provided by Sec. 6.3(a). Nominees for election to such offices shall be residents of those judicial districts required to accomplish the above declared policy of rotating the residency of the President in alternate years.

Sec. 7.3. Absences from Board Meetings. If a duly elected member of the Board of Governors is absent from three consecutive meetings of the Board, without having first been excused by the President for cause, the member's seat may be declared vacant by majority vote of board members present, voting by secret ballot, at the next regular or special meeting of the board. The vacancy so created shall be filled as provided in Section 7.4.

Sec. 7.4. Other Vacancies. Vacancies in the offices of the Board of Governors and the Assembly shall be filled by the Board. If a vacancy occurs in the office of an at-large Governor, it shall remain vacant until the next regular appointment by the First Vice-President. Vacancies of committee or section chairmanships or membership on committees or section councils shall be filled by the President.

Sec. 7.5. Unexpired Terms of Officers. A person elected or appointed to fill a vacancy as an officer shall serve for the unexpired term. Any person elected by a new Board of Governors at its first regularly scheduled meeting, to fill a vacancy in any office the term of which would have started at the most recent Annual Meeting, shall be deemed to have been elected for the full term.

Sec. 7.6. Leave of Absence. Any officer, Board of Governors or Assembly member may be granted a leave of absence during the term of such member's elected position according to the terms for such leave granted by the Board of Governors in its discretion. The provisions of Bylaw Sections 4.7 and 7.3 shall not apply to such persons during the period of the leave and it shall not constitute a vacancy as that term is used herein. If necessary or advisable, the Board of Governors shall appoint an interim replacement, subject to the succession procedures of Section 7.2.

Sec. 7.7 Board of Governors Vacancies. A person selected by the Board of Governors to fill a vacancy or unfilled seat on the Board of Governors shall serve until the opening of the Annual Meeting next following the meeting at which the person was selected. A person selected by the Board of Governors to fill a vacancy or unfilled seat for all or part of an ISBA year shall be deemed to have served a full-year for purposes of Sec. 5.3.

SECTION 8
Sections

Sec. 8.1. Generally. The members of the Association shall be divided in a manner to be determined by the Assembly into sections (or divisions), whose functions are to promote the activities of the Association assigned to them by the Assembly.

Sec. 8.2. Creation or Discontinuance. The Assembly or the Board of Governors may create a new section or discontinue a section. Discontinuance of a section shall become effective at close of the next Annual Meeting of the Association; creation of a new section shall become effective at the opening of the next Annual Meeting.

Sec. 8.3. Councils. Except as the Assembly may otherwise provide, the President shall appoint a chair, vice-chair, and secretary and as many additional members of the section to serve during the President's term of office as the Assembly determines, to be the council of the section, and the President may also appoint qualified nonlawyers to a section council. In the event the office of President becomes vacant, section officers and members shall serve the balance of the term to which they were appointed. At least one member of the council of each section shall be under the age of 36 years at the commencement of his or her term of office. A majority of the members of the council constitutes a quorum for a council meeting. The council shall be the governing body of a section.

Sec. 8.4. Section Membership Records and Meetings. The executive director shall maintain a list of the names and addresses of the members of each section.

Sec. 8.5. Section Committees. The council of each section has the power to divide the members of the section into committees to perform different phases of the work of the section and to make recommendations to the section for action. No action of a committee is effective unless approved by the council of the section.

Sec. 8.6. Association Policy. No action of a section or that of any officer or member thereof establishes a policy of the Association unless it has been first approved by the Assembly or Board of Governors.

Sec. 8.7. Minutes of Section Council Meetings. The secretary of each section council shall be responsible for recording the minutes of the section council meetings. The minutes of each section council meeting must be timely filed with the Office of the Executive Director.

SECTIONS 9
Committees of the Association

Sec. 9.1. Standing Committees. There shall be such standing committees as the Board of Governors or Assembly may authorize. The numbers, qualifications, powers and duties of all committees shall be determined by the Board of Governors or the Assembly. The members of standing committees shall be appointed by the President to serve during his or her term of office, or as provided by resolution of the Board of Governors or the Assembly. In the event the office of President becomes vacant, committee officers and members shall serve the balance of the term to which they were appointed.

Sec. 9.2. Special, Joint and Ad Hoc Committees. The President, the Board of Governors or the Assembly may authorize the creation of special, joint and ad hoc committees, subject to the power of the Board of Governors or the Assembly to abolish any such committee. The members of special and ad hoc committees and ISBA representatives to joint committees shall be appointed by the President, or as provided by resolution of the Board of Governors or the Assembly.

Sec. 9.3. Association Policy. No action or statement of a committee or that of any officer or member thereof establishes a policy of this Association unless it has first been approved by the Assembly or Board of Governors.

Sec. 9.4. Minutes of Committee Meetings. The secretary of each committee shall, within seven days after any meeting thereof, file with the executive director a copy of the minutes of the meeting.

SECTION 10
Business Meetings of the Association

Sec. 10.1. Time and Place. An annual business meeting of the Association shall be held at a time and place designated by the Board of Governors. Special business meetings of the Association may be called by the President, the Assembly, or the Board. Any meeting may be held within or without the State of Illinois.

Sec. 10.2. Notice. Notice in writing of the place and time of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be mailed no fewer than seven or more than 40 days in the case of a special meeting, and no fewer than 12 or more than 40 days in the case of an Annual Meeting to each member entitled to vote at the meeting. In lieu of a separate notice, the notice may be printed in an issue of the Illinois Bar Journal or the ISBA Bar News mailed to each member entitled to vote.

SECTION 11
Records and Indemnification

Sec. 11.1. Membership Records. The Association shall keep at its registered office or principal office in Illinois a record of the names and addresses of its members.

Sec. 11.2. Other Records. The Association shall also keep correct and complete books and records of account and minutes of the proceedings of its members, Assembly, Board of Governors, sections and committees. An annual audit conducted by a certified public accountant shall be submitted to the Board of Governors.

Sec. 11.3. Indemnification. The Association shall indemnify its officers and all members of its Assembly, Board of Governors, committee members, section council members and its former officers and former members of its Assembly, Board of Governors, committees and section councils, or any person who serves or may have served, at its request by its election or appointment as a director or officer of another corporation, for all sums which they, or any of them, shall become legally obligated to pay as damages, and for expenses actually and necessarily incurred by them in connection with the defense or settlement of any cause of action, suit or proceeding in which they, or any of them, are made parties, or a party, by reason of being or having been an officer or a member of the Assembly, Board of Governors, committee or section council of the Association or elected or appointed directors or officers as aforesaid, notwithstanding that the allegations of any cause of action, suit or proceeding may be false, fraudulent or groundless. If the Board of Governors so authorizes, any person entitled to the benefits of this Association's indemnification may be indemnified for expenses actually and necessarily incurred prior to the final adjudication of any such action, suit, or proceeding but only if the person seeking indemnification acknowledges in writing that he or she will be legally bound to reimburse the Association if such person is adjudged in such action, suit, or proceeding to be liable for willful misconduct in the performance of duty or such action, suit, or proceeding is settled by agreement predicated upon the existence of such liability.

SECTION 12
Affiliation of Organized Bar Associations

Any organized bar association in the State of Illinois which does not discriminate in its membership practices on the basis of sex, race, religion, national origin, disability, sexual orientation, or gender identity may become affiliated with this Association upon signed application filed with the Association. The ISBA application form shall be signed by the president and secretary of the applicant association, and shall contain a copy of the applicant's bylaws. The application and bylaws shall be presented to the Board of Governors, and favorable action thereon by a majority vote constitutes the applicant an affiliated association.

SECTIONS 13
Amendments

Sec. 13.1. Articles of Incorporation. The Articles of Incorporation of the Association may be amended in the following manner: The Board of Governors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of the Assembly, which may be either an annual or special meeting. Written or printed notice, setting forth the proposed amendment or a summary of the changes to be effected thereby, shall be given in accordance with the statute to each member entitled to vote at the meeting. The proposed amendment is adopted if it receives two-thirds of the votes cast at the meeting on the proposed amendment.

Sec. 13.2. Bylaws. The Bylaws of the Association may be amended or revised only at any meeting of the Assembly, upon not less than 14 days written notice of the proposal to each member of the Assembly. Germane amendments to the proposed amendments will be in order at the meeting where the proposal is considered, but no motions to substitute shall be in order unless upon the agenda after proper notice to the members. The proposed amendment is adopted if it receives a majority of the votes cast at the meeting on the proposed amendment.

SECTION 14
Standing Task Force on Unauthorized Practice of Law
Adopted by the Task Force on UPL on November 3, 2001
Recommended by the Board of Governors on November 16, 2001
Adopted by the Assembly on December 15, 2001

There shall be a Standing Task Force on Unauthorized Practice of Law. The Standing Task Force shall recommend and, with approval of the Board of Governors, implement comprehensive strategic policies for the protection of the public and of the integrity of the legal system. The Standing Task Force shall be appointed by the President with approval of the Board of Governors and shall include representatives from a variety of legal concentrations, including one who is under the age of 37 years, one of whom shall be a separate member of the Assembly, and one of whom shall be a member of an Office of State's Attorney or the Attorney General. The chair and vice-chair of the Standing Task Force may not be from the same electoral area as defined in Section 5.4. No Standing Task Force chair or vice-chair may serve for more two consecutive one-year terms. No member of the Standing Task Force may serve for more than five years. The ISBA general counsel shall serve as the permanent secretary of the Standing Task Force.

Assembly

June 16, 2012

Agenda Item 2D
Minutes

MINUTES
MEETING OF THE ASSEMBLY
OF THE ILLINOIS STATE BAR ASSOCIATION

ILLINOIS STATE
BAR ASSOCIATION

ISBA Mid Year Meeting
Sheraton Chicago Hotel and Towers
Chicago, IL

December 10, 2011

1. Call to Order – John G. Locallo

President Locallo welcomed the Assembly and invited Honorable Thomas Kilbride, Chief Justice of the Illinois Supreme Court to make remarks.

Chief Justice Kilbride thanked the Assembly for the opportunity to address it and noted the following Court activities and initiatives:

* Adoption of an important new Supreme Court Rule to allow the ARDC to prosecute unauthorized practice of law cases. This proposal was initiated by the ISBA.

* Continuing Technology initiatives to advance the court system. This includes placing jury instructions online; working to achieve E-Filing in the state of Illinois; launching an E-Record system in the Second and Fourth District Appellate Courts where the court file and the common-law record is scanned, accepted electronically, and then transmitted to the appellate court; and updating the Courts website;

* Finally, the Chief Justice noted the good and strong working relationship with the ISBA during President Locallo's year as well as in the past. He hoped that the relationship continues to be positive and productive where the Court reviews ideas from practitioners and judges across the state to keep the judicial system moving forward in an efficient and innovative way.

2. Report of Secretary – Russell K. Scott, Secretary

A. Report on the Notice of the Meeting

Secretary Scott reported that proper notice of the meeting and agenda had been timely mailed in accordance with the Assembly rules. A quorum for this meeting was present.

B. Approval of the Minutes

On motion made, seconded, and carried, the minutes of the June 18, 2011, Assembly meeting were approved.

3. Report of the Agenda and Program Committee – Letitia Spunar Sheats, Chair

Chair Sheats summarized the purpose, membership and procedures of the Assembly Agenda and Program Committee. She reorganized and thanked the members of the Committee for their service: Geri L. Arrindell, Colleen McLaughlin, Robert T. Park, Arlette Porter.

4. President's Report – John G. Locallo

A. Introduction of ISBA Past Presidents –

Past Presidents in attendance were recognized and thanked for their service:
Honorable Carol K. Bellows, John C. Mullen, John W. DeMoss, Richard L. Thies, Thomas Lahey, Herbert H. Franks, J. Timothy Eaton, Loren Golden, Robert K. Downs, Irene Barr, Joseph G. Bisceglia, Jack C. Carey, John G. O'Brien, and Mark D. Hassakis.

B. Remarks of President Locallo

* President Locallo welcomed Illinois Supreme Court Justices Lloyd Karmeier and Mary Jane Theis;

* President Locallo noted the adoption of the new ARDC UPL prosecution rule was a very significant development which originated form the ISBA through the UPL Task Force, but had also been a significant goal of the Board of Governors and the Assembly. It is an important public protection issue for which the bar, and now the court, has a strong interest. He applauded the Court for its action.

5. Report of the ISBA Mutual Insurance Company – John W. DeMoss

President DeMoss reported that the Mutual was strong and well. He noted that those insured with ISBA Mutual in 2011 will receive a dividend equal to approximately 10% of the premium that was paid in this past year. He further noted that this is the seventh year in a row that the Mutual has paid a dividend.

President DeMoss reported that the Mutual continues to be recognized by A.M Best with an annual rating of "A" with a stable outlook which is the highest rating any similar company has achieved anywhere in the U.S.

President DeMoss further reported that new business has increased and the Mutual should end the year with approximately $17 million in overall premiums. The Mutual is expected to end the year with $30 million in surplus.

Finally, President DeMoss commented on the strong relationship between the Mutual and the ISBA. He noted the Mutual has become the lead provider of Fastcase and that the Mutual provides a premium rebate for policy holders attending the Solo and Small Firm Conference.

6. Report of the Assembly Finance Committee – Timothy E. Moran, Chair

A. 2010-2011 Fiscal Year Audit and Financial Statements

President Locallo called upon Chair Timothy Moran to address the Assembly. Chair Moran reported that that the Budget and Audit Committee has met and reviewed the Audit Report for the period ending June 30, 2011. Vice Chair Moran thanked the members of the Committee: Carey Gill, Honorable Leonard Murray, Tara Ori, Frank Perrecone, and Arlette Porter.

Chair Moran reported that the Audit Report concludes that it presents fairly and accurately the financial position of the ISBA and that the statements therein conform to generally accepted accounting principles. The auditors expressed a clean or unqualified opinion as to the ISBA's financial status.

No change in the dues rates structures is anticipated at this time for the forthcoming year. The ISBA remains a financially healthy organization with an approximate current net worth $5.5 million.

Motion made and seconded to approve and accept the Auditors Report.

A number of Assembly members addressed the Report and Financial Statements. Inquiries were raised and answered concerning: the costs of electric voting; officer and Board expenditures; CRO lease amortization; and Fastcase

After discussion, the Motion carried.

7. Report of the Illinois Bar Foundation – George F. Mahoney, President

President Mahoney provided an overview of IBF, and thanked staff and Board volunteers. He noted that last year the IBF contributed $300,000 to Legal Organizations and $100,000 to lawyers in need of assistance.

President Mahoney noted that the October 2011 Gala was the most successful Gala in the history of the Foundation. It raised just short of $500,000.

President Mahoney further noted that a Benchmark Committee has been established to review what the IBF is doing and how it is doing it, to measure IBF success to success of other foundations of like kind around the country. Jim Lestikow heads that Committee.

A Development Committee has also been established. Beginning in 2012, the IBF is initiating a campaign to increase contributions by $1.5 Million.

President Mahoney then introduced Chris Ory, Chair, Lawyer Care Committee who addressed the Assembly concerning the $300,000 in grants awarded to approximately 30 organizations. Chair Ory then introduced Nicole Simmons, wife of deceased attorney Michael Simmons, who addressed the Assembly about the assistance her family received from the IBF during her husband's illness. The assistance allowed her family to remain in the family residence during this very difficult time. She expressed her family's sincere thanks and appreciation.

Sandra Blake, IBF Silver Fellow, also addressed the Assembly concerning IBF assistance to domestic and sexual violence prevention organization LifeSpan.

8. Election of "Under 35" Representative to the ABA House of Delegates

President Locallo noted that no one filed for the available positions. He noted that according to ISBA procedure, the seats will be filled at the next Board of Governors meeting in January 2012.

9. Legislation - Mark Hassakis, Chair

Chair Hassakis made some brief opening remarks and then introduced Jim Covington, ISBA Director of Legislative Affairs, to update the Assembly on legislative activities.

A. ISBA Sponsored Legislation

Director Covington noted several successful legislative efforts during the past year including: a number of Juvenile Justice issues spearheaded by Past-President Hassakis; adoption of civil union legislation; abolition at the death penalty; establishment of a transfer on deed instrument, tirelessly advocated by ISBA member Charles Brown, Vice Chair, Trusts and Estates Section Council; and defeat of certain Department of Healthcare and Family Services administrative rules, with the support of the Elder Law Section Council, Heather McPhearson, Chair.

Director Covington further noted that matters to be considered in the upcoming legislative session include: legislative redistricting; possible rewrite of the Marriage and Dissolution Act; and a Constitutional amendment to give crime victims standing in court proceedings.

Finally, Director Covington also identified and described a number of proposals to be included in the ISBA's Legislative package:

- Creation of a new statute to allow first-offender probation for certain felonies. (Initiated by the Criminal Justice Section Council)

- Establishing notice and imposition of time limits before a litigant can claim dissipation of marital or non-marital assets in the Illinois Marriage and Dissolution of Marriage Act. (Initiated by the Family Law Section Council)

- Clarification of the child support section of the Illinois Marriage and Dissolution of Marriage Act by incorporating case law and current practices. (Initiated by the Family Law Section Council.)

- Increasing the credit for time served for bailable offenses from $5 to $15. (Initiated by the Criminal Law Section Council.)

- Defining "confidential communication" under the Mental Health and Disabilities Confidentiality Act as including a therapist or patient communication with a pharmacist during the course of providing mental health services. (Initiated by the Mental Health Committee.)

- Creating two exemptions from prosecution for eavesdropping. If a business entity records or listens under the telemarketing or solicitation exemption, the consumer may record as well. Allows a citizen to record a law enforcement officer performing public duties in a public place. (Initiated by the Intellectual Property Section Council.)

- Creating a "domestic asset protection trust" that allows a settler to establish an Illinois trust for his or her own benefit which, if not fraudulent, will be protected from most creditors. (Initiated by the Trusts and Estates Section Council)

- Changing the eligibility for scavenger-tax sales from two to three years for Cook county only. (Initiated by the State and Local Tax Section Council)

Assembly member Friedman addressed the Assembly concerning the eavesdropping proposal. Member Friedman urged the Assembly to amend the proposal as submitted to exclude the proposals reference to "in public."

Motion to amend the eavesdropping proposal to take out the words "in public," moved and seconded.

After discussion and debate, the question having been called, the Motion carried by a vote of 74-65.

Motion made, seconded, and carried to adopt the legislative package as amended and in concept.

B. LAWPAC

Director Covington reported President Locallo's recent appointments of John Rotowski, Tim Moran, and Keith Emmons to LAWPAC.

Motion to ratify these appointments duly made, seconded, and carried.

10. Report of Standing Committee on Strategic Marketing – James Dunneback, Chair

Chair Dunneback addressed the Assembly. He noted the purposes of the Standing Committee and updated the Assembly on recent trends in the ISBA's marketing campaign. He noted the goals of:

1. Improving the image the legal profession

2. Positioning ISBA members as providers of choice for individuals and businesses seeking legal services.

3. Providing a core membership benefit that assists in recruiting members by: updating the Illinoislawyerfinder.com website; and making the Lawyer Referral Service a site of choice for the public to get information that they need about the legal system, and making sure that the quality of the information on that page is top notch.

THERE BEING NO FURTHER BUSINESS before the Assembly, the meeting was adjourned. Respectfully Submitted:

_____

Russell K. Scott, Secretary

Assembly

June 16, 2012

Agenda Item 6A
Budget

Date: May 30, 2012

To: ISBA Board of Governors

From: Douglas M. Barringer, CPA
Director of Administrative Services

Re: Proposed Budget 2012 – 2013

Attached please find the 2012-2013 Proposed Budget as proposed by the Board Budget and Assembly Finance Committees. The proposed budget continues to maintain important core member services without an increase in the dues rate structure. However, this budget does reflect an anticipated deficit of $108,000 for the 2012-2013 fiscal year. This anticipated deficit of $108,000 is 1.3% of our nearly $8.4 million budget. In contrast to the current year's budget, the proposed budget projects a 1.9% decrease in revenue and a 1.6% decrease in expense. Overall the financial health of the association remains good and steady. The net fund balance for the association for June 30, 2012 is anticipated to be approximately $5.4 million with $3.0 million of that as unrestricted. As a ratio for monitoring overall financial health, the unrestricted fund balance represents 35% of our annual budget, which reflects a healthy organization. A continuing concern is the decline in dues revenue. Though the decline from last year is slight, .5%, dues revenue has declined slightly each of the last 4 years.

This budget reflects several significant adjustments including a reduction in Strategic Marketing in the amount of $125,000; the reduction of $115,000 in CLE net revenue; the reduction of $72,000 in our West Thompson royalty because of their every other year publication; and the reduction of $35,000 from Bank of America as they reduce their affinity credit card program.

To assist you in your review of the proposed budget, I have described below some of the specific changes from the 2011-2012 budget to the 2012-2013 proposed budget:

Revenue

1. An increase in Membership Dues in the amount of $50,000 in anticipation of an upcoming membership campaign.

2. An increase in Book Publication Revenue of $50,000 given the trend in increased book publication revenue we have realized over the last few years.

3. The royalty from the Illinois Compiled Statutes has been reduced by $72,000 to reflect the every other year publication of the compiled statutes and the resulting royalty we receive from West Thompson.

4. The royalty from Bank of America has been reduced by $35,000 to reflect the reduction of the affinity credit card program by BOA.

5. CLE Revenue has been reduced by $165,000 to reflect the second half of the alphabet requiring MCLE credit and as a result of the significant competition in the number of CLE providers offering free or discounted CLE.

Expenses

1. Administrative Expenses have been increased $117,000 or 2.1%. This increase is the net of salary adjustments, increase in indirect personnel expense, increase in staff travel, increase in the depreciation/amortization expense of the CRO remodeling and the new association management software system, and the continuation of the reduction in the CRO lease expense.

2. As a result of the renegotiation of the Illinois Bar Journal printing contract, we anticipate savings for next year in the amount of $7,000. In addition, dollars spent in the current year for the development of the Weekly E-Clips will not be necessary for next year resulting in a reduction in that expense by $6,000.

3. General Meetings Expenses, which include the Board of Governors, the Annual and Midyear Meetings, the ABA Meeting and the Great Rivers Conference, have been increased by $24,500 to more accurately reflect anticipated expense for next year.

4. Program Expenses have been decreased by $221,500 as the net result of changes in several items. Some of the items that are new or out of the ordinary include:

   - A reduction in CLE Expense of $50,000. With the reduction in CLE revenue, expense will decrease as well.
   - Judicial Evaluations in Cook County has been reduced by $15,000 to more accurately reflect anticipated expense and the contribution of $1,000 by each bar association of the Alliance.
   - The removal of the $15,000 for the utilization of an outside legal tech/management consultant and removal of the $15,000 for the Member-to-Member Directory.
   - The reduction of $14,500 in Legislation to more accurately reflect anticipated expenses.
   - The reduction of $125,000 in the budget of the Strategic Marketing Campaign.
   - The increase in expense of the Solo and Small Firm Conference to reflect the additional cost of hosting the conference this year in Itasca rather than in Springfield.

5. Section and Committee Expenses for meetings have been reduced by $45,500. This net reduction includes the addition of several new committees appointed by President Elect Thies as well as the savings realized by the continued efforts of our councils and committees regarding the frequency and location of the meetings being held.

ILLINOIS STATE BAR ASSOCIATION
ESTIMATED YEAR-END REVENUES AND
EXPENDITURES
AND
PROPOSED BUDGET FOR 2012-2013

	PROPOSED BUDGET 2012/2013	**BUDGET 2011/2012**	BUDGET DIFFERENCE	EST. INC/EXP JUNE 30, 2012
Income	**$8,250,000**	**$8,407,000**	($157,000)	$8,194,500
Expenses:				
Administrative	**$5,633,000**	**$5,516,015**	($116,985)	$5,471,500
Publications	**307,000**	**317,000**	10,000	305,500
General Meetings and Travel	**569,500**	**545,000**	(24,500)	574,000
Program Expenses	**1,257,500**	**1,479,000**	221,500	1,417,000
Committee Expenses	**233,000**	**233,500**	500	203,000
Section Expense	**358,000**	**403,000**	45,000	340,500
TOTAL EXPENSE	**$8,358,000**	**$8,493,515**	$135,515	$8,311,500
Surplus/(Deficit)	**($108,000)**	**($86,515)**	($21,485)	($117,000)
Extra Budgetary Authorizations:				
Joint Program with IJA and IWBA	**$0**	**$5,000**	$5,000	$4,273
IL Law & Leadership Institute	**$0**	**$9,285**	$9,285	$9,285
Net Surplus (Deficit)	**($108,000)**	**($100,800)**	($7,200)	($130,558)

	PROPOSED BUDGET 2012/2013	**BUDGET 2011/2012**	BUDGET DIFFERENCE	EST. INC/EXP JUNE 30, 2012
INCOME				
Membership Dues	**$5,750,000**	**$5,720,000**	$30,000	$5,672,000
Membership Campaign	**50,000**	**30,000**	20,000	45,000
Section Fees	**445,000**	**445,000**	0	445,000
IBJ Display Advert.	**270,000**	**254,000**	16,000	285,000
IBJ Subscriptions	**13,000**	**13,000**	0	12,000
Illinois Lawyer Now	**24,000**	**24,000**	0	24,000
Newsletter Advertising	**36,000**	**38,000**	(2,000)	38,000
Internet Advertising	**34,000**	**25,000**	9,000	34,000
Ill. Compiled Statutes	**32,000**	**104,000**	(72,000)	91,000
Ill. Courts Bulletin	**17,000**	**18,000**	(1,000)	18,000
Other Publications	**4,000**	**5,000**	(1,000)	2,500
Book Publications	**150,000**	**100,000**	50,000	149,000
Income on Investments	**115,000**	**120,000**	(5,000)	126,000
Lawyer Referral Fees	**80,000**	**80,000**	0	80,000
Public Info Material	**3,000**	**4,000**	(1,000)	3,000
Royalties Bank of America Program	**75,000**	**110,000**	(35,000)	90,000
Other Program Royalties	**90,000**	**80,000**	10,000	102,000
Other Income	**2,000**	**2,000**	0	2,000
Commercial Mailing Labels	**24,000**	**27,000**	(3,000)	24,000
CLE Programs	**620,000**	**700,000**	(80,000)	511,000
CLE Book Sales	**8,000**	**8,000**	0	8,000
CLE Electronic Sales	**200,000**	**285,000**	(85,000)	235,000
Fastcase Contribution from ISBA Mutual Insurance	**90,000**	**90,000**	0	90,000
Solo Small Firm Conference	**100,000**	**100,000**	0	97,000
Fred Lane's Programs	**18,000**	**25,000**	(7,000)	11,000
TOTAL	**$8,250,000**	**$8,407,000**	($157,000)	$8,194,500

ADMINISTRATIVE EXPENSES	**PROPOSED BUDGET 2012/2013**	**BUDGET 2011/2012**	BUDGET DIFFERENCE	EST. INC/EXP JUNE 30, 2012
Staff Salaries	**$3,160,000**	**$3,122,015**	($37,985)	$3,095,000
Payroll Taxes	**275,000**	**240,000**	(35,000)	246,000
Indirect Payroll	**577,000**	**570,000**	(7,000)	565,000
Postage and Express	**248,000**	**264,000**	16,000	244,000
IT/Data Processing	**170,000**	**170,000**	0	155,000
Telephone	**44,000**	**42,000**	(2,000)	44,000
Staff Travel	**110,000**	**110,000**	0	136,000
General Office Machines	**30,000**	**30,000**	0	26,500
Paper and Envelopes	**48,000**	**59,000**	11,000	51,000
Utilities	**114,000**	**116,000**	2,000	112,000
Building Maintenance	**80,000**	**80,000**	0	79,000
Amortization and Depreciation	**250,000**	**190,000**	(60,000)	225,000
Outside Printing/Labeling	**6,000**	**10,000**	4,000	4,000
Pressroom	**64,000**	**66,000**	2,000	61,000
Mailroom	**17,000**	**18,000**	1,000	16,000
Insurance	**70,000**	**69,000**	(1,000)	69,000
Supplies, Library, Mbrshps & Subscriptions	**42,000**	**40,000**	(2,000)	46,500
Credit Card and Bank Service Charges	**81,000**	**73,000**	(8,000)	79,000
Election Expenses	**17,000**	**19,000**	2,000	10,500
Bar Center Taxes	**48,000**	**48,000**	0	48,000
Auditors	**29,000**	**28,000**	(1,000)	28,500
Legal Service	**8,000**	**12,000**	4,000	5,500
Chicago Office Expense	**145,000**	**140,000**	(5,000)	125,000
TOTAL	**$5,633,000**	**$5,516,015**	($116,985)	$5,471,500

	PROPOSED BUDGET 2012/2013	BUDGET 2011/2012	BUDGET DIFFERENCE	EST. INC/EXP JUNE 30, 2012
PUBLICATIONS				
Bar Journal	**$207,000**	**$214,000**	$7,000	$198,000
Unrelated Income Tax	**10,000**	**10,000**	0	10,000
Illinois Lawyer Now	**23,000**	**22,000**	(1,000)	22,000
E-Clips	**27,000**	**33,000**	6,000	33,000
Other Publications	**5,000**	**5,000**	0	5,000
Book Publications	**35,000**	**33,000**	(2,000)	37,500
Readership Survey	**0**	**0**	0	0
TOTAL	**$307,000**	**$317,000**	$10,000	$305,500

	PROPOSED BUDGET 2012/2013	BUDGET 2011/2012	BUDGET DIFFERENCE	EST. INC/EXP JUNE 30, 2012
GENERAL MEETINGS and TRAVEL				
Officers and Board	**$210,000**	**$180,000**	($30,000)	$208,000
Officer Stipends	**30,000**	**30,000**	0	30,000
ABA Meetings	**45,000**	**45,000**	0	48,000
Annual Meeting	**70,000**	**50,000**	(20,000)	50,000
Midyear Meeting	**90,000**	**100,000**	10,000	109,000
Other	**2,000**	**2,000**	0	0
Admission Ceremonies	**9,500**	**9,500**	0	9,500
Assembly	**97,000**	**100,000**	3,000	96,500
Newsletter Editors Conf.	**1,000**	**2,000**	1,000	0
Chief Justice Reception	**0**	**0**	0	0
Senior Counselors Ceremony	**5,000**	**10,000**	5,000	7,000
Regional Member Events	**4,000**	**4,000**	0	4,000
Great Rivers Conference	**6,000**	**12,500**	6,500	12,000
Washington, D.C. Admission Ceremony	**0**	**0**	0	0
TOTAL	**$569,500**	**$545,000**	($24,500)	$574,000

PROGRAM EXPENSES	**PROPOSED BUDGET 2012/2013**	**BUDGET 2011/2012**	BUDGET DIFFERENCE	EST. INC/EXP JUNE 30, 2012
Academy of Illinois Lawyers	**$2,000**	**$0**	($2,000)	$0
Affiliated Bar Association Grants	**5,000**	**5,000**	0	5,000
Allerton House Conference	**0**	**0**	0	2,500
Bar Leadership Conference	**6,000**	**0**	(6,000)	0
CLE Program Expense	**400,000**	**450,000**	50,000	398,000
ISBA Website and Internet Services	**25,000**	**25,000**	0	25,000
Judicial Evaluations Cook	**5,000**	**20,000**	15,000	6,000
Judicial Evaluations Downstate	**4,000**	**4,000**	0	3,000
Law School Programs	**5,000**	**5,500**	500	5,500
Lawyer Referral Service	**15,000**	**21,500**	6,500	15,000
Legal Tech Consultant	**0**	**15,000**	15,000	5,000
LRE Mock Trial	**0**	**5,000**	5,000	5,000
Legislation Other	**27,500**	**42,000**	14,500	28,000
Membership and Marketing	**30,000**	**30,000**	0	30,000
Membership Publications	**15,000**	**10,000**	(5,000)	10,000
Membership Advertising	**45,000**	**45,000**	0	39,000
Member to Member Directory	**0**	**15,000**	15,000	0
Fastcase Online Research	**125,000**	**128,000**	3,000	123,000
Public Relations Other	**33,000**	**44,000**	11,000	41,000
Race Judicata Sponsorship	**1,000**	**5,000**	4,000	1,000
Strategic Marketing Campaign	**300,000**	**425,000**	125,000	495,000
Cable TV Productions	**23,000**	**23,000**	0	21,000
Public Relations Consultant	**70,000**	**70,000**	0	70,000
Solo and Small Firm Conference	**100,000**	**70,000**	(30,000)	76,000
Unauthorized Practice of Law	**10,000**	**10,000**	0	2,000
Young Lawyers Division	**11,000**	**11,000**	0	11,000
TOTAL	**$1,257,500**	**$1,479,000**	$221,500	$1,417,000

	PROPOSED BUDGET 2012/2013	BUDGET 2011/2012	BUDGET DIFFERENCE	EST. INC/EXP JUNE 30, 2012
COMMITTEE EXPENSES				
AR & DC Committee	**$4,000**	**$4,500**	$500	$3,500
Bar Services Committee	**14,000**	**15,000**	1,000	13,000
Budget & Audit	**1,500**	**1,500**	0	1,000
CLE Programs Committee	**16,000**	**19,000**	3,000	14,000
Corrections and Sentencing	**5,500**	**7,000**	1,500	5,500
Delivery of Legal Services	**6,000**	**7,000**	1,000	5,000
Disability Law Committee	**5,000**	**5,000**	0	2,000
Ed., Admission & Competence	**2,500**	**3,000**	500	2,500
Government Lawyers Committee	**4,000**	**5,000**	1,000	4,000
IBJ Editorial Board	**6,500**	**8,000**	1,500	6,000
Investment Committee	**500**	**500**	0	500
J. A. Polls	**8,000**	**8,000**	0	8,000
Judicial Evaluations - Outside Cook	**15,000**	**15,000**	0	17,000
Judicial Evaluations - Cook	**3,000**	**3,000**	0	3,000
Law Office Management and Economics	**6,000**	**7,000**	1,000	6,000
Law School Committee	**6,500**	**7,000**	500	6,000
Law Related Education	**6,500**	**9,000**	2,500	6,000
Legal Technology	**7,000**	**12,500**	5,500	10,500
Legislation Committee	**4,000**	**4,500**	500	4,000
Mental Health	**10,500**	**6,500**	(4,000)	12,000
Mentoring Committee	**2,500**	**3,500**	1,000	2,000
Military Affairs	**4,000**	**4,000**	0	4,000
Racial & Ethnic Minorities and the Law	**7,000**	**9,000**	2,000	7,000
Other Committee Expense	**2,000**	**3,000**	1,000	3,000
Professional Conduct	**6,000**	**6,000**	0	6,000
Public Relations	**7,000**	**8,000**	1,000	6,500
Scope & Correlation	**500**	**500**	0	500

	PROPOSED BUDGET 2012/2013	BUDGET 2011/2012	BUDGET DIFFERENCE	EST. INC/EXP JUNE 30, 2012
COMMITTEE EXPENSES CONTINUED				
Sexual Orientation and Gender Identity	**$10,500**	**$14,000**	$3,500	$10,000
Strategic Marketing for ISBA Members	**5,500**	**6,000**	500	5,500
Supreme Court Rules	**500**	**500**	0	0
Task Force on IL Lawyer Finder	**3,000**	**3,000**	0	2,000
Tone and Conduct Committee	**500**	**500**	0	500
Women and the Law Committee	**6,000**	**6,000**	0	6,000
Unauthorized Practice of Law	**4,000**	**4,500**	500	4,000
Diversity Leadership Council	**10,000**	**10,000**	0	13,000
Diversity Pipeline Committee	**2,500**	**5,000**	2,500	3,000
S.C. on Franchise and Distribution	**0**	**1,000**	1,000	0
Committee on Solo Small Firm Conf.	**500**	**1,000**	500	500
S. C. on Lawyers Feeding Illinois	**5,000**	**0**	(5,000)	0
S.C. on Fair and Impartial Courts	**10,000**	**0**	(10,000)	0
S. C. on Legal Education	**9,000**	**0**	(9,000)	0
S. C. on Recusal	**5,000**	**0**	(5,000)	0
TOTAL COMMITTEE EXPENSES	**$233,000**	**$233,500**	$500	$203,000

	PROPOSED BUDGET 2012/2013	BUDGET 2011/2012	BUDGET DIFFERENCE	EST. INC/EXP JUNE 30, 2012
SECTION EXPENSES				
Administrative Law	**$3,500**	**$3,500**	$0	$2,500
Agricultural Law	**13,500**	**13,500**	0	13,000
Alternative Dispute	**8,000**	**10,000**	2,000	8,000
Animal Law	**5,500**	**6,500**	1,000	4,500
Antitrust Law	**1,000**	**2,000**	1,000	1,000
Bench & Bar	**12,000**	**16,000**	4,000	12,000
Bus. Advice & Fin. Planning	**5,000**	**6,000**	1,000	5,000
Child Law	**4,000**	**4,500**	500	3,000
Civil Practice & Procedure	**17,000**	**21,000**	4,000	16,000
Commercial Banking & Bankruptcy	**12,000**	**11,000**	(1,000)	14,500
Construction Law	**4,500**	**4,500**	0	4,500
Corporate Law Department	**5,000**	**5,500**	500	4,500
Business & Securities law	**6,500**	**8,500**	2,000	6,500
Criminal Justice	**14,500**	**16,500**	2,000	14,000
Education Law	**6,000**	**8,000**	2,000	6,000
Elder Law	**19,000**	**23,000**	4,000	17,000
Employee Benefits	**4,500**	**4,500**	0	4,000
Environmental Law	**8,500**	**9,500**	1,000	7,500
Family Law	**29,000**	**34,000**	5,000	28,000
Federal Practice	**6,000**	**6,000**	0	5,000
Federal Taxation	**7,500**	**9,000**	1,500	7,000
General Practice	**9,000**	**11,000**	2,000	8,000
Health Care	**12,500**	**13,500**	1,000	12,000
Human Rights	**10,500**	**11,000**	500	10,000
Insurance Law	**4,500**	**5,000**	500	4,000
Intellectual Property	**3,000**	**3,000**	0	2,500
International Law	**4,000**	**5,500**	1,500	4,000

	PROPOSED BUDGET 2012/2013	BUDGET 2011/2012	BUDGET DIFFERENCE	EST. INC/EXP JUNE 30, 2012
SECTION EXPENSES CONTINUED				
Labor and Employment Law	**$7,000**	**$8,000**	$1,000	$7,000
Local Government	**9,500**	**10,000**	500	8,500
Mineral Law	**5,500**	**6,000**	500	5,500
Other	**1,000**	**1,000**	0	1,000
Energy, Utilities, Telecommunications, and Transportation	**2,500**	**2,500**	0	2,500
Real Estate Law	**20,000**	**20,000**	0	19,000
Senior Lawyers	**7,500**	**7,500**	0	7,000
State and Local Taxation	**5,000**	**5,000**	0	5,000
Tort Law	**14,000**	**17,000**	3,000	13,000
Traffic Laws and Courts	**7,000**	**7,000**	0	7,000
Trusts and Estates	**12,000**	**14,000**	2,000	11,000
Workers' Compensation	**14,000**	**14,000**	0	13,000
Young Lawyers Council	**17,000**	**19,000**	2,000	17,000
TOTAL SECTION EXPENSE	**$358,000**	**$403,000**	$45,000	$340,500

Assembly

June 16, 2012

Agenda Item 6B
Operating Statement

ILLINOIS STATE BAR ASSOCIATION
OPERATING STATEMENT AND BUDGET FOR
THE PERIOD OF JULY 1, 2011 THRU APRIL 30, 2012

	ACTUAL APRIL 2012	BUDGET APRIL 2012	BUDGET DIFFERENCE	BUDGET 2011/2012
Income	$7,892,451	$8,104,668	($212,217)	$8,407,000
Expenses:				
Administrative	$4,322,410	$4,361,801	$39,391	$5,516,015
Publications	241,664	253,500	11,836	317,000
General Meetings and Travel	415,533	386,122	(29,411)	545,000
Program Expenses	1,181,346	1,242,722	61,376	1,479,000
Committee Expenses	113,344	145,775	32,431	233,500
Section Expense	176,648	240,805	64,157	403,000
Expense Subtotal	$6,450,945	$6,630,725	$179,780	$8,493,515
Extra Budgetary Authorizations:				
IL Law & Leadership Institute	2,148	2,148	0	9,285
Joint Program with IJA and IWBA	4,273	5,000	727	5,000
TOTAL EXPENSE	$6,457,366	$6,637,873	$180,507	$8,507,800
Net Operating Surplus (Deficit)	$1,435,085	$1,466,795	($31,710)	($100,800)
Market Gain (Loss) on Long-Term Investments	($87,421)			
Net Surplus (Deficit)	$1,347,664			

	ACTUAL APRIL 2012	BUDGET APRIL 2012	BUDGET DIFFERENCE	BUDGET 2011/2012
INCOME				
Membership Dues	$5,667,249	$5,715,000	($47,751)	$5,720,000
Membership Campaign	45,336	30,000	15,336	30,000
Section Fees	444,234	444,234	0	445,000
IBJ Advertising	238,865	207,600	31,265	254,000
IBJ Subscriptions	7,967	9,097	(1,130)	13,000
Illinois Lawyer Now Advertising	17,363	17,363	0	24,000
Newsletter Advertising	30,527	30,527	0	38,000
Internet Advertising	29,800	21,000	8,800	25,000
Ill. Compiled Statutes	90,682	104,000	(13,318)	104,000
Ill. Courts Bulletin	14,360	15,000	(640)	18,000
Other Publications	1,806	4,438	(2,632)	5,000
Book Publications	141,984	92,703	49,281	100,000
Income from Investments	117,947	112,000	5,947	120,000
Lawyer Referral Fees	75,437	75,437	0	80,000
Public Info Material	2,235	3,261	(1,026)	4,000
Bank of America Royalties Program	67,131	87,131	(20,000)	110,000
Other Program Royalties	76,195	54,138	22,057	80,000
Other Income	2,130	2,000	130	2,000
Commercial Mailing Labels	17,476	20,500	(3,024)	27,000
CLE Programs	460,780	650,000	(189,220)	700,000
CLE Book Sales	6,514	6,514	0	8,000
CLE Electronic Sales	137,957	187,725	(49,768)	285,000
Fastcase Contribution from ISBA Mutual Insurance	90,000	90,000	0	90,000
Solo Small Firm Conference	97,373	100,000	(2,627)	100,000
Fred Lane's Programs	11,103	25,000	(13,897)	25,000
TOTAL	$7,892,451	$8,104,668	($212,217)	$8,407,000

ADMINISTRATIVE EXPENSES	ACTUAL APRIL 2012	BUDGET APRIL 2012	BUDGET DIFFERENCE	BUDGET 2011/2012
Staff Salaries	$2,627,256	$2,653,877	$26,621	$3,122,015
Payroll Taxes	210,191	204,503	(5,688)	240,000
Indirect Payroll	314,049	319,000	4,951	570,000
Postage and Express	185,161	205,402	20,241	264,000
IT/Data Processing	125,521	140,000	14,479	170,000
Telephone	37,351	35,000	(2,351)	42,000
Staff Travel	112,080	85,433	(26,647)	110,000
General Office Machines	18,511	22,031	3,520	30,000
Paper and Envelopes	36,183	44,231	8,048	59,000
Utilities	80,393	84,000	3,607	116,000
Building Maintenance	61,274	60,000	(1,274)	80,000
Amortization & Depreciation	169,791	134,000	(35,791)	190,000
Outside Printing/Labeling	839	6,934	6,095	10,000
Pressroom	41,290	46,000	4,710	66,000
Mailroom	10,875	12,800	1,925	18,000
Insurance	59,655	59,655	0	69,000
Office Exp., Supplies, Library	38,534	32,000	(6,534)	40,000
Credit Card and Bank Service Charges	56,655	51,000	(5,655)	73,000
Election Expenses	1,666	10,000	8,334	19,000
Bar Center Taxes	23,435	23,435	0	48,000
Auditors	28,575	28,000	(575)	28,000
Legal Service	2,845	9,500	6,655	12,000
Chicago Office Expense	80,280	95,000	14,720	140,000
TOTAL	$4,322,410	$4,361,801	$39,391	$5,516,015

	ACTUAL APRIL 2012	BUDGET APRIL 2012	BUDGET DIFFERENCE	BUDGET 2011/2012
PUBLICATIONS				
Bar Journal	$161,133	$177,094	$15,961	$214,000
Unrelated Income Tax	4,000	4,000	0	10,000
Illinois Lawyer Now	16,476	16,476	0	22,000
E-Clips	22,789	22,789	0	33,000
Other Publications	2,912	3,142	230	5,000
Book Publications	34,354	30,000	(4,354)	33,000
TOTAL	$241,664	$253,500	$11,836	$317,000
GENERAL MEETINGS and TRAVEL				
Officers and Board	$153,497	$125,341	($28,156)	$180,000
Officer Stipends	25,000	25,000	0	30,000
ABA Meetings	48,218	45,000	(3,218)	45,000
Annual Meeting	0	0	0	50,000
Midyear Meeting	109,207	100,000	(9,207)	100,000
Other	0	2,000	2,000	2,000
Admission Ceremonies	6,175	6,175	0	9,500
Assembly	50,482	54,106	3,624	100,000
Newsletter Editors Conference	0	2,000	2,000	2,000
Chief Justice Reception	0	0	0	0
Senior Counsellor Ceremonies	6,917	10,000	3,083	10,000
Regional Member Events	4,262	4,000	(262)	4,000
Great Rivers Conference	11,775	12,500	725	12,500
Washington, D.C. Admission Ceremony	0	0	0	0
TOTAL	$415,533	$386,122	($29,411)	$545,000

PROGRAM EXPENSES	ACTUAL APRIL 2012	BUDGET APRIL 2012	BUDGET DIFFERENCE	BUDGET 2011/2012
Academy of Illinois Lawyers	$65	0	($65)	$0
Affiliated Bar Association Grants	4,125	4,125	0	5,000
Allerton House Conference	2,395	0	(2,395)	0
CLE Program Expense	259,763	312,149	52,386	450,000
ISBA Website and Internet Services	16,286	16,286	0	25,000
Judicial Evaluations Cook	6,678	20,000	13,322	20,000
Judicial Evaluations Downstate	2,996	4,000	1,004	4,000
Law School Programs	4,918	4,918	0	5,500
Lawyer Referral Service	12,017	18,500	6,483	21,500
Legal Tech Consultant	3,460	14,000	10,540	15,000
LRE Mock Trial	5,000	5,000	0	5,000
Legislation Other	16,351	30,000	13,649	42,000
Membership & Marketing	26,632	26,632	0	30,000
Membership Publications	8,933	8,933	0	10,000
Membership Advertising	26,802	32,828	6,026	45,000
Member to Member Directory	0	15,000	15,000	15,000
Fastcase Online Caselaw	123,196	128,000	4,804	128,000
Public Relations Other	25,718	29,000	3,282	44,000
Race Judicata Sponsorship	1,061	5,000	3,939	5,000
Cable TV Productions	16,172	18,000	1,828	23,000
Public Relations Consultant	51,652	51,652	0	70,000
Strategic Marketing Campaign	480,880	410,880	(70,000)	425,000
Solo and Small Firm Conference	76,149	70,000	(6,149)	70,000
Unauthorized Practice of Law	247	7,969	7,722	10,000
Young Lawyers Division	9,850	9,850	0	11,000
TOTAL	$1,181,346	$1,242,722	$61,376	$1,479,000

COMMITTEE EXPENSES	ACTUAL APRIL 2012	BUDGET APRIL 2012	BUDGET DIFFERENCE	BUDGET 2011/2012
AR & DC Committee	$1,699	$2,648	$949	$4,500
Bar Services and Activities Committee	6,265	8,905	2,640	15,000
Budget & Audit	334	682	348	1,500
CLE Programs Committee	8,351	14,177	5,826	19,000
Corrections and Sentencing	2,853	4,500	1,647	7,000
Delivery of Legal Services	2,323	4,367	2,044	7,000
Disability Law Committee	1,979	4,951	2,972	5,000
Education, Admission & Competence	1,057	1,500	443	3,000
Government Lawyers Committee	1,803	2,864	1,061	5,000
IBJ Editorial Board	4,000	5,775	1,775	8,000
Investment Committee	97	97	0	500
J. A. Polls Committee	3,508	3,508	0	8,000
Judicial Evaluations Committee-Outside Cook	11,273	9,000	(2,273)	15,000
Judicial Evaluations-Cook	1,358	1,000	(358)	3,000
Law Office Management and Economics	2,764	3,750	986	7,000
Law School Committee	5,301	6,200	899	7,000
Law Related Education for the Public	2,860	6,000	3,140	9,000
Legal Technology	2,979	5,000	2,021	12,500
Legislation Committee	2,794	3,000	206	4,500
Mental Health	8,959	3,500	(5,459)	6,500
Mentoring Committee	1,296	2,500	1,204	3,500
Military Affairs	1,948	1,948	0	4,000
Racial & Ethnic Minorities and the Law	2,057	4,500	2,443	9,000
Other Committee Expense	515	515	0	3,000
Professional Conduct	4,818	4,818	0	6,000

COMMITTEE EXP. CONTINUED	ACTUAL APRIL 2012	BUDGET APRIL 2012	BUDGET DIFFERENCE	BUDGET 2011/2012
Public Relations	$3,441	$4,919	$1,478	$8,000
Scope & Correlation	117	400	283	500
Sexual Orientation and Gender Identity	5,821	9,500	3,679	14,000
Strategic Marketing for ISBA Members	3,580	4,000	420	6,000
Supreme Court Rules	0	500	500	500
Task Force on IL Lawyer Finder	1,596	3,000	1,404	3,000
Tone and Conduct Committee	4	500	496	500
Women and the Law Committee	2,376	3,000	624	6,000
Unauthorized Practice of Law	3,382	4,000	618	4,500
Diversity Leadership Council	8,971	6,000	(2,971)	10,000
Diversity Pipeline Committee	563	2,500	1,937	5,000
S.C. on Franchise and Distribution	0	1,000	1,000	1,000
Special Committee on Solo Small Firm Conf.	302	750	448	1,000
Task Force - Limited Scope Representation	0			
TOTAL COMMITTEE EXPENSES	$113,344	$145,775	$32,431	$233,500

SECTION EXPENSES	ACTUAL APRIL 2012	BUDGET APRIL 2012	BUDGET DIFFERENCE	BUDGET 2011/2012
Administrative Law	$670	$1,872	$1,202	$3,500
Agricultural Law	7,981	8,740	759	13,500
Alternative Dispute Resolution	3,555	5,500	1,945	10,000
Animal Law	2,269	4,500	2,231	6,500
Antitrust & Unfair Competition Law	680	1,580	900	2,000
Bench & Bar	5,946	10,000	4,054	16,000
Bus. Advice & Fin. Planning	2,406	3,500	1,094	6,000
Child Law	1,040	2,500	1,460	4,500
Civil Practice & Procedure	8,224	13,000	4,776	21,000
Commercial Banking & Bankruptcy	10,252	6,500	(3,752)	11,000
Construction Law	2,675	2,675	0	4,500
Corporate Law Department	1,306	2,500	1,194	5,500
Business & Securities Law	1,902	4,000	2,098	8,500
Criminal Justice	5,445	8,000	2,555	16,500
Education Law	2,726	5,000	2,274	8,000
Elder Law	7,908	14,000	6,092	23,000
Employee Benefits	1,263	2,000	737	4,500
Environmental Law	2,631	4,750	2,119	9,500
Family Law	14,148	20,000	5,852	34,000
Federal Practice	2,639	2,942	303	6,000
Federal Taxation	3,263	5,500	2,237	9,000
General Practice Solo & Small Firm	4,673	7,500	2,827	11,000
Health Care	9,605	11,159	1,554	13,500
Human Rights	5,714	6,500	786	11,000
Insurance Law	1,679	2,847	1,168	5,000

SECTION EXP. CONTINUED	ACTUAL APRIL 2012	BUDGET APRIL 2012	BUDGET DIFFERENCE	BUDGET 2011/2012
Intellectual Property	$1,138	$1,632	$494	$3,000
International & Immigraton Law	720	2,000	1,280	5,500
Labor and Employment Law	3,461	4,500	1,039	8,000
Local Government	3,876	5,500	1,624	10,000
Mineral Law	4,282	5,000	718	6,000
Other	0	1,000	1,000	1,000
Energy, Utilities, Telecommunications, and Transportation	650	1,000	350	2,500
Real Estate Law	11,066	12,136	1,070	20,000
Senior Lawyers	3,657	4,000	343	7,500
State and Local Taxation	2,789	2,789	0	5,000
Tort Law	7,390	11,000	3,610	17,000
Traffic Laws and Courts	3,473	3,473	0	7,000
Trusts and Estates	4,969	8,000	3,031	14,000
Workers' Compensation	8,587	9,711	1,124	14,000
Young Lawyers Council	9,990	12,000	2,010	19,000
TOTAL SECTION EXPENSE	$176,648	$240,805	$64,157	$403,000

ILLINOIS STATE BAR ASSOCIATION
COMPARATIVE BALANCE SHEET

	April 30, 2012	April 30, 2011
Current Assets:		
Cash and Petty Cash	$249,476	$175,866
Certificates of Deposit	507,419	653,930
Money Market Investments	401,110	911,784
Accounts Receivable	56,301	55,877
Accrued Interest Receivable	14	1,079
Prepaid Expenses & Other Assets	116,816	186,836
Total Current Assets	$1,331,136	$1,985,372
Long Term Assets:		
Investments	$3,483,773	$4,810,186
Fixed Assets:		
Cost (Net of Depreciation)	$2,660,403	$1,262,501
Total Assets	$7,475,312	$8,058,059
Current Liabilities:		
Accounts Payable	$278,344	$299,686
ICB & LRS Deferred Income	21,461	21,603
Dues & Section Deferred Income	34,003	54,009
Other Deferred Income	314,191	314,094
Total Current Liab.	$647,999	$689,392
Designated Fund Balance		
Building Expansion Fund	$1,448,924	$1,448,924
Building Maintenance Fund	33,168	33,168
General Contingency Fund	858,700	858,700
Total Designated Fund Balance	$2,340,792	$2,340,792
Undesignated Fund Balance	$4,486,521	$5,027,875
Total Liabilities and Fund Balance	$7,475,312	$8,058,059

ILLINOIS STATE BAR ASSOCIATION
INVESTMENTS AS OF 4/30/2012

INSTITUTION	PURCHASE DATE	MATURITY DATE	INTEREST RATE	AMOUNT
EVERBANK ISLANDIA, NY	5/28/2011	5/28/2012	1.00	105,248
NEXITY BANK/ALOSTAR BIRMINGHAM, AL	6/21/2011	6/21/2012	1.26	202,172
SECURITY BANK SPRINGFIELD, IL	8/24/2011	6/24/2012	0.70	200,000
FIDELITY INVESTMENT (Sweep Account)			0.01	9,640
CENTENNIAL BANK			0.80	52,584
BANK OF SPRINGFIELD			0.50	243,409
TRISTATE CAPITAL BANK			0.05	2,541
GOLDWATER BANK			0.46	2,773
INTERVEST NATIONAL BANK			0.50	4,920
BANK OF AMERICA			0.08	5,135
SECURITY BANK			0.20	3,041
EDWARD JONES			0.01	5,217
MERRILL LYNCH			0.01	5,002
NATIONWIDE BANK			0.40	50,915
MARINE BANK			0.20	10,410
CARROLLTON BANK			0.25	5,523

Assembly

June 16, 2012

Agenda Item 8
Elections

Katherine A. Amari O'Dell

Katherine A. Amari O'Dell is a senior associate with The Law Offices of Amari & Locallo with a practice confined exclusively to handling real estate tax assessment and related matters for commercial, industrial and multi-unit residential property owners in Illinois and on a national basis.

Katherine graduated from The John Marshall Law School in 2000 and is a Past President of the John Marshall Law School Alumni Association. The Alumni Association also awarded her The Distinguished Service Award in May of 2006. Its Board of Trustees recognized her significant contributions to the school with its prestigious Spirit Award earlier this year at a reception in April.

Katherine began her career at the Cook County State's Attorney's Office in the real estate tax department of the Civil Division. She defended cases for the Cook County Treasurer's Office, the Cook County Clerk's Office, the Cook County Board of Review and the Cook County Assessor's Office, including Specific Objection lawsuits, Property Tax Appeal Board cases, Indemnity lawsuits as well as tax sale and tax deed matters.

Katherine is a member of the Illinois State Bar Association, serving her third elected term as a member of the ISBA General Assembly. Katherine is the past President of the Justinian Society of (Italian) Lawyers. Katherine began her membership with the Justinian Society in 2001, as a second year law student. She is also the associate editor of the Society newsletter.

In 2007, Katherine was selected by the Law Bulletin Publishing Company as one of "40 Illinois Attorneys Under 40 to Watch."

Katherine is married to Jason E. O'Dell. They live in Chicago and are the proud parents of Jason Jr., age 4.

Assembly

June 16, 2012

Agenda Item 9B
Animal Law

Memorandum In Support of and Seeking ISBA Co-sponsorship of Tort, Trial, and Insurance Practice Section's Recommendation

Re: Due Process and Comprehensive Dangerous Dog Laws

The following Recommendation was approved by the ABA TIPS Council in February and will be considered by the ABA House of Delegates in August in Chicago.

AMERICAN BAR ASSOCIATION
TORT TRIAL AND INSURANCE PRACTICE SECTION
REPORT TO THE HOUSE OF DELEGATES
RECOMMENDATION

RESOLVED, that the American Bar Association urges all state, territorial, and local legislative bodies and governmental agencies to enact comprehensive breed-neutral dangerous dog/reckless owner laws that ensure due process protections for owners, encourage responsible pet ownership and focus on the behavior of both individual dog owners and dogs, and to repeal any breed discriminatory/specific provisions.

The Animal Law Section Council requests that the ISBA support this resolution and agree to be a co-sponsor. On April 16, 2012, the section council unanimously approved the resolution and authorized this request of the Association.

This Recommendation is consistent with current Illinois state law, 510 ILCS 5 dealing with potentially dangerous, dangerous, and vicious dogs in that it urges governmental bodies to enact comprehensive breed-neutral dangerous dog/reckless owner laws that

- Ensure due process protections for owners
- Encourage responsible pet ownership that focus on the behavior of both individual dog owners and dogs
- Repeal any breed discriminatory provisions

The Due Process recommendation is needed because throughout the U.S. many municipal dangerous dog ordinances have been declared unconstitutional because of procedural or substantive due process issues. Constitutionally valid and comprehensive breed-neutral ordinances protect the rights of dog owners and promote public safety.

Indeed, Ohio HB 14 was signed into law on February 21, 2012, repealing Ohio's vicious dog law that declared all "pit bulls" as vicious and replacing it with a comprehensive dangerous dog/reckless owner statute. Twelve states including Illinois have state laws prohibiting canine profiling. 510 ILCS 5/24

There have been numerous newspaper reports regarding courts striking down dangerous dog ordinances.

- 2007-Spokane, Washington

Spokane's "dangerous dog" ordinance is unconstitutional because it denies pet owners the right of due process, a Superior Court judge said today in a ruling that may have far-reaching effects.

"As a matter of law, the administrative procedures used in the City of Spokane regarding 'dangerous dog' determinations and appeals from those determinations violated due process rights both on their face and as applied," Judge Robert Austin said in his ruling.

It came in the case of Patty Schoendorf, a 57-year-old resident of the city's West Central neighborhood. Her two dogs, a 1 ½-year-old boxer and golden Lab mix and a 4-year-old border collie and black Lab mix, were impounded in mid-August by SpokAnimal officers, working under a city animal control contract.

Animal control officers alleged her two dogs killed a neighborhood cat, but Schoendorf says the contract dog catchers grabbed the wrong black and tan dogs. She says she was given no opportunity to make that case before a city hearing examiner.

- 2007-Port St. Lucie, Florida

  After more than two years on a canine equivalent of death row, Liner was returned to his Port St. Lucie owners Wednesday because an appeals court ruled the city's law that declared the dog vicious is unconstitutional.

"This is the best Christmas present ever, to get Liner back home," Larry Ciaccio said as he and his wife, Lisa Ciaccio, picked up the pit bull mix at Safe Harbor Animal Sanctuary and Hospital in Jupiter.

Having Liner confiscated, he said, "was like having your child taken away."

Liner's case began in January 2005, when Port St. Lucie Animal Control officers responded to a report he and another of the Ciaccios' dogs, Boss, were loose and fighting each other. Animal Control declared Liner "vicious." Boss, who had earlier been declared vicious, was confiscated and euthanized.

Under a Port St. Lucie ordinance, said Marcy LaHart, a West Palm Beach attorney representing the Ciaccios, a dog deemed vicious is subject to a host of restrictions, "and if the dog and the owner don't comply, the law says the city can come in, seize the dog and kill it."

In September 2005, Liner reportedly chased a woman and her son riding bicycles past Larry Ciaccio's business, and the dog was confiscated by Animal Control, LaHart said.

- December 2011-Pierce County, Washington

A state appeals court has declared unconstitutional Pierce County's dangerous-dog ordinance, ruling the law meant to protect the public from vicious animals violates the due-process rights of their owners.

A panel of the Division II court of Appeals issued an opinion last week calling the fees unconstitutional. The three-judge panel ruled unanimously that the fees could deprive people who can't afford to pay them the right to challenge the county's unilateral declaration of their dogs as dangerous.

"Requiring the responding party to pay a fee to access any review of a government-initiated action could prevent many people from obtaining the review they are legally entitled to before deprivation of a property-interest." Justice Jill Johanson wrote for the court. Judges David Armstrong and Marywave Van Deren also signed the opinion. Bellingham attorney Adam Karp, who represented a Pierce County woman who challenged the law, summed it up this way: "You shouldn't have to purchase justice." The panel also ruled the county's process for deeming an animal dangerous is not rigorous enough, making it too easy for

Government officials to declare an animal vicious. Karp said the ruling could have repercussions for other governments that charge fees before giving dog owners a hearing to challenge their animals' "dangerous" designations.

ABA REPORT

Introduction and Current Legal Landscape

Breed-discriminatory measures, sometimes referred to as breed-specific measures, distinguish dogs of one or more specific breeds, along with dogs presumed to mixes of those breeds, as inherently dangerous because of the dog's physical appearance. Often these provisions will describe the most common physical characteristics of the breed, or they will refer to the American Kennel Club or United Kennel Club's description. Dogs within the community are judged by these physical characteristics. If a certain number of features are present in a particular dog, the dog is presumed to be a member of the breed or, in the case of mixed-breed

dogs, of that breed's heritage and is classified as dangerous per se. The consequences of this classification vary greatly. Some laws ban the ownership, keeping or harboring of dogs of certain breeds or appearance, other laws place onerous restrictions on the dogs and their owners. These restrictions can include requiring sterilization, micro-chipping, prescribed enclosures, muzzling, special leashes, specific collars, detailed signage, training and a minimum age of the person who can walk the dog. The dogs affected by these laws have not actually shown dangerous behaviors; the dogs just appear to be of a certain breed or heritage.

Breed-discriminatory laws occasionally are proposed and sometimes passed by local governments. These proposals usually come after a well-publicized and emotional dog bite incident within or near the local community and are best described as "panic policymaking."[1] Because these laws are enacted out of emotion, lawmakers often fail to consider the effects of provisions that impact the property rights of responsible dog owners and can involve the seizing and destroying of property (family pets) simply because their dog is of the targeted breed, heritage, or appearance.

Currently twelve states avoid panic policymaking by prohibiting breed discriminatory measures.[2] Only one state, Ohio, previously defined one or more breeds of dogs as "vicious."[3] In February 2012, the State of Ohio enacted legislation that repealed that designation and establishing a generic dangerous dog law based on behavior. In addition, many national public health and animal welfare organizations publicly oppose breed-discriminatory legislation, including the American Humane Association,[4] American Kennel Club,[5] American Society for the Prevention

---

[1] Susan Hunter and Richard A. Brisbin, Jr., *Panic Policy Making: Canine Breed Bans in Canada and the United States*, 1, Prepared for delivery at the 2007 Annual Meeting of the Western Political Science Association (2007).

[2] CAL. AGRIC. CODE §31683 (West 2009) (provided, however, that California law does allow local authorities to enact breed specific ordinances pertaining only to mandatory spay or neuter programs under certain circumstances – CAL. HEALTH & SAFETY CODE §§ 122330 and 122331); COLO. REV. STAT. ANN. §18-9-204.5(5)(b) (West 2009); FLA. STAT. ANN. §767.14 (West 2009); **510 ILL. COMP. STAT. 5/24 (2009);** MINN. STAT. ANN. §347.51 (West 2009); N.J. STAT. ANN. § 4:19-36 (West 2009); N.Y. AGRIC. & MKTS. LAW §107(5) (McKinney 2009); OKLA. STAT. ANN. tit. 4, §46(B) (West 2009); PA. CONS. STAT. ANN. § 459-507-A(c) (West 2009); TEX. HEALTH & SAFETY CODE ANN. § 822.047 (Vernon 2009); VA. CODE ANN. §3.2-6540(C) (West 2009).

[3] OHIO REV. CODE ANN. § 955.11 (A)(4)(a)(iii) (West 2010) (providing that a dog is vicious if it "[b]elongs to a breed that is commonly known as a pit bull dog").

[4] American Humane Association, Animal Protection Position Statements 9 (2009), http://www.americanhumane.org/assets/pdfs/animals/au-animal-welfare-position-statements.pdf (last visited July 26, 2011) ("American Humane opposes legislation that seeks to ban a particular breed of dog. Such laws provide a false sense of security as all dogs, when improperly treated or trained, can present a risk to public health.")

[5] American Kennel Club, Canine Legislation Position Statements 7 (2008), http://www.akc.org/pdfs/canine_legislation/PBLEG2.pdf (last visited July 26, 2011) ("The American Kennel Club strongly opposes any legislation that determines a dog to be 'dangerous' based on specific breeds or phenotypic classes of dogs.")

of Cruelty to Animals,[6] American Veterinary Medical Association,[7] Association of Pet Dog Trainers,[8] Best Friends Animal Society,[9] the Humane Society of the United States[10] and the National Animal Control Association,[11] or promote breed-neutral approaches to reducing dog bites like the Centers for Disease Control.[12]

Public safety and property rights are safeguarded when governmental entities target a specific dog or dog owner's behavior, not appearance.

Due Process

A primary reason this recommendation calls for the repeal of breed-discriminatory laws is that such laws are inconsistent with traditional notions of due process. Fundamental principles of due process require that laws provide adequate notice to the public and to the officers charged with

---

[6] American Society for the Prevention of Cruelty to Animals – Position Statement on Breed-Specific Legislation, http://www.aspca.org/about-us/policy-positions/breed-specific-legislation-1.aspx (last visited July 26, 2011).

[7] American Veterinary Medical Association, Dangerous Animal Legislation http://www.avma.org/issues/policy/dangerous_animal_legislation.asp (last visited July 26, 2011) ("The AVMA supports dangerous animal legislation by state, county, or municipal governments provided that legislation does not refer to specific breeds or classes of animals.")

[8] Association of Pet Dog Trainers, Breed Specific Legislation, Association of Pet Dog Trainers Position Statement, 2001, http://www.apdt.com/about/ps/breed_specific_legis.aspx (last visited July 26, 2011) ("The APDT opposes any law that deems a dog as dangerous or vicious based on appearance, breed or phenotype. Canine temperaments are widely varied, and behavior cannot be predicted by physical features such as head shape, coat length, muscle to bone ratio, etc. The only predictor of behavior is behavior.")

[9] Best Friends Animal Society, Pit Bull Terrier Initiatives, http://network.bestfriends.org/initiatives/pitbulls/default.aspx (last visited July 26, 2011) ("Best Friends Animal Society is working throughout the country to help pit bulls, who are battling everything from a media-driven bad reputation to legislation designed to bring about their extinction. Best Friends hopes to end discrimination against all dogs. Dogs are individuals and should be treated as individuals.")

[10] Humane Society of the United States, Dangerous Dogs and Breed Specific Legislation (2010), http://www.humanesociety.org/animals/dogs/facts/statement_dangerous_dogs_breed_specific_legislation.html (last visited July 26, 2011) ("The HSUS opposes legislation aimed at eradicating or strictly regulating dogs based solely on their breed for a number of reasons.")

[11] National Animal Control Association, Extended Animal Control Concerns – Dangerous/Vicious Animals (2002), http://www.nacanet.org/guidelines/Guidelines%20Dangerous_Vicious%20Animals.pdf (last visited July 26, 2011) ("Dangerous and/or vicious animals should be labeled as such as a result of their actions or behavior and not because of their breed.")

[12] The Centers for Disease Control, Injury Prevention and Control: Home & Recreational Safety, Dog Bite Fact Sheet (2008) http://www.cdc.gov/HomeandRecreationalSafety/Dog-Bites/dogbite-factsheet.html (last visited July 26, 2011) ("Many practical alternatives to breed-specific policies exist and hold promise for preventing dog bites.")

their enforcement in order to prevent arbitrary and discriminatory application of the law. Breed discriminatory legislation often vaguely define the targeted breed. For example, the recently revised Ohio statute previously defined a vicious dog as a dog that "belongs to a breed that is commonly known as a pit bull dog."[13] This type of definition raises serious problems for owners and enforcement authorities because there is no clear guidance as to which dogs fall into such category. The identifier "pit bull" does not refer to a single or recognized breed of dog. It covers a genetically diverse group of dogs, including, at minimum, American Pit Bull Terriers, American Staffordshire Terriers, and Staffordshire Bull Terriers, and dogs presumed to be mixes of one or more of those breeds. It is a slang term used to describe an ever increasing group of dogs that fit an ever evolving set of physical characteristics. "Pit bull," as now employed by shelters, rescues, animal control agencies, politicians and municipalities, most often describes dogs of unknown origin.

Moreover, even if the breed is more specifically defined in the legislation, it is very difficult to determine the breed of a dog based on its appearance. As described in more detail below, even trained individuals often misidentify the breed of a dog. Since a pit bull type dog is not an official breed of dog but rather refers to a dog from a variety of official breeds and/or a dog that merely has certain physical characteristics of those breeds, the chance for error is greatly increased. The result is a vague standard that fails to provide adequate notice to owners that they may own such a dog. Moreover, the definition allows for far too much discretion by officials in identifying a dog as falling within the definition and results in the subjective and hence arbitrary enforcement of the law.[14] The definition's vagueness offends due process because a "vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis, with attendant dangers of arbitrary and discriminatory application." *Grayned v. City of Rockford,* 408 U.S. 104, 108-09 (1972) (footnote omitted).

Economics

A second reason this recommendation calls for the repeal of breed-discriminatory laws and the implementation of strong, breed-neutral laws is because dangerous dog laws with breed discriminatory provisions are very expensive to enforce. In 1997, Prince George's County in Maryland enacted CB-104-1996, which banned pit bull terrier type dogs. In 2002, CR-68-2002 created the Vicious Animal Legislation Task Force to evaluate the effectiveness of existing

[13] OHIO REV. CODE ANN. § 955.11 (A)(4)(a)(iii) (West 2010). Legislation was enacted in February 2012 that deleted the reference to pit bull dogs in the definition of "vicious" in Ohio law. Ohio state law is now breed neutral and considers the behavior of the dog in determining whether a dog should be deemed dangerous or vicious. H.B. 14, 129th Gen. Assemb. (Ohio 2012).

[14] *See e.g.* American Dog Owners Assoc. v. City of Lynn, 533 N.E.2d 632 (Mass. 1989) (finding the law unconstitutional and stating that it "depends for enforcement on the subjective understanding of dog officers of the appearance of an ill-defined "breed," [and] leaves dog owners to guess at what conduct or dog "look" is prohibited . . . . Such a law gives unleashed discretion to the dog officers charged with its enforcement, and clearly relies on their subjective speculation whether a dog's physical characteristics make it what is "commonly understood" to be a "Pit Bull.").

legislation and administrative regulations concerning vicious animals and to advise the county on improvements and amendments to current policies or laws.[15] The task force found that the cost to the Animal Management Division for maintenance of pit bull terrier type dogs over a two-year period was approximately $560,000. The task force concluded that the breed-discriminatory policy was inefficient, costly, difficult to enforce, subjective and questionable in results. It recommended repealing the breed-specific ban.[16]

Despite these findings, Prince George's County has yet to repeal its breed ban. The county seizes and impounds more than 900 pet "pit bulls" per year. On average, more than 80 percent of the dogs impounded are maintained by the Animal Management Division throughout a lengthy hearing process and eventually euthanized, not because of any dangerous propensities, but solely because of their appearance.[17]

In 2009, Best Friends Animal Society commissioned a study entitled "The Fiscal Impact of Breed Discriminatory Legislation in the United States."[18] The study estimates the number of canines in every community in the country based on federal government data. The model correlates a wide range of demographic and geographic variables, all of which are available at the community level, with known canine populations in thirteen jurisdictions utilizing non-linear programming techniques. In other words, the model minimizes the differences between actual and predicted canine populations in the control cities by estimating coefficients across a wide range of available data.

Using this model, the analysis determined that the number of dogs in a specific town is a function of the total number of households, total population, physical land area, the structural type of housing, the gender and ethnic mix of the community, the poverty rate, and the marriage rate.[19]

Once the total number of dogs is estimated, the number of pit bull terrier type dogs is calculated using national estimates of the number of dogs affected by the breed-discrimination legislation.[20] When the model was developed, it was estimated that there are 72,114,000 dogs in the United States, with an estimated 5,010,934 pit bull terrier type dogs.[21] Note that these are not genetic American Pit Bull Terriers, American Staffordshire Terriers or Staffordshire Bull Terriers, the

---

[15] Vicious Animal Legislation Task Force, REPORT OF THE VICIOUS ANIMAL LEGISLATION TASK FORCE 2 (2003) (Presented to Prince George's County Council, July 2003).
[16] *Id*. at 5.
[17] *Id*. at 6.
[18] John Dunham & Assoc., Inc., *The Fiscal Impact of Breed Discriminatory Laws in the United States*, May 13, 2009, http://www.guerrillaeconomics.biz/bestfriends/best%20friends%20methodology%20and%20write%20up.pdf (last visited Aug. 1, 2011).
[19] *Id*. at 4.
[20] *Id*. at 2. (This was an average of 6.9 percent, and was calculated from local and national statistics found on media reports, animal activist reports, federal government reports, and from dog-bite victims groups.)
[21] *Id*.

breeds of dogs typically defined as "pit bulls," but rather dogs that may be identified as pit bull terrier type dogs simply due to their size and shape, which are the dogs typically netted by breed-discriminatory laws.

According to the study, if the United States were to enact a breed-discriminatory law, it would cost $459,138,163 to enforce annually.[22] The fiscal cost of a breed-discriminatory law in the District of Columbia alone would be $965,990 annually.[23] The costs include those related to animal control and enforcement, kenneling and veterinary care, euthanasia and carcass disposal, litigation from residents appealing or contesting the law, and DNA testing. Other costs not included in this estimate may vary depending on current resources available to a specific community's animal control program. They may include additional shelter veterinarians, increased enforcement staffing, and capital improvements associated with increased shelter space needed.

Efficacy

This recommendation calls for the implementation of strong, breed-neutral laws because dangerous dog laws with breed-discriminatory provisions are ineffective at improving public safety. Several studies have been conducted on the topic of the impact and effectiveness of laws that regulate dogs based on breed or appearance instead of behavior. .

The United Kingdom banned "pit bulls" in 1991. One study examined the U.K.'s Dangerous Dog Act and concluded that the ban had no effect on stopping dog attacks.[24]

A more recent study compared dog bites reported to the public-health department of Aragon, Spain, for the five-year period before the 1999 implementation of the city's Dangerous Dog Act and the five-year period after.[25] The Act targeted a variety of breeds. The allegedly dangerous breeds accounted for 2.4 percent of the dog bites before the breed-discriminatory law was introduced and 3.5 percent of the dog bites after the law was implemented. The authors state that the "results suggest that BSL was fundamentally flawed … [and] not effective in protecting people from dog bites in a significant manner."[26]

---

[22] *Id*.
[23] http://www.guerrillaeconomics.biz/bestfriends/ (Select state; then "calculate." The cost to other individual cities and counties can be determined online by using the study's fiscal impact calculator).
[24] B. Klaassen, J.R. Buckley & A. Esmail, *Does the Dangerous Dog Act Protect Against Animal Attacks: A Prospective Study of Mammalian Bites in the Accident and Emergency Department,* 27(2) INJURY 89-91 (1996) (examining incidents seen at one urban accident and emergency department before the implementation of the act and again two years later).
[25] B. Rosado et al., *Spanish: Dangerous Animals Act: Effect of the Epidemiology of Dog Bites,* 2(5) JOURNAL OF VETERINARY BEHAVIOR 166-74 (2007).
[26] *Id*. at 172.

In 2007, the Netherlands repealed a "pit bull" ban that had been in place for 15 years because it had failed to reduce the incidence of dog bites.[27] As part of the evaluation that led to repeal, the government had commissioned a study of dog bites in the country. The authors had reported to the government a "mismatch between risk indices and the then-current legislation." As opposed to regulating dogs on the basis of breed or appearance, the authors recommended "a better understanding of how to handle dogs."[28]

A recent study published in the Journal of the American Veterinary Medical Association, employing the "number needed to treat" methodology relied upon in evidence-based medicine, proposes one possible explanation of the lack of public safety results. Based upon the authors' analysis of dog-bite-injury data obtained from multiple jurisdictions across the US and estimates of the "breed" populations of the nation's canines, the authors calculated that serious injury from dogs is so infrequent that authorities would have to remove approximately 100,000 dogs of a targeted group from a community in order to prevent one serious bite.[29]

These published studies are consistent with a 2009 article discussing the effect of the Denver, Colorado breed discriminatory law.[30] Twenty years after the ban was enacted, the director of Denver Animal Control admitted that he is unable to say with any certainty whether it has made Denver any safer. Labrador Retrievers – the most popular dog breed – are the most likely dog to bite in the Denver metropolitan area.[31]

As stated above, several agencies and organizations have published policies that disagree with the implementation of breed discriminatory provisions. The Centers for Disease Control (CDC) reached this conclusion after conducting a study of human fatalities resulting from dog bites. The CDC noted many other factors beyond a dog's breed may affect a dog's tendency toward aggression – such as reproductive status, heredity, sex, early experience, and socialization and training. Author Karen Delise, a leading authority on dog bite-related fatalities in the United States, distinguishes between what she describes as resident dogs--dogs whose owners maintain them exclusively on chains, in kennels, or in yards; and/or obtain them for negative functions (such as guarding, fighting, protection, and irresponsible breeding) and family dogs--dogs whose

---

[27] Expatica.com, Dutch Agriculture Minister Scraps Pit Bull Ban (June 11, 2008) http://www.expatica.com/nl/news/local_news/Dutch-Agriculture-Minister-scraps-pit-bull-ban.html (last visited July 24, 2011.)

[28] Cornelissen, J.M.R., Hopster, H., *Dog bites in The Netherlands: A Study Of Victims, Injuries, Circumstances And Aggressors to Support Evaluation of Breed Specific Legislation*, 186(3) THE VETERINARY JOURNAL 292-8 (2009).

[29] Patronek, G., Slater, M., Marder, A., *Use of a Number-Need-To-Ban Calculation to Illustrate Limitations of Breed-Specific Legislation in Decreasing the Risk Of Dog Bite-Related Injury*, 237(7) JOURNAL OF THE AMERICAN VETERINARY MEDICAL ASSOCIATION 788 (October 1, 2010).

[30] Peter Marcus, *Do Dog Breed Bans Work?* DENVER DAILY NEWS, March 3, 2009 (on file with authors).

[31] Corona Research, *Dog Bites in Colorado: Report of Dog Bite Incidents Reported to Animal Control July 2007 - June 2008*, (2009), http://www.livingsafelywithdogs.org/; follow "Data on dog bites in Colorado: key findings and recommended action steps; full report," (last visited July 27, 2011).

owners afford them opportunities to learn appropriate behavior and to interact with humans on a regular basis in positive and humane ways,[32] rather than on breed

A result analogous to Delise's was reported by a team of university ethologists in 1997. Their study demonstrated that family dogs who were bonded closely with human beings stay closer to their guardians and are likelier to look to them for clues to dealing with unfamiliar and problem-solving situations and dealing with unfamiliar situations than are dogs not comparably bonded with people.[33]

The National Animal Control Association (NACA) has also issued guidelines that disapprove of ordinances that classify dogs as dangerous solely because of their breed and appearance.[34] Instead, NACA advocates for stringent enforcement of dangerous dog laws that classify dogs as dangerous based on a dog's individual behavior.[35] One of the reasons they established this policy was because dogs of all breeds are capable of being aggressive and dangerous.[36] Thus, focusing on just a single or a few breeds does not adequately protect the public and thus is not good legal policy.

Enforcement: Identifying dogs of unknown origin

A significant percentage of the US dog population is of mixed breed and undocumented origin.[37] Attempts to name the breed or breeds in undocumented mixed-breed dogs has been shown to correlate extremely poorly with DNA breed analysis of the same dogs. In a recent study, adoption agency personnel were asked to identify the breed or breeds comprising mixed breed dogs whose origins they did not know. Their identifications were then compared with DNA breed analysis of the same dogs. In only 25% of the dogs was at least one of the breeds proposed by the adoption agency personnel detected as a predominant breed by DNA analysis. In 87.5% of

---

[32] Karen Delise, THE PIT BULL PLACEBO: THE MEDIA, MYTHS AND POLITICS OF CANINE AGGRESSION 151, 168 (Anubis Publishing 2007).
[33] Topál,J, Miklósi,A, Csányi,V, *Dog-Human Relationship Affects Problem Solving Behavior in the Dog*, 10(4) ANTHROZOOS 214-224 (1997).
[34] National Animal Control Association, Extended Animal Control Concerns – Dangerous/Vicious Animals (2002), http://www.nacanet.org/guidelines/Guidelines%20Dangerous_Vicious%20Animals.pdf (last visited July 26, 2011) (stating "[d]angerous and/or vicious animals should be labeled as such as a result of their actions or behavior and not because of their breed").
[35] *Id*.
[36] *Id*.
[37] Janis Bradley, THE RELEVANCE OF BREED IN SELECTING A COMPANION DOG 11 (National Canine Research Council 2011) (reporting a majority of dogs in the United States are likely of mixed breed); Sandy Robins, *First Mutt Census Reveals Strong Dog DNA Trends*, TODAY, April 4, 2011, *available at* http://today.msnbc.msn.com/id/42380422/ns/today-today_pets_and_animals/t/first-mutt-census-reveals-strong-dog-dna-trends/# (last accessed Aug. 2, 2011) (reporting that more than half the dogs in the U.S. are mixed breed dogs).

the dogs, breeds were detected by DNA analysis that none of the adoption agency personnel named in their responses.[38]

The controlled-study result mirrors real-world outcomes. For example, in January of 2010, authorities in Brampton, Ontario seized two dogs, about whom there had been no complaint for running at large, aggression or biting, claiming that they satisfied the definition of "pit bull" as used in the Ontario breed-ban statute. The dogs were evaluated by an independent veterinarian who advised the city that the dogs did not satisfy the definition. After the dogs had been in the animal shelter for 97 days, they were released to their owners. According to the Brampton Guardian, the city expended approximately $43,000 in the matter of these two dogs.[39]

Impact on Individuals

This recommendation calls for the implementation of strong, breed neutral laws because breed-discriminatory laws not only infringe on property rights without demonstrated increase in public safety, but they also cause unintended hardship to responsible owners of dogs that happen to fall within the regulated breed. In a survey conducted by the American Pet Product Association, 70% of people considered their dog like a child or family member.[40] When a breed is banned, families are forced to choose between moving to another city or county, surrendering their family pet in order to comply with the law, or living in violation of the law. Dogs that are given up or seized under these laws are killed.

Some localities respond to this concern by enacting restrictions on the ownership of the breed rather than an all-out ban. However, complying with many of the restrictions typically included in these laws can be quite expensive, and thus the restrictions discriminate against economically disadvantaged dog owners. Veterinary services, including spaying, neutering, and micro-chipping can be costly. Building new fences to meet an enclosure requirement may also be beyond the financial capabilities of some responsible pet owners. These restrictions unfairly punish owners who are economically disadvantaged for whom the restrictions serve as a de-facto ban. Laws should not function to prevent economically disadvantaged individuals from owning pets.

Additionally, as society has become more mobile, these laws not only impact residents of the city with the breed-discriminatory law, but also residents of neighboring communities who pass through the city or travel to that city for their veterinarian, grooming establishment or boarding kennel. A very small minority of jurisdictions have included exceptions for individuals simply

---

[38] Victoria L. Voith, et al., *Comparison of Adoption Agency Breed Identification and DNA Breed Identification of Dogs*, 12 JOURNAL OF APPLIED ANIMAL WELFARE SCIENCE 253, 260 (2009) (suggesting with the discrepancy of opinion by shelters and identification by DNA, that it would be worthwhile to reevaluate the reliability of breed identification as well as the justification of current public and private policies pertaining to specific dog breeds).

[39] Pam Douglas, *Doggiegate Costs Thousands*, THE BRAMPTON GUARDIAN, July 24, 2010 *available at* http://www.bramptonguardian.com/news/cityhall/article/852169--doggiegate-cost-thousands (last accessed Aug. 2, 2011).

[40] AM. PET PRODS. ASS'N, 2009-2010 APPA NATIONAL PET OWNERS SURVEY 42 (2010).

passing through the city, but this does not help consumers of businesses within that city. Most laws either are silent on the issue, which implies that those travelling through the jurisdiction would have to meet all requirements, and a few others require that owners obtain permits for any trip into or through the city with their dog. The burden on dog owners and commercial establishments within the city and surrounding areas can be immense.

The impact that these laws can have on individuals with disabilities, however, is particularly harsh. Many individuals with disabilities use service dogs to help them. Many breeds of dogs, as well as mixed breeds, work as service dogs. Training dogs to be service animals is very time consuming and expensive; thus, simply replacing a dog is not an option. Recent cases have highlighted the conflict between breed-discriminatory laws and protections for persons with disabilities. For example, a recent class action suit was brought in the United States District Court of Colorado against the cities of Denver and Aurora who both have breed bans against pit bull type dogs and made no exceptions for service dogs.[41] In its recently enacted guidelines interpreting the Americans with Disabilities Act (ADA) [42] the Department of Justice ("DOJ") stated that it does not believe that it is either appropriate or consistent with the ADA to defer to local laws that prohibit certain breeds of dogs.[43] Such deference would have the effect of limiting the rights of persons with disabilities under the ADA who use certain service animals based on where they live rather than on whether the use of a particular animal poses a direct threat to the health and safety of others. According to the comments accompanying the new regulations, governmental entities have the ability to determine, on a case-by-case basis, whether a particular service animal can be excluded based on that particular animal's actual behavior or history--not based on fears or generalizations about an entire breed or breeds of dogs.[44]

Alternative, More Effective Provisions

Measures that protect the public from dogs that are actually dangerous have proven to increase public safety. Instead of discriminating against breeds of dogs, Calgary protects the public from all aggressive dogs, regardless of breed, through its Responsible Pet Ownership Bylaw. Pursuant to the city's bylaw, enforcement officers focus on public education and dole out stiff fines for

[41] Carlos Illescas, *Bans on Pit Bull Prompts Lawsuit*, THE DENVER POST, May 14, 2010, *available at* http://www.denverpost.com/recommended/ci_15082662 (last accessed Aug. 2, 2011). *See* Grider v. City and County of Denver, 2011 WL 721279 (D. Colo. 2011) (discussing a case where individuals with disabilities using trained service animals subject to breed bans alleged violations of Title II of the ADA). The court in this case specifically did not rule on the validity of the jurisdictions' ordinances but only considered whether the Plaintiffs in the case alleged facts sufficient to support the elements of the ADA claim. *Id*. at *2.
[42] Nondiscrimination on the Basis of Disability in State and Local Government Services, 75 Fed. Reg. 56164, 56177 (Sept. 15, 2010) (codified at 28 C.F.R. Pts 35 and 36).
[43] *Id*. at 56194.
[44] *Id*.

irresponsible dog owners. [45] According to the Calgary Herald, aggressive dog attacks are at the lowest level they have been in 25 years, despite a steady population growth.[46]

Illinois is one of twelve states that prohibit breed discrimination. Following a series of dog-related incidents, including two that received prominent media attention, the state's General Assembly debated a flurry of breed-discriminatory bills.[47] Because of these highly publicized dog bite-related incidents, legislators introduced bills that would have restricted a variety of dog breeds. Rather than passing breed-discriminatory laws, the Illinois General Assembly eventually passed comprehensive generic public-safety measures that targeted reckless owners and aggressive dog behavior.

The first was the Ryan Armstrong Act,[48] which mandates the sterilization of any dog found to be dangerous or vicious by temperament and increases penalties for people who own dogs that are declared dangerous or vicious and later injure someone. Significantly, the Ryan Armstrong Act prohibits municipalities or political subdivisions from passing any ordinance or regulation that is specific to breed.

Another type of effective animal control law targets negligent or reckless owners. In 2007, St. Paul, Minnesota, passed an ordinance that addressed such reckless dog owners.[49] St. Paul pet owners cited more than once for abusing or neglecting an animal cannot legally own another pet under the ordinance. Dog bites are down in St. Paul.[50] Similarly, Tacoma, Washington, enacted an ordinance regulating "problem pet owners."[51] A person who commits three or more animal-

---

[45] Calgary, Alta., Can., Bylaws 23M2006, *amended by* 48M2008, 49M2008 (2008).

[46] Sean Myers, *Calgary Dog Attacks Fall to Lowest Level in 25 Years: City a Leader in Reducing Canine Problems, Says Top Bylaw Officer*, Calgary Herald, Feb. 21, 2009, at B2. (2009 Animal Statistics for Calgary, Alberta can be found here: http://content.calgary.ca/CCA/City+Hall/Business+Units/Animal+and+Bylaw+Services/Animal+Services/Statistics/Animal+Statistics.htm (last visited Aug. 1, 2011)).

[47] Matt Wagner, *Mauled Kids Brignt Outcry for Dog Laws with Teeth*, SPRINGFIELD NEWS-LEADER (Springfield, MO), Oct, 5, 2003 at 1B. In 2001, 7-year-old Ryan Armstrong was mauled by a stray dog in Chicago. Armstrong had gotten off his bike to pet some puppies and was confronted by a fully grown unsterilized male Rottweiler. When Armstrong attempted to pet the Rottweiler, the dog bit him, nearly severing his thumb from his hand. Ryan also was bit on his chest and arm before friends were able to chase the dog away. *Id*. *See also* Richard Roeper, *For Woman Who Loved Dogs, a Fitting Memorial*, CHICAGO SUN-TIMES, Jan. 21, 2003, at 11 (Anna Cieslewicz, a 48-year-old pediatric nurse, was attacked and killed by two unsterilized male dogs in the Dan Ryan Woods in Chicago.)

[48] Illinois Public Act 93-0548, Ch. 8 (Il. 2003).

[49] St. Paul, Minn., CODE OF ORDINANCES §200.02 (2009).

[50] Steve Brandt, *Dog Bites Are Down in Minneapolis and St. Paul*, STAR TRIBUNE (Minneapolis), June 1, 2009, *available at* http://www.startribune.com/local/stpaul/46585887.html?page=1&c=7 (last accessed Aug. 2, 2011).

[51] Press Release, City of Tacoma, A Look at City of Tacoma News for the Week of Dec. 9, 2007, (Dec. 7, 2007) (on file with author) (discussing that members of the City Council to hear final

control violations in a 24-month period can be declared a problem pet owner and forced to surrender all of his or her animals.

Conclusion

The Tort Trial and Insurance Practice Section urges all state, territorial, and local legislative bodies and governmental agencies to enact comprehensive breed-neutral dangerous dog/reckless owner laws that ensure due process protections for owners, encourage responsible pet ownership and focus on the behavior of both individual dog owner and dogs, and to repeal any breed-discriminatory/specific provisions.

Respectfully submitted,

---

reading of the ordinance that would set penalties and define owners who repeatedly violate animal control laws as "problem pet owners").

GENERAL INFORMATION FORM

Submitting Entity: Tort Trial and Insurance Practice Section

Submitted By: Randy J. Aliment, Chair

1. Summary of Recommendation.

   This Recommendation is intended to address issues arising from canine profiling

2. Approval by Submitting Entity.

   Approved by the Council of the Tort Trial and Insurance Practice Section on February 3, 2012.

3. Has This or a Similar Recommendation Been Submitted to the House or Board Previously?

   No.

4. What Existing Association Polices are Relevant to This Recommendation and How Would They Be Affected By Its Adoption?

   Not applicable.

5. What Urgency Exists Which Requires Action at This Meeting of the House?

   Many cities and counties consider enacting or repealing breed discriminatory laws throughout the year.

6. Status of Legislation. (If applicable.) Not applicable.

7. Cost to the Association. (Both Direct and Indirect Costs)

   None.

8. Disclosure of Interest. (If applicable.)

   Not applicable.

9. Referral.

   This Report and Recommendation is referred to the Chairs and Staff Directors of all ABA Sections and Divisions.

10. Contact Person. (Prior to Meeting.)

Elise A. "Ledy" VanKavage
Chair, Animal Law Committee
Senior Legislative Attorney
Best Friends Animal Society
P.O. Box 313
Maryville, IL 62062
Phone: 618-345-8086
E-Mail: ledyv@bestfriends.org

Kara Gilmore
Manager and General Counsel
National Canine Research Council
433 Pugsley Hill Rd.
Amenia, NY 12501
Phone: 845-705-7880
E-Mail: kgilmore@ncrcouncil.com

Rebecca Huss
Co-Chair, Subcommittee on Companion Animals for Animal Law Committee
Professor of Law
Valparaiso University School of Law
656 S. Greenwich
Valparaiso, IN 46383
Phone: 219-465-7856
E-Mail: rebecca.huss@valpo.edu

Katie Bray Barnett
Co-Chair, Subcommittee on Companion Animals for Animal Law Committee
2140 Haskell Ave.
Lawrence, KS 66046
(785) 840-4488
krbb08@gmail.com

11. Contact Person. (Who Will Present the Report to the House.)

TBD

EXECUTIVE SUMMARY

1. Summary of the Recommendation

   This Recommendation calls for federal, state, territorial, and local legislative bodies and governmental agencies to enact comprehensive breed neutral dangerous dog laws based on behavior and to repeal any breed discriminatory provisions.

2. Summary of the Issue that the Recommendation Addresses

   The Recommendation is intended to address problems that arise when dangerous dog laws do not meet due process requirements.

3. Please Explain How the Proposed Policy Position Will Address the Issue

   This recommendation sets forth actions that legislative bodies and governmental agencies can take to pass effective dangerous dog laws.

4. Summary of Minority Views or Opposition Which Have been Identified

   Some political subdivisions have enacted breed discriminatory ordinances because they believe they can identify the heritage of a dog by physical characteristics and that the heritage of a dog controls the dog's behavior.

ISBA MUTUAL
INSURANCE COMPANY

Assembly

June 16, 2012

Information Items
ISBA Mutual Insurance

ISBA MUTUAL
INSURANCE COMPANY

ISBA MUTUAL INSURANCE COMPANY
REPORT TO THE ISBA ASSEMBLY
June 16, 2012
By Jon W. DeMoss, President & CEO

Two Thousand eleven was another very good year for our company. Favorable operating results allowed us to pay a 10% dividend to our policyholders. This was the seventh year in a row that we have paid a dividend. Checks for the 2011 dividend were mailed to our policyholders in February 2012. Our company is practically unique among professional liability insurers in the payment of a dividend.

We finished 2011 with just over $17 million in gross written premium. Over $900,000 of this amount was from new business, which was a slight increase from 2010. Our policyholders' surplus rose to $29.85 million, even after the payment of the dividend, which represents an all time high for our company. We benefited from slightly over $2 million in investment income while maintaining the value of our investment portfolio.

Our company's stability in the current challenging economic climate has been looked upon favorably by A.M. Best. Best affirmed our "A" (excellent) rating with a stable outlook last November.

Two thousand twelve continues our experience in 2011. Both our gross written premium level and our surplus are up slightly. After the first quarter of this year, our surplus stood at slightly over $31 million. We are receiving income on our invested assets consistent with recent years and the value of our portfolio has increased slightly. We have held our base rates stable for many years and do not expect any need for an increase in the foreseeable future.

We are happy to be the principal sponsor of Fastcase which is provided free of charge to all ISBA members and we continue to sponsor many other worthwhile ISBA activities including events at the Annual and Mid-Year Meetings. We are looking forward to continuing as a major sponsor of the annual ISBA Solo and Small Firm Conference in September and the Illinois Bar Foundation Gala coming up in October.

Much of our growth in the past has been by word of mouth from our ISBA member policyholders. If you know of any lawyer who might be interested in insurance through our company, we would appreciate it if you could refer them to Kurt Bounds, our Vice President of Business Development and Service, at 800-473-4722.

Assembly

June 16, 2012

Information Items
Professional Ethics

ISBA Advisory Opinion on Professional Conduct

Opinion No. 12-01
January 2012

Subject: Threatening Criminal Prosecution

Digest: Where a lawyer has filed suit to recover on an NSF check for a client, the lawyer cannot present or participate in presenting criminal charges to obtain an advantage in the civil aspects of the NSF check matter.

References: Illinois Rule of Professional Conduct 8.4(g)

ISBA Professional Conduct Advisory Opinion Nos. 550, 142

In re Lewelling; 296 Or. 702, 678 P.2d 1229 (Or. En Banc. 1984)

720 ILCS 5/32-1

FACTS

A lawyer represents a client who wants to collect on an NSF check. The lawyer files suit, but finds that the sheriff cannot get service on the defendant.

QUESTIONS

1. Can the lawyer send the check back to the client and advise the client of his/her right to file a criminal complaint?
2. Can the lawyer send the check to the State's Attorney and ask, on behalf of the client, that a criminal complaint be issued?

OPINION

Rule 8.4 (g) of the Illinois Rules of Professional Conduct provides that "It is professional misconduct for a lawyer to present, participate in presenting, or threaten to present criminal or professional disciplinary charges to obtain an advantage in a civil matter."

A similar prohibition was contained in the predecessor Rules of Professional Conduct.

ISBA Opinion No. 550 (1976) states that "it is professionally improper for a lawyer to threaten the possible presentment of criminal charges to collect 'insufficient funds' checks for a client." ISBA Opinion No. 142 (1956) provides that advising a debtor that the indebtedness will be taken up with the State's Attorney's Office is unethical and unprofessional.

Under the facts as indicated, where the lawyer has filed suit and service has not been obtained, the lawyer can send the check back to the client and advise the client that he/she may press criminal charges on his/her own if he/she chooses. The lawyer, however, cannot properly "participate in presenting" such charges to obtain any advantage in the civil aspects of the NSF check matter.

The harm here is not the filing of a criminal complaint by the client, but the lawyer's participation in that act to gain advantage in the civil matter.

> The civil adjudicative process is primarily designed for the settlement of disputes between parties, while the criminal process is designed for the protection of a society as a whole. Threatening to use, or using, the criminal process to coerce adjustment of private civil claims or controversies is a subversion of the process; further, the person against whom the criminal process is so misused may be deterred from asserting his legal rights and thus the usefulness of the civil process in settling disputes is impaired. As in all cases of abuse of judicial process, the improper use of criminal process tends to diminish public confidence in our legal system.

In re Lewelling, 296 Or. 702, 678, P.2d 1229, at 1231 (Or. En Banc. 1984) quoting EC 7-21 (Attorney suspended for 60 days for presenting or threatening to present criminal charges solely to obtain an advantage in a civil matter.)

The lawyer should also advise his or her client not to threaten criminal charges in order to obtain payment of the NSF check because the Illinois Criminal Code makes it an offense to receive consideration in return for a promise not to prosecute or aid in the prosecution of an offender. This is known as "compounding a crime." See 720 IlCS 5/32-1

ISBA Professional Conduct Advisory Opinion

Opinion No. 12-02
January 2012

Subject: Fees and Expenses

Digest: It is improper for an estate planning attorney to charge a fee calculated solely as a percentage of the value of the estate.

References: Illinois Rule of Professional Conduct 1.5(a);

In re Estate of Weeks, 409 Ill. App. 3d 1101, 950 N.E.2d 280 (4th Dist. 2011);

Goldfarb v. Virginia State Bar, 421 U.S. 773 (1975);

Estate of Painter, 567 P.2d 820 (Colo. 1977);

In re Estate of Platt, 586 So.2d 328 (Fl. 1991).

FACTS

An attorney handling a decedent's probate estate becomes aware that the attorney who prepared the decedent's estate planning based his fee solely on a percentage of the assets in the estate. The inquiring attorney believes the estate planning work to have been properly performed, but that the hourly charges for the estate planning services would have been far less than the percentage fee charged.

QUESTION

Is an estate planning attorney's charging of a percentage fee materially exceeding the hourly fee proper?

OPINIONS

Several court decisions, including one recently decided in Illinois, have concluded that a probate attorney's charging of a fee based solely on a percentage of an estate's value is improper, and does not satisfy the benchmark requirement that a fee be "reasonable."

To this effect, in *Estate of Painter,* 567 P.2d 820 (Colo. 1977), the court held that a fee to probate counsel based upon a percentage of the value of the estate being probated was improper when viewed against a rule requiring that a fee be reasonable.

Similarly, the Florida court in *In re Estate of Platt,* 586 So.2d 328 (Fl. 1991), held that it was improper to determine the fees of a probate attorney solely according to a percentage of the value of the estate when the relevant statute provided, as does ours, that a number of factors be considered in determining the reasonableness of a fee. The Court reflected that although the size of the probate estate is a factor which may be considered in determining reasonableness, it is not properly to be used as the sole controlling factor.

Most recently, the Illinois Appellate Court for the Fourth District reached a similar conclusion *In re Estate of Weeks,* 409 Ill. App. 3d 1101, 950 N.E.2d 280, (4th Dist 2011). There, the decedent's probate attorney sought to charge a fee in the amount of 3% of the value of the probate estate, claiming that such a percentage fee was his customary charge for an estate of the size involved and that it was also the customary charge in neighboring counties for probating an estate of that size.

The trial court held that the application of such a percentage fee was not "reasonable" under governing sections of the Probate Act which provide, as does our Rule 1.5 (a), various factors to be considered in determining the reasonableness of a fee. *Weeks,* 409 Ill. App. 3d at 1109. In so concluding, the trial court went so far as to compare the use of a percentage fee to an improper reliance on a fee schedule as was precluded in *Goldfarb v. Virginia State Bar,* 421 U.S. 773 (1975).

The Appellate Court in *Weeks* reached a similar conclusion, stating that reasonable fees must be determined on a case by case basis, and that the trial court properly applied the various factors set forth in the Probate Act, rather than a percentage fee based on the estate's assets, in determining a reasonable fee. Among the factors which the court stated are proper for consideration are the size of the estate, the work involved, the skill evidenced by the work, the time expended, the success of the effort involved, and the efficiency with which the estate was administered. The Court went on to the state that "the most important factor is the amount of time spent on the estate," and concluded its analysis by stating:

> "This court concluded almost three decades ago '[i]t is now well-established that fees may not be determined on the basis of fee schedules, and that "[c]learly, an award of fees in this case should have been based on the time spent by petitioners, the complexity of the work they performed, and their ability. We conclude that this is what the trial Court did."

As did the Probate Act discussed in *Weeks,* Rule 1.5 (a) recites no less than eight (8) factors to be considered in determining the reasonableness of a fee, several of which may be relevant to the rendering of estate planning services. Such factors include, in addition to the time and labor expended, the following considerations:

(1) the novelty and difficulty of the questions involved, and the skill requisite to perform the service properly;

(2) the fee customarily charged in the locality for similar legal services;
(3) the amount involved and the results obtained;
(4) the nature and length of the professional relationship with the client; and
(5) the experience, reputation and ability of the lawyer performing the service

Moreover, the Comment to Rule 1.5 recognizes that even the considerations listed in Rule 1.5(a) are not exclusive, and that such Rule requires that the lawyer's fees be reasonable 'under the circumstances." RPC 1.5, Comment [1].

Accordingly, under the precedent and pursuant to Rule 1.5(a), the estate planning attorney's having charged solely on the basis of a percentage of the size of the estate, without consideration of the time expended or the other factors recited by Rule 1.5(a), is unreasonable and improper. On the other hand, however, we are not wholly in accord with the Court's implication in *Weeks* that the time spent on the matter is in all instances the most important factor to be considered, to the exclusion of other factors which may be deserving of greater emphasis in any given instance. Rather, consideration of all of the factors recited in Rule 1.5(a), and giving to each of their proper weight on a case by case basis, is necessary to arrive at a determination of reasonableness consistent with the dictates of *Weeks.*

In so concluding, we are also cognizant of the fact that each of the cases which we have cited, including *Weeks*, involved the propriety of a percentage fee in the probate of an estate, not in the planning of an estate. It does not seem to us, however, that this distinction would warrant a result more favorable to an estate planner. To the contrary, if a probate attorney, whose task would seemingly involve more uncertainty and unpredictability than that of an estate planner, cannot charge on a percentage basis, we see no reason why an estate planner should be allowed to do so.

Accordingly, while our opinion is not based solely on the fact, as posited by the inquiring attorney, that the estate planner's percentage fee substantially exceeded what would have been an hourly fee, we are of the view that an estate planner's charging of a percentage fee based solely on the size of the estate without regard to the time expended and the other considerations recited in Rule 1.5(a), is in appropriate.

ISBA Professional Conduct Advisory Opinion

Opinion No. 12-03
January 2012

Subject: Advertising and Solicitation; Confidentiality; Referral Fees and Arrangements

Digest: A lawyer may participate in a networking group with other service professionals which refers clients to one another if: (a) the reciprocal referrals are not exclusive; (b) the lawyer requests prior consent from the client to give his or her name to someone in the networking group, although the better practice might be for the lawyer to give the name of the other "professional" to the client; (c) the client is informed of the existence of the referral agreement between the lawyer and the non-lawyer professional; and (d) the referral arrangement does not interfere with the lawyer's professional judgment as to making the referral or providing substantive legal services.

References: Illinois Rules of Professional Conduct 1.6(a), 2.1, 5.4, 7.1, 7.2, 7.3;

ISBA Professional Conduct Advisory Opinion No. 97-01;

ABA Formal Opinion No. 09-455;

New York Rules of Professional Conduct 7.1(b)(2).

FACTS

A group of business and professional people in a community has organized a not-for-profit organization open to members who are interested in "networking" to obtain business contacts. Members attend weekly meetings to describe to each other the services their business offers and to exchange the names and telephone numbers of persons with whom the members have had contact and who might be in need of the services of other members. It is contemplated that members who receive the names and telephone numbers of leads from other members will then contact those leads. There is an initiation fee and a monthly fee to remain a member. The funds collected are allocated each week to a different member of the organization to advertise that member's business in a local newspaper or journal.

QUESTION

A lawyer interested in joining the "networking" group has inquired whether participation in its activities would violate the Illinois Rules of Professional Conduct ("RPC's").

OPINION

The lawyer may participate in the networking group, albeit with certain restrictions to ensure the lawyer complies with the RPC's.

With respect to the networking group itself, RPC 7.2(b) provides as follows:

> A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may:
>
> (1) pay the reasonable costs of advertisements or communications permitted by this Rule;
>
> (2) pay the usual charges of a legal service plan or a not-for-profit lawyer referral service;
>
> (3) pay for a law practice in accordance with Rule 1.17; and
>
> (4) refer clients to another lawyer or nonlawyer professional pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if
>
> (i) the reciprocal referral agreement is not exclusive, and
>
> (ii) the client is informed of the existence and nature of the agreement.

Comment 8 to RPC 7.2 provides that while a lawyer "may agree to refer clients to another lawyer or nonlawyer professional, in return for the undertaking of that person to refer clients or customers to the lawyer," this arrangement "must not interfere with the lawyer's professional judgment as to making referrals or as to providing substantive legal services." This Comment references RPC 2.1, which requires a lawyer to "exercise independent professional judgment" as well as RPC 5.4, which bars a lawyer from allowing a person who recommends his or her services to "direct or regulate the lawyer's professional judgment in rendering such legal services."

A further consideration is whether the lawyer breaches RPC 1.6(a) if the lawyer were to provide his or her client's name and telephone number to another lawyer or to a nonlawyer professional member of the networking group. With some exceptions that do not apply to the fact scenario, RPC 1.6(a), which governs "Confidentiality of Information," provides, in pertinent part, that a "lawyer shall not reveal information relating to the representation of a client." Comment 1 to RPC 1.6 states that the Rule

"governs the disclosure by a lawyer of information relating to the representation of a client during the lawyer's representation of a client." Although the RPC's do not specifically address whether a client's identity is considered "confidential information," it appears from other ethics opinions that this is so.

For example, ABA Formal Opinion 09-455 considered the disclosure of client identities for conflicts purposes. Citing the definition of information covered by Model Rule 1.6(a), which is "all information relating to the representation, whatever its source," ABA Formal Opinion 09-455 then opined that that "*the persons* and issues involved in a matter generally are protected by Rule 1.6 and ordinarily may not be disclosed unless an exception to the Rule applies or the affected client gives informed consent" (Emphasis added). See also RPC 1.6, Comment [3]. Further, with respect to client referrals, ISBA Advisory Opinion 97-01 (1997) concluded that a lawyer may give the names of his clients to a bank as potential customers for banking services, but must first obtain consent of his or her clients to do so. *See also* Rule 7.1(b)(2) of the New York Rules of Professional Conduct (noting that an advertisement may include information as to "names of clients regularly represented, provided that the client has given prior written consent"). Accordingly, an attorney should consider his or her client's identity to be confidential information which cannot be disclosed without the client's consent.

Thus, the lawyer's participation in the networking group in question is permissible under RPC 7.2(b)(4) and RPC 1.6 provided that: (a) the reciprocal referrals are not exclusive; (b) the lawyer requests prior consent from the client to give his or her name to someone in the networking group, although the better practice might be for the lawyer to give the name of the other "professional" to the client; (c) the client is informed of the existence of the referral agreement between the lawyer and the non-lawyer professional; and (d) the referral arrangement does not interfere with the lawyer's professional judgment as to making the referral or providing substantive legal services.

With respect to initiation fees and monthly fees paid by the lawyer for membership in the networking group, those funds are used to advertise a different member's business in a local newspaper or journal each week. Because those funds will be used to pay the lawyer's "reasonable costs of advertisements or communications," as permitted by RPC 7.2(b), this does not violate the rule that a lawyer "shall not give anything of value to a person for recommending the lawyer's services." The advertisements should comply with RPC 7.1, in that they should not be false or misleading.

In regard to contacting potential clients to whom the lawyer is referred by other members of the networking group, RPC 7.3(a) is relevant and provides as follows:

> A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment from a prospective client when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:
>
> (1) is a lawyer; or

(2) has a family, close personal, or prior professional relationship with the lawyer.

RPC 7.3(c), however, does permit a "lawyer to solicit professional employment from a perspective client known to be in need of legal services in a particular matter" if the words "Advertising Material" appear on the outside of the envelope or at the beginning or ending of a recorded or electronic communication, unless the recipient of the communication is a person specified in RPC 7.3(a)(1) or (a)(2).

Accordingly, to the extent that the networking group contemplates that the lawyer will contact directly by phone, in person, or by real-time electronic contact, the potential clients to whom the lawyer is referred, such contact would violate RPC 7.3(a). It would, however, be permissible for the lawyer to contact the potential client by mail or by recorded or electronic communication, provided the words "Advertising Material" appear on the envelope or communication as provided by RPC 7.3(c). Accordingly, the lawyer participating in the networking group should obtain the mailing and email address for the potential client, rather than just the client's phone number.

ISBA Professional Conduct Advisory Opinion

Opinion No. 12-04
January 2012

Subject: Advertising and Solicitation

Digest: Labeling communications to solicit professional employment as "promotional" materials does not comply with requirements of the Illinois Rules of Professional Conduct to label such materials as "Advertising Material."

References: Illinois Rules of Professional Conduct 7.2 and 7.3(c);

In the Matter of Benkie, 892 N.E.2d 1237 (Ind. 2008);

ABA Formal Opinion 10-457.

FACTS

Several firms have placed the legend "promotional materials" on firm brochures and other marketing papers that they distribute to other lawyers and non-lawyers.

QUESTION

The inquirer asks whether the legend "promotional materials" complies with the requirements of Rule 7.3(c).

OPINION

Rule 7.3(c) provides , in relevant part, that:

> "Every written, recorded or electronic communication from a lawyer soliciting professional employment from a prospective client known to be in need of legal services in a particular matter shall include the words "Advertising Material" on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, …"

We are of the view that the labeling of the communications to solicit professional employment in question as "promotional materials" does not comply with the requirements of this Rule. While the terms "advertising" and "promotional" may be similar, we believe RPC 7.3's specific use of the term "Advertising Material," highlighted by quotation marks, is a clear indication of the mandatory nature of the use of that specific term. See *In the Matter of Benkie*, 892 N.E.2d 1237 (Ind. 2008)(use of the term "Legal Advertisement" did not satisfy "Advertising Material" requirement). Accordingly, we believe that only the labeling of firm brochures and the like as "Advertising Material" when used as a means of solicitation complies with the requisites of Rule 7.3.

While firm brochures (and their modern counterpart, the internet website) are clearly regulated communications under the RPC, and thus subject to prohibitions on false or misleading statements, it should be noted that the labeling requirements of Rule 7.3(c), only apply to communications employed in the direct written, recorded or electronic solicitation of prospective clients known to be in need of legal services. Communications sent in response to requests from potential clients and general announcements do not require the special labeling. RPC 7.3, Comment [7]. Further, nothing in this opinion is intended to imply that firm brochures (or websites) generally are required to be labeled as "Advertising Material." (For a discussion of issues relating to firm websites, see ABA Formal Opinion 10-457.) In addition, the non-solicitation provisions of Rule 7.3 in its entirety are directed only to contacts with certain lay persons, not to contacts with other attorneys or persons with whom the lawyer has a family, close personal, or prior professional relationship. Thus, to the extent that the marketing materials referenced in this inquiry are directed to lawyers, (or other exempted individuals), no requirement exists that they be labeled in any fashion under Rule 7.3(c).

ISBA Professional Conduct Advisory Opinion

Opinion No. 12-05
January 2012

Subject: Prospective Client; Conflict of Interest

Digest: It would be improper for a lawyer to represent a person adverse to a prospective client who had previously consulted with the lawyer in the same matter and disclosed significantly harmful information during the consultation absent both persons' informed consent.

References: Illinois Rule of Professional Conduct 1.18;

King v. King, 52 Ill.App.3d 749, 367 N.E.2d 1358 (4th Dist. 1977);

In re the Marriage of Newton, ___ Ill.App.3d ___, 955 N.E.2d 572 (1st Dist. 2011).

FACTS

Wife makes an appointment to see Attorney concerning a contemplated divorce. At Attorney's request, Wife fills out a "marital information sheet" giving certain biographical information for Attorney's use in preparing a petition for dissolution of marriage. A conference ensues at which time Wife and Attorney discuss Attorney's hourly rates, some of the biographical information provided, and the fact that Husband is having an affair with another woman. Attorney explains the law regarding her rights, including advice concerning support, visitation, maintenance and property rights. The consultation ends without a commitment to employ Attorney for further services.

One month later, Husband comes to see Attorney with the express purpose of hiring him as his attorney in the marital action involving Wife. The Attorney consults with Husband and learns that Wife, following her earlier discussion with the Attorney, hired another attorney to represent her. The Wife, through the other attorney, has now filed divorce proceedings against Husband. Issues with respect to child custody, financial and other matters will be contested.

QUESTION

Can Attorney represent Husband in view of the fact that Wife never indicated to Attorney that she wanted to hire him and, in fact, hired another attorney?

OPINION

Whether or not Wife indicated to Attorney that she wanted to hire Attorney, or in fact hired another lawyer, is not dispositive of the ethical issue presented by the above factual scenario. *King v. King*, 52 Ill.App.3d 749, 367 N.E.2d 1358 (4th Dist. 1977). Also not dispositive is the analysis, employed in *King*, of whether an attorney-client relationship arose between the prospective client and the lawyer. Under Illinois' 2010 RPC, the question presented in this inquiry requires an analysis under new RPC 1.18 ("Duties to Prospective Client").

Under RPC 1.18(a), Wife is considered to be a "prospective client." RPC 1.18(c)("A person who discusses with a lawyer the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.") RPC 1.18(b), (c), and (d) further set forth the duties owed to these "prospective clients." The duties include restrictions on a lawyer's representation of persons adverse to a prospective client as well as prohibitions on the use of any information learned during an initial consultation.

The analysis of whether Attorney can represent Husband after previously consulting with Wife begins with RPC 1.18(c). This Rule establishes that it is a conflict of interest for a lawyer to represent a person with interests "materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in that matter." RPC 1.18(c). In the fact scenario presented above, the marital proceedings between Wife and Husband are clearly the same matter. In addition, as Husband and Wife are opposing parties in a contested divorce we believe their interests are materially adverse as well.

However, the analysis of what may be "significantly harmful" information to Wife (as a prospective client) may not be so clear. Neither the Rule nor its Comments provide any guidance on what constitutes the potentially disqualifying "significantly harmful" information. (Importantly, the Comments to the Rule do note that a lawyer may want to limit his or her initial consultation with a prospective client only to information sufficient to determine whether a conflict of interest may exist and also may condition conversations with a prospective client on that person's agreement, as long as its informed, that no information disclosed during the consultation will prohibit the lawyer from representing an adverse party. See RPC 1.18 Comment [3], [4], and [5].) Although no detailed facts are included in the inquiry, it appears that biographical information sufficient to prepare a petition for dissolution, knowledge about the Husband's affair, and information allowing Attorney to provide advice on a number of marital issues would likely fall within the realm of information that "could be significantly harmful." *Cf. In re the Marriage of Newton*, ___ Ill.App.3d ___, 955 N.E.2d 572 (1st Dist. 2011)(Attorney-client relationship formed after lawyer met with person for 1.5 to 2 hours and discussed information and issues related to marriage and impending divorce). Nevertheless, this is a very fact specific question. If significantly harmful information was received, Attorney would be prohibited from representing Husband (subject to exceptions noted below). RPC 1.18(c) also makes it clear that the conflict would be imputed to all members of Attorney's firm.

Notwithstanding the existence of a conflict under RPC 1.18(c), two exceptions are available that might allow the representation to proceed. These exceptions apply even if significantly harmful information has been conveyed to the lawyer. Although facts to establish either exception are not provided in the inquiry, the exceptions are worth noting. First, under RPC 1.18(d)(1), the representation would be permissible if both the affected client and the prospective client give their informed consent to the representation. (Lawyers should take special note that "informed consent" is now a defined term at RPC 1.0(e). The definition imposes significant obligations on the lawyer to disclose to the client: all the facts and circumstances related to the particular situation; exploration of the material advantages and disadvantages of the action; and a discussion of available options and alternatives. See RPC 1.0, Comments [6] and [7].) Second, under RPC 1.18(d)(2), a partner of the lawyer receiving the information could represent a party adverse to a prospective client as long as: (1) the lawyer involved in the consultation was timely screened from the representation; and (2) the lawyer took reasonable measures to avoid exposure to disqualifying information.

Finally, regardless of whether RPC 1.18(c) or (d) would allow Attorney to represent Husband, Attorney owes Wife a duty under RPC 1.18(b) not to "use or reveal information" learned in the initial meeting with Wife. However, this duty can be waived if the Wife gives informed consent to its use or the information has become generally know. See RPC 1.9(c) and RPC 1.9 Comment [8].

ISBA Professional Conduct Advisory Opinion

Opinion No. 12-06
January 2012

Subject: Client Files; Law Firms

Digest: A lawyer must maintain records that identify the name and last known address of each client, and reflect whether the client's representation is active or concluded, for an indefinite period of time. A lawyer must keep complete records of trust account funds and other property of clients or third parties held by the lawyer and must preserve such records for at least seven years after termination of the representation. A lawyer must also maintain all financial records related to the lawyer's practice for not less than seven years. For other materials, if appropriate steps are taken to return or preserve actual client property or items with intrinsic value, then it is generally permissible for a legal services program to dispose of routine case file materials five years after case closing. Other considerations, such as administrative expense and the six-year Illinois statute of repose, suggest a general retention period for most lawyers of at least seven years. Any method of disposal must protect the confidentiality of client information.

References: Illinois Rules of Professional Conduct 1.4, 1.6, 1.15, and 1.16;

ISBA Professional Conduct Advisory Opinion 94-13;

Illinois Supreme Court Rule 769;

735 ILCS 5/13-214.3(c);

Restatement Third, The Law Governing Lawyers § 46 (2000);

Arizona Ethics Opinion 08-02 (December 2008);

West Virginia Ethics Opinion 2002-01 (March 2002).

FACTS

The inquiring legal services program has been existence for more than 35 years. Its staff and volunteer lawyers provide low or no-cost legal services to low-income persons in 65 Illinois counties. The program's annual case load averages more than 20,000.

The program retains case files and "conflict cards" for a period of five years after case closing. It permanently or indefinitely retains original documents (deeds, wills); documents in pending guardianship files; files which are or may be the subject of a pending or anticipated complaint, lawsuit or investigation; case-related materials which may have value as a part of the program's archives; money on deposit in the program's office or client trust accounts; and materials relating to open, active cases that are related to another case of a client's matter currently pending in the office.

The program routinely offers to return all materials furnished by clients to the program prior to the destruction of case files. If no materials were furnished, no offer is made. Storage costs are a major expense to the program. It believes that it can dispose of routine case file materials not described above five years after case closing without any adverse affect to the program's clients.

QUESTIONS

1. May the program routinely destroy "conflict cards" five years after case closing?

2. May the program routinely destroy case files five years after case closing?

OPINION

Although it is clear that a lawyer is required to preserve and protect the funds and other property of clients or third persons in the lawyer's possession, and there are explicit directives regarding the maintenance and preservation of financial records regarding a lawyer's practice, there is little guidance with respect to a lawyer's duty to preserve those portions of a lawyer's file that are neither client property nor financial records.

The Illinois Rules of Professional Conduct and the Illinois Supreme Court Rules provide specific guidance regarding preservation of client property and certain lawyer records. With respect to client funds and other property, Illinois Rule 1.15(a) requires:

> (a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be deposited in one or more separate and identifiable interest- or dividend- bearing client trust accounts maintained at an eligible financial institution in the state where the lawyer's office is situated, or elsewhere with the informed consent of the client or third party. … Other, tangible property shall be identified as such and appropriately safeguarded. Complete records of client trust account funds and other property shall be kept by the lawyer and shall be preserved for a period of seven years after termination of the representation.

Rule 1.15(a)(1) through (8) lists specific requirements for the maintenance of "complete records" of trust accounts, including the retention of: receipt and disbursement journals, account ledgers, checkbook registers and bank statements, client retainer and compensation agreements, and copies of all bills and rendered to clients for legal fees and expenses.

Illinois Rule 1.16(d) further provides:

> (d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as … surrendering papers and property to the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

Supreme Court Rule 769 defines two categories of lawyer records that must be kept as originals, copies, or computer-generated images. Paragraph (1) requires a lawyer to maintain records that identify the name and last known address of each client and reflect whether the representation of the client is ongoing or concluded. In contrast to Rule 1.15(a) and paragraph (2) of Supreme Court Rule 769, discussed below, paragraph (1) makes no reference to any period of time. It therefore appears that the client information described in paragraph (1) should be preserved indefinitely.

Paragraph (2) of Supreme Court Rule 769 requires that all financial records related to a lawyer's practice be maintained for a period of not less than seven years. Financial records are defined to include bank statements, time and billing records, checks, check stubs, journals, ledgers, audits, financial statements, tax returns, and tax reports.

The Committee Comment to Supreme Court Rule 769 notes that the 2003 amendment to the rule gives lawyers the option of maintaining records in forms that save space and reduce cost without increasing the risk of premature destruction. The comment also advises on appropriate types of electronic storage media: "For example, CDs and DVDs have a normal life exceeding seven years, so an attorney might use them to maintain financial records. At present, however, floppy disks, tapes, hard drives, zip drives, and other magnetic media have insufficient normal life to meet the requirements of this rule."

Aside from the rules discussed above, there appear to be no other Illinois professional conduct or court rules regarding the preservation of lawyer files or records. The *Restatement Third, The Law Governing Lawyers* § 46(1) (2000) provides that a lawyer must take reasonable steps to safeguard documents in the lawyer's possession relating to the representation of a client or former client. Comment *b* to § 46 notes that a law firm need not preserve client documents indefinitely and may destroy documents that are outdated or no longer of consequence.

ISBA Opinion 94-13 (January 1995) reviewed in detail a lawyer's duty to return to clients or to provide access by clients or former clients to various categories of materials normally maintained in a lawyer's file. Because there are various types of

materials (like lawyer notes, drafts, research memoranda, and internal administrative documents) that a lawyer need not provide either copies or access to the client, there appears to be no reason to require retention of such materials after the materials are no longer of use to the representation.

Applying these rules and principles to the questions presented by the inquiring legal services program, the program should not routinely destroy the "conflict cards" five years after case closing because those records appear to reflect client information covered by Supreme Court Rule 769(1) that must be retained indefinitely. However, if the information required by Rule 769(1) is collected and preserved in some other acceptable form, then there is no reason to retain the actual "conflict cards" beyond five years after a matter is closed.

With respect to case files, given that the program retains original deeds, wills, and other documents with intrinsic value indefinitely and offers to return any materials furnished by clients, the program need not retain the rest of the case files more than five years after closing if those materials are no longer useful to the clients' representation. Designation by the Supreme Court of seven years as the minimum retention period for specific materials, including a detailed list of materials to be maintained with regard to client trust funds and other property held by a lawyer and the financial records of a law practice, suggests that a shorter period should be sufficient for routine materials. Thus, if the program has kept clients reasonably informed about the status of their matters in compliance with Rule 1.4(a), then the rest of the case files generally may be discarded after five years after closing.

There appears to be no consensus on the minimum period for retention of lawyer file materials no longer needed for a client's representation, but at least two other state bar opinions agree that five years after the conclusion of a matter is a reasonable option. See Arizona Opinion 08-02 (December 2008) and West Virginia Opinion 2002-01 (March 2002).

Although disposal of routine case file materials not covered by Rule 1.15(a) or Supreme Court Rule 769 five years after conclusion of a matter is generally permissible, other considerations suggest that a longer period might be advisable. One consideration is cost. For many lawyers, separating the records that must be maintained for at least seven years from those that may be discarded after five years would require additional administrative effort and expense that could exceed any saving in storage costs. Another consideration is the availability of a lawyer's file in the event of a claim against the lawyer. Given that the statute of repose for professional liability claims against lawyers, 735 ILCS 5/13-214.3(c), is six years, retaining files for some reasonable period beyond six years seems prudent. A general retention period of at least seven years after termination of the representation would comply with two of the Supreme Court's three record-keeping rules and keep a lawyer's file available in the event of a claim.

Finally, disposal of any part of a lawyer's file must be done in a manner that protects the confidentiality of all information relating to the client's representation, consistent with the lawyer's duty under Illinois Rule 1.6. Comment [16] to Rule 1.6 observes that a lawyer must act competently to safeguard information relating to the

representation of a client against inadvertent or unauthorized disclosure by the lawyer or others participating in the representation of the client or who are subject to the lawyer's supervision. Hence, the program must assure that its method of disposing of case files preserves the confidentiality of its clients' information.

ISBA Professional Conduct Advisory Opinion

Opinion No. 12-07
January 2012

Subject: Court Obligations

Digest: Attorney does not have an obligation under R.P.C. Rule 3.3 to tell the court that the unrepresented adversary has a defense based on a written agreement that the attorney's client signed with the adversary and which the attorney now believes in good faith is unenforceable.

References: Illinois Rules of Professional Conduct, Rule 3.3

FACTS

Attorneys representing party A in litigation against unrepresented party B is aware that the two parties entered into a written agreement that would constitute a potential defense in favor of B, but the attorney has a good faith belief that the agreement is unenforceable. Client A did not consult with the attorney before entering into the agreement.

QUESTIONS

Must attorney advise the court of the agreement and potential defense?

OPINIONS

Rule 3.3 requires attorneys to exercise candor in dealing with the courts. For example, subsection (a)(1) provides that a lawyer "shall not knowingly fail to disclose to the tribunal 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," and sub-section (a)(3) prohibits a lawyer from knowingly offering false evidence. Together these sections require candor in dealing with the court.

As comment 2 observes, while a lawyer has a duty to present a client's case with "persuasive force," that duty is qualified by the lawyer's duty of candor to the tribunal. The comment goes on to say that the lawyer "must not allow the tribunal to be misled by false statements of law or fact which the lawyer knows to be false."

In the situation at hand, the lawyer is aware that the signed agreement between the lawyer's client and the unrepresented party constitutes a potential defense to the lawyer's client's claim; however, the lawyer also has good faith belief that the agreement is unenforceable. Under these circumstances the lawyer need not advise the court of the potential defense. Rule 3.3 (a) (2) provides that a lawyer shall not knowingly fail to disclose legal authority known to the lawyer to be directly adverse to the position of the client or offer evidence that is false. In the case at hand, the attorney has a good faith belief that the contract is unenforceable. This good faith belief supports the conclusion that the lawyer's failure to disclose the existence of the agreement does not contravene Rule 3.3.

Moreover, sub-section (a)(2) prohibits a lawyer from failing to disclose "legal authority" which is adverse to his or her client's position. The rule does not require the lawyer to disclose facts which are contrary to the client's position. Such disclosure, of course, would be an onerous burden in litigation, since a lawyer would generally be aware of "facts" contrary to his or her client's position. Here, the existence of an agreement which might exonerate the adversary is a fact which his not required to be disclosed by the lawyer. The lawyer, of course, could be in violation of sub-sections (a)(1) or (a)(3) if her or she makes false statements about the agreement or its existence.

ISBA Professional Conduct Advisory Opinion

Opinion No. 12-08
March 2012

Subject: Confidentiality; Government Attorneys

Digest: Child sex abuse is "substantial bodily injury" for purposes of the Illinois Rules of Professional Conduct, so an Illinois lawyer must reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to prevent reasonably certain child sex abuse. Whether an Illinois lawyer has a duty to report suspected child sex abuse under a federal statute is a question of law beyond the competence of the Committee.

References: Illinois Rule of Professional Conduct 1.6

ISBA Opinion 12-03 (January 2012)

Restatement Third, The Law Governing Lawyers § 66 (2000)

Balla v. Gambro, Inc., 145 Ill.2d 492, 584 N.E.2d 104 (1991)

42 U.S.C. § 13031

FACTS

The inquiring lawyer, admitted in Illinois, works as a civilian lawyer providing legal assistance to military personnel and their families at a federal military facility. A divorce client has disclosed to the lawyer that the client's spouse had committed various infidelities, including soliciting sex from minors. When the lawyer advised the client to report the matter to law enforcement authorities, the client expressed a strong reluctance to do so. The client also claimed to lack proof of any actual sexual assault of minors although some of the spouse's emails that the client claimed to have seen, which the lawyer has not seen, indicated that the spouse was interested in meeting children for sex. The lawyer asks whether there is a duty under the Illinois Rules of Professional Conduct or federal law to report this situation to the appropriate law enforcement authorities.

OPINION

This inquiry raises issues of a lawyer's duty to reveal information to prevent abuse of a minor. The general rule governing client confidentiality is Illinois Rule 1.6, which provides in relevant part:

> (a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by paragraph (b) or required by paragraph (c).
>
> (b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:
>
> (1) to prevent the client from committing a crime in circumstances other than those specified in paragraph (c);
>
> …
>
> (6) to comply with other law or a court order.
>
> (c) A lawyer shall reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to prevent reasonably certain death or substantial bodily harm.

As explained in Comment [3] to Rule 1.6, the rule "applies not only to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source." See, *e.g.*, ISBA Opinion 12-03 (January 2012) (identity of lawyer's client protected). Comment [3] also explains that a lawyer may not disclose protected information except as authorized by the Rules or other law. Paragraph (b) of the rule lists six situations where disclosure of client information by the lawyer may be permitted, but is not required. Paragraph (b)(1) permits disclosure to the extent the lawyer reasonably believes necessary to prevent the lawyer's client from committing certain crimes. Because paragraph (b)(1) applies only to situations where the lawyer's client is the potential perpetrator, it would not appear relevant to the situation presented, where the client's spouse is the person who may intend a criminal act.

Paragraph (b)(6) permits disclosure to the extent the lawyer reasonably believes necessary to comply with "other law" or a court order. Comment [12] to Rule 1.6 explains that whether such other law supersedes Rule 1.6 is a question of law beyond the scope of the rules. The Comment further explains that when disclosure of information relating to the representation appears to be required by other law, the lawyer must discuss the matter with the client to the extent required by Rule 1.4 (lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation). If, however, the other law requires disclosure, then paragraph (b)(6) permits the lawyer to make such disclosures as are necessary to comply with the law.

There is a federal statute, 42 U.S.C. § 13031, concerning child abuse reporting. Paragraph (a) of § 13031 requires a person engaged in a professional capacity on federal land or in a federal facility who "learns of facts that give reason to suspect that a child has suffered an incident of child abuse" to report promptly to designated authorities. Whether this statute applies to the Illinois lawyer in the situation presented is a question

of law beyond the competence of this Committee. However, if § 13031 applies and requires a report, then the inquiring lawyer would be permitted by Rule 1.6(b)(6) to make the disclosures required to comply with the statute.

The other potentially relevant provision of Rule 1.6 is paragraph (c), which directs that a lawyer "shall" reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to prevent reasonably certain death or substantial bodily harm. In contrast to the permissive disclosures under paragraph (b), the duty to disclose under paragraph (c) to prevent reasonably certain death or substantial bodily injury is mandatory. And this duty is neither excused nor negated by the client's wishes or instructions. See *Balla v. Gambro, Inc.*, 145 Ill.2d 492, 502, 584 N.E.2d 104, 109 (1991) (in-house lawyer "had no choice but to report to the FDA" employer's plan to distribute defective dialysis machines). At least twelve other states have a similar mandatory disclosure rule. See Arizona Rule 1.6(b); Connecticut Rule 1.6(b); Florida Rule 4-1.6(b)(2); Iowa Rule 32:1.6(c); Nevada Rule 1.6(c); New Jersey Rule 1.6(b)(1); North Dakota Rule 1.6(b); Tennessee Rule 1.6(c)(1); Texas Rule 1.05(e); Vermont Rule 1.6(b)(1); Washington Rule 1.6(b)(1); and Wisconsin Rule 20:1.6(b).

Also in contrast to paragraph (b)(1), paragraph (c) does not limit disclosure to acts of the lawyer's client. Thus, in the situation presented, the fact that the potential perpetrator is the client's spouse rather than the client would not relieve the lawyer of the duty to disclose an otherwise reportable threat of death or substantial bodily harm. Whether there is a reportable threat will usually depend upon the specific circumstances because paragraph (c) requires that the lawyer "reasonably believes" that the disclosure is "necessary" to prevent "reasonably certain" death or substantial bodily injury. In the situation presented, it is not clear whether the spouse's alleged interest in meeting children for sex is a realistic threat to any particular child or merely a prurient fantasy. For there to be a mandatory duty to disclose, the threat must meet the tests of paragraph (c). It should also be noted that paragraph (c) applies only to future harm rather than past conduct.

Finally, it seems clear that child sex abuse should be regarded as "substantial bodily harm" for purposes of Rule 1.6(c). By definition, sex acts with minors are nonconsensual; and such activity likely involves violence and intimidation. Comment *c* to § 66 of *Restatement Third, The Law Governing Lawyers* (2000), includes "child sexual abuse" in the definition of "serious bodily harm" for purposes of § 66, which permits a lawyer to use or disclose confidential client information when the lawyer reasonably believes necessary to prevent reasonably certain death or serious bodily harm to a person.

ISBA Professional Conduct Advisory Opinion

Opinion No. 12-09
March 2012

Subject: Unauthorized Practice of Law; Multijurisdictional Practice; Law Firms

Digest: A lawyer not admitted in Illinois may not primarily practice in this state, physically or through a virtual office, even if the co-owner of the law firm is a lawyer, licensed in Illinois, who has direct supervision of the non-admitted lawyer on matters involving Illinois clients.

References: Illinois Rules of Professional Conduct 5.5, 7.1, 8.5(a)

ABA Report of the Commission on Multijurisdictional Practice (2002)

Illinois Supreme Court Rule 721(a)(4)

Ohio Sup. Ct., Bd. of Comm'rs on Grievances & Discipline, Opinion 2011-2

FACTS

Two attorneys wish to establish a law practice owned 50/50 between them. One is licensed only in Illinois, one is licensed only in State X.

Both live and primarily work in Illinois. However, the attorney licensed in State X makes frequent visits to State X for networking and to cultivate a client base there. The attorneys agree that the Illinois-licensed attorney will have direct supervision and ultimate authority over matters involving Illinois clients, although the State X-licensed attorney will interact with Illinois clients and dispense legal advice to them from time to time.

The Illinois-licensed attorney will sign all pleadings in Illinois courts, make all Illinois court appearances, and conduct any Illinois real estate closings personally. The State X-licensed attorney will engage in networking and market himself in Illinois as an attorney, but will take precautions to ensure that potential clients do not get the impression that he is licensed in Illinois. All letterheads and business cards will clearly

and correctly indicate the jurisdictions in which each attorney is licensed to practice. Both attorneys agree to make sure, at the time any client is acquired, that the client understands that the State X-licensed attorney is not licensed in Illinois. Retainer agreements will contain bold-type disclosures to this effect.

QUESTIONS

Is the State-X licensed attorney in the above scenario engaged in the unauthorized practice of law for purposes of Rule of Professional Conduct 5.5 or any other restrictions?

Also, if the practice were to have a virtual office and the lawyers' states of bar admission were made clear in correspondence, would there be ethical concerns?

OPINIONS

RPC 5.5 addresses the topics of unauthorized practice of law and multijurisdictional practice, and provides definitive guidance in answering the first question posed. Paragraph (b) of the rule is the provision applicable to that inquiry:

> (b) A lawyer who is not admitted to practice in this jurisdiction shall not:
>
> > (1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or
> > (2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

Under the facts provided, the State X lawyer would work primarily in Illinois, which means that he would have a systematic and continuous presence (presumably including an office) in Illinois for the practice of law, in violation of paragraph (b)(1). The fact that the state of admission is accurately displayed does not vitiate that violation, as Rule 5.5(b)(1) prohibits the systematic and continuous presence, independent of the lawyer's representation as to his bar admission. Rule 5.5(b)(2) serves as a specific example of the general prohibition, in RPC 7.1, against making "a false or misleading communication." Lawyers engaged in allowable multijurisdictional practice should not state or imply that they are generally admitted in locations outside of their actual jurisdictions of admission.

Paragraph (b)(1) does allow for exceptions, and several safe harbors are established by paragraph (c) (temporary practice in discrete matters) and paragraph (d) (house counsel and federal practice). None of those exceptions apply to the proposed law practice, nor is there any other law in Illinois that would permit it. Despite the fact that the Illinois lawyer will personally attend court and real estate closings and will supervise the State X lawyer, the latter will still be practicing law in Illinois systematically and continuously.

The promulgation of Rule 5.5 was intended to reflect the realities of multijurisdictional practice by clarifying the circumstances under which it would be allowed, but it was not intended to modify the familiar understanding among American lawyers "...that they may not open a permanent office in a state where they are not licensed...." American Bar Association, Report of the Commission on Multijurisdictional Practice, Introduction and Overview, p. 13 (August 2002). While multijurisdictional law practices are allowable and not uncommon, it is expected that lawyers in such arrangements will practice primarily in their respective states of admission. See Ill. Sup. Ct. R. 721(a)(4)(non-admitted shareholders of professional service corporations, etc., not permitted to practice law in Illinois).

The Committee concludes that the State X lawyer would be acting in violation of Rule 5.5(b) should he work primarily in Illinois. Such a lawyer would be subject to discipline not only in State X, but also in Illinois, inasmuch as RPC 8.5(a) (as amended effective January 1, 2010, to account for multijurisdictional practice) provides, in part, as follows: **"**A lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction." And the Illinois lawyer would be subject to discipline for participating in the arrangement, as Rule 5.5(a) forbids assisting another in unauthorized practice.

The second question seeks the Committee's view on the same set of facts, except that the firm would have a virtual office from which the firm's correspondence would identify the lawyers' respective states of admission. The advent of the virtual law office, or online legal practice, has raised several ethical challenges, including concerns about the unauthorized practice of law. Such issues can and should be analyzed under the framework of the Rules of Professional Conduct. See, e.g., Ohio Sup. Ct., Bd. of Comm'rs on Grievances & Discipline, Op. 2011-2 (October 7, 2011).

In the context of a virtual law office involving lawyers from different states, each lawyer should take care that any out-of-state practice is not systematic and continuous**.** The proposed practice involves a lawyer from State X who wishes to practice regularly in Illinois, whether through a physical presence or a virtual presence. "Presence may be systematic and continuous even if the lawyer is not physically present here." RPC 5.5, Comment [4]. So even if the virtual office were not based in Illinois, the fact that the State X lawyer would do work for Illinois clients and would seek legal work in Illinois establishes a systematic and continuous presence. As noted in the Ohio ethics opinion cited above, concerning a law firm located outside of Ohio and advertising on the internet, "'Systematic and continuous' presence includes both physical and virtual presence in Ohio." Ohio Op. 2011-2, p. 8.

Because the State X lawyer wishes to practice regularly in Illinois, the Committee is of the opinion that Rule 5.5(b) bars the proposed practice, regardless of whether the lawyer's presence in Illinois is physical or virtual. Additionally, because the Illinois lawyer would be part and parcel of the project, he or she would be subject to discipline under Rule 5.5(a) for assisting the State X lawyer.

Professional Conduct Advisory Opinions are provided by the ISBA as an educational service to the public and the legal profession and are not intended as legal advice. The opinions are not binding on the courts or disciplinary agencies, but they are often considered by them in assessing lawyer conduct.

ISBA Professional Conduct Advisory Opinion

ILLINOIS STATE BAR ASSOCIATION

Opinion No. 12-09
March 2012

Subject: Unauthorized Practice of Law; Multijurisdictional Practice; Law Firms

Digest: A lawyer not admitted in Illinois may not primarily practice in this state, physically or through a virtual office, even if the co-owner of the law firm is a lawyer, licensed in Illinois, who has direct supervision of the non-admitted lawyer on matters involving Illinois clients.

References: Illinois Rules of Professional Conduct 5.5, 7.1, 8.5(a)

ABA Report of the Commission on Multijurisdictional Practice (2002)

Illinois Supreme Court Rule 721(a)(4)

Ohio Sup. Ct., Bd. of Comm'rs on Grievances & Discipline, Opinion 2011-2

FACTS

Two attorneys wish to establish a law practice owned 50/50 between them. One is licensed only in Illinois, one is licensed only in State X.

Both live and primarily work in Illinois. However, the attorney licensed in State X makes frequent visits to State X for networking and to cultivate a client base there. The attorneys agree that the Illinois-licensed attorney will have direct supervision and ultimate authority over matters involving Illinois clients, although the State X-licensed attorney will interact with Illinois clients and dispense legal advice to them from time to time.

The Illinois-licensed attorney will sign all pleadings in Illinois courts, make all Illinois court appearances, and conduct any Illinois real estate closings personally. The State X-licensed attorney will engage in networking and market himself in Illinois as an attorney, but will take precautions to ensure that potential clients do not get the impression that he is licensed in Illinois. All letterheads and business cards will clearly and correctly indicate the jurisdictions in which each attorney is licensed to practice.

Both attorneys agree to make sure, at the time any client is acquired, that the client understands that the State X-licensed attorney is not licensed in Illinois. Retainer agreements will contain bold-type disclosures to this effect.

QUESTIONS

Is the State-X licensed attorney in the above scenario engaged in the unauthorized practice of law for purposes of Rule of Professional Conduct 5.5 or any other restrictions?

Also, if the practice were to have a virtual office and the lawyers' states of bar admission were made clear in correspondence, would there be ethical concerns?

OPINIONS

RPC 5.5 addresses the topics of unauthorized practice of law and multijurisdictional practice, and provides definitive guidance in answering the first question posed. Paragraph (b) of the rule is the provision applicable to that inquiry:

> (b) A lawyer who is not admitted to practice in this jurisdiction shall not:
>
> > (1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or
> > (2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

Under the facts provided, the State X lawyer would work primarily in Illinois, which means that he would have a systematic and continuous presence (presumably including an office) in Illinois for the practice of law, in violation of paragraph (b)(1). The fact that the state of admission is accurately displayed does not vitiate that violation, as Rule 5.5(b)(1) prohibits the systematic and continuous presence, independent of the lawyer's representation as to his bar admission. Rule 5.5(b)(2) serves as a specific example of the general prohibition, in RPC 7.1, against making "a false or misleading communication." Lawyers engaged in allowable multijurisdictional practice should not state or imply that they are generally admitted in locations outside of their actual jurisdictions of admission.

Paragraph (b)(1) does allow for exceptions, and several safe harbors are established by paragraph (c) (temporary practice in discrete matters) and paragraph (d) (house counsel and federal practice). None of those exceptions apply to the proposed law practice, nor is there any other law in Illinois that would permit it. Despite the fact that the Illinois lawyer will personally attend court and real estate closings and will supervise the State X lawyer, the latter will still be practicing law in Illinois systematically and continuously.

The promulgation of Rule 5.5 was intended to reflect the realities of multijurisdictional practice by clarifying the circumstances under which it would be allowed, but it was not intended to modify the familiar understanding among American lawyers "...that they may not open a permanent office in a state where they are not licensed...." American Bar Association, Report of the Commission on Multijurisdictional Practice, Introduction and Overview, p. 13 (August 2002). While multijurisdictional law practices are allowable and not uncommon, it is expected that lawyers in such arrangements will practice primarily in their respective states of admission. See Ill. Sup. Ct. R. 721(a)(4)(non-admitted shareholders of professional service corporations, etc., not permitted to practice law in Illinois).

The Committee concludes that the State X lawyer would be acting in violation of Rule 5.5(b) should he work primarily in Illinois. Such a lawyer would be subject to discipline not only in State X, but also in Illinois, inasmuch as RPC 8.5(a) (as amended effective January 1, 2010, to account for multijurisdictional practice) provides, in part, as follows: **"**A lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction." And the Illinois lawyer would be subject to discipline for participating in the arrangement, as Rule 5.5(a) forbids assisting another in unauthorized practice.

The second question seeks the Committee's view on the same set of facts, except that the firm would have a virtual office from which the firm's correspondence would identify the lawyers' respective states of admission. The advent of the virtual law office, or online legal practice, has raised several ethical challenges, including concerns about the unauthorized practice of law. Such issues can and should be analyzed under the framework of the Rules of Professional Conduct. See, e.g., Ohio Sup. Ct., Bd. of Comm'rs on Grievances & Discipline, Op. 2011-2 (October 7, 2011).

In the context of a virtual law office involving lawyers from different states, each lawyer should take care that any out-of-state practice is not systematic and continuous**.** The proposed practice involves a lawyer from State X who wishes to practice regularly in Illinois, whether through a physical presence or a virtual presence. "Presence may be systematic and continuous even if the lawyer is not physically present here." RPC 5.5, Comment [4]. So even if the virtual office were not based in Illinois, the fact that the State X lawyer would do work for Illinois clients and would seek legal work in Illinois establishes a systematic and continuous presence. As noted in the Ohio ethics opinion cited above, concerning a law firm located outside of Ohio and advertising on the internet, "'Systematic and continuous' presence includes both physical and virtual presence in Ohio." Ohio Op. 2011-2, p. 8.

Because the State X lawyer wishes to practice regularly in Illinois, the Committee is of the opinion that Rule 5.5(b) bars the proposed practice, regardless of whether the lawyer's presence in Illinois is physical or virtual. Additionally, because the Illinois lawyer would be part and parcel of the project, he or she would be subject to discipline under Rule 5.5(a) for assisting the State X lawyer.

Professional Conduct Advisory Opinions are provided by the ISBA as an educational service to the public and the legal profession and are not intended as legal advice. The opinions are not binding on the courts or disciplinary agencies, but they are often considered by them in assessing lawyer conduct.

ISBA Professional Conduct Advisory Opinion

ILLINOIS STATE BAR ASSOCIATION

Opinion No. 12-10
March 2012

Subject: Withdrawal from Representation; Impaired Client; Confidentiality

Digest: It would be professionally proper for a lawyer to request permission of the Court to withdraw if the client's actions or conduct is rendering the lawyer's fulfillment of employment difficult or is demanding action which in the lawyer's judgment is contrary to the law. Under the facts presented, it would be professionally proper for a lawyer to seek the establishment of guardianship for a client when the information upon which the lawyer acts was learned by the lawyer through the confidential relationship

References: Illinois Rules of Professional Conduct 1.16, 1.14, 1.6

Kelly R. Peck, Ethical Issues in Representing Elderly Clients with Diminished Capacity, 99 Ill. Bar J. 572 (2011)

ABA Annotated Mode Rules of Professional Conduct, 7th Edition (2011)

FACTS

The inquiring lawyer represents a client in a divorce proceeding. He has obtained what he feels to be a favorable settlement. The client has a history of psychiatric problems and is irrational in discussions with the lawyer. The client has consented to the proposed Judgment and Agreement and now refuses to sign. The lawyer does not believe the client is capable of making decisions in her own best interest.

The client has also begun to demand nearly impossible tasks of the lawyer. For example, though the client has no funds to pay for future litigation, the client wants full custody of the 17-year old child who moved in with the spouse and who refuses to live with the client. (The Committee presumes that issues of custody are addressed in the proposed Judgment and Decree.)

The lawyer inquires whether he is able to withdraw from representation in the divorce proceedings. He also inquires whether he is able to suggest that the Court

determine whether a guardian need be appointed without breaching the confidentiality between the lawyer and a client.

OPINION

Rule 1.16(b) (4) allows withdrawal of a lawyer if the client "insists on taking action that the lawyer considers repugnant or which with the lawyer has a fundamental disagreement." Rule 1.16(b) (6) allows withdrawal by a lawyer if "the representation… has been rendered unreasonably difficult by the client." If a lawyer believes withdrawal is advisable, the lawyer must seek the permission of the tribunal or comply with applicable law pursuant to 1.16(c). Additionally, upon termination of the representation, the lawyer must take steps to protect the interests of the client, including giving reasonable notice, time to employ other counsel, returning papers and property to which the client is entitled, and returning unearned fees to the client pursuant to 1.16(d).

Lastly, the question arises as to whether or not the lawyer may request the Court, when he asks permission to withdraw, to determine if guardianship is proper. Rule 1.6 provides that a lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out representation, or the disclosure is permitted under the Rule. However, Rule 1.14 provides specific guidance with respect to a client with diminished capacity. Specifically Rule 1.14(b) provides "when the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial, or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian." Although information relating to the representation of the client is protect by Rule 1.6, Pursuant to Rule 1.14(c), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interest.

Comments to Rule 1.14 state the obvious: "The lawyer's position in such cases is an unavoidably difficult one." Any lawyer encountering this type of a factual situation should carefully review the factors set forth in the comments to Rule 1.14. However, under the facts presented, it would be professionally proper for a lawyer to seek the establishment of a guardianship for a client even when the information upon which the lawyer acts was learned by the lawyer through the confidential relationship.
