ILLINOIS STATE
BAR ASSOCIATION

Board of Governors Meeting
President Abraham Lincoln Hotel & Conference Center
Springfield, Illinois
March 10, 2017

AGENDA

Thursday, March 9th
Illinois Bar Center / 424 South Second Street / Springfield, Illinois

5 – 7:00 p.m.	-	Board Reception

Friday, March 10th
President Abraham Lincoln Springfield / 701 East Adams Street / Springfield, Illinois

8:30 a.m.	-	Board of Governors Breakfast Freeport Foyer, Second Floor
9:00 a.m.	-	Board of Governors Meeting Freeport, Second Floor
12:00 p.m.	-	Board of Governors Lunch Freeport Foyer, Second Floor

SPECIAL SETTINGS

9:15 a.m. **110. ISBA Council of Law School Deans**

A representative of the Council will present recommendations regarding Illinois Bar admissions (participation by conference call)

10:30 a.m. **108. Special Committee on Supreme Court Rule 711**

The Board will be asked to consider a response to the recent action of the Supreme Court of Illinois on a proposed amendment to Rule 711. Immediate Past President Davi will be present and Judge Michael Chmiel will join via conference call to speak on the issue.

ACTION AGENDA

1. MINUTES

A. Attached is a copy of the minutes of the October 14, 2016 meeting of the Board of Governors.

B. Executive Session for approval of Minutes from October 14, 2016 Executive Session

3. PRESIDENT'S REPORT

President Cornelius will make the report of the President.

12. EXECUTIVE DIRECTOR'S REPORT

The Executive Director will make a report on membership and administration.

5. BUDGET AND AUDIT
Russell Hartigan, Chair

A. Financial Statements

Attached are the Operating Statements for the fiscal year ending December 31, 2016.

B. Illinois Bar Center

A status report will be made on the construction relating to updating the Illinois Bar Center in Springfield.

6. SCOPE AND CORRELATION
James McCluskey, Chair

The Standing Committee on Scope and Correlation met on February 15, 2017. Attached is a copy of the Minutes for the meeting. The Chair will make a report on any matters to be considered by the Board.

10. PROFESSIONAL ETHICS OPINIONS

The Board will be asked to adopt Professional Conduct Advisory Opinions 17-01, 17-02, 17-03, and 17-04. Please refer to the attached memorandum from the General Counsel.

STANDING COMMITTEES

78. LEGISLATION
Umberto Davi, Chair

The Board of Governors will be requested to take a position on two legislative proposals. Please refer to attached memorandum from the Director of Legislative Affairs.

SPECIAL COMMITTEES

108. SPECIAL COMMITTEE ON SUPREME COURT RULE 711

The Board will be asked to consider a response to the recent action of the Supreme Court of Illinois on a proposed amendment to Rule 711. Please refer to attached copies of (1) the letter providing notice of Supreme Court action on the ISBA's 711 proposal from the Administrative Office of the Illinois Courts and (2) a memorandum from the Special Committee and (3) a preliminary proposed response submitted by the Special Committee. Immediate Past President Davi will be present and Judge Michael Chmiel will join via conference call to speak on the issue.
(Specially set for 10:30 a.m.)

110. COUNCIL OF LAW SCHOOL DEANS

A representative of the Council will present recommendations regarding Illinois Bar Admissions.
(Specially set for 9:15 a.m.)

OTHER ORGANIZATIONS

131. AMERICAN BAR ASSOCIATION

President-elect Hartigan will report on the most recent ABA meeting.

INFORMATION AGENDA

2. CALENDAR

Attached is a copy of the 2016-17 Board meeting schedule.

11. ISBA ELECTIONS

Attached is a copy of the Candidate's Report for the 2017 Elections.

98. TASK FORCE ON UNAUTHORIZED PRACTICE OF LAW

Attached is a copy of the February 17, 2017 Illinois Supreme Court Opinion on *Stone Street Partners v. City of Chicago Department of Administrative Hearings.*

ILLINOIS STATE
BAR ASSOCIATION

Board of Governor Meeting
March 10, 2017

Action Agenda Item #1
Minutes
(101416)

ILLINOIS STATE
BAR ASSOCIATION

Board of Governors Meeting
ISBA Chicago Regional Office
20 South Clark Street, Chicago
October 14, 2016

MINUTES

Board Members Present: Cornelius, Hartigan, McCluskey, Sosin, Davi, Davis, Doherty, Duignan, Durkin, Fruehling, Gaertner, George Stewart, Karno, Komie, Krolikowska, Lynch, Menaker, O'Brien, Orsey, Porter, Saeedi; Wawrzynek, Weiler, Williams, and Wright.

Board Members Absent: Gill, Rochford

Others Present: Flannell, JA Polls; Gamrath, Assembly Agenda Committee; Moran, Futures Task Force; McKillip, JA Polls; Nyuli, Futures Task Force; Schoenbeck, ISBA Young Lawyers Division; Thies, Legal Education, Admissions, and Competence.

Staff Present: Craghead, Executive Director; Archer, Director Administration and Finance; Covington, Director of Legislative Affairs; Cunningham, Assistant Counsel; Northrup, General Counsel; and Weaver, Assistant to the Executive Director.

President Cornelius called the meeting to order and presided throughout.

1. Minutes

Motion duly made, and seconded to approve the Minutes of the June 18, 2016. After two corrections noted, motion to approve minutes as revised carried.

3. President's Report

President Cornelius welcomed the Board members. He expressed his appreciation for all the encouragement he has received during his presidential year. He noted that he has been very busy with many Association activities since the Annual meeting. He singled out a few highlights since becoming president: his participation at the first meeting of the ISBA Council of Law School Deans, where issues such as the Uniform Bar Exam, experiential learning, 711's, and many others were discussed; participation at an IBF Fellows event in Collinsville; presentations during law school orientations at SIU, NIU, and U of I; participation at the ABA Annual Meeting in San Francisco; a very well attended diversity luncheon in Peoria where he was the keynote speaker; and testifying before the Illinois Supreme Court Rules Committee in support of a proposal to prohibit juvenile shackling in courtrooms.

5. Budget and Audit

President Cornelius called upon First-Vice President, and Board Budget Committee Chair, Hartigan, Executive Director Craghead, and Director of Finance Archer to address the Board on budget issues.

Executive Director Craghead noted that at this time the budget was approximately $204,000 better than budget. In addition, a budgeted $170,000 contribution from long term reserves had not been used. He then brought the Board's attention to the Annual meeting held in Rosemont. He noted that there was a significant variance between the budgeted costs for the Annual meeting and what had been expended. This was in large part due to increased expenses at the Rosemont location (in contrast to a Wisconsin location). However, he noted a number of positive aspects of the Annual meeting including: this was the first Annual meeting held in Illinois in 30 years; higher registrations and section council meeting attendance, the absence hotel guest room of attrition fees; increased sponsorship revenue, and less section council and committee member reimbursements.

Director Archer then addressed the Board and reported that FY 2015-2016 ended with a net operating surplus of $190,690 (and, after taking into account market loss on long term investments, a net surplus of $78,654). He discussed a number of variance items, including positive results from a new member campaign and better than expected electronic CLE sales. He highlighted lower than expected advertising revenue and continuing decreases in income from live CLE events.

Board members raised a number of questions, mostly centered on CLE revenue and expenses, and the significant trend of members accessing substantially more online CLE, both free and paid. Issues concerning IBC real estate taxes were also raised.

Director Archer then provided the Board with an update on construction at the Illinois Bar Center. He noted that the project was proceeding with a slight delay and was anticipated to exceed the original estimated total project cost by approximately $45,000. The additional time and expense were attributed to the discovery of additional asbestos as well as unforeseen plumbing and electrical work.

Motion made, seconded and carried to approve the budget report.

6. Scope and Correlation

President Cornelius called upon Second Vice President McCluskey to address the Board.

Second Vice-President McCluskey updated the Board with respect to several Scope Committee matters including: reorganization of the Association's diversity organizational structure, participation of Association officers at ABA meetings, the status of efforts to revise S. Ct. Rule 23, and the status of the Association's efforts with respect to futures, lead generation, and collaborative law.

Motion made, seconded, and carried to approve the Scope recommendations with respect to the reorganization of the Association's diversity organizational structure.

10. Professional Ethics Opinions

President Cornelius called upon General Counsel Northrup to discuss four recommended ethics opinions.

General Counsel Northrup provided background information on the Professional Conduct Committee's recommended four ethics opinions: 16-04 (Facebook prizes); 16-05 (conflict of interest involving law firm employee on city council); 16-06 (use of cloud based services); and 16-07 (of counsel relationships).

The Board discussed the proposed opinions, particularly 16-04 and the possibility that providing prizes for Facebook designations was potentially distasteful and subject to being misunderstood by the public.

Motion made, seconded and carried to approve opinions 16-05, 16-06, and 16-07.

Motion made, seconded and carried to reject opinion 16-04.

President Cornelius then called upon David Morgans of the Professional Conduct Committee to address proposed opinion 16-08.

Mr. Morgans addressed the Board and provided background information on opinion 16-08 related to conflicts of interest and disclosure requirements when a criminal defense lawyer is actively campaigning against a State's Attorney.

After extensive discussion, including concerns about the impact of the opinion on a lawyer's speech rights and the lawyer client relationship, motion made, seconded and carried to refer the opinion back to the Professional Conduct Committee for further consideration.

11. Elections

President Cornelius noted that the Illinois Bar Foundation was making recommendations to fill six seats on its Board for two year terms. The recommendations were: Sharon Eiseman (First Appellate District), Mark Karno (First Appellate District), Mary Petruchius (Second Appellate District), Tim Bertschy (Third Appellate District), Don Tracy (Fourth Appellate District), and Jennifer Shaw (Fifth Appellate District).

Motion made, seconded and carried to accept the IBF recommendation.

58. Young Lawyers Division

President Cornelius called upon George Schoenbeck, Chair of the Young Lawyers Division to update the Board on its activities.

Chair Schoenbeck thanked President Cornelius for the opportunity to address the Board and tell it about the Young Lawyers Division's goals and activities. Chair Schoenbeck referenced the new Committee on New Lawyers that has been tasked with implementing many of the recommendations made over the past several years concerning new and young lawyers. He also noted YLD's outreach to different parts of the state through a number of "speed networking" events in locations like Collinsville and central Illinois. He also described the YLD's traditional events such as the Winter Wine event, a Day at the Races in Arlington Heights, the Bean Bag tournament in Champaign, and the Holiday Party. He also noted YLD efforts to reprogram CLE in formats that appeal to younger and new lawyers, and efforts to reintegrate the YLD back into the larger Association structure, particularly by scheduling events in coordination with larger Association events such as the Mid-Year meeting. Finally, he noted the YLD's intent on reaching out to law students by, in part, sponsoring ISBA days at each of the Illinois law schools.

The Board commented on a number of the YLD efforts, and President Cornelius specifically thanked the YLD for its creativity an innovation in bringing interest to the Association.

71. Judicial Advisory Polls

President Cornelius called upon Judges McKillip and Flannell to present a request from the Judicial Advisory Poll Committee that the Board reconsider its prior action with respect to the publication of JA Poll results.

Judges McKillip and Flannell discussed the February, 2016 Board action to amend the JA Poll Manual to make public all associate judgeship polls (with an opportunity for applicants to withdraw prior to publication). They both expressed a number of concerns concerning the publication of all JA Poll results, particularly the potential negative impact on applicants' professional reputation and on the number of lawyers willing to be applicants for associate judge positions, especially in rural circuits.

After debate, motion made, seconded and carried to rescind the Board's action of February 26, 2016, concerning paragraph 6.02 of the JA Poll Manual and the public release of all JA Poll results.

Motion made, seconded and carried to amend section 6.02 of the JA Poll manual by replacing the current section with the following language:

The Chief Judge shall inform the ISBA at the time of the request of the poll if the poll results are to be released to the public. If the poll is to be made public, the applicants shall have the ability to withdraw their applications within forty-eight hours after an email is sent to the applicant containing the bar poll results, which will be sent to each applicant's email address. If an applicant withdraws his/her application, those bar poll results as to that candidate will not be made public by any source. Once the forty-eight hour time period had passed, the ISBA will release the bar poll results by posting those results on the ISBA website.

76. Legal Education, Admission and Competence

President Cornelius called upon Daniel Thies, Chair of the Legal Education, Admission & Competence Committee to present its proposal on the adoption of the Uniform Bar Exam in Illinois.

Chair Thies addressed the Board and indicated the Committee's "Final Report on the Adoption of the Uniform Bar Exam" was unanimously supported by the LEAC Committee. He noted adoption of the UBE would create a more flexible job market, lower the cost of bar admission, and enhance the bar exam's focus on making new lawyers practice ready. He noted that 87% of the current bar exam would remain the same and that the only difference would be the replacement of three Illinois specific essay questions with the multistate performance test. He noted that the states were free to add additional state specific requirements as well.

After discussion, motion made, seconded and carried to recommend that the Assembly approve the recommendations of LEAC's "Final Report on the Adoption of the Uniform Bar Exam."

78. Legislation

President Cornelius called upon Director of Legislative Affairs Covington to address a number of legislative proposals for the upcoming legislative session.

Four legislative proposals were presented and included amendments to: (1) the Illinois Marriage and Dissolution of Marriage Act to prohibit life insurance benefits from being paid to a former spouse after a judgment of dissolution of marriage unless there was a specific reference in the judgment to the contrary; (2) various criminal sentencing laws concerning monetary credit against fines for time served prior to sentencing, including the cost of incarceration in presentence reports, and court procedures regarding ensuring court consideration of a defendant's compliance with terms and conditions of supervision or probation; and (3) the Code of Criminal Procedure establishing consequences for a court's failure to give a defendant the already required admonition about immigration consequences of a plea.

After discussion, motion made, seconded, and carried to support in concept the amendments to the Illinois Marriage and Dissolution of Marriage Act and the Code of Criminal of Procedure, and to support the various sentencing related amendments.

Director Covington then discussed the fourth legislative proposal before the Board, a proposal to amend the Code of Civil Procedure regarding the striking of affirmative defenses. Director Covington noted that the Legislation Committee voted 11-8 to oppose the proposal. He also noted a split of positions from several section councils.

After discussion, motion made, seconded, and carried to postpone consideration of the proposal.

98. Task Force on the Unauthorized Practice of Law

Motion made, seconded and carried to go into executive session.

99. Collaborative Law

President Cornelius called upon Board member Anna Krolikowska, as a member of the Special Committee on Review of the Collaborative Law Process, to present a legislative proposal on the collaborative process.

Board member Krolikowska provided background on the Special Committee, including its members, deliberations, and work product. Specifically, she described the Special Committee's draft legislation and accompanying Supreme Court rule proposal. She noted that 15 US jurisdictions have adopted collaborative process legislation.

The Board discussed a number of aspects of the proposal. It was confirmed that the proposal is only applicable to family law. In addition, several Board members questioned the necessity of mandatory withdrawal when the collaborative process fails. Proponents of the proposal noted that the mandatory withdrawal was a central feature of collaborative process designed, in part, to ensure the parties (and their lawyers') commitment to the process.

Motion made, seconded and carried to recommend that the Assembly approve the proposal of the Special Committee.

107. Task Force on the Future of Legal Services

President Cornelius called upon Chair Tim Moran, and Vice-Chair Lisa Nyuli, of the Task Force on the Future of Legal Services.

Chair Moran discussed the establishment of the Task Force and the nature of its work that culminated in the Report and Recommendations before the Board. He noted that the genesis of the Task Force was the "Limited License Legal Technician" program established in Washington State, but explained the Task Force worked with a much broader scope. Chair Moran discussed the data-driven focus of the Report, the various forces impacting the delivery of legal services, various market and regulatory forces minimizing the role of lawyers, and the overriding need for the bar to recognize the changing legal environment and to adapt to it. He touched on many activities currently being implemented by the Association, as well as the need to establish a Standing Committee on the Future of Legal Services.

After discussion, motion made, seconded and carried to recommend that the Assembly approve the Task Force's Report and Recommendations.

There being no other further business, motion made, seconded, and carried to adjourn the meeting.

Respectfully submitted,

Al Durkin, Secretary

ILLINOIS STATE
BAR ASSOCIATION

Board of Governor Meeting
March 10, 2017

Action Agenda Item #5A
Budget & Audit
Financial Statements

ILLINOIS STATE BAR ASSOCIATION
OPERATING STATEMENT AND BUDGET FOR
THE PERIOD OF JULY 1, 2016 THRU JANUARY 31, 2017

	ACTUAL JAN 2017	BUDGET JAN 2017	BUDGET DIFFERENCE	BUDGET 2016/2017
1 Income	$7,981,123	$8,338,230	($357,107)	$8,982,263
Expenses:				
2 Administrative	$3,177,107	$3,784,471	$607,364	$6,434,668
3 Publications	145,761	167,638	21,877	285,950
4 General Meetings and Travel	237,972	255,671	17,699	443,500
5 Program Expenses	266,995	381,719	114,724	759,772
6 Committee Expenses	66,244	94,263	28,019	171,800
7 Section Expense	117,768	153,318	35,550	316,250
TOTAL EXPENSE	$4,011,847	$4,837,080	$825,233	$8,411,940
Extra Budgetary Authorizations:	0	0	0	0
Net Operating Surplus (Deficit)	$3,969,276	$3,501,150	$468,126	$570,323
* Less Accrual Adjustment	($2,864,168)			
Market Gain (Loss) on Long-Term Investments	$238,006			
Net Surplus (Deficit)	$1,343,114			

*Accrual Adjustment -
Membership Dues, Campaign and section fees/12 months x 5 remaining months to recognize income

	ACTUAL JAN 2017	BUDGET JAN 2017	BUDGET DIFFERENCE	BUDGET 2016/2017
INCOME				
1 Membership Dues	$6,234,350	$6,579,901	($345,551)	$6,664,883
2 Membership Campaign	155,520	108,280	47,240	108,280
3 Section Fees	484,133	497,183	(13,050)	510,000
4 IBJ Advertising	129,173	163,803	(34,630)	276,000
5 IBJ Subscriptions	4,190	3,500	690	6,000
6 Newsletter Advertising	18,518	24,895	(6,377)	40,000
7 Internet Advertising	30,853	26,250	4,603	45,000
8 Ill. Compiled Statutes	0	0	0	21,000
9 Ill. Courts Bulletin	5,940	5,177	763	10,000
10 Book Publications	70,079	74,430	(4,351)	110,000
11 ILBarDocs	39,102	37,683	1,419	64,600
12 Income from Investments	81,067	75,833	5,234	130,000
13 Lawyer Referral Fees	37,734	37,734	0	65,000
14 Public Info Material	534	409	125	2,000
15 Bank of America Royalties Program	13,146	57,500	(44,354)	57,500
16 Other Program Royalties	85,243	67,083	18,160	115,000
17 Other Income	4,828	3,000	1,828	3,000
18 CRO Rental Income Suite 950	2,975	1,750	1,225	3,000
19 Commercial Mailing Labels	4,874	5,736	(862)	10,000
20 CLE Live Programs	161,315	145,833	15,482	250,000
21 CLE Electronic Sales	72,557	72,917	(360)	125,000
22 Fastcase Contribution from ISBA Mutual Insurance	90,000	90,000	0	90,000
23 Solo Small Firm Conference	16,307	23,333	(7,026)	40,000
24 Fred Lane's Programs	18,685	16,000	2,685	16,000
25 Free CLE Sponsorship from ISBA Mutual Insurance	220,000	220,000	0	220,000
TOTAL	$7,981,123	$8,338,230	($357,107)	$8,982,263

	ACTUAL JAN 2017	BUDGET JAN 2017	BUDGET DIFFERENCE	BUDGET 2016/2017
ADMINISTRATIVE EXPENSES				
26 Staff Salaries	$1,581,070	$1,994,417	$413,347	$3,419,000
27 Payroll Taxes	107,875	160,417	52,542	275,000
28 Indirect Payroll	322,004	439,250	117,246	753,000
29 Postage and Express	74,597	105,000	30,403	180,000
30 IT/Data Processing	114,838	93,333	(21,505)	160,000
31 Telephone	18,200	17,500	(700)	30,000
32 Staff Travel	55,483	65,333	9,850	112,000
33 General Office Machines	8,386	9,333	947	16,000
34 Paper and Envelopes	15,139	26,250	11,111	45,000
35 Utilities	56,839	70,293	13,454	112,000
36 Building Maintenance	44,354	30,333	(14,021)	52,000
37 Amortization & Depreciation	289,431	289,431	0	496,168
38 Pressroom	43,916	30,917	(12,999)	53,000
39 Mailroom	10,927	14,583	3,656	25,000
40 Insurance	55,474	54,951	(523)	80,000
41 Office Exp., Supplies, Library	20,825	23,333	2,508	40,000
42 Credit Card and Bank Serv. Charge	66,842	64,420	(2,422)	95,000
43 Election Expenses	10,615	13,125	2,510	22,500
44 Bar Center Taxes	26,085	26,085	0	52,000
45 Auditors	31,150	31,000	(150)	31,000
46 Legal Service	2,923	3,500	577	6,000
47 Chicago Office Expense	220,134	221,667	1,533	380,000
TOTAL	$3,177,107	$3,784,471	$607,364	$6,434,668

	ACTUAL JAN 2017	BUDGET JAN 2017	BUDGET DIFFERENCE	BUDGET 2016/2017
PUBLICATIONS				
48 Bar Journal	$89,543	$99,167	$9,624	$170,000
49 Unrelated Income Tax	5,488	20,417	14,929	35,000
50 E-Clips	20,754	18,083	(2,671)	31,000
51 Book Publications	21,013	18,083	(2,930)	31,000
52 ILBarDocs	8,963	9,888	925	16,950
53 Graphic Design Enhancements	0	1,000	1,000	1,000
54 Communication Branding Update	0	1,000	1,000	1,000
TOTAL	$145,761	$167,638	$21,877	$285,950
GENERAL MEETINGS and TRAVEL				
55 Officers and Board	$53,582	$77,024	$23,442	$150,000
56 Officer Stipends	17,500	17,500	0	30,000
57 ABA Meetings	28,722	25,000	(3,722)	50,000
58 Annual Meeting	4,065	4,065	0	40,000
59 Midyear Meeting	74,265	75,500	1,235	75,500
60 Other	0	500	500	1,000
61 Admission Ceremonies	4,201	2,758	(1,443)	8,000
62 Assembly	50,415	49,324	(1,091)	85,000
63 Distinguished Counsellor Ceremony	5,222	4,000	(1,222)	4,000
TOTAL	$237,972	$255,671	$17,699	$443,500

PROGRAM EXPENSES	ACTUAL JAN 2017	BUDGET JAN 2017	BUDGET DIFFERENCE	BUDGET 2016/2017
64 Academy of Illinois Lawyers	$2,866	$0	($2,866)	$0
65 Affiliated Bar Association Grants	0	1,552	1,552	5,000
66 Allerton House Conference	0	1,000	1,000	1,000
67 Celebrating the Profession Lunch	0	2,500	2,500	2,500
68 Cook County Luncheon	0	2,000	2,000	2,000
69 CLE Live Program Expense	84,058	113,750	29,692	195,000
70 CLE Electronic Program Expense	72,297	72,917	620	125,000
71 ISBA Website and Internet Services	3,413	15,768	12,355	30,000
72 Judicial Evaluations Cook	0	0	0	0
73 Law Practice Management	19,365	35,718	16,353	61,230
74 Judicial Evaluations Downstate	25	0	(25)	4,000
75 Law School Programs	530	2,933	2,403	5,000
76 Lawyer Referral Service	1,187	13,659	12,472	20,000
77 LRE Mock Trial	0	0	0	1,000
78 Legislation Other	28,477	29,318	841	54,000
79 Membership & Marketing	19,061	40,410	21,349	65,542
80 Marketing & Comm. Programming	44	2,453	2,409	7,500
81 Membership Publications	416	10,000	9,584	10,000
82 Membership Advertising	6,000	13,590	7,590	15,000
83 Fastcase Online Caselaw	0	0	0	94,500
84 Public Relations Other	5,261	4,875	(386)	8,500
85 Solo and Small Firm Conference	18,232	13,383	(4,849)	40,000
86 Unauthorized Practice of Law	25	0	(25)	2,000
87 Young Lawyers Division	5,738	5,893	155	11,000
TOTAL	$266,995	$381,719	$114,724	$759,772

COMMITTEE EXPENSES	ACTUAL JAN 2017	BUDGET JAN 2017	BUDGET DIFFERENCE	BUDGET 2016/2017
88 AR & DC Committee	$2,780	$2,780	$0	$4,500
89 Bar Services and Activities	2,000	3,666	1,666	9,000
90 Budget & Audit	20	20	0	1,000
91 CLE Programs Committee	4,696	8,063	3,367	13,000
92 Corrections and Sentencing	3,617	3,656	39	9,000
93 Delivery of Legal Services	1,474	3,919	2,445	5,500
94 Disability Law Committee	4,404	4,375	(29)	7,500
95 Ed., Admission & Competence	3,658	2,917	(741)	5,000
96 Government Lawyers Committee	1,333	2,056	723	5,000
97 IBJ Editorial Board	2,365	2,550	185	5,000
98 Investment Committee	195	248	53	750
99 J. A. Polls Committee	4,222	4,667	445	8,000
100 Judicial Evaluations-Outside Cook	7,228	8,750	1,522	15,000
101 Judicial Evaluations-Cook	826	826	0	0
102 Law Office Management and Economic:	1,106	2,078	972	6,000
103 Law School Committee	519	4,583	4,064	5,000
104 Law Related Education for the Public	1,256	1,716	460	6,500
105 Legal Technology	2,074	3,740	1,666	6,000
106 Legislation Committee	458	458	0	2,500
107 Marketing & Communications	2,254	2,254	0	7,500
108 Mentoring Committee	0	0	0	1,000
109 Military Affairs	1,563	1,167	(396)	2,000
110 Racial & Ethnic Minorities and the Law	1,145	1,750	605	3,000
111 Other Committee Expense	1,744	1,750	6	3,000
112 Professional Conduct	1,043	1,577	534	4,000

COMMITTEE EXP. CONTINUED	ACTUAL JAN 2017	BUDGET JAN 2017	BUDGET DIFFERENCE	BUDGET 2016/2017
113 Scope & Correlation	345	345	0	500
114 Sexual Orientation & Gender Identity	919	3,382	2,463	8,000
115 Tone and Conduct Committee	0	50	50	50
116 Women and the Law Committee	2,479	3,922	1,443	5,000
117 Unauthorized Practice of Law	1,163	1,998	835	3,500
118 Diversity Leadership Council	845	3,500	2,655	6,000
119 Diversity Reception	8,498	8,000	(498)	8,000
120 Comt. on Solo Small Firm Conf.	6	875	869	1,500
121 Task Force on Legal Education	0	0	0	0
122 SC Law School Dean Council/Forum	9	2,625	2,616	4,500
TOTAL COMMITTEE EXPENSES	$66,244	$94,263	$28,019	$171,800

SECTION EXPENSES	ACTUAL JAN 2017	BUDGET JAN 2017	BUDGET DIFFERENCE	BUDGET 2016/2017
123 Administrative Law	$2,090	$3,208	$1,118	$5,500
124 Agricultural Law	6,947	7,099	152	14,000
125 Alternative Dispute Resolution	3,169	3,408	239	9,000
126 Animal Law	1,344	2,156	812	4,500
127 Antitrust & Unfair Competition Law	0	43	43	1,500
128 Bench & Bar	2,478	4,494	2,016	8,000
129 Bus. Advice & Fin. Planning	3,594	4,727	1,133	6,000
130 Business & Securities Law	2,004	2,004	0	5,000
131 Child Law	1,195	2,899	1,704	5,000
132 Civil Practice & Procedure	3,164	3,164	0	5,500
133 Commercial Banking & Bankruptcy	5,593	5,250	(343)	9,000
134 Construction Law	721	3,059	2,338	5,500
135 Corporate Law Department	1,047	2,683	1,636	5,000
136 Criminal Justice	4,703	5,366	663	12,000
137 Education Law	1,026	1,920	894	5,000
138 Elder Law	7,793	6,417	(1,376)	11,000
139 Employee Benefits	425	425	0	2,500
140 Energy, Utilities, Telecommunications, and Transportation	1,322	875	(447)	1,500
141 Environmental Law	1,391	2,786	1,395	4,000
142 Family Law	7,714	12,197	4,483	25,000
143 Federal Practice	2,228	2,658	430	5,500
144 Federal Taxation	1,633	2,333	700	4,000
145 General Practice SSF	6,549	6,549	0	12,000
146 Health Care	4,908	6,238	1,330	12,000
147 Human Rights	1,238	2,708	1,470	6,500
148 Insurance Law	682	1,856	1,174	3,500

	ACTUAL JAN 2017	BUDGET JAN 2017	BUDGET DIFFERENCE	BUDGET 2016/2017
SECTION EXP. CONTINUED				
149 Intellectual Property	$3,568	$1,872	($1,696)	$4,000
150 International & Immigration Law	351	858	507	3,000
151 Labor and Employment Law	2,179	3,641	1,462	8,000
152 Local Government	3,673	5,676	2,003	9,500
153 Mental Health	5,011	6,650	1,639	13,000
154 Mineral Law	4,295	3,208	(1,087)	5,500
155 Other	0	0	0	0
156 Real Estate Law	2,478	7,620	5,142	14,000
157 Senior Lawyers	3,130	3,130	0	8,000
158 State and Local Taxation	1,207	2,888	1,681	7,000
159 Tort Law	2,645	4,537	1,892	13,000
160 Traffic Laws and Courts	2,334	2,886	552	7,250
161 Trusts and Estates	5,845	5,845	0	12,500
162 Workers' Compensation	2,471	4,362	1,891	10,000
163 Young Lawyers Council	3,558	3,558	0	10,000
164 New Lawyer Forum	65	65	0	3,500
TOTAL SECTION EXPENSE	$117,768	$153,318	$35,550	$316,250

ILLINOIS STATE BAR ASSOCIATION
COMPARATIVE BALANCE SHEET

	Jan. 31, 2017	Jan. 31, 2016
Current Assets:		
Cash and Petty Cash	$322,468	$80,093
Certificates of Deposit	1,989,000	1,494,000
Money Market Investments	260,163	646,522
Accounts Receivable	179,555	102,920
Prepaid Expenses & Other Assets	169,095	174,919
Total Current Assets	$2,920,281	$2,498,454
Long Term Assets:		
Investments	$5,208,838	$4,566,666
Fixed Assets:		
Cost (Net of Depreciation)	$3,989,041	$3,013,411
Total Assets	$12,118,160	$10,078,531
Current Liabilities:		
Accounts Payable	$508,176	$385,589
ICB & LRS Deferred Income	13,408	16,627
Dues & Section Deferred Income	29,175	20,736
Other Deferred Income	79,563	64,339
Deferred Rent	395,295	405,330
Total Current Liability	$1,025,617	$892,621
Designated Fund Balance		
Building Expansion Fund	$1,448,924	1,448,924
Building Maintenance Fund	20,451	20,451
General Contingency Fund	858,700	858,700
Total Designated Fund Balance	$2,328,075	$2,328,075
Undesignated Fund Balance	$8,764,468	6,857,835
Total Liabilities and Fund Balance	$12,118,160	$10,078,531

ILLINOIS STATE
BAR ASSOCIATION

Board of Governor Meeting
March 10, 2017

Action Agenda Item #6
Scope and Correlation
(021517)

ILLINOIS STATE
BAR ASSOCIATION

Standing Committee on Scope & Correlation
February 15, 2017
Conference Call Meeting

MINUTES

Members Present: McCluskey (Chair), Davi, Duignan, Durkin, Fruehling, Krolikowska, O'Brien, Orsey, and Sosin

Members Absent: Saeedi

Also Present: Executive Director Craghead, General Counsel Northrup, and Assistant to the Executive Director Weaver

Chair McCluskey called the meeting to order at 2:00 p.m. and presided throughout.

1. Minutes

Motion Durkin/Davi to approve the Minutes of the September 15, 2016 meeting as submitted. Motion carried.

2A. Request of Standing Committee on Legal Technology

The Standing Committee had requested authorization for an out-of-state meeting at the headquarters of Share File in Raleigh, North Carolina to learn firsthand about cloud-based data storage and sharing. A copy of the memorandum making the request is attached. The Committee discussed the request, including a review of the costs of a prior out-of-state travel meeting of the Committee, the status of the Committee's 2016-17 budget, and alternate meeting opportunities afforded by the technology of today. Motion Durkin/Krolikowska to recommend to the Board of Governors that the request be declined. Motion carried.

2B. Supreme Court Rule 769

The Standing Committee on Legal Technology had requested that Rule 769 be amended by the addition of certain comments. The memorandum requesting the amendment is attached. Motion Durkin/Krolikowska to recommend to the Board of Governors that it approve the proposed amendments, subject to any comments of the Standing Committee on ARDC and the Standing Committee on Professional Responsibility, with such comments requested to be available in time for consideration at the March 10, 2017 meeting of the Board of Governors. Motion carried.

3. ISBA Participation in ABA House of Delegates

At the request of Chair McCluskey, the Scope Committee continued its discussion of the composition of the ISBA delegation to the ABA House, Chair McCluskey suggested that the interests of the ISBA might be better served if there were more "at large" delegates who are eligible to serve for ten consecutive years, rather than four ex-officio ISBA officer delegates who normally only serve for four years. In addition, Chair McCluskey explained that there would likely be cost savings in reducing the number of ex-officio officer delegates. The Scope Committee discussed all of these considerations. Motion Durkin/Fruehling to request staff to draft amendments to the ABA Delegate Election Policy that would reduce the number of ex-officio officer delegates by two and increase the "at large" delegates by two for consideration at the next Scope Meeting. Motion carried.

4. "Under Represented" Seats on the Board of Governors

The Bylaws of the Association require that the Board "review and reexamine" the appointed Board seats in 2016-17. The Scope Committee opined that it would be more workable for the Scope Committee to undertake this task and make recommendations to the Board for consideration at the May 20, 2017 meeting of the Board. Motion Durkin/Orsey to authorize the appointment of a subcommittee of the Scope Committee to promptly undertake the review and prepare its findings and recommendations, if any, for initial consideration at the next meeting. Motion carried. Chair McCluskey appointed Durkin (Chair), Saeedi, Krolikowska, Sosin and Duignan as members of the subcommittee.

5. Illinois Bar Foundation – Proposed Bylaw Amendments

The IBF has proposed amendments to its Bylaws, and any amendment to those Bylaws must be approved by the ISBA Board of Governors. The Scope Committee reviewed the proposed amendments contained in the <u>attached</u> material. Motion Durkin/Sosin to recommend to the Board of Governors that it approve the amendments. Motion carried.

6. Proposed Lead Generation Rule

The General Counsel presented a report on the status and related aspects of a Supreme Court Rule on lead generation. The Scope Committee discussed the importance of this issue and its desire to move forward. Motion Durkin/Krolikowska that the materials pertaining to the proposed rule be referred to the Standing Committee on Professional Conduct, the General Practice, Solo and Small Firm Section Council and the Tort Law Section Council, and others as may be warranted, with a request that those groups review the issue and provide comments in time for a final proposal to be considered at the next meeting of the Scope Committee. Motion Carried.

7. Standing Committee on Legal Education, Admission and Competence – Rural Practice

The Scope Committee noted the issues being explored by the LEAC Committee regarding rural practice in Illinois and that appropriate staff would work with LEAC to further define its suggestions.

8. Supreme Court Rule 711

The Scope Committee noted the decision of the Supreme Court of Illinois on the revision to Rule 711 proposed by the Association. There was discussion about whether a response to the decision would be appropriate. Chair McCluskey suggested that this is a sensitive matter and that communication, if any, might be better received from the leadership.

9. Supreme Court Rule 23

The Scope Committee noted the decision of the Supreme Court of Illinois on the amendment of Rule 23 proposed by a Joint IJA/CBA/ISBA Committee.

10. Next Meeting

The next meeting was scheduled for 3:00 p.m. on Thursday, May 4, 2017 via conference call.

There being no further business, the meeting was adjourned at 3:30 p.m.

Respectfully submitted,

Robert E. Craghead
Secretary

M E M O R A N D U M

DATE: August 31, 2016

TO: ISBA Scope & Correlation Committee

FROM: ISBA Standing Committee on Legal Technology

SUBJECT: Committee visit to cloud law provider Citrix ShareFile

Dear Scope & Correlation Committee,

Digital data stored in the cloud is a fact of life for lawyers and their clients. Storing and sharing that data securely and easily though can be a challenge. Citrix ShareFile has created a solution that promises to do just that as well as working on other products to make a lawyer's digital life easier including docketing, electronic signatures and more on their product roadmap. A visit to ShareFile's Raleigh, N.C., headquarters by CoLT will provide an opportunity for ISBA's premier legal technology group to learn more about their existing and future products and share this information with ISBA members via the Illinois Bar Journal and newsletters. It also provides an opportunity for members of CoLT to share the concerns and needs of Illinois lawyers with the ShareFile team.

Much as with the Google trip that resulted in numerous articles as well as information presented at various CLE sessions by CoLT members, similar results will be achieved from ShareFile. ShareFile is rapidly becoming a "go to" resource for lawyers and firms when it comes to online file storage, synchronization and transfer. Add in the expanded capabilities that Citrix and ShareFile are bringing to the legal marketplace, making Illinois lawyers aware of their options become more important especially in light of the adoption of the changes to Rule 1.1 and 1.6.

CoLT has always been mindful of our budget and has not spent its full budget for a number of years. Like the Google trip, CoLT will conduct a committee meeting during this trip. ISBA travel and expense guidelines will be followed.

Those guidelines provide up to $180 for one night of hotel and up to $350 for airfare. Costs for the 2012 trip to Google came to $5,500 and it is expected that costs would be similar, if not lower, for this visit.

Thank you for consideration.

Regards,
Mark Palmer, Chair, ISBA Standing Committee on Legal Technology

MEMORANDUM

TO: ISBA Scope & Correlation Committee

FROM: ISBA Standing Committee on Legal Technology (COLT)

Date: December 20, 2016

Re: Proposed Rule Change – SCR 769 (Comments)

I am writing on behalf of the ISBA's Committee on Legal Technology (COLT). We are asking the ISBA to support a proposed rule change to the official comments on Illinois Supreme Court Rule 769 – Maintenance of Records.

BACKGROUND
SCR 769 addresses an attorney's duty regarding maintenance of records. As noted recently in the Illinois Bar Journal, attorneys have experienced a "digital storage revolution" over the past few years. The cost of storing files and records electronically has dropped dramatically and attorneys are increasingly turning to electronic storage to meet their ethical duties. While we know that the future is digital, we also know that technology rapidly changes. We believe the rules should recognize and accommodate this inevitable change.

CURRENT RULE
SCR 769 and the official comment currently provides:
Rule 769. Maintenance of Records

It shall be the duty of every attorney to maintain originals, copies or computer-generated images of the following:

(1) records which identify the name and last known address of each of the attorney's clients and which reflect whether the representation of the client is ongoing or concluded; and

(2) all financial records related to the attorney's practice, for a period of not less than seven years, including but not limited to bank statements, time and billing records, checks, check stubs, journals, ledgers, audits, financial statements, tax returns and tax reports.

Committee Comment (April 1, 2003)

This amendment gives attorneys the option of maintaining records in forms that save space and reduce cost without increasing the risk of premature destruction. 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.

We believe the comment is too narrow and dated. Instead, it should reflect that technology will continue to change and that lawyers should consider industry standards in assessing their options.

PROPOSAL
We request that the following comment be adopted:

As technology and its capabilities rapidly change, this rule is intended to provide guidelines as to the obligations of attorneys and their ability to use digital media or other electronic forms to store their records and not dictate the specific media or technology they must use. Attorneys may use industry standard technology that has a reasonable likelihood of providing necessary access capabilities to records for at least seven years. For example, online storage or archiving services that provide for long term access as well as local media such as redundant arrays of inexpensive disks with backups, properly stored optical media as well as other existing or future media that can be used onsite or in the cloud which provides a reasonable likelihood of access seven or more years. These examples are in no way the only media that conform to this Rule. Lawyers must look to use technology industry standards in determining the appropriate technology that complies with this Rule and their obligations under it.

We look forward to hearing your thoughts.

Respectfully,

Trent L. Bush

ILLINOIS BAR FOUNDATION

~~BY-LAWS~~ BYLAWS
ILLINOIS BAR FOUNDATION
(As Amended and Approved by the IBF Board of Directors, ~~June 18, 2015~~June 16, 2016

ARTICLE I
PURPOSES

The Illinois Bar Foundation (hereinafter "Foundation"), the charitable affiliate of the Illinois State Bar Association (hereinafter "ISBA"), shall be organized and operated exclusively for charitable, literary and educational purposes within the meanings of Section 501(c)(3) of the Internal Revenue Code of 1986, as now in effect or as may hereafter be amended ("the Code"), and Section 103.5 of the Illinois General Not-For-Profit Corporation Act of 1986, 805 ILCS 105/101.01 et seq., as now in effect or as may hereafter be amended ("the NFP Act").~~.~~

The specific purposes for which the ~~Illinois State Bar Association~~ISBA formed the ~~Illinois Bar~~ Foundation include the following:

~~a) To foster and maintain the honor and integrity of the profession of law;~~
~~b) To improve and to facilitate the administration of justice;~~
~~c) To promote the study of law and research therein, the diffusion of knowledge thereof and the continuing education of lawyers;~~
~~d) To cause to be published and to distribute addresses, reports, treatises and other literary works on legal subjects;~~
~~e) To acquire, preserve and exhibit rare books and documents, subjects of art and items of historical interest having legal significance; or~~
a~~f~~) To relieve, aid and assist as charitable acts deserving members of the Bar who shall be ill, incapacitated or superannuated and in need of aid, and the dependents of such members in need of aid; and
b~~g~~) To ~~otherwise~~ support and promote the equal access to the legal system; and ~~and rights and privileges provided under the Constitution of the United States and the Constitution and Laws of the State of Illinois.~~
c) To engage is all lawful charitable activities as the Foundation shall, from time to time, deem appropriate

The Foundation also has such powers and responsibilities as are now or may hereafter be granted by the ~~General Not-For-Profit Corporation Act of the state of Illinois.~~NFP Act.

No part of the net earnings of the Foundation shall inure to the benefit of, or be distributable to, its members, ~~trustees~~, Directors, ~~o~~Officers, or other private persons, except that the Foundation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth above. No substantial part of the activities of the Foundation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Foundation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office. Notwithstanding any other provision of these articles, the Foundation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from Federal Income Tax under

Section 501(c)(3) of the ~~Internal Revenue~~ Code, or any corresponding section of any future federal tax code, or (b) by a corporation, contributions to which are deductible under Section 170(c)(2) of the ~~Internal Revenue~~ Code, or any corresponding section of any future federal tax code.

The Foundation shall distribute its income for each tax year at such time and in such manner not to become subject to the tax on undistributed income imposed by Section 4942 of the ~~Internal Revenue~~ Code ~~of 1986~~, or the corresponding provision of any future ~~United States Internal Revenue Law~~federal tax code. The Foundation shall not engage in any act of self-dealing as defined in Section 4943(c) of the ~~Internal Revenue~~ Code ~~of 1986~~ or the corresponding provision of any future ~~United States Internal Revenue Law~~federal tax code, nor make any investments in such manner as to incur tax liability under Section 4944 of the ~~Internal Revenue~~ Code ~~of 1986~~ or the corresponding provision of any future ~~United States Internal Revenue Law~~federal tax code, nor make any taxable expenditures as defined in Section 4945(d) of the ~~Internal Revenue~~ Code of ~~1986~~, or the corresponding provision of any future ~~United States Internal Revenue Law~~federal tax code.

ARTICLE II
OFFICES

The Foundation shall have and continuously maintain in the state of Illinois a Registered Office and a Registered Agent whose office is identical with such Registered Office, and may have other offices within or without the state of Illinois as the Board of Directors may from time to time determine.

ARTICLE III
BOARD OF DIRECTORS

Section 1. General Powers. The affairs of the Foundation shall be managed by its Board of Directors ("Board").

Section 2. Number, Tenure and Qualification. There shall be thirty (30) Directors composed of:

a. Twelve (12) District Directors to be elected by the Board of Governors of the ~~Illinois State Bar Association~~ISBA;

b. The President and three vice presidents of the ~~Illinois State Bar Association~~ISBA who shall be ex-officio members of the Board ~~of Directors~~ of the Foundation and who shall hold office during their respective terms as such Officers of the ~~Illinois State Bar Association~~ISBA;

c. Two (2) members of the Board of Governors of the ~~Illinois State Bar Association~~ISBA who shall be appointed at large by the President of the ~~Illinois State Bar Association~~ISBA and shall serve during his or her term as President;

d. The Immediate Past Chair of the ISBA Young Lawyers Division. If such person is unable to serve, then the ISBA Board of Governors shall appoint a member of the Young Lawyers Division ~~Council~~ to serve the term;

e. The President, First Vice President, Second Vice President, Third Vice President and Immediate Past President of the Foundation who shall be ex officio members of the Board ~~of Directors~~;

f. The Chair, Vice-Chair and Secretary of The Fellows who shall be ex-officio members of the Board ~~of Directors~~ and who shall hold office during their respective terms as Fellows Officers;

g. Three (3) at-large Directors serving staggered three-year terms, to be appointed by the President of the Foundation. These three at-large Directors' terms will be staggered such that each year the then-current President of the Board will make one appointment for a three year term and fill the remaining terms of vacancies, if any.

~~g. Three (3) at large Directors appointed by the President of the Illinois Bar Foundation.~~

Except as otherwise provided, each Director shall hold office for a term of two (2) years and until his or her successor is elected and qualified. No Director shall serve more than six (6) consecutive years as a Director and thereafter shall not be reappointed as a Director for two (2) years after the completion of six (6) years of service on the Board ~~of Directors~~. Any Director who is elected as President, First Vice President, Second Vice President, Third Vice President or Fellows Officer shall not be subject to the term limitation of this section so long as ~~that~~ he or she is serving ~~in that position~~as such officer.

Section 3. Geographic Districts of Directors. To assure representation of all areas of the ~~S~~state on the Board of Directors, the Twelve District Directors shall be elected from each of the Judicial Districts under Article VI of the Constitution of the State of Illinois (1970) as follows: four (4) Directors from the First District and two (2) Directors from each of the Second, Third, Fourth and Fifth Districts. Two (2) of the Directors from the First District and one (1) Director from each of the Second, Third, Fourth and Fifth Districts shall be appointed in the odd years; all others shall be appointed in even years.

Judicial Districts shall be determined by Director's primary office address.

Section 4. Duties of Directors. The Board ~~of Directors~~ has the principal responsibility for the fulfillment of the Foundation's mission and the legal accountability for its operation. The Board ~~of Directors~~ shall determine the overall mission and goals of the Foundation, establish policies related to the governance of the Foundation, secure adequate financial resources to fund Foundation operations, approve the annual budget and provide financial oversight and ensure compliance with applicable governmental regulations.

In addition to these general duties, the Board ~~of Directors~~ shall maintain a separate Board of Directors Job Description which identifies specific duties of Directors and shall from time to time review and update such description.

Section 5. Regular Meetings. ~~The annual meeting of the Board of Directors will be held at a place in conjunction with the annual meeting of the Illinois State Bar Association, and the Officers elected at said meeting will take office upon their election.~~

Regular meetings of the Board ~~of Directors~~ shall be scheduled on a quarterly basis by the Board or the President. ~~with the next quarterly meeting being set at the conclusion of the meeting preceding the meeting to be set~~. Any quarterly meeting of the Board ~~of Directors~~ may be cancelled if, in the discretion of the President after consultation with the Secretary, there is insufficient business to be conducted by the Board ~~of Directors exists~~. The annual meeting of the Board (one of the quarterly meetings) will be held at a place in conjunction with the annual meeting of the ISBA, and the Officers elected at said meeting will take office upon their election

Section 6. Special Meetings. Special meetings of the Board ~~of Directors~~ may be called by or at the request of the President or any two (2) Directors. The person or persons authorized to call special meetings of the Board ~~of Directors~~ may fix any place, either within or without the State of Illinois, as the place for holding any special meeting of the Board ~~of Directors, called by them.~~

Section 7. Notice of Meetings. Notice of all meetings and other actions of the Foundation and the Board ~~of Directors~~ shall be in compliance with the ~~General Not For Profit Corporation Act of 1986, as amended, 805 ILCS 105/101.01, et seq.~~ NFP Act.

Section 8. Quorum. A majority of the duly elected and acting Directors shall constitute a quorum for the transaction of business at any meeting of the Board ~~of Directors~~ provided that if less than the stated quorum of the Directors ~~are~~ is present at said meeting, a majority of the Directors present may adjourn the meeting from time to time without further notice.

Section 9. Manner of Acting. The act of a majority of the Directors present at the meeting at which a quorum is present shall be the act of the Board ~~of Directors~~, except where otherwise provided by law or by these Bylaws.

Section 10. Absences From Board Meetings. If a duly elected or appointed member of the Board ~~of Directors~~ has three (3) consecutive absences from meetings of the Board, the member's seat shall be declared vacant.

Section 11. Vacancies. Any vacancy on the Board ~~of Directors~~ occurring by reason of the death, resignation or other disqualification of any Director shall be filled by the original appointing authority. A Director elected to fill a vacancy shall be elected for the unexpired term of his or her predecessor in office. Time served completing an unexpired term of office shall not count toward the maximum length of Board service as defined by Article III, Section 2 of these Bylaws.

Section 12. Compensation. Directors shall receive no stated salaries for their services, but by resolution of the Board ~~of Directors~~, ~~a fixed sum and~~ reasonable expenses of attendance, if any, may be allowed for attendance at each regular or special meeting of the Board ~~of Directors~~; provided, that nothing herein contained shall be construed to preclude any Director from serving the Foundation in any other capacity and receiving compensation therefore.

Section 13. Action Without A Meeting. Unless specifically prohibited by the Articles of Incorporation or Bylaws, any action required to be taken at a meeting of the Board ~~of Directors~~, or any other action which may be taken at a meeting of the Board ~~of Directors~~, or of any committee thereof, may be taken in a manner authorized by the General Not-For-Profit Corporation Act of 1986, as amended.

ARTICLE IV
OFFICERS

Section 1. Officers. ~~Beginning in October 2012, and continuing thereafter, the~~The Officers of the Foundation shall be a President, a First Vice President, a Second Vice President, a Third Vice President, a Treasurer, a Secretary and such other ~~o~~Officers as may be elected in accordance with the provisions of this article. The Board ~~of Directors~~ may elect or appoint such other Officers, including one (1) or more Assistant Secretaries and one (1) or more Assistant Treasurers, as it shall deem desirable, such Officers to have the authority and perform the duties prescribed, from time to time, by the Board ~~of Directors~~.

Section 2. Election and Term of Office. ~~Beginning in October of 2014,~~ The President, First Vice President, Second Vice President, and Third Vice President of the Foundation shall serve for a one (1) year term and shall take office at the regular annual meeting. The Board of Directors shall elect a Third Vice President annually at or before its regular annual meeting. The Office of the President shall rotate from a Director residing in the First Judicial District a Director residing in the Second, Third, Fourth, or Fifth Judicial Districts, followed by a Director from any Judicial District, except as may result pursuant to the balance of this section. The First Vice President shall automatically succeed to the O~~o~~ffice of President at the conclusion of his or her term. The Second Vice President shall automatically succeed to the O~~o~~ffice of First Vice President at the conclusion of his or her term. The Third Vice President shall automatically succeed to the O~~o~~ffice of Second Vice President at the conclusion of his or her term. Each candidate for any vacancy in the Vice Presidential O~~o~~ffices will be chosen in a manner consistent with this Policy.

All other O~~o~~fficers shall continue to be elected annually at the regular annual meeting of the Board of Directors for a one (1) year term. Each Officer, except as otherwise provided, shall hold office until his or her successor shall have ascended or been duly elected and shall have qualified.

Section 3. Removal. Any Officer ~~or Agent~~ elected or appointed by the Board ~~of Directors~~ may be removed by the Board ~~of Directors~~ whenever in its judgment the best interests of the Foundation would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

Section 4. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or otherwise, may be filled by the Board ~~of Directors~~ for the unexpired portion of the term. An Officer elected to fill a vacancy shall hold office for the unexpired term of the Officer's predecessor in office, and until the Officer's successor ascends consistent with Section 3 above or is elected and qualified.

Section 5. President. The President shall be the Principal Executive Officer of the Foundation and shall in general supervise and control all of the business and affairs of the Foundation. He or she shall preside at all meetings of the Board ~~of Directors~~. He or she may sign, with the Secretary or any other proper Officer of the Foundation authorized by the Board ~~of Directors~~, any deeds, mortgages, bonds, contracts, or other instruments which the Board ~~of Directors~~ has authorized to be executed, except in cases where the signing and execution thereof shall

be expressly delegated, by the Board ~~of Directors~~ or by these Bylaws or by statute, to some other Officer ~~or Agent~~ of the Foundation; and in general shall perform all duties incident to the ~~o~~Office of President and such other duties as may be prescribed by the Board ~~of Directors~~ from time to time.

Section 6. Vice Presidents. In the absence of the President or in the event of his or her inability or refusal to act, the First Vice President shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. The First, Second, and Third Vice Presidents shall perform such other duties as from time to time may be assigned to him or her by the President or by the Board ~~of Directors~~.

In the event that any First Vice President shall have succeeded to the ~~o~~Office of President during his or her term as First Vice President due to the resignation or death of the President then holding office, or due to any other vacancy of such office, then the First Vice President shall continue as President for the term that would have been the normal term as President but for the succession to the O~~o~~ffice of President during the term of his or her vice presidency.

Section 7. Treasurer. The Treasurer shall have charge and custody of and be responsible for all funds and securities of the Foundation; receive and give receipts for money due and payable to the Foundation from any sources whatsoever, and deposit all such moneys in the name of the Foundation in such banks, trust companies or other depositories as shall be selected in accordance with the provisions of Article VI of these Bylaws; and in general perform all the duties incident to the O~~o~~ffice of Treasurer and such other duties as from time to time may be assigned to him or her by the President or by the Board~~ of Directors. He or she shall, at all reasonable times, exhibit the books and accounts to any Oofficer or Director of the Foundation. When required by the Board of Directors, but at least annually, the Treasurer shall render a statement of accounts.~~

Section 8. Secretary. The Secretary shall keep the minutes of the meetings of the Board ~~of Directors~~ electronically or in one (1) or more books provided for that purpose; see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law; be custodian of the corporate records of the Foundation, keep a register of the post office address of each Director which shall be furnished to the Secretary by such Director; and in general perform all duties incident to the O~~o~~ffice of Secretary and such other duties as from time to time may be assigned to him or her by the President or by the Board~~ of Directors~~. All duties of the Secretary may, from time to time, be delegated to Foundation staff.

Section 9. Assistant Treasurers And Assistant Secretaries. The Assistant Treasurers and Assistant Secretaries, in general, shall perform such duties as shall be assigned to them by the Treasurer or by the Secretary or by the President or the Board~~ of Directors~~.

Section 10. Executive Director. The Executive Director shall be the chief operating officer of the Foundation. He or she shall be responsible for all day-to-day management functions. The Executive Director shall manage and direct all activities of the Foundation in accordance with policies established by the Board and shall be responsible to the Board and report to the President. Within the Executive Director's authority, and in the course of assigned duties, he or she shall: (a) employ and discharge all members of the staff necessary to carry on the work of the Foundation, and fix their compensation within the approved budget, and (b) define the duties of the staff, ~~supervisor~~ supervise performance and establish titles, and delegate responsibilities as shall, in his or her best judgment, be in the best interests of the Foundation. The Executive Director shall attend all meetings of the Board, the Executive Committee and other Committee meetings as reasonably necessary, serving as an ex officio member, without a vote. The Executive Director may be excused at any such meetings called to review his or her performance and/or compensation.

ARTICLE V.
COMMITTEES

Section 1. Board Committees~~ of Directors.~~ The Foundation shall establish committees, each of which shall consist of three (3) or more Directors, and, where permitted, non-director volunteers. Such committees, to the extent provided, shall have and exercise the authority of the Board of Directors in the management of the Foundation; but the designation of such committees and the delegation thereto of authority shall not operate to relieve the Board of Directors, or any individual Director, of any responsibility imposed upon it or him or her by law.

The following shall constitute the Standing Committees of the Foundation:

A. Executive
B. Finance & Investment
C. Development
D. Grants
E. Lawyers Care Fund
F. Fellows
G. Nominating

Section 2. Executive Committee. Between meetings of the Board ~~of Directors~~, ongoing oversight of the affairs of the Foundation shall be conducted by the Executive Committee, and the Executive Committee shall have and exercise all the authority of the Board ~~of Directors~~ in the management of the Foundation, except as otherwise required by law. The Executive Committee shall: (a) hire, set reasonable and appropriate compensation for, and annually evaluate the performance of the Executive Director, (b) develop and monitor the Foundation's annual budget, (c) oversee the Fellows Committee, and (d) keep regular minutes of its proceedings and report the same to the Board ~~of Directors~~ at the next meeting of the Board. Unless otherwise provided by resolution of the Board ~~of Directors~~, the Executive Committee shall consist of the President, First Vice President, Second Vice President, Third Vice President, Secretary, Treasurer, Immediate Past President, Chair of The Fellows and the ~~2nd~~ Second Vice President of the Illinois State Bar Association. The President shall chair the Executive Committee.

Section 3. Finance & Investment Committee. The Finance ~~and~~ & Investment Committee shall be responsible for: (a) retention and monitoring of the Foundation's auditors; (b) review of all tax filings by the Foundation and all financial reporting of the Foundation; (c) the prudent management of the Foundation's investment portfolio; (d) ~~establishing~~setting and maintaining adequate internal controls for financial management; and (e) selecting and monitoring the Foundation's outside investment advisors, if any. The Committee shall provide the Board a written report at each annual meeting, or as soon as possible thereafter, regarding the Committee's review of said financial reports~~,~~ and investment results. Members of the Committee shall have experience in analyzing financial statements for nonprofit organizations. The Treasurer shall chair the Finance & Investment Committee. .

Section 4. Development Committee. The Development Committee shall develop, implement and monitor an annual and long-term fundraising plan to provide for long-term growth of Foundation assets, including annual giving, cy pres, and planned giving efforts. The Committee shall develop gift acceptance policies and, when necessary, determine whether a gift falls within the guidelines. The Committee will also develop, implement and monitor an annual marketing plan for the Foundation.

(a) The Events Sub-Committee shall develop, implement and monitor all non-Fellows fundraising events as well as participate in ~~event sub-committees~~events such as the Gala.

Formatted: Indent: Left: 0", Hanging: 0.5"

(b) ~~Cy Pres Sub-Committee:~~ The Cy Pres Sub-Committee is responsible for encouraging lawyers to recommend and judges to award the Foundation with Cy Pres funds to support its programs.

Formatted: Indent: Left: 0", Hanging: 0.5"

(c) ~~Planned Giving Sub-Committee:~~ The Planned Giving Sub-Committee shall implement and monitor planned giving efforts and promote membership in the Foundation's Lincoln Legacy Society.

Section 5. Grants Committee. The Grants ~~Screening~~ Committee shall develop and implement guidelines for awarding grants, review grant proposals and recommend grant awards to the Board. The Committee shall monitor grant awards to ensure that funds are being spent for approved purposes.

Section 6. Lawyers Care Fund Committee. The Lawyers Care Fund Committee shall implement guidelines for awarding subsistence gifts, review and monitor applications for subsistence gifts and make subsistence gift awards.

Section 7. Fellows Committee. The Fellows Committee shall monitor Fellows' fundraising efforts and pursuance of the Fellows mission as detailed in the Fellows Bylaws.

Section 8. Nominating Committee. The Nominating Committee is responsible for recruiting and ~~nominating~~ recommending candidates as members to the Board of Directors, including without limitation, nomination of the 12 District Directors to be elected by the ISBA Board of Governors as provided for in Article III, Section 2(a).

The Nominating Committee shall consist of ten (10) members, as follows:

A. The ~~i~~Immediate ~~p~~Past ~~p~~President of the Foundation shall serve as the Chair of the Nominating Committee;
B. The First, Second, and Third Vice Presidents of the Foundation;
C. Two (2) members of the Board from the First Judicial District;
D. Two (2) members of the Board from outside the First Judicial District; and
E. The 2nd and 3rd Vice Presidents of the ~~Illinois State Bar Association~~ISBA.

The Nominating Committee shall be appointed by the President prior to April 1st and prior to the expiration of the Presidential term. The Nominating Committee shall convene and recommend a Third Vice President to the Board prior to June 1st of such year. If the Immediate Past President is unable to serve as chair, the Foundation President shall appoint another Director to so serve. In the event of a Committee tie vote, the President shall break the tie.

Section 9. Other Committees. Other committees and subcommittees not having and exercising the authority of the Board ~~of Directors~~ in the management of the Foundation may be designated ad hoc by the President with the concurrence of the Executive Committee, including, without limitation, the following: Bylaws, JusticeCorps and Strategic Planning.

Section 10. ~~Chair and Committee Members~~Committee Leadership and Appointments. One (1) member of each committee shall be appointed Chair by the President for a one year term, and one (1) person shall be appointed Vice Chair, unless otherwise provided for in these Bylaws. The President shall appoint Directors to serve on each committee on an annual basis with the concurrence of the Executive Committee. Unless otherwise provided for in these Bylaws, committees may include ISBA members who are not Directors.

The committee chairs, in consultation with the President, ~~shall~~ may appoint non-director committee members.

Section 11. Term of Office. Each member of a committee shall continue as such until the next annual meeting of the Board ~~of Directors~~ of the Foundation and until his or her successor is appointed, unless the committee shall be sooner terminated, or unless such member be removed from such committee, or unless such member shall cease to qualify as a member thereof.

Section 12. Vacancies. Vacancies in the membership of any committee may be filled by appointments made in the same manner as provided in the case of the original appointments.

Section 13. Quorum. Unless otherwise provided in the resolution designating a committee, a majority of the whole committee shall constitute a quorum and the act of a majority of the members present at a meeting at which a quorum is present shall be the act of the committee.

Section 14. Rules. Each committee may adopt rules for its own governance, not inconsistent with these Bylaws or with rules adopted by the Board ~~of Directors~~.

ARTICLE VI.
CONTRACTS, CHECKS, DEPOSITS AND FUNDS

Section 1. Contracts. The Board ~~of Directors~~ may authorize any Officer or Officers~~, Agent or Agents~~ or the Executive Director and/or the Assistant Treasurer of the Foundation, in addition to the Officers so authorized by these Bylaws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Foundation and such authority may be general or confined to specific instances or transactions.

Section 2. Checks, Drafts, Etc. All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the ~~Corporation~~Foundation, may be signed by the President, Treasurer, or such other Officers or Directors~~, Aagent or Aagents~~ of the Foundation and in such manner as shall from time to time be determined by resolution of the Board of Directors. In the absence of such determination by the Board of Directors, such instruments shall be signed by the President and one other elected Officer of the Foundation.

Section 3. Deposits. All funds of the Foundation shall be deposited from time to time to the credit of the Foundation in such banks, trust companies or other depositories as the Board ~~of Directors~~ may select.

Section 4. Gifts. The Board ~~of Directors~~ may accept on behalf of the Foundation any contribution, gift, bequest or devise for the general purposes or for any special purpose of the Foundation. The Board ~~of Directors~~ may delegate any or all of the terms of acceptance to a Committee of the Board in accordance with any adopted Gift Acceptance Policies.

ARTICLE VII.
BOOKS AND RECORDS

The Foundation shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of its Board ~~of Directors~~ and committees having any of the authority of the Board of Directors, and shall keep at the registered or principal office a record giving the names and addresses of the Directors entitled to vote. All books and records of the Foundation may be inspected by any Director, Officer or his or her agent or attorney for any proper purpose at any reasonable time.

ARTICLE VIII.
INDEMNIFICATION

Section 1. Permissive Indemnification. The Foundation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed lawsuit or other legal proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she is or was a director, officer, employee or agent of the Foundation, or as a result of any other service on behalf of the Foundation, or is or was serving at the request of the Foundation as a director, officer, manager, employee or agent of another entity, against expenses, including reasonable attorney fees, judgments, fines, and amounts paid in settlement actually and reasonably incurred by such person in connection with any such lawsuit or other legal proceeding to whatever extent the Board deems appropriate, and in any context including a lawsuit or legal proceeding by or in the right of the Foundation, as allowed by Section 108.70 of the NFP Act.

Section 2. Mandatory Indemnification. The Foundation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed lawsuit or other legal proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she is or was an unpaid director, officer, or committee member of the Foundation, or as a result of any other unpaid authorized service on behalf of the Foundation, or is or was serving at the request of the Foundation as an unpaid director, officer, or agent of another entity, against expenses, including reasonable attorney fees, judgments, fines, amounts paid in settlement actually and reasonably incurred by such person in connection with any such lawsuit or other legal proceeding, including a lawsuit or legal proceeding by or in the right of the Foundation, to the fullest extent allowed by Section 108.70 of the NFP Act.

~~The Foundation may indemnify any person who was or is a party, or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Foundation) by reason of the fact that he or she is or was a Director, Officer, employee or Aagent of the Foundation, or who is serving at the request of the Foundation of another corporation, partnership, joint venture, trust or other enterprise, against expenses~~

~~(including attorneys' fees), judgments, fines and amounts paid in settlement, actually and reasonably incurred by him or her in connection with such action, suit or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Foundation, and, with respect to any criminal action or proceeding, has no reasonable cause to believe his or her conduct was unlawful; provided, however, that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his or her duty to the Foundation, and unless, only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability, but in view of all the circumstances of the case, such person is fairly and reasonably entitled to be indemnifiedy for such expenses as the court shall deem proper.~~

~~Expenses (including attorneys' fees) incurred by an Officer or Director in defending a civil or criminal action, suit or proceeding may be paid by the Foundation in advance of the final disposition of such action, suit or proceeding, as authorized by the Board of Directors in the specific case, upon receipt of an undertaking by or on behalf of the Director, or Officer, to repay such amount, unless it shall ultimately be determined that he or she is not entitled to be indemnified by the Foundation as authorized under this ?~~

~~**Article VIII.**~~

~~Any indemnification under this Article VIII (unless ordered by a court) shall be made by the Foundation only as authorized in the specific case, upon a determination that indemnification of the present or former Director, Officer, employee or agent is proper in the circumstances because he or she has met the applicable standard of conduct set forth herein. Such determination shall be made with respect to a person who is a Director or Officer at the time of the determination: (1) by the majority vote of the Directors who were not parties to such action, suit or proceeding, even though less than a quorum, (2) by a Ccommittee of the Directors designated by a majority vote of the Directors, even though less than a quorum, or (3) if there are no such Directors, or if the Directors so direct, by independent legal counsel in a written opinion.~~

~~The indemnification and advancement of expenses provided by this Article VIII shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any bylaw, agreement, vote of disinterested Directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a Director, oOfficer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.~~

~~If the Foundation has paid indemnity or has advanced expenses under this Article VIII to a Director, Oofficer, employee or agent, the Foundation shall report the indemnification or advance in writing to the members entitled to vote with or before the notice of the next meeting of the members entitled to vote.~~

~~The Board of Directors may purchase and maintain insurance on behalf of any person who is or was a Director, oOfficer, employee or Aagent of the Foundation, or who is or was serving at the request of the Foundation as a Director, Oofficer, employee or Aagent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against such person and incurred by such person in any such capacity, or arising out of his or her status as such, whether or not the Foundation would have the power to indemnify such person against such liability under the provisions of this Article.~~

~~If any part of this Article shall be found in any action, suit, or proceeding to be invalid or ineffective, the validity and effectiveness of the remaining parts shall not be affected.~~

ARTICLE IX.
FISCAL YEAR

The fiscal year of the Foundation shall begin on the first day of July in each calendar year and end on the last day of June in the following calendar year.

ARTICLE X.
CONFLICTS OF INTEREST

The Foundation strives to maintain the highest ethical standards in all of its policies, procedures and programs and to avoid conflicts of interest. All persons shall act in good faith in all relationships touching upon their responsibilities to the Foundation and shall avoid any conflict of interest. No person shall personally benefit from his or her relationship with the Foundation other than by reasonable compensation for services approved by the Board of Directors or through established policy. No person shall accept any favor, gratuity or gift which may influence actions concerning the Foundation.

ARTICLE XI.
WAIVER OF NOTICE

Whenever any notice is required to be given under the provisions of the General Not-For-Profit Corporation Act of Illinois or under the provisions of the articles of incorporation or Bylaws of the Foundation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time slated therein, shall be deemed equivalent to the giving of such notice.

ARTICLE XII.
THE FELLOWS OF THE ILLINOIS BAR FOUNDATION

This Foundation shall have an adjunct associated group of individuals who shall be know as "The Fellows of the Illinois Bar Foundation." The conditions for admission to, and the classification of categories within, The Fellows of the Illinois Bar Foundation shall be embodied in a set of Bylaws known as, "Bylaws of The Fellows of the Illinois Bar Foundation" upon adoption by the Board ~~of Directors~~ of the ~~Illinois Bar~~ Foundation.

ARTICLE XIII.
AMENDMENTS TO BYLAWS

These Bylaws may be altered, amended or repealed and new Bylaws may be adopted by a majority of the Directors present at any regular meeting or at any special meeting, provided that at least thirty (30) days' written notice is given of intention to alter, amend or repeal or to adopt new Bylaws at such meeting; provided, however, no such alteration, amendment, or repeal of Bylaws shall be effective until approved by the Board of Governors of the ~~Illinois State Bar Association.~~ISBA.

ILLINOIS BAR FOUNDATION

BYLAWS
ILLINOIS BAR FOUNDATION
(As Amended and Approved by the IBF Board of Directors, June 16, 2016

ARTICLE I
PURPOSES

The Illinois Bar Foundation (hereinafter "Foundation"), the charitable affiliate of the Illinois State Bar Association (hereinafter "ISBA"), shall be organized and operated exclusively for charitable, literary and educational purposes within the meanings of Section 501(c)(3) of the Internal Revenue Code of 1986, as now in effect or as may hereafter be amended ("the Code"), and Section 103.5 of the Illinois General Not-For-Profit Corporation Act of 1986, 805 ILCS 105/101.01 et seq., as now in effect or as may hereafter be amended ("the NFP Act").

The specific purposes for which the ISBA formed the Foundation include the following:

a) To relieve, aid and assist as charitable acts deserving members of the Bar who shall be ill, incapacitated or superannuated and in need of aid, and the dependents of such members in need of aid;
b) To support and promote the equal access to the legal system; and
c) To engage in all lawful charitable activities as the Foundation shall, from time to time, deem appropriate

The Foundation also has such powers and responsibilities as are now or may hereafter be granted by the NFP Act.

No part of the net earnings of the Foundation shall inure to the benefit of, or be distributable to, its members, , Directors, Officers, or other private persons, except that the Foundation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth above. No substantial part of the activities of the Foundation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Foundation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office. Notwithstanding any other provision of these articles, the Foundation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from Federal Income Tax under Section 501(c)(3) of the Code, or any corresponding section of any future federal tax code, or (b) by a corporation, contributions to which are deductible under Section 170(c)(2) of the Code, or any corresponding section of any future federal tax code.

The Foundation shall distribute its income for each tax year at such time and in such manner not to become subject to the tax on undistributed income imposed by Section 4942 of the Code, or the corresponding provision of any future federal tax code. The Foundation shall not engage in any act of self-dealing as defined in Section 4943(c) of the Code or the corresponding provision of any future federal tax code, nor make any investments in such manner as to incur tax liability under Section 4944 of the Code or the corresponding provision of any future federal tax code, nor make any taxable expenditures as defined in Section 4945(d) of the Code of, or the corresponding provision of any future federal tax code.

ARTICLE II
OFFICES

The Foundation shall have and continuously maintain in the state of Illinois a Registered Office and a Registered Agent whose office is identical with such Registered Office, and may have other offices within or without the state of Illinois as the Board of Directors may from time to time determine.

ARTICLE III
BOARD OF DIRECTORS

Section 1. General Powers. The affairs of the Foundation shall be managed by its Board of Directors ("Board").

Section 2. Number, Tenure and Qualification. There shall be thirty (30) Directors composed of:

a. Twelve (12) District Directors to be elected by the Board of Governors of the ISBA;
b. The President and three vice presidents of the ISBA who shall be ex-officio members of the Board of the Foundation and who shall hold office during their respective terms as such Officers of the ISBA;
c. Two (2) members of the Board of Governors of the ISBA who shall be appointed at large by the President of the ISBA and shall serve during his or her term as President;
d. The Immediate Past Chair of the ISBA Young Lawyers Division. If such person is unable to serve, then the ISBA Board of Governors shall appoint a member of the Young Lawyers Division to serve the term;
e. The President, First Vice President, Second Vice President, Third Vice President and Immediate Past President of the Foundation who shall be ex officio members of the Board;
f. The Chair, Vice-Chair and Secretary of The Fellows who shall be ex-officio members of the Board and who shall hold office during their respective terms as Fellows Officers;
g. Three (3) at-large Directors serving staggered three-year terms, to be appointed by the President of the Foundation. These three at-large Directors' terms will be staggered such that each year the then-current President of the Board will make one appointment for a three year term and fill the remaining terms of vacancies, if any.

Except as otherwise provided, each Director shall hold office for a term of two (2) years and until his or her successor is elected and qualified. No Director shall serve more than six (6) consecutive years as a Director and thereafter shall not be reappointed as a Director for two (2) years after the completion of six (6) years of service on the Board. Any Director who is elected as President, First Vice President, Second Vice President, Third Vice President or Fellows Officer shall not be subject to the term limitation of this section so long as he or she is serving as such officer.

Section 3. Geographic Districts of Directors. To assure representation of all areas of the State on the Board of Directors, the Twelve District Directors shall be elected from each of the Judicial Districts under Article VI of the Constitution of the State of Illinois (1970) as follows: four (4) Directors from the First District and two (2) Directors from each of the Second, Third, Fourth and Fifth Districts. Two (2) of the Directors from the First District and one (1) Director from each of the Second, Third, Fourth and Fifth Districts shall be appointed in the odd years; all others shall be appointed in even years.

Judicial Districts shall be determined by Director's primary office address.

Section 4. Duties of Directors. The Board has the principal responsibility for the fulfillment of the Foundation's mission and the legal accountability for its operation. The Board shall determine the overall mission and goals of the Foundation, establish policies related to the governance of the Foundation, secure adequate financial resources to fund Foundation operations, approve the annual budget and provide financial oversight and ensure compliance with applicable governmental regulations.

In addition to these general duties, the Board shall maintain a separate Board of Directors Job Description which identifies specific duties of Directors and shall from time to time review and update such description.

Section 5. Regular Meetings. Regular meetings of the Board shall be scheduled on a quarterly basis by the Board or the President. Any quarterly meeting of the Board may be cancelled if, in the discretion of the President after consultation with the Secretary, there is insufficient business to be conducted by the Board . The annual meeting of the Board (one of the quarterly meetings) will be held at a place in conjunction with the annual meeting of the ISBA, and the Officers elected at said meeting will take office upon their election

Section 6. Special Meetings. Special meetings of the Board may be called by or at the request of the President or any two (2) Directors. The person or persons authorized to call special meetings of the Board may fix any place, either within or without the State of Illinois, as the place for holding any special meeting of the Board.

Section 7. Notice of Meetings. Notice of all meetings and other actions of the Foundation and the Board shall be in compliance with the NFP Act.

Section 8. Quorum. A majority of the duly elected and acting Directors shall constitute a quorum for the transaction of business at any meeting of the Board provided that if less than the stated quorum of the Directors is present at said meeting, a majority of the Directors present may adjourn the meeting from time to time without further notice.

Section 9. Manner of Acting. The act of a majority of the Directors present at the meeting at which a quorum is present shall be the act of the Board, except where otherwise provided by law or by these Bylaws.

Section 10. Absences From Board Meetings. If a duly elected or appointed member of the Board has three (3) consecutive absences from meetings of the Board, the member's seat shall be declared vacant.

Section 11. Vacancies. Any vacancy on the Board occurring by reason of the death, resignation or other disqualification of any Director shall be filled by the original appointing authority. A Director elected to fill a vacancy shall be elected for the unexpired term of his or her predecessor in office. Time served completing an unexpired term of office shall not count toward the maximum length of Board service as defined by Article III, Section 2 of these Bylaws.

Section 12. Compensation. Directors shall receive no stated salaries for their services, but by resolution of the Board, reasonable expenses of attendance, if any, may be allowed for attendance at each regular or special meeting of the Board; provided that nothing herein contained shall be construed to preclude any Director from serving the Foundation in any other capacity and receiving compensation therefore.

Section 13. Action Without A Meeting. Unless specifically prohibited by the Articles of Incorporation or Bylaws, any action required to be taken at a meeting of the Board, or any other action which may be taken at a meeting of the Board, or of any committee thereof, may be taken in a manner authorized by the General Not-For-Profit Corporation Act of 1986, as amended.

ARTICLE IV
OFFICERS

Section 1. Officers. The Officers of the Foundation shall be a President, a First Vice President, a Second Vice President, a Third Vice President, a Treasurer, a Secretary and such other Officers as may be elected in accordance with the provisions of this article. The Board may elect or appoint such other Officers, including one (1) or more Assistant Secretaries and one (1) or more Assistant Treasurers, as it shall deem desirable, such Officers to have the authority and perform the duties prescribed, from time to time, by the Board.

Section 2. Election and Term of Office. The President, First Vice President, Second Vice President, and Third Vice President of the Foundation shall serve for a one (1) year term and shall take office at the regular annual meeting. The Board of Directors shall elect a Third Vice President annually at or before its regular annual meeting. The Office of the President shall rotate from a Director residing in the First Judicial District; a Director residing in the Second, Third, Fourth, or Fifth Judicial Districts; followed by a Director from any Judicial District, except as may result pursuant to the balance of this section. The First Vice President shall automatically succeed to the Office of President at the conclusion of his or her term. The Second Vice President shall automatically succeed to the Office of First Vice President at the conclusion of his or her term. The Third Vice President shall automatically succeed to the Office of Second Vice President at the conclusion of his or her term. Each candidate for any vacancy in the Vice Presidential Offices will be chosen in a manner consistent with this Policy.

All other Officers shall continue to be elected annually at the regular annual meeting of the Board of Directors for a one (1) year term. Each Officer, except as otherwise provided, shall hold office until his or her successor shall have ascended or been duly elected and shall have qualified.

Section 3. Removal. Any Officer elected or appointed by the Board may be removed by the Board whenever in its judgment the best interests of the Foundation would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

Section 4. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or otherwise, may be filled by the Board for the unexpired portion of the term. An Officer elected to fill a vacancy shall hold office for the unexpired term of the Officer's predecessor in office, and until the Officer's successor ascends consistent with Section 3 above or is elected and qualified.

Section 5. President. The President shall be the Principal Executive Officer of the Foundation and shall in general supervise and control all of the business and affairs of the Foundation. He or she shall preside at all meetings of the Board. He or she may sign, with the Secretary or any other proper Officer of the Foundation authorized by the Board, any deeds, mortgages, bonds, contracts, or other instruments which the Board has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated, by the Board or by these Bylaws or by statute, to some other Officer of the Foundation; and in general shall perform all duties incident to the Office of President and such other duties as may be prescribed by the Board from time to time.

Section 6. Vice Presidents. In the absence of the President or in the event of his or her inability or refusal to act, the First Vice President shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. The First, Second, and Third Vice Presidents shall perform such other duties as from time to time may be assigned to him or her by the President or by the Board.

In the event that any First Vice President shall have succeeded to the Office of President during his or her term as First Vice President due to the resignation or death of the President then holding office, or due to any other vacancy of such office, then the First Vice President shall continue as President for the term that would have been the normal term as President but for the succession to the Office of President during the term of his or her vice presidency.

Section 7. Treasurer. The Treasurer shall have charge and custody of and be responsible for all funds and securities of the Foundation; receive and give receipts for money due and payable to the Foundation from any sources whatsoever, and deposit all such moneys in the name of the Foundation in such banks, trust companies or other depositories as shall be selected in accordance with the provisions of Article VI of these Bylaws; and in general perform all the duties incident to the Office of Treasurer and such other duties as from time to time may be assigned to him or her by the President or by the Board. All duties of the Treasurer may, from time to time, be delegated to Foundation staff.

Section 8. Secretary. The Secretary shall keep the minutes of the meetings of the Board electronically or in one (1) or more books provided for that purpose; see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law; be custodian of the corporate records of the Foundation; keep a register of the post office address of each Director which shall be furnished to the Secretary by such Director; and in general perform all duties incident to the Office of Secretary and such other duties as from time to time may be assigned to him or her by the President or by the Board. All duties of the Secretary may, from time to time, be delegated to Foundation staff.

Section 9. Assistant Treasurers And Assistant Secretaries. The Assistant Treasurers and Assistant Secretaries, in general, shall perform such duties as shall be assigned to them by the Treasurer or by the Secretary or by the President or the Board.

Section 10. Executive Director. The Executive Director shall be the chief operating officer of the Foundation. He or she shall be responsible for all day-to-day management functions. The Executive Director shall manage and direct all activities of the Foundation in accordance with policies established by the Board and shall be responsible to the Board and report to the President. Within the Executive Director's authority, and in the course of assigned duties, he or she shall: (a) employ and discharge all members of the staff necessary to carry on the work of the Foundation, and fix their compensation within the approved budget, and (b) define the duties of the staff, supervise performance and establish titles, and delegate responsibilities as shall, in his or her best judgment, be in the best interests of the Foundation. The Executive Director shall attend all meetings of the Board, the Executive Committee and other Committee meetings as reasonably necessary, serving as an ex officio member, without a vote. The Executive Director may be excused at any such meetings called to review his or her performance and/or compensation.

ARTICLE V.
COMMITTEES

Section 1. Board Committees. The Foundation shall establish committees, each of which shall consist of three (3) or more Directors, and, where permitted, non-director volunteers. Such committees, to the extent provided, shall have and exercise the authority of the Board of Directors in the management of the Foundation; but the designation of such committees and the delegation thereto of authority shall not operate to relieve the Board of Directors, or any individual Director, of any responsibility imposed upon it or him or her by law.

The following shall constitute the Standing Committees of the Foundation:

a. Executive
b. Finance & Investment
c. Development
d. Grants
e. Lawyers Care Fund
f. Fellows
g. Nominating

Section 2. Executive Committee. Between meetings of the Board, ongoing oversight of the affairs of the Foundation shall be conducted by the Executive Committee, and the Executive Committee shall have and exercise all the authority of the Board in the management of the Foundation, except as otherwise required by law. The Executive Committee shall: (a) hire, set reasonable and appropriate compensation for, and annually evaluate the performance of the Executive Director, (b) develop and monitor the Foundation's annual budget, (c) oversee the Fellows Committee, and (d) keep regular minutes of its proceedings and report the same to the Board at the next meeting of the Board. Unless otherwise provided by resolution of the Board, the Executive Committee shall consist of the President, First Vice President, Second Vice President, Third Vice President, Secretary, Treasurer, Immediate Past President, Chair of The Fellows and the Second Vice President of the Illinois State Bar Association. The President shall chair the Executive Committee.

Section 3. Finance & Investment Committee. The Finance & Investment Committee shall be responsible for: (a) hiring and monitoring of the Foundation's auditors; (b) review of all tax filings by the Foundation and all financial reporting of the Foundation; (c) the prudent management of the Foundation's investment portfolio; (d) setting and maintaining adequate internal controls for financial management; and (e) selecting and monitoring the Foundation's outside investment advisors, if any. The Committee shall provide the Board a written report at each annual meeting, or as soon as possible thereafter, regarding the Committee's review of said financial reports and investment results. Members of the Committee shall have experience in analyzing financial statements for nonprofit organizations. The Treasurer shall chair the Finance & Investment Committee. .

Section 4. Development Committee. The Development Committee shall develop, implement and monitor an annual and long-term fundraising plan to provide for long-term growth of Foundation assets, including annual giving, cy pres, and planned giving efforts. The Committee shall develop gift acceptance policies and, when necessary, determine whether a gift falls within the guidelines. The Committee will also develop, implement and monitor an annual marketing plan for the Foundation.

a. The Events Sub-Committee shall develop, implement and monitor all non-Fellows fundraising events as well as participate in events such as the Gala.
b. The Cy Pres Sub-Committee is responsible for encouraging lawyers to recommend and judges to award the Foundation with cy pres funds to support its programs.
c. The Planned Giving Sub-Committee shall implement and monitor planned giving efforts and promote membership in the Foundation's Lincoln Legacy Society.

Section 5. Grants Committee. The Grants Committee shall develop and implement guidelines for awarding grants, review grant proposals and recommend grant awards to the Board. The Committee shall monitor grant awards to ensure that funds are being spent for approved purposes.

Section 6. Lawyers Care Fund Committee. The Lawyers Care Fund Committee shall implement guidelines for awarding subsistence gifts, review and monitor applications for subsistence gifts, and make subsistence gift awards.

Section 7. Fellows Committee. The Fellows Committee shall monitor Fellows' fundraising efforts and pursuance of the Fellows mission as detailed in the Fellows Bylaws.

Section 8. Nominating Committee. The Nominating Committee is responsible for recruiting and recommending candidates as members to the Board of Directors, including, without limitation, nomination of the 12 District Directors to be elected by the ISBA Board of Governors as provided for in Article III, Section 2(a).

The Nominating Committee shall consist of ten (10) members, as follows:

a. The Immediate Past President of the Foundation shall serve as the Chair of the Nominating Committee;
b. The First, Second, and Third Vice Presidents of the Foundation;
c. Two (2) members of the Board from the First Judicial District;
d. Two (2) members of the Board from outside the First Judicial District; and
e. The 2nd and 3rd Vice Presidents of the ISBA.

The Nominating Committee shall be appointed by the President prior to April 1st and prior to the expiration of the Presidential term. The Nominating Committee shall convene and recommend a Third Vice President to the Board prior to June 1st of such year. If the Immediate Past President is unable to serve as chair, the Foundation President shall appoint another Director to so serve. In the event of a Committee tie vote, the President shall break the tie.

Section 9. Other Committees. Other committees and subcommittees not having and exercising the authority of the Board in the management of the Foundation may be designated ad hoc by the President with the concurrence of the Executive Committee, including, without limitation, the following: Bylaws, JusticeCorps and Strategic Planning.

Section 10. Committee Leadership and Appointments. One (1) member of each committee shall be appointed Chair by the President for a one year term, and one (1) person shall be appointed Vice Chair, unless otherwise provided for in these Bylaws. The President shall appoint Directors to serve on each committee on an annual basis with the concurrence of the Executive Committee. Unless otherwise provided for in these Bylaws, committees may include ISBA members who are not Directors. The committee chairs, in consultation with the President, may appoint non-director committee members.

Section 11. Term of Office. Each member of a committee shall continue as such until the next annual meeting of the Board of the Foundation and until his or her successor is appointed, unless the committee shall be sooner terminated, or unless such member be removed from such committee, or unless such member shall cease to qualify as a member thereof.

Section 12. Vacancies. Vacancies in the membership of any committee may be filled by appointments made in the same manner as provided in the case of the original appointments.

Section 13. Quorum. Unless otherwise provided in the resolution designating a committee, a majority of the whole committee shall constitute a quorum and the act of a majority of the members present at a meeting at which a quorum is present shall be the act of the committee.

Section 14. Rules. Each committee may adopt rules for its own governance, not inconsistent with these Bylaws or with rules adopted by the Board.

ARTICLE VI.
CONTRACTS, CHECKS, DEPOSITS AND FUNDS

Section 1. Contracts. The Board may authorize any Officer or Officers or the Executive Director and/or the Assistant Treasurer of the Foundation, in addition to the Officers so authorized by these Bylaws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Foundation and such authority may be general or confined to specific instances or transactions.

Section 2. Checks, Drafts, Etc. All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Foundation, may be signed by the President, Treasurer, or such other Officers or Directors of the Foundation and in such manner as shall from time to time be determined by resolution of the Board of Directors. In the absence of such determination by the Board of Directors, such instruments shall be signed by the President and one other elected Officer of the Foundation.

Section 3. Deposits. All funds of the Foundation shall be deposited from time to time to the credit of the Foundation in such banks, trust companies or other depositories as the Board may select.

Section 4. Gifts. The Board may accept on behalf of the Foundation any contribution, gift, bequest or devise for the general purposes or for any special purpose of the Foundation. The Board may delegate any or all of the terms of acceptance to a Committee of the Board in accordance with any adopted Gift Acceptance Policies.

ARTICLE VII.
BOOKS AND RECORDS

The Foundation shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of its Board and committees having any of the authority of the Board of Directors, and shall keep at the registered or principal office a record giving the names and addresses of the Directors entitled to vote. All books and records of the Foundation may be inspected by any Director, Officer or his or her agent or attorney for any proper purpose at any reasonable time.

ARTICLE VIII.
INDEMNIFICATION

Section 1. Permissive Indemnification. The Foundation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed lawsuit or other legal proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she is or was a Director, Officer, employee or Agent of the Foundation, or as a result of any other service on behalf of the Foundation, or is or was serving at the request of the Foundation as a Director, Officer, manager, employee or Agent of another entity, against expenses, including reasonable attorney fees, judgments, fines, and amounts paid in settlement actually and reasonably incurred by such person in connection with any such lawsuit or other legal proceeding to whatever extent the Board deems appropriate, and in any context including a lawsuit or legal proceeding by or in the right of the Foundation, as allowed by Section 108.70 of the NFP Act.

Section 2. Mandatory Indemnification. The Foundation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed lawsuit or other legal proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she is or was an unpaid Director, Officer, or committee member of the Foundation, or as a result of any other unpaid authorized service on behalf of the Foundation, or is or was serving at the request of the Foundation as an unpaid Director, Officer, or Agent of another entity, against expenses, including reasonable attorney fees, judgments, fines, amounts paid in settlement actually and reasonably incurred by such person in connection with any such lawsuit or other legal proceeding, including a lawsuit or legal proceeding by or in the right of the Foundation, to the fullest extent allowed by Section 108.70 of the NFP Act.

ARTICLE IX.
FISCAL YEAR

The fiscal year of the Foundation shall begin on the first day of July in each calendar year and end on the last day of June in the following calendar year.

ARTICLE X.
CONFLICTS OF INTEREST

The Foundation strives to maintain the highest ethical standards in all of its policies, procedures and programs and to avoid conflicts of interest. All persons shall act in good faith in all relationships touching upon their responsibilities to the Foundation and shall avoid any conflict of interest. No person shall personally benefit from his or her relationship with the Foundation other than by reasonable compensation for services approved by the Board of Directors or through established policy. No person shall accept any favor, gratuity or gift which may influence actions concerning the Foundation.

ARTICLE XI.
WAIVER OF NOTICE

Whenever any notice is required to be given under the provisions of the General Not-For-Profit Corporation Act of Illinois or under the provisions of the articles of incorporation or Bylaws of the Foundation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time slated therein, shall be deemed equivalent to the giving of such notice.

ARTICLE XII.
THE FELLOWS OF THE ILLINOIS BAR FOUNDATION

This Foundation shall have an adjunct associated group of individuals who shall be know as "The Fellows of the Illinois Bar Foundation." The conditions for admission to, and the classification of categories within, The Fellows of the Illinois Bar Foundation shall be embodied in a set of Bylaws known as, "Bylaws of The Fellows of the Illinois Bar Foundation" upon adoption by the Board of the Foundation.

ARTICLE XIII.
AMENDMENTS TO BYLAWS

These Bylaws may be altered, amended or repealed and new Bylaws may be adopted by a majority of the Directors present at any regular meeting or at any special meeting, provided that at least thirty (30) days' written notice is given of intention to alter, amend or repeal or to adopt new Bylaws at such meeting; provided, however, no such alteration, amendment, or repeal of Bylaws shall be effective until approved by the Board of Governors of the ISBA.

ILLINOIS STATE
BAR ASSOCIATION

Board of Governor Meeting
March 10, 2017

Action Agenda Item #10
Professional Ethics Opinions
(17-01, 17-02, 17-03, 17-04)

ILLINOIS STATE
BAR ASSOCIATION

MEMORANDUM

To: Board of Governors

From: Charles Northrup, General Counsel

Date: February 28, 2017

Re: Proposed Professional Conduct Advisory Opinions

Attached please find four draft Professional Conduct Advisory Opinions that the Professional Conduct Committee recommends the Board adopt. Upon adoption by the Board, the opinions will be properly formatted, labeled, and added to the ISBA website. A brief synopsis of the opinions is set out below.

Recommended Opinion 17-01

This Opinion addresses the issue of whether under IRPC 1.6(c) a lawyer must reveal his or her client's addiction to heroin and opioids. The Opinion concludes that the lawyer does not need to reveal the addiction. The Opinion notes that determining when disclosing client confidences is necessary to prevent the client's reasonably certain death or substantial bodily harm is intensely fact sensitive, but that generally the mere possibility of death or substantial bodily harm as a result of addiction is too remote in time and uncertain of occurrence to trigger the mandatory reporting requirement of IRPC 1.6(c).

Recommended Opinion 17-02

This Opinion suggests that it is reasonable for *client files* to be destroyed after seven years from the end of a representation. It also provides that no client notice is required prior to file destruction, especially where prior notice of the lawyer's file destruction policy was given via an engagement letter. Client property or items with intrinsic value must be preserved or returned to the client. The Opinion also notes the existing Rule requirements for: client name and address list (indefinitely under Rule 769); financial records of various kinds (seven years under Rule 769); and trust account records (seven years under Rule of Professional Conduct 1.15).

Recommended Opinion 17-03

This Opinion addresses a situation where a lawyer is asked to represent a husband and wife in a short sale of their marital home, even though the lawyer has been retained by the husband to file for divorce. The Opinion concludes that representing the husband and wife in the short sale would be a conflict of interest and that it is very unlikely that the conflict could be waived. The preferred course would be to have the husband and wife each represented during the short sale, or another lawyer representing them both.

Recommended Opinion 17-04

This Opinion concludes that when a buyer and seller of real estate have executed a sales contract, it is highly unlikely that a lawyer could represent them both in the sale. It further provides that where buyer and seller have not executed a sales contract, a single lawyer cannot represent them both. The Opinion declines to speculate about what circumstances might permit a lawyer to represent both the buyer and seller of real estate.

If questions, please do not hesitate to contact me.

ISBA Professional Conduct Advisory Opinion

Opinion No. 17-01
March 2017

Subject: Confidentiality; Impaired Client

Digest: The question of whether the disclosure of confidential information is necessary to prevent reasonably certain death or substantial bodily harm is a factual issue.

References: Illinois Rules of Professional Conduct 1.6(c) and 1.14

Restatement (Third) of the Law Governing Lawyers Sec. 66 (2000)

FACTS

The inquiring attorney has a client who is addicted to heroin and opioids, and also takes cocaine, marijuana and methadone. The client is arrested for possession of a controlled substance, and appears severely impaired during court hearings, but remains silent before the Judge, allowing the attorney to do the speaking. The client is unable to stop consuming heroin and continues to be in violation of bond conditions.

QUESTION

The attorney asks whether, pursuant to Rule 1.6(c) of the Illinois Rules of Professional Conduct, he must reveal his client's addictions to the Court in order to prevent reasonably certain death or substantial bodily harm to his client.

ANALYSIS

As alluded to in the inquiry, Illinois Rule 1.6(c) provides:

> "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."

We begin by noting that the Illinois Rule is drawn in mandatory terms; i.e., the lawyer <u>shall</u> reveal information under the circumstances therein stated, while the comparable ABA Model Rule; i.e., Rule 1.6(b)(l), is drawn in discretionary terms, providing that the attorney <u>may</u> reveal confidential information under the same circumstances as are set forth in the Illinois Rule. Thus, whether mandatory under the Illinois Rule or discretionary under the ABA Model Rule, the threshold for disclosure of confidential information under the two Rules is the same, that being whether an attorney reasonably believes that the revealing of such information is necessary to prevent reasonably certain death or substantial bodily harm.

As recognized in the Restatement (Third) of the Law Governing Lawyers §66(2000), the question of whether the disclosure of otherwise confidential information is necessary to prevent reasonably certain death or substantial bodily harm is intensely fact sensitive. Moreover, in deciding whether death or substantial bodily harm is reasonably certain to occur, Comment [6] to Illinois Rule 1.6 (c) recognizes that such harm is reasonably certain to occur if it will be suffered immediately or if there is a present and substantial threat that a person will suffer such harm at a later date if the lawyer fails to take action necessary to eliminate the threat.

To this effect, the Restatement has recognized various factors to be considered in deciding whether the disclosure of confidential information is necessary to prevent reasonably certain death or substantial bodily harm, including the following:

1. The degree to which it appears likely that the threatened death or serious bodily harm will actually result in the absence of disclosure;

2. The irreversibility of the consequences once the act has taken place;

3. Whether victims may be unaware of the threat or may rely on the lawyer to protect them;

4. The lawyer's prior course of dealing with the client; and

5. The extent of adverse effect on the client that might result from disclosure contemplated by the lawyer.

Examples given by the Restatement or the Comments to Rule 1.6 as to whether disclosure is necessary to prevent reasonably certain death or substantial bodily harm include the following:

1. Comment [6] to Illinois Rule 1.6(c) states that a lawyer who knows that a client or other person has accidently discharged toxic waste into a town's water supply must reveal this information to authorities if there is a present and substantial risk that a person who drinks the water will contract life threatening or debilitating disease and the lawyer's disclosure is necessary to eliminate the threat or reduce the number of victims.

2. The Restatement states that a lawyer representing a defendant in a personal injury action who learns from a consulting physician that the plaintiff has a life threatening medical condition of which the plaintiff is unaware, and which can be repaired through surgery, may under the ABA discretionary Rule, reveal such condition to the plaintiff.

3. The Restatement also sets forth that a lawyer whose client reveals that he has set a mechanical device to burn down a building in which people are living has the discretion under the ABA Rule to reveal such facts, even though this may result in criminal charges against his client.

4. On the other hand, the Restatement concludes that a lawyer who learns that his client has unknowingly used a component in the manufacture of its products resulting in a slight statistical chance that a user may suffer serious bodily harm, but only in a highly unlikely combination of circumstances, does not under the ABA Rule have the discretion to warn the public of such slightly increased risk of harm.

Applying the above guidance to the present inquiry, we are of the view that the inquiring attorney is not in all instances obligated under Rule 1.6(c) to reveal confidential information as to the existence of his client's addiction to heroin and opioids, even though such addictions may at some unknown time in the future result in death or serious bodily harm. While admittedly serious, and not to diminish the possible danger to the client's safety and well-being caused by the client's addictions and usage, we cannot conclude that the lawyer's knowledge of a client's addictions, without more, always results in a mandatory obligation to disclose such information in order to prevent reasonably certain death or substantial bodily harm. We do not believe the dictates of Rule 1.6(c) to go so far.

Moreover, while Comment [6] to the Rule recognizes that the risk of reasonably certain death or substantial bodily harm need not in all instances be immediate, the Comment goes on to state that there must at the least be a present and substantial threat that the person will suffer such harm at a later date if the lawyer fails to take action necessary to eliminate the threat. In the present instance, while the client's addictions, especially to heroin, present a risk that at some unknown time in the future the client <u>may</u>, like every person suffering from such an addiction, suffer the ills foreseen by the Rule, such danger is sufficiently remote in time and uncertain of occurrence as to render us unable to say that it presents the present and foreseeable threat of reasonably certain death or substantial bodily harm as would be required to call the Rule into play. Thus, we are of the belief that the mandate of disclosure under Rule 1.6(c) is not presently applicable to this situation.

This is not to say, however, that the attorney would never have a possible obligation under the Rule to reveal the client's addiction and usage. As stated, the question of whether the circumstances in any given situation may require reporting under Rule 1.6(c) is an intensely fact sensitive inquiry. To this effect, if the attorney has additional information in a given instance reflecting an increased danger of death or substantial bodily harm, beyond the risk inherent in the client's being an addict, such as a history on the part of a client to attempt suicide or to cause bodily injury to himself, or the existence of believable threats by the client to do himself injury, such considerations may result in a different conclusion as to the reasonableness of a belief on the part of an attorney that the revealing of otherwise confidential information is necessary to prevent reasonably certain death or substantial bodily harm. However, on the facts stated in the present inquiry, we do not believe that the attorney's knowledge of the client's addictions and usage, without more, creates a reasonable belief on the part of an attorney that intervention is necessary to prevent reasonably certain death or substantial bodily harm so as to require disclosure under Rule 1.6(c).

We are somewhat comforted in our conclusion that mandatory disclosure is not required under the present circumstances by the fact that Rule 1.6(c) is not the only Rule under which help for the addictive client may be obtained. To this effect, while the attorney's present inquiry is specifically premised on the requirements of Rule 1.6(c) and to the attorney's possible mandatory obligation thereunder to reveal his client's addictions, the provisions of Rule 1.14, dealing with a client who is of diminished capacity, may also come into play and may provide an easier and in many instances a more readily available avenue for assisting such a client than that provided by Rule

1.6(c). Without going into a lengthy discourse of the provisions of Rule 1.14, suffice it to say that it provides that an attorney who has a client whose capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or some other reason, shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client. (Rule 1.14(a)). However, the Rule goes on to state that a lawyer having a client who has diminished capacity, who is at risk of substantial physical, financial or other harm unless action is taken, and who cannot adequately act in the client's own interest, may (not shall) take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take actions to protect the client and, in appropriate cases, seek the appointment of a guardian ad litem, conservator or guardian. (Rule 1.14(b)) The Rule further recognizes that while information relating to the representation of a client with diminished capacity is protected by the confidentiality provisions of Rule 1.6, the lawyer, when taking protective action pursuant to Rule 1.14(b), is impliedly authorized under Rule 1.6(a) to reveal information about the client to the extent reasonably necessary to protect the client's interests (Rule 1.14(c)).

Thus, an attorney having a client whose drug or other conditions create a reasonable belief on the part of the attorney that the client is of diminished capacity should take into account the provisions of Rule 1.14, and that the attorney may have the right under such Rule, even absent the existence of an obligation to report under Rule 1.6(c) and despite the confidentiality provisions of Rule 1.6, to obtain help for the client under Rule 1.14. We thus recommend that the inquiring attorney review the provisions of Rule 1.14 with a view to whether it provides an additional avenue for obtaining relief for his addictive client.

CONCLUSION

Accordingly, we conclude that an attorney having knowledge of a client's drug addiction and usage does not in all instances, and in the absence of further aggravating circumstances increasing the certainty of death or serious bodily harm, have an obligation under Rule 1.6(c) to reveal such information. We reiterate, however, that the determination of the attorney's obligation under the mandatory provisions of the Rule is intensely fact sensitive, and may in some circumstances rise to the level of requiring action under the Rule to prevent reasonably certain death or substantial bodily harm. Additionally, even absent the existence of a mandatory reporting obligation under Rule 1.6(c), the lawyer may have steps available to protect his client if the client is of diminished capacity under the provisions of Rule 1.14.

ISBA Professional Conduct Advisory Opinion

Opinion No. 17-02
March 2017

Subject: Client Files; Law Firms

Digest: A lawyer must maintain records that identify each client and reflect whether the client's representation is active for an indefinite period of time. A lawyer must maintain all financial records related to the lawyer's practice as well as complete records of trust account funds and other property of clients or third parties held by the lawyer for at least seven years. For other records and materials, if appropriate steps are taken to return or preserve actual client property or items with intrinsic value, it is generally permissible for a lawyer to dispose of closed file materials within a "reasonable" time after conclusion of a matter; and seven years should generally be considered a reasonable time. Sending former clients notice of the proposed disposal of a closed file generally should not be required. Any method of disposal must protect the confidentiality of client information.

References: Illinois Rules of Professional Conduct 1.0, 1.6, and 1.15;

Illinois Supreme Court Rule 769;

735 ILCS 5/13-214.3(c);

ISBA Professional Conduct Advisory Opinion 12-06 (January 2012);

ABA Informal Opinion 1384 (March 1977);

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

Missouri Rule of Professional Conduct 4-1.22 (2016);

Ohio Supreme Court Board of Professional Conduct Client File Retention Guide (March 2016);

Tennessee Board of Professional Responsibility Opinion 2015-F-160(a) (March 2016);

Arizona State Bar Opinion 08-02 (December 2008);

Iowa State Bar Opinion 08-02 (March 2008)

West Virginia Lawyer Disciplinary Board Opinion 2002-01 (March 2002).

FACTS

The inquiring law firm is incurring substantial storage fees for closed client matter files and wishes to dispose of files no longer of use that are more than ten years old. For many years, the firm has included the following or similar language in its standard engagement letter signed by clients: "At your request, your papers and property will be returned to you [after termination of the Matter] promptly upon receipt of payment for outstanding fees, service charges and disbursements. Our own files, including lawyer work product, pertaining to the Matter will be retained by the firm. For various reasons, including the minimization of unnecessary storage expenses, we reserve the right to destroy or otherwise dispose of any such documents or other materials retained by us within a reasonable time after the termination of the engagement." The firm states that locating and contacting former clients to seek consent for destruction, or to provide advance notice of destruction, would be impossible in some situations as well as costly and burdensome in most cases.

QUESTION

Where clients have signed engagement agreements advising that a law firm may destroy or otherwise dispose of documents relating to a closed matter within a reasonable time after the end of the engagement, may the law firm do so: (1) ten years after the end of an engagement; and (2) without taking additional steps, including, for example, giving notice to the former clients?

ANALYSIS

As noted in ISBA Opinion 12-06 (January 2012), there are minimum time periods that certain financial and trust account records regarding a lawyer's practice must be maintained. Specifically, Illinois Rule 1.15(a) requires that complete records of trust account funds and other property of clients or third persons be kept by a lawyer and preserved for at least seven years after termination of a representation. Subparagraphs (1) to (8) of the Rule 1.15(a) list the specific requirements for the "complete records" of trust accounts.

Illinois Supreme Court Rule 769 defines two additional categories of lawyer records that must be maintained. 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, 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.

In the present inquiry, the law firm typically advised new clients of the firm's records retention policy, including the intention to dispose of closed files "within a reasonable time after the termination of the engagement," in the initial engagement letter. The firm now wishes to consider ten years as a "reasonable" period of time. Apart from the specific rules discussed above, there appear to be no other Illinois professional conduct or court rules relevant to a minimum or "reasonable" retention period for lawyer file materials no longer needed for a client's representation. Other authorities provide useful guidance on this question.

ISBA Opinion 12-06 (January 2012) considered whether an Illinois legal services program could routinely dispose of various types of case materials five years after a matter was closed. The opinion noted that records reflecting the client information covered by Supreme Court Rule 769(1) must be retained indefinitely, and that the financial and trust account records described in Supreme Court Rule 769(2) and Illinois Rule 1.15(a) must be kept for seven years. With respect to closed case files, except for original deeds, wills, and other documents with intrinsic value, ISBA Opinion 12-06 concluded that the program need not retain such files more than five years after a matter was closed if those materials were no longer useful to the clients' representation.

As early as 1977, the American Bar Association advised that lawyers need not retain closed files indefinitely. ABA Informal Opinion 1384 (March 1977) observes: "A lawyer does not have a general duty to preserve all of his files permanently. Mounting and substantial storage costs can affect the cost of legal services, and the public interest is not served by unnecessary and avoidable additions to the cost of legal services."

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, however, that "… a law firm is not required to preserve client documents indefinitely and may destroy documents that are outdated or no longer of consequence."

The experience in other states is also instructive. In July 2016, the Missouri Supreme Court amended its Rule of Professional Conduct 4-1.22 to reduce that state's general mandatory file-retention period from ten years to six years for all files where the representation ends on or after July 1, 2016. Missouri Rule 4-1.22 lists four exceptions to the general rule: (a) where a legal malpractice claim is pending; (b) where a criminal or other governmental investigation is pending; (c) where a disciplinary matter is pending; or (d) where other litigation is pending.

The Ohio Supreme Court Board of Professional Conduct Client File Retention Guide, issued in March 2016, acknowledged that there is no minimum file retention requirement in Ohio and observed that the "… decision of how long to maintain a client file always lies within the professional judgment of the lawyer…." The Guide also noted that other jurisdictions suggest minimum file retention periods that run concurrently with trust account recordkeeping requirements (seven years in Ohio), and agreed that the trust account period may be appropriate in many cases, except for particular matters that may require longer retention.

Tennessee Board of Professional Responsibility Opinion 2015-F-160(a) (March 2016) recommended that a lawyer retain former client files for five years after termination of representation, noting that the guideline may be altered by client agreement or the type of representation and contents of the file. Arizona State Bar Opinion 08-02 (December 2008) concluded that a general five-year retention period "… remains a safe default option for the lawyer and client in the absence of an agreement otherwise." The opinion further noted that the five-year period was supported by Arizona Rule 1.15(a), which requires a five-year retention period for trust account records. Iowa State Bar Opinion 08-02 (March 2008) recommended a retention period of no less than six years if the lawyer has a written file retention policy and ten years in the absence of such a policy.

West Virginia Lawyer Disciplinary Board Opinion 2002-01 (March 2002) noted that lawyers do not have a general duty to preserve closed files permanently, and stated: "At some point in time, even absent explicit consent to destroy, it is no longer reasonable for a client to expect that the lawyer will still maintain the client's property. At that point in time, the client's consent to destroy the file is implicit." The opinion concluded that, with certain exceptions, "holding the file for five years with no request for it by the client can be deemed implicit consent to destroy the file."

In view of these authorities, the ten-year retention period for closed files proposed by the inquiring law firm is clearly reasonable. In fact, a general "default" retention period of seven years for the ordinary closed file materials of an Illinois law firm also appears reasonable. A general retention period of seven years after termination of the representation would be consistent with two of the Illinois Supreme Court's three lawyer record-keeping requirements (records required by Supreme Court Rule 769(1) should be preserved indefinitely). As noted above, several other jurisdictions have chosen their state's trust account record retention period as the appropriate default guideline for retention of ordinary closed files. Retaining closed files at least seven years could also prove advantageous in the event of a lawyer liability claim, given that the Illinois statute of repose for professional liability claims against lawyers, 735 ILCS 5/13-214.3(c), is six years.

There may be specific situations, like those listed as exceptions to Missouri Rule 4-1.22, or types of materials like those listed in ISBA Opinion 12-06 (original deeds, wills, and other documents with intrinsic value), where retaining a file, or portions of a file, longer than seven years may be necessary or prudent. And as long as the requirements of Illinois Rule 1.15(a) and Supreme Court Rule 769 are met, lawyers and adequately informed clients (see the definition of "informed consent" in Illinois Rule 1.0(e)) are free to agree on any mutually acceptable retention period for closed client files.

The inquiring law firm also asks whether, in view of the terms set out in the firm's general engagement letter, it is necessary to give clients or former clients notice that the firm intends to destroy the file relating to a particular matter. In this regard, it is useful to note that neither Illinois

Rule 1.15(a) nor Illinois Supreme Court Rule 769(2), which set the minimum retention periods for lawyer trust account and financial records, require any notice to clients after the minimum retention periods have ended and a lawyer is then impliedly free to destroy the trust account and financial records. It seems reasonable to assume that if the Court believed that notice to clients of the potential destruction of these important lawyer records was necessary or appropriate, the Court would have written those rules to require notice.

This approach is also consistent with Missouri Rule of Professional Conduct 4-1.22, which does not require notice to clients or former clients that a file will be destroyed. Like West Virginia Lawyer Disciplinary Board Opinion 2002-01, the Missouri rule presumes that if "… the client does not request the file within six years after completion or termination of the representation, the file shall be deemed abandoned by the client and may be destroyed."

If appropriate steps have been taken to return or preserve actual client property or items with intrinsic value, sending former clients notice of the proposed disposal of routine closed file materials generally should not be required. Attempting to locate and communicate with former clients seven to ten years after a matter is closed will always be time-consuming and expensive – and in many cases, futile. As the Missouri Supreme Court and the West Virginia Lawyer Disciplinary Board concluded, former clients who have left their closed matter files untouched for five or six years should be considered to have lost interest. Clearly, as in the case of the present inquiry, former clients who have been given notice of the firm's file retention policy in the initial engagement letter need no additional notice before the firm may destroy a closed file.

Finally, disposal of any part of a law firm's closed file must be done in a manner that protects the confidentiality of all information relating to the client's representation, consistent with a lawyer's duty under Illinois Rule 1.6. Comment [18] to Rule 1.6 explains 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 law firm must assure that its method of disposing of closed files preserves the confidentiality of information relating to the representation of its clients or former clients.

ISBA Professional Conduct Advisory Opinion

Opinion No. 17-03
March 2017

Subject: Conflict of Interest; Conflict of Interest – Transactional Matters

Digest: The Illinois Rules of Professional Conduct prohibit a lawyer from representing a husband and wife in a short sale if the husband is currently a client of the lawyer who is investigating filing a divorce petition for the husband, unless both the husband and wife give informed consent to the conflict and the lawyer "reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client."

References: Illinois Rules of Professional Conduct, Rule 1.7

Illinois Rules of Professional Conduct, Rule 1.0(e)

Illinois Rules of Professional Conduct, Rule 1.6

ABA Formal Opinion 05-434

ISBA Ethics Opinion 86-15

ISBA Ethics Opinion 99-01

Restatement (Third) of the Law Governing Lawyers §122

Geoffrey C. Hazard and W. William Hodes, The Law of Lawyering: A Handbook on the Model Rules of Professional Conduct, §1.7:207 (2d ed. Supp. 1996)

FACTS

A lawyer represents a client ("Husband") seeking a dissolution of marriage from his wife ("Wife"). The lawyer is still gathering information but has not yet filed a petition for divorce. Husband and Wife owe approximately $100,000 on the mortgage for their marital home. The home is no longer worth $100,000 and neither can afford the payments either together or separately. If they act in the next six months, Husband and Wife may be able to sell their home through a short sale that would eliminate the potential for a deficiency judgment.

QUESTIONS

1) Does the lawyer have a conflict of interest if she represents Husband and Wife in a short sale of their home?

2) Can the lawyer represent Husband and Wife if they waive any conflict the lawyer may have?

ANALYSIS

Illinois Rule of Professional Conduct 1.7 provides that a lawyer has a conflict of interest if she concurrently represents clients whose interests are adverse unless the clients consent and several other factors are met:

> (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
>
> > (1) the representation of one client will be directly adverse to another client; or
> >
> > (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.
>
> (b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:
>
> > (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
> >
> > (2) the representation is not prohibited by law;
> >
> > (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
> >
> > (4) each affected client gives informed consent.

I.R.P.C. 1.7.

The lawyer's proposed representation of Husband and Wife in the short sale constitutes a concurrent conflict under Rule 1.7(a)(1). Here, the lawyer currently represents Husband who is contemplating filing for a divorce from Wife. Although no lawsuit has been filed, the representation of Husband is directly adverse to Wife. "There may be direct adversity even though there is no overt confrontation between the clients, as, for example, where one client seeks the lawyer's advice as to his legal rights against another client whom the lawyer represents on a wholly unrelated matter. Thus, for example, a lawyer would be precluded by Rule 1.7 (a) from advising a client as to his rights under a contract with another client of the lawyer…." ABA Formal Opinion 05-434. So even though Husband has not yet filed for divorce, the lawyer's representation of Husband is already directly adverse to Wife, and representing Wife as a client in another matter, like the proposed short sale, constitutes a concurrent conflict under Rule 1.7(a)(1).

The lawyer's proposed representation of Husband and Wife in the short sale may also create a concurrent conflict of interest for the lawyer under Rule 1.7(a)(2) which states that a concurrent conflict exists if there is a "significant risk" the representation of one client will be "materially limited" by the lawyer's responsibilities to another client. "[A]ny impairment of the client-lawyer relationship precludes concurrent representation in situations of direct client-to-client conflict."

ISBA Ethics Op. 99-01 (quoting Geoffrey C. Hazard and W. William Hodes, "The Law of Lawyering: A Handbook on the Model Rules of Professional Conduct," §1.7:207 (2d ed. Supp. 1996)). ISBA Ethics Opinion 99-01 analyzed the situation where a lawyer proposed to represent a husband in a divorce from his wife, and proposed to represent the wife in a custody proceeding involving a former spouse. The opinion concluded that the conflict between clients in a divorce was so great that the "lawyer should not undertake representation of one spouse in a marriage dissolution matter if the lawyer already represents the client's spouse in another family law matter." *Id*.

The facts presented here differ in a significant way from those of Ethics Opinion 99-01 because Husband and Wife's interests are aligned in the short sale. However, if one of the two clients will somehow benefit more from the short sale, or could gain a tactical advantage or leverage in the divorce from the short sale (for example if it falls through), then the lawyer's representation of both clients may become materially limited and a concurrent conflict would exist under Rule 1.7(a)(2). Indeed, given how closely a client's finances are usually linked to both their home ownership and the litigation of a divorce it is hard to imagine that the representation of Husband and Wife in the short sale would not be materially limited by the lawyer's duties to the Husband contemplating to file for divorce.

The lawyer can overcome the Rule 1.7(a)(1) and (2) concurrent conflict from representing Wife in the short sale if the representation falls under the exception to a concurrent conflict provided in Rule 1.7(b). The Rule 1.7(b) exception has four subparts, each of which must be satisfied.

The first subpart, that "the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client," requires the lawyer to determine whether she can appropriately represent all parties in the transaction. This could be a problem if completing the proposed transaction, the short sale, would somehow confer a greater advantage on one of the spouses than it would on the other spouse in the looming divorce. Given how closely a couple's assets, and the manner those assets are held, can impact the outcome of a divorce proceeding it may be impossible for the lawyer to conclude she can advise both spouses about moving forward with the short sale. On the other hand, because there is a short deadline on the short sale, and the short sale would likely benefit both Husband and Wife, the lawyer may believe that husband and wife are best served by the lawyer representing them in the short sale despite the conflict from the potential divorce. Ultimately whether the proposed concurrent representation does not violate subpart 1 will depend on the specific facts of the situation. Although given the inherent conflict in divorce proceedings, it seems unlikely that a lawyer could ever represent one spouse in a contemplated divorce, and concurrently represent the other spouse for any purpose. *See* ISBA Ethics Op. 99-01; *see also* ISBA Ethics Op. 86-15.

The second subpart, that the representation is not prohibited by law, is met here.

The third subpart, that "the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal" is met here. The lawyer is not contemplating representing both clients in the divorce and the short sale is not a proceeding before a "tribunal."

The fourth subpart, that "each affected client gives informed consent," is met only if the lawyer discloses information to both Husband and Wife sufficient to inform them about their decision to waive the conflict, and if both consent. *See* I.R.P.C. 1.7 cmt 2 (explaining that for purposes of Rule 1.7(b)(4) the clients "affected" include both of the clients referred to in paragraph (a)(1).) The amount of information the lawyer must convey for Husband and Wife to give informed consent is "adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct." I.R.P.C. 1.0(e). The *Restatement (Third) of the Law Governing Lawyers* similarly defines informed consent to a waiver of a conflict as requiring "that the client or former client have reasonably adequate information about the material risks of such representation to that client or former client." *Restatement (Third) of the Law Governing Lawyers §122*. So for Wife to give informed consent to the representation the lawyer would need to explain to Wife that Husband is contemplating a divorce and that the manner in which the short sale proceeds could impact the outcome of the divorce. The lawyer should also recommend that Husband and Wife each retain their own lawyer, or that Husband and Wife jointly retain a new lawyer (who does not represent either one in relation to the potential divorce), for the short sale because of the risk that the joint representation with the lawyer who already represents Husband in relation to the potential divorce, and the related need to share financial information, may compromise one of their positions in the divorce.

Finally, the lawyer needs to consider Illinois Rule of Professional Conduct 1.6 which prohibits a lawyer from sharing information related to the representation of a client without informed consent. Rule 1.6 is potentially implicated in two ways. First, Husband would need to waive confidentiality and allow the lawyer to share with Wife that Husband has retained the lawyer to investigate filing for divorce. Second, if the short sale process involves collecting financial information from Husband and Wife, then lawyer would potentially be in possession of confidential financial information about both Husband and Wife that could be relevant to the looming divorce proceeding. Husband and Wife would both need to waive confidentiality and allow the lawyer to share each party's confidential financial information with the other party. As part of waiving confidentiality, the lawyer would need to make sure that Husband and Wife both understand that sharing the financial information for purposes of the short sale could convey an advantage to the other party in a divorce.

CONCLUSION

In conclusion, it will be a rare situation where the lawyer concludes that she could "provide diligent legal representation to each affected client" as required by Rule 1.7(b)(1) to accept the concurrent representation. If the lawyer does conclude that she can accept the concurrent representation, the lawyer must then obtain Husband's informed consent to share information about the representation in the contemplated divorce with Wife. Finally, if the lawyer concludes that she can accept the representation and Husband consents to sharing information about the contemplated divorce with Wife, then the lawyer must obtain informed consent from Wife after communicating "adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct." I.R.P.C. 1.0(e). Consequently, any lawyer contemplating a joint representation in a situation like this will likely want to turn down the joint representation unless there is some strong rationale for why Husband and Wife should not use either separate lawyers or a single different lawyer without a conflict related to the possible divorce for the short sale.

ISBA Professional Conduct Advisory Opinion

Opinion No. 17-04
March 2017

Subject: Conflict of Interest; Conflict of Interest – Transactional Matters

Digest: In most circumstances, a lawyer will not be able to represent both the buyer and seller in a real estate transaction.

References: Illinois Rules of Professional Conduct, Rules 1.0(e) and 1.7

ISBA Op. 86-15

New York State Bar Ass'n Op. 807 (2007)

Vermont Ethics Op. 78-04 and 2004-03

In re Dixon, 07 CH 115, M.R. 22629 (2008)

In re Jeffers, 08 CH 103, M.R. 23537 (2010)

In re Murzyn, 05 CH 73, M.R. 21436 (2007)

In re Scott, 09 CH 102, M.R. 25453 (2012)

FACTS

A mother wants to sell her home to her son. Mother and son worked out the details of the transaction without the assistance of counsel. They contact a lawyer to handle the purchase and sale of the home and to represent each of them at the closing.

QUESTIONS

May the lawyer represent both the buyer and the seller in the transaction and at the closing?

ANALYSIS

At the outset, we caution that numerous lawyers have been disciplined for representing or attempting to represent both the buyer and seller in a real estate transaction. *See, e.g.,* In re Scott, 09 CH 102, M.R. 25453 (2012); In re Jeffers, 08 CH 103, M.R. 23537 (2010); In re Dixon, 07 CH 115, M.R. 22629 (2008); In re Murzyn, 05 CH 73, M.R. 21436 (2007). Accordingly, we caution lawyers to fully research and analyze any such contemplated representation.

In addition, we have previously issued an opinion that concluded, in most circumstances, lawyers cannot represent both the buyer and seller in a real estate transaction. We concluded that the circumstances where a lawyer could undertake such multiple representation are extremely rare.

See ISBA Op. 86-15. We believe that this opinion is still sound under the 2010 Rules of Professional Conduct.

Illinois Rule of Professional Conduct 1.7, the rule that addresses concurrent conflicts of interest, provides:

> (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
>
> (1) the representation of one client will be directly adverse to another client; or
>
> (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.
>
> (b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:
>
> (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
>
> (2) the representation is not prohibited by law;
>
> (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
>
> (4) each affected client gives informed consent.

As stated in Comment 7 to Rule 1.7, directly adverse conflicts can arise in transactional matters. Representation of a buyer in a real estate transaction is directly adverse to the representation of the seller. Therefore, there is a concurrent conflict of interest under Rule 1.7.

Accordingly, the lawyer must then determine if the lawyer can take on the representation, even with the conflict of interest, if the lawyer can obtain the informed consent of each client. Some conflicts of interest are nonconsentable; the lawyer must determine consentability on a case-by-case basis. *See,* Comment 14, Rule 1.7.

Pursuant to Rule 1.7(b)(1), the lawyer must analyze whether the lawyer may reasonably believe that the lawyer will be able to provide competent and diligent representation to each affected client. The question is whether a reasonable lawyer would conclude that the lawyer could provide the required diligence and competence to both the buyer and the seller in the transaction.

In our view, if the buyer and the seller have not already executed a valid sales contract, the lawyer could not reasonably believe that he or she could provide competent and diligent representation to both the buyer and the seller. The lawyer could not negotiate on behalf of one client without harming or potentially harming the other client. The lawyer's obligations and loyalties are so divided that the lawyer could not reasonably believe that the lawyer could provide adequate representation to both parties.

As we stated in Op. 86-15, "Under normal circumstances involving an arms-length unrelated buyer and seller, we feel it by no means obvious that their interests can be adequately represented by a single attorney. We would, therefore, conclude under such circumstances that their dual representation would be improper, regardless of their consent thereto."

Even if the parties agree on the terms of the sale, and have already executed the sales contract, we believe that it is highly unlikely that a lawyer could properly represent both the buyer and seller in concluding the transaction. Issues often arise after the parties have executed the contract and prior to closing that would require the lawyer to give unqualified advice to his or her client.

Our conclusions are consistent with several opinions in other states. *See e.g.*, Vt. Ethics Op. 2004-03 (2004)(an attorney may not simultaneously represent a client who is selling a parcel of real property and provide limited representation to the buyer of the same real estate by providing a title insurance policy to such buyer); Vt. Ethics Op. 78-04 (general representation of both purchaser and seller in a normal "arms-length" real estate transaction is not permitted under the rules even though both parties consent); New York State Bar Ass'n Op. 807 (2007)(the buyer and seller of residential real estate may not engage separate attorneys in the same firm to advance each side's interests against the other, even if the clients give informed consent to the conflict of interest).

However, in Opinion 86-15, we stated, "We are not prepared to say categorically in the present instance that an attorney can never, under any circumstances, adequately represent the interests of both the buyer and seller in a real estate transaction. We do, however, believe such instances to be extremely rare."

We decline to consider under what circumstances the representation of the buyer and seller might be proper even with informed consent. Whether the lawyer can adequately represent both the buyer and the seller will depend on the facts of that transaction. If the lawyer concludes that a reasonable lawyer could undertake the joint representation, the lawyer must then obtain the informed consent of each client. Such a consent must include all of the possible ramifications of the waiver of the conflict, including the likelihood that the lawyer would be obliged to withdraw from representation if any conflict ensues, at the expense of the clients.

CONCLUSION

In most circumstances, a lawyer will not be able to represent both the buyer and seller in a real estate transaction, even if the buyer and seller are related.

Board of Governor Meeting
March 10, 2017

Action Agenda Item #78
Legislation

ILLINOIS STATE BAR ASSOCIATION

MEMORANDUM

To: ISBA Board of Governors

From: Jim Covington

Date: February 24, 2017

In re: Two Legislative Proposals

This memo will summarize two legislative proposals that need your direction. Both were matters that we simply ran out of time to get through our lengthy legislative process. The first is from Trusts and Estates and the second from Animal Law. Please call me if you have any questions. Thank you.

(1) ISBA Legislative Proposal 99-7 amends statutory awards from a decedent's estate for an "adult dependent child."[1] Trusts and Estates believes that the current statute is archaic and undercuts current estate planning that tries to protect disabled adults after the death of a caretaker family member.

This proposal was sent to several section councils in 2015 and then again in 2016, and Trusts and Estates has reworked it several times to accommodate concerns that were raised. Elder Law, Mental Health, and Trusts Estates now support it. General Practice still opposes, and I'll get into their opposition later in this memo. The ISBA Legislation Committee unanimously supported it last month,

Currently, this statute allows the court, if it deems reasonable, to award the surviving spouse, minor children, or "adult dependent children" a sum of money for their proper support for the nine-month period after the decedent's death. Under current law it may not be less than $20,000 for the spouse and $10,000 for each child.

For the past couple of decades or so, both federal and Illinois law have allowed specific planning for disabled persons, including supplemental or special needs trusts, as well as payback trusts. "Payback trusts" provide for the disabled person during his or her lifetime with any remaining balance payable to the State to the extent that funds were expended for the benefit of the dependent person. These tools are in addition to the use of POD and TOD accounts, joint tenancy accounts, and the new Transfer on Death Instrument (TODI).

[1] 755 ILCS 5/15-1, 15-2.

Estate planners are aware that providing for a disposition in a decedent's estate for the benefit of a person who is eligible to receive Medicaid or Supplemental Security Income would render the person ineligible and cause the disposition to repay the State. Thus, estate plans are routinely crafted to avoid that result.

That special planning could be adversely affected if, in addition to the plans made for the benefit of the disabled adult child outside of the probate estate, the probate estate would also provide a potentially significant award for the benefit of the disabled adult child.

For example, a parent may have established a significant supplemental needs trust for the benefit of an adult child. But if that adult child is also entitled to claim a significant award under the probate estate, the parents' estate plan for other beneficiaries would be adversely affected.

This proposal was triggered in 2013 by the First District Appellate Court of Illinois that found that an adult child of the decedent was "dependent" for the reason that the child was unable to maintain himself and was a ward of the estate.[2] The adult dependent child's award in that case could have exceeded $400,000 and significantly if not entirely exhausted the probate estate.

That Appellate Court decision highlighted the fact that significant and appropriate planning outside the probate estate for the benefit of a disabled adult child may be frustrated if that adult dependent child is still entitled to a significant portion of the probate estate as well as the benefits of other planning.

Considering the methods by which parents and others may provide for adult children who might otherwise become public charges, there is no longer a need for an award from the probate estate for an adult dependent child.

What this bill does:

- Creates a separate statutory award for adult dependent child for at least $5,000. A minor child would still be entitled to at least $10,000, and a surviving spouse would still be entitled to at least $20,000 as under current law.
- The qualifying language would be "for each adult child of the decedent who likely is to become a public charge and was financially dependent on the decedent and resided with the surviving spouse at the time of death." (*Note, one of General Practice's concerns was that there was no clear definition of financially dependent child. As used in the Spouse's Award and Child's Award sections of Article XV of the Illinois Probate Act, the term "dependent" is defined in Section 1-2.06 as "a person who is unable to maintain himself and is likely to become a public charge."*)

[2] *In re: Estate of Raul N. Mosquera* (2013 Il. App. 1st 120130).

- The award must be at least $5,000, but the court may give whatever sum it deems reasonable, or agreed upon the surviving spouse and representative of the decedent's estate of affiant under a small-estate affidavit. *(Note, this was another General Practice concern that the court has no discretion. I'm not sure how to read "a sum of money that the court deems reasonable" as limiting the judge's discretion.)*
- Requires the adult child's agent or guardian or other adult on behalf of the adult child to provide written notice to the representative or affiant asserting that the adult child was financially dependent on the decedent at the time of the decedent's death within 30 days of the surviving spouse or adult child receiving notice of this potential award.

General Practice's final concern was the proposal was too broad. I'm not sure how to respond to this because of the vagueness of this concern.

Current status. Bill introduction deadline for both chambers was February 10, 2017. To preserve our options for this spring, I reached out to Steven A. Andersson, the minority chair of the House Judiciary Committee. He is a member of the ISBA Assembly and does estate-planning work. I told him that I was seeking approval from the Board so that ISBA could formally initiate this. He introduced it as HB 2516 as a placeholder that may be found here.

(2) ISBA Legislative Proposal 100-1. It creates civil immunity for volunteer humane investigators who investigate complaints concerning the care and treatment of companion animals, which includes canines, felines, and equines. It does not immunize acts or omissions of willful or wanton misconduct.

This proposal was sent to a number of sections and committees at the ISBA annual meeting in June of 2016, and Animal Law Section Council has amended it to make it narrower and more focused after its initial review. Animal Law reached out to Brad Pollock and Michael Hartigan of Tort Law Section Council, and the attached draft is a result of that conference call and follow-up emails.

Under the Illinois Humane Care Act and corresponding rules, a humane investigator is trained and approved by the Department of Agriculture (DoA). The vast majority of these investigators are volunteers from humane societies who are organized to protect companion animals. Other persons who may perform these investigators by statute include law enforcement officers, Department investigators, and animal-control officers, all of whom already receive statutory immunity as state or local employees.

In some local jurisdictions, animal-control officers don't respond to calls for help after the workday is over unless public safety is involved. Also, in many situations the county animal-control charges local municipalities for any services provided. If a municipality chooses not to pay (and they often make that choice), there is no assistance from animal control available.

Nor do DoA employees respond after the workday is over, and as a policy, the Department is asking local jurisdictions to handle companion animals matters so the Department can concentrate on enforcement if there isn't shared authority. The Department enforces 12 animal-related statutes; there is shared authority only under Humane Care Act. Humane investigators fill the void if no local government authority will respond. If police respond, they often ask local humane investigators to assist.

The Department of Agriculture is now contemplating new rules to require more training for humane investigators such as a weeklong course in the National Animal Control Associations series or at the University of Missouri cruelty school. Those new rules will actually require more training for approved humane investigators than is required for governmental animal-control officers, who are not required to have any formal training. (Yet those so employed enjoy statutory immunity under the Local Government Tort Immunity Act.)

The Animal Law Section Council believes that these volunteers should have immunity (except for willful and wanton misconduct) so that no good deed is punished. They believe that these volunteers (numbering 300-400 across the State) speak for animals that can't speak for themselves.

The actual proposed language is here:

(510 ILCS 70/10) (from Ch. 8, par. 710)

Sec. 10. Investigation of complaints.

(a) Upon receiving a complaint of a suspected violation of this Act, a Department investigator, any law enforcement official, or an approved humane investigator may, for the purpose of investigating the allegations of the complaint, enter during normal business hours upon any premises where the animal or animals described in the complaint are housed or kept, provided such entry shall not be made into any building which is a person's residence, except by search warrant or court order. Institutions operating under federal license to conduct laboratory experimentation utilizing animals for research or medical purposes are, however, exempt from the provisions of this Section. State's Attorneys and law enforcement officials shall provide such assistance as may be required in the conduct of such investigations. Any such investigation requiring legal procedures shall be immediately reported to the Department. No employee or representative of the Department shall enter a livestock management facility unless sanitized footwear is used, or unless the owner or operator of the facility waives this requirement. The employee or representative must also use any other reasonable disease prevention procedures or equipment provided by the owner or operator of the facility. The animal control administrator and animal control wardens appointed under the Animal Control Act shall be authorized to make investigations complying with this Section for alleged violations of Sections 3, 3.01, 3.02, and 3.03 pertaining to companion animals. The animals impounded shall remain under the jurisdiction of the animal control administrator and be held in an animal shelter licensed under the Animal Welfare Act.

(b) Any veterinarian acting in good faith is immune from any civil or criminal liability resulting from his or her actions under this Section. The good faith on the part of the veterinarian is presumed.

(c) Civil liability under this Act may not be imposed against an approved humane investigator for any act or omission in conducting investigations or otherwise enforcing the provisions of this Act, unless the act or omission is a result of willful or wanton misconduct. This immunity does not extend to the operation of a motor vehicle.

This revised proposal was re-referred to the following sections and committees at the 2016 midyear meeting:

General Practice. Support.

Local Government. Support.

Tort Law. Tort Law supported it but as amended below:

(c) Civil liability under this Act may not be imposed against an approved humane investigator for any act or omission in conducting investigations or otherwise enforcing the provisions of this Act, unless the act or omission is a result of willful or wanton misconduct. This immunity does not extend to the operation of a motor vehicle *or bodily injury to a person.* *(Tort's amendment was "or bodily injury.")*

Animal Law had agreed to an exception for operation of a motor vehicle (I think arriving out of the conference call with Pollock and Haritgan) because driving a motor vehicle was not Animal Law's concern—there is already a well-established body of law regulating doing so with insurance and it is outside the scope of doing an humane investigation at the request of DoA or local government. They think Tort Law's proposed additional language is so broad and vague it emasculates the proposal.

Civil Practice. Opposed unanimously as presented. They opposed for the following reasons:

- There should be an exception to immunity if there is insurance coverage in place that would apply to any damage or liability.
- Overly broad to immunize any act or omission under the auspicious of "conducting investigations."

Animal Law's response to the first concern: They are unaware, and I'm unaware, of any statutory exception for immunity if there is insurance. I'll look into that. Granted, a few humane investigators will be employed by a unit of local government, but Animal Law believes it is very few of them are so employed. For example, Sangamon County has just four animal officers. I'm guessing none of them work after 5:00 p.m. unless it is an emergency matter affecting public safety.

Animal Law's response to the second concern: Animal Law is following the statute by using the words "conducting investigations." That's what they do, but only at the request of DoA or a unit of local government. Trying to figure out how to draft statutory language to conform to the possible myriad of fact-specific situations isn't practical.

Agricultural Law. Animal Law presented to them at the midyear meeting, and they referred it to their legislative subcommittee. They've never taken a formal position on it since its referral at the annual meeting. They met on Feb. 2 and delegated a possible amendment to a lawyer employed by the Farm Bureau that is on the committee. I did receive a lengthy email from that lawyer after the midyear meeting that summarized her concerns.

Her email was concerned that the Humane Care Act applies to livestock and that therefore livestock facilities would be involved. She is correct about that, but humane investigators concentrate on companion animals and they have always received direction from DoA to refer all livestock matters to DoA.

So, her concern was that if a humane investigator was on site to investigate a complaint about a companion animal but sees something that should be addressed concerning livestock. She sought an amendment to foreclose this possibility by amending to limit investigators' ability to investigate allegations of the Act involving livestock facilities. She further sought an amendment that these investigations must be conducted as authorized by the Act and applicable DoA administrative rules.

Animal Law's response. Well, it simply doesn't happen; humane investigators are not asked by DoA to investigate livestock matters. Animal Law is a little uneasy about removing this statutory language just because they are asking for immunity. The Farm Bureau's issue is broader than immunity; their concern is the underlying statute. Animal Law doesn't care to expand the scope of this proposal.

Animal Law also thinks that it is current law that you must conduct investigations in conformity under any applicable DoA rules.

Legislation Committee. The Legislation Committee supports this proposal in concept.

Current status. Senator Don Harmon (D-Oak Park) has agreed to sponsor a shell bill as a placeholder for us pending the Board's decision and what he thinks should be in a final draft.

Thank you.

ILLINOIS STATE
BAR ASSOCIATION

Board of Governor Meeting
March 10, 2017

Action Agenda Item #108
Special Committee on Supreme Court Rule 711

Supreme Court of Illinois
ADMINISTRATIVE OFFICE OF THE ILLINOIS COURTS

Michael J. Tardy
Director

222 North LaSalle Street, 13th Floor
Chicago, IL 60601
Phone: (312) 793-6165
mtardy@illinoiscourts.gov

3101 Old Jacksonville Road
Springfield, IL 62704
Phone: (217) 558-4490

February 1, 2017

Charles Northrup
General Counsel
Illinois State Bar Association
424 South Second Street
Springfield, IL 62701-1779

Dear Mr. Northrup:

On behalf of the Supreme Court, I write in response to your March 18, 2016, proposal to expand the application of Supreme Court Rule 711 to allow supervised law students working at private law firms to appear in courts and administrative tribunals in the state in the manner that law students currently are allowed to do if they work for legal aid and government organizations.

After initial review, the Court sought input on the proposed amendments from its Commission on Access to Justice. The ATJ Commission discussed the proposal with representatives from legal aid agencies, law school public interest advisors and law school clinical program directors from across the State. The ATJ Commission reported that these entities expressed unanimous opposition to the ISBA proposal because of concerns that the changes would shift interest away from their programs and lead to a decrease in law students working at government law offices, legal aid agencies and law school clinics. As such, the ATJ Commission expressed strong concerns about the proposal.

During the January 2017 Term, the Court carefully considered the ISBA's detailed and insightful rationale for the proposal, as well as the input from the ATJ Commission. After thorough discussion, the Court voted to disapprove the proposed amendment.

On behalf of the Court, I wish to thank the ISBA for its thoughtful proposal. Please relay the Court's appreciation to the ISBA membership for its efforts on this issue.

Sincerely,

Michael J. Tardy
Director

c: Hon. Lloyd A. Karmeier, Chief Justice, Supreme Court of Illinois
Bailey Cunningham, Assistant Counsel, ISBA

MEMORANDUM

To: Board of Governors, Illinois State Bar Association
c/o Vincent F. Cornelius, President

From: Judge Mike Chmiel, Chair
Special Committee on Rule 711
Illinois State Bar Association

Re: Proposal for Amendments to Rule 711 of the Supreme Court of Illinois

Date: March 1, 2017

In follow-up to our previous communications, and as you know, the Supreme Court has "voted to disapprove the proposed amendment".

Of course, the Special Committee on Rule 711 was disappointed to learn of the same, especially in consideration of the reference to "unanimous opposition" to the proposal by "legal aid agencies, law school public interest advisors and law school clinical program directors from across the State", as reported to the Supreme Court of Illinois by its Commission on Access to Justice. The disapproval was explained in Michael Tardy's letter of February 1, 2017, which also relays "concerns that the changes would shift interest away from their programs and lead to a decrease in law students working at government law offices, legal aid agencies and law school clinics".

Of course, our work on the proposal found opposite. As such, we fear miscommunication may be involved. As suggested in the Committee's reports, and in subsequent deliberations, the amendments should provide a broader environment for participation under Rule 711 by those who might not otherwise participate. As such, the Committee believes the amendments will actually fuel interest in opportunities under Rule 711, including those provided by legal aid and law schools. As well, ***law school deans control who actually gets to participate***! Further, of course, we note (a) the state's around Illinois and most others provide for what we are proposing, and (b) what we are proposing will serve, as much as any initiative, to arrive at more practice-ready attorneys, to help the profession and the community.

On February 16, 2016, the Committee met by telephone to discuss Director Tardy's letter and what, if anything, should happen next. While we are reluctant to suggest that the ISBA ask the Court to reconsider, we thought it might be prudent to suggest that the ISBA ask to talk to the Commission. Attached is the draft of a letter which President Cornelius (or perhaps Charles Northrup) might consider sending in reply to Director Tardy's letter.

We believe in this project, but respect the Court's unique role in this, and welcome your further direction to (a) stand down and consider our work concluded, (b) follow-up with the Court (and its Commission) along the lines suggested in the attached draft, and/or (c) work on a new proposal.

Thanks for the opportunity.

[INSERT ISBA LETTERHEAD]

[INSERT DATE]

Mr. Michael J. Tardy
Director
Administrative Office of the Illinois Courts
3101 Old Jacksonville Road
Springfield, Illinois 62704

RE: Supreme Court Rule 711

Dear Director Tardy:

Thank you for your correspondence dated February 1, 2017, which was addressed to Charles Northrup, as General Counsel of the Illinois State Bar Association. Of course, we are disappointed to learn our proposal for amendments to Rule 711 was voted down. While we respect the process, we are perplexed by the "unanimous opposition to the ISBA proposal" by legal aid agencies and law schools, in that our task force on the proposal involved many such entities. As such, we would like to meet with the Commission on Access to Justice, to better understand how we missed the mark, so that we might more fully report to our membership and consider how future initiatives might be better presented.

We welcome your further direction on this. Thank you.

ILLINOIS STATE
BAR ASSOCIATION

BOARD OF GOVERNORS
MEETING SCHEDULE

2016 - 2017

March 10^{th}	Board of Governor Meeting President Abraham Lincoln Hotel, Springfield *Morning meeting / Board Reception evening before*
March 30^{th}	Illinois Academy of Lawyers Laureate Award Luncheon Standard Club, Chicago *Registration required*
May 19^{th}	Board of Governor Meeting Embassy Suites, Naperville *Morning meeting / Board Dinner evening before*
June 15^{th} – 17^{th}	Annual Meeting The Abbey, Wisconsin

ILLINOIS STATE
BAR ASSOCIATION

2017
CANDIDATE REPORT

(N.B.: Pursuant to the Policy and Procedures for Election approved by the ISBA Assembly, in those instances where there are more candidates than positions to be filled, nominees are listed on the ballot by the date of filing. Where two or more people filed on the same date, ballot positions were determined by lot. Ballot positions are listed next to the candidate's name.)

Third Vice-President (1 to be elected; 2 candidates)

Lisa M. Nyuli	1
Dennis J. Orsey	2

Board of Governors

Cook (2 to be elected; 4 candidates)

Julie A. Johnson f/k/a Neubauer	4
Mark L. Karno*	2
Shawn Kasserman	3
Daniel R. Saeedi	1

Under Age 37 – Outside of Cook County (1 to be elected; 2 candidates)

Alisha Biesinger	1
Emily J. Rapp	2

Under Age 37 – Cook County (2 to be elected; 3 candidates)

Anna P. Krolikowska*	2
Sarah M. LeRose	3
Dennis M. Lynch*	1

Assembly

Cook County (21 to be elected; 32 candidates)

Patrick C. Anderson	29
Paul M. Bach	16
Patrice Ball-Reed	5
Frank A. Battaglia	4

* Denotes Incumbent

Assembly

Cook County (cont)

Dennis Burke	18
Leonore Carlson	13
Joel L. Chupack	31
Umberto Davi	9
Michael V. Favia*	17
Eugene F. Friedman	8
Anthony D. Gattuso	27
Ashanti Madlock Henderson	26
David P. Huber	20
Elizabeth A. Kaveny*	22
Stephen M. Komie	1
Melinda M. Lange	23
David H. Latarski	14
Bruno Ronald Marasso	30
Erica Crohn Minchella	12
Paul G. O'Toole	25
J. Damian Ortiz	10
Patricia Pantoja	28
Chloe' G. Pedersen	24
Masah Renwick	21
Marie Sarantakis	7
Evan Schanerberger	11
Judie L. Smith	3
Craig J. Squillace	2
Edna Turkington-Viktora*	6
Kevin T. Veugeler	15
Michael Vojta	32
Cory White	19

Ballot positions certified by:

[signature]

Teller

2/7/17

Date

* Denotes Incumbent

2017 IL 117720

IN THE
SUPREME COURT
OF
THE STATE OF ILLINOIS

(Docket No. 117720)

STONE STREET PARTNERS, LLC, Appellee and Cross-Appellant, v.
THE CITY OF CHICAGO DEPARTMENT OF ADMINISTRATIVE HEARINGS *et al.*, Appellants and Cross-Appellees.

Opinion filed February 17, 2017.

CHIEF JUSTICE KARMEIER delivered the judgment of the court, with opinion.

Justices Thomas, Kilbride, and Garman concurred in the judgment and opinion.

Justice Freeman dissented, with opinion, joined by Justices Burke and Theis.

OPINION

¶ 1 Stone Street Partners, LLC (Stone Street), brought this action in the circuit court of Cook County to obtain administrative review and declaratory and other relief, including an award of damages, after discovering that a judgment had been recorded against one of its properties for failure to pay $1050 in fines and costs imposed by the city of Chicago's department of administrative hearings (the Department) for violation of various provisions of the city's building code more than a decade earlier. Stone Street's complaint, which named as defendants the city of Chicago, the Department and its director, and the city of Chicago's department of buildings and the commissioner of that department (collectively the City), asserted that the original administrative proceedings were a nullity and could not serve as the basis for the judgment subsequently recorded against its property because, *inter alia*, it had not been given the requisite notice and therefore had no opportunity to contest the violations alleged by the City before judgment was entered against it.

¶ 2 Following a motion filed by the City pursuant to section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2012)), the circuit court rejected Stone Street's cause of action in its entirety. The appellate court, with one justice partially dissenting, subsequently affirmed in part, reversed in part, and remanded for further proceedings. 2014 IL App (1st) 123654. We allowed the City's petition for leave to appeal. Ill. S. Ct. R. 315 (eff. July 1, 2013). For the reasons that follow, the judgment of the appellate court is affirmed, and the cause is remanded to the circuit court for further proceedings.

¶ 3 BACKGROUND

¶ 4 The standards governing this appeal are well established. A motion to dismiss under section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2012)) admits the legal sufficiency of the complaint but asserts that some affirmative matter defeats the plaintiff's claim. When reviewing whether a motion to dismiss under section 2-619 should have been granted, we may consider all facts presented in the pleadings, affidavits, and depositions found in the record. *Doe A. v. Diocese of Dallas*, 234 Ill. 2d 393, 396 (2009). All well-pleaded facts along with all reasonable inferences that can be drawn from those facts are deemed admitted, and all pleadings and supporting documents must be interpreted in the light most favorable to the nonmoving party. *Bjork v. O'Meara*, 2013 IL 114044, ¶ 21. Because section 2-619 motions present a question of law, we give no deference to the determinations by the lower courts. Our review is *de novo*. *Doe A.*, 234 Ill. 2d at 396.

¶ 5 The record before us, when viewed according to the foregoing principles, establishes the following. Stone Street is a limited liability company created in 1998 and duly registered with the Illinois Secretary of State. Its registered agent is and has always been William G. Daluga, Jr. Mr. Daluga's address is 200 W. Adams Street, Suite 2500, Chicago, Illinois 60606. According to state records, Stone Street's principal office is located at 1343 N. Wells Street, ground level, Chicago, Illinois 60610. These addresses have been on file with the Secretary of State since 1998 and have never changed.

¶ 6 Stone Street owns real estate located at 44-46 E. Superior Street, Chicago, Illinois 60611.[1] On March 19, 2009, the City recorded a judgment against that property. The judgment so recorded had actually been entered 10 years earlier, on September 9, 1999, following a hearing on that same date, by an administrative law officer in the City's department of administrative hearings. The judgment was in the amount of $1050 and was based on the administrative officer's determination that "Stone Street Partners" was liable for violation of various provisions of the City's building code. One thousand dollars of this sum was a fine. Fifty dollars was for costs.

¶ 7 There is no evidence that Stone Street or anyone with authority to act on behalf of Stone Street had ever been notified of the building code violations that resulted in the 1999 judgment or the judgment itself, at any time prior to 2009. The "communication transmittal form" on which the building inspector had listed the violations to be addressed at the September 9, 1999, hearing showed that during the inspection, the owner was not present. Moreover, the document incorrectly identified the property's owner as "1st Real Estate and Development."

¶ 8 Issuance of the foregoing document apparently resulted after code violations discovered by City inspectors in the previous months remained uncorrected. However, neither that document nor the prior reports of violations were mailed to

[1]The record shows that these are actually two separate buildings, 44 E. Superior Street and 46 E. Superior Street.

Stone Street's office or the office of its registered agent, Mr. Daluga. The City destroyed most of the records regarding this matter, but the surviving materials indicate that the notices were actually mailed to Supera Properties, 2001 N. Halsted Street, No. 301, Chicago, IL, 60614. Supera Properties was neither an agent nor a representative of Stone Street. Copies were apparently also sent to this address: Stone Street Partners, 44 E. Superior Street, Chicago, IL 60614. Forty-four E. Superior Street, however, was not Stone Street's principal place of business, and Stone Street Partners is not the company's name. The company is registered as Stone Street Partners, LLC, and its address was on N. Wells Street. The street name and number listed on the notice were actually those of the property where the violations were alleged to be, but even at that, the address was inaccurate. The zip code listed, 60614, was incorrect. The property owned by Stone Street is located in the 60611 zip code area.

¶ 9 While notice was never given to or received by Stone Street or its agents or representatives, a person named Keith Johnson entered a written appearance in the administrative proceeding that culminated in the fine against Stone Street. Johnson represented that he was there on behalf of Stone Street, but the address and phone number he gave corresponded to those of a business called "First Real Estate," not Stone Street, and he left blank the section of the appearance form in which he was asked to state under oath that he was either the respondent/owner, lessee, attorney, or authorized agent/representative of Stone Street.[2] Although Johnson died before this litigation arose and therefore could not be questioned, the reason he refrained from selecting any of the options seems apparent. He could not do otherwise without committing perjury. Johnson was not employed by Stone Street and had no affiliation of any kind with the company. He did not even live in the subject property. So far as can be ascertained, he was merely the private caretaker for Philip Farley, the father of an attorney named Brian Farley, who was one of the members of Stone Street.

[2]The name "First Real Estate" is similar to "1st Real Estate and Development," the entity erroneously listed by the City's inspector in his "communication transmittal form" as being the owner of the subject property. Whatever relationship Johnson had to that company is unknown, and there is no evidence in the record before us that the company, whatever its precise name, had any relationship to Stone Street.

¶ 10 When Johnson was working for Philip in 1999, Philip, who is now also deceased, had suffered a stroke, was in ill health, and lacked the mental capacity to manage his own affairs. Due to his diminished mental capacity, Philip was not involved in the management or affairs of Stone Street and therefore could not have authorized Johnson to act on Stone Street's behalf.[3] Moreover, there is no evidence that Stone Street or anyone associated with Stone Street ever took any action or made any representations that would indicate to others that Johnson had any authority to act on Stone Street's behalf with respect to this or any other matter. To the contrary, Brian Farley, Philip's son, stated unequivocally that he served as attorney for the company at the time and that if the company had been sent proper notice, he would have been the one to appear on the company's behalf. According to Brian's uncontested affidavit, Johnson had no authority to represent Stone Street, and the company "would not have sent a caretaker to defend the charges had it been properly provided with notice of this case."

¶ 11 After Stone Street learned that a judgment had been recorded against the company's property in 2009 based on the 1999 administrative judgment imposing the $1050 in fines and costs on "Stone Street Partners," Brian Farley wrote to the City's counsel in his capacity as Stone Street's attorney to request that the judgment be released and that title to the property be cleared. When that effort proved unsuccessful, Stone Street sought relief from the City's department of

---

[3]The record does contain a document signed by Philip and dated August 26, 1999, accepting a proposal from a company called Ace Electric to perform some electrical work at 44-46 E. Superior Street. Putting aside the question of Philip's competency to execute the document, nothing in the document references Stone Street, directly or indirectly. The circumstances of the transaction are unknown. It is possible that testimony from the September 9, 1999, administrative hearing or from an earlier hearing held in the case the previous month would have shed useful light on this. Unfortunately, no transcripts were made of those hearings, and the audio recordings of the hearings were destroyed by the City. Consistent with both the standards governing review of judgments granting motions under 2-619, which we discussed earlier, and longstanding principles of evidence and trial procedure governing situations where a party has destroyed evidence (see 89 C.J.S. *Trial* § 592 (2012); *Miller v. People*, 39 Ill. 457, 466 (1866); Illinois Pattern Jury Instructions, Civil, No. 5.01 (2011)), we infer that this missing evidence would not have supported the City's position.

administrative hearings. Specifically, the company asked the Department to vacate and set aside the September 9, 1999, judgment on the grounds that the company had never received notice of the charges or of any orders entered in the case. The company further contended that the proceedings leading to the 1999 administrative judgment were fatally flawed because regardless of Johnson's relationship (or lack thereof) with Stone Street, he was not a lawyer and could not appear for the company without violating the prohibition against the unauthorized practice of law.

¶ 12 By order dated December 9, 2011, the administrative law officer for the Department "struck" Stone Street's request for relief with prejudice on the grounds that the Department no longer had jurisdiction to set aside the September 9, 1999, judgment. Thus rebuffed again, Stone Street turned next to the circuit court of Cook County. There, Stone Street filed the complaint that gave rise to this appeal.

¶ 13 Stone Street's complaint contained four counts. Count I sought administrative review of the December 9, 2011, decision by the Department striking with prejudice its motion to vacate and set aside the 1999 administrative judgment. That count, which was predicated on the provisions of the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2012)), asserted, among other things, (1) that there was no legal or factual support for the Department's decision and (2) that the Department erred in failing to consider, on the merits, its claims that the September 9, 1999, judgment was fatally flawed because Stone Street had not been given the requisite notice and opportunity to be heard in violation of the state and federal constitutions and because the judgment resulted from proceedings involving the unauthorized practice of law.

¶ 14 Count II of Stone Street's complaint requested a declaratory judgment that the judgment recorded against its property in 2009 is null and void because the September 9, 1999, administrative judgment on which it is based (1) had expired, was not revived, and therefore was unenforceable under sections 12-101, 12-108, and 12-183 of the Code of Civil Procedure (735 ILCS 5/12-101, 12-108, 12-183 (West 2012)); (2) was the product of proceedings involving the unauthorized practice of law; and (3) was entered against a nonexistent entity, namely, Stone Street Partners rather than Stone Street Partners, LLC. Stone Street also complained that in the 2011 administrative proceedings rejecting its efforts to vacate and set aside the 1999 judgment, the City was improperly represented by a private law firm rather than its own corporation counsel. Stone Street further contended that the City's unlawful actions placed a cloud on its title to the subject property and that it should receive monetary compensation, including an award of attorney fees, for the resulting damages it sustained.

¶ 15 Count III of Stone Street's complaint incorporated by reference the previous allegations but sought recovery for slander of title based on the additional charge that in recording the September 9, 1999, administrative judgment and then refusing to take the necessary corrective action after being asked to do so by Brian Farley, the City had acted maliciously. Count IV claimed that the September 9, 1999, order imposing the $1050 in fines was void and unenforceable because the administrative complaint culminating in that order was neither drafted nor prosecuted by a licensed attorney and, in pursuing the complaint, the City was therefore engaged in the unauthorized practice of law.

¶ 16 The City moved to dismiss Stone Street's cause of action in its entirety pursuant to section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2012)). Following a hearing, the circuit court entered an order granting the City's motion as to the claims asserted in counts II, III, and IV of the complaint. With respect to count I, which sought administrative review, the court affirmed the December 9, 2011, judgment by the Department striking, for lack of jurisdiction, Stone Street's challenge to the September 9, 1999, judgment imposing $1050 in fines and costs.

¶ 17 Stone Street appealed. As noted at the outset of this opinion, the appellate court affirmed in part, reversed in part, and remanded for further proceedings. 2014 IL App (1st) 123654. After reviewing the record and the applicable law, the appellate court concluded that Stone Street had not, in fact, been afforded the necessary notice and opportunity to be heard prior to entry of the September 9, 1999, judgment against it. *Id.* ¶ 13. It further opined that Stone Street cannot be deemed to have waived its objection to proper notice based on Johnson's participation at the September 9 hearing. As grounds for this conclusion, the appellate court relied primarily on the fact that Johnson was not a licensed attorney. Citing a range of authorities, including this court's recent decision in *Downtown Disposal Services, Inc. v. City of Chicago*, 2012 IL 112040, the appellate court held that nonattorneys cannot represent corporations in administrative hearings, particularly hearings of the type at issue here, "which involve testimony from sworn witnesses, interpretation of laws and ordinances, and can result in the imposition of punitive fines ***." 2014 IL App (1st) 123654, ¶ 16. It further noted, however, that even if Johnson had been a licensed attorney, the result would have been the same because the record affirmatively showed that Johnson lacked authority to represent Stone Street in any capacity. *Id.* ¶ 21.

¶ 18 Once it reached this conclusion, the appellate court next considered how the lack of notice affected the viability of the various counts asserted by Stone Street in its complaint. No discussion was needed regarding count IV, which alleged unauthorized practice of law by the City, because Stone Street had decided not to pursue its challenge to the dismissal of that count.

¶ 19 With respect to count I, the court opined that notwithstanding the fatal defect in the September 9, 1999, proceedings and judgment, the Department had no authority to revisit that judgment and its 2011 order striking Stone Street's motion to vacate was therefore properly upheld on review by the circuit court. *Id.* ¶ 25. The appellate court also concluded that the circuit court had correctly dismissed count III of Stone Street's complaint, which alleged slander of title. The appellate court held that this claim was barred by section 2-107 of the Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/2-107 (West 2012)), which immunizes local public entities from liability for injury caused by any action of its employees that is libelous or slanderous. 2014 IL App (1st) 123654, ¶ 31.

¶ 20 The appellate court reached a different result with respect to count II, which sought declaratory and other relief. It held that Stone Street could not recover money damages under that count to the extent that such damages were premised on slander of title principles. As noted, the appellate court believed that the City was cloaked in statutory immunity with respect to such claims. *Id.* ¶ 28. At the same time, however, the appellate court concluded that because Stone Street's complaint and related materials supported its claim that the 1999 administrative judgment was void because the requisite notice had not been given, Stone Street should be permitted to pursue equitable relief under count II in the circuit court. It therefore reversed in part as to that count and remanded to the circuit court for further proceedings.

¶ 21 One justice concurred in part and dissented in part. In her view, the circuit court's dismissal of count II should have been affirmed in its entirety. *Id.* ¶¶ 43-45

(Connors, J., concurring in part and dissenting in part). She also disagreed with the majority's discussions regarding the unauthorized practice of law by Johnson and the City. In addition, contrary to a view expressed by the majority, the partially dissenting justice believed that this case warranted issuance of a certificate of importance pursuant to Illinois Supreme Court Rule 316 (eff. Dec. 6, 2006). 2014 IL App (1st)123654, ¶ 51 (Connors, J., concurring in part and dissenting in part).

¶ 22 The City petitioned our court for leave to appeal, which we allowed. Ill. S. Ct. R. 315 (eff. July 1, 2013). We have also permitted various parties to file friend of the court briefs under Illinois Supreme Court Rule 345 (eff. Sept. 20, 2010). The Illinois State Bar Association has filed a brief supporting Stone Street. The Attorney General of Illinois, the American Automotive Association, and a group including the Society for Human Resource Management have filed three separate briefs supporting the City. In addition, after the case was taken under advisement, we ordered supplemental briefing on the question of whether the notice of the building code violations and the 1999 administrative hearing was "adequate to acquire personal jurisdiction over Stone Street Partners, LLC, and satisfy due process." That briefing has now been completed, and the matter is ready for a decision by this court.

¶ 23 ANALYSIS

¶ 24 The sole issue presented by the City's appeal is whether the appellate court erred in concluding that count II of Stone Street's should not have been dismissed in its entirety and that Stone Street should, instead, be permitted to proceed on the portions of count II that sought declaratory relief and elimination of the cloud on Stone Street's title to its property on 44-46 E. Superior Street. As we have discussed, the basis for the appellate court's ruling was that Stone Street had never been properly served with notice of the proceedings that resulted in the administrative judgment against it and that Johnson's appearance at the September 9, 1999, administrative hearing could not cure that defect. In assailing the appellate court's decision, the City focuses on the court's holding that Johnson's appearance could not operate as a waiver of the City's failure to provide Stone Street with proper notice because he was a layperson and his participation in the proceedings violated the prohibition against the unauthorized practice of law.

¶ 25 The City urges us to reject that holding because, in its view, administrative proceedings conducted by the Department do not require specialized legal skill and training and the rationale for the general rule that corporations must be represented by attorneys in legal proceedings is inapplicable to administrative proceedings such as those conducted by the Department. The City argues, in the alternative, that even if the representation of corporations in proceedings before the Department does involve the practice of law and Johnson's conduct here would otherwise run afoul of the prohibition against the unauthorized practice of law, this court should invoke its inherent authority to regulate the practice of law and hold that lay representation of corporations in administrative proceedings of the type conducted by the Department is permissible. If we are not disposed to take that view and instead agree with the appellate court that lay representation of corporations in proceedings before the Department is prohibited, the City asks that we give that holding only prospective effect.

¶ 26 The City is entirely correct that Johnson's status is central to the viability of the claims asserted by Stone Street in count II of its complaint. But for Johnson's presence at the September 9, 1999, hearing, there would be no basis for holding that Stone Street had been given adequate notice and an opportunity to be heard with respect to the building code violations that were the predicate for the $1050 judgment recorded against its property. As we have indicated, the record is devoid of evidence that the City undertook the measures necessary to notify Stone Street of those violations in the manner and within the time required by law. Without such notice, the only way the subsequent proceedings could be given effect is if the lack of notice could be deemed to have been waived by someone with authority to waive it, and the only person who could possibly have effectuated such a waiver in this case is Johnson.

¶ 27 While Johnson's role in the case is therefore critical, we disagree with the City that the viability of Stone Street's cause of action turns on whether laypersons may represent corporations in administrative proceedings before the Department without violating the prohibitions against the unauthorized practice of law. In our view, resolving the issues of whether Johnson's representation violated the ban on the practice of law by lay persons and, if so, whether such conduct should nevertheless be permitted in administrative proceedings before the Department is unnecessary for resolution of this case. The reason these issues need not be addressed was actually identified by the appellate court majority itself in its opinion: Johnson did not represent Stone Street in *any* capacity.[4]

¶ 28 A defendant does not waive objection to a tribunal's exercise of jurisdiction based on the participation of a person who has not been authorized by the defendant, expressly or impliedly, to appear on its behalf, and there is no proof of ratification. That is so even if the purported representative is a licensed attorney. When the facts show a lack of authorization, the representative's acts are a nullity against the party for whom the appearance was entered. 2014 IL App (1st) 123654, ¶ 21 (citing *Gray v. First National Bank of Chicago*, 388 Ill. 124, 129 (1944)).

¶ 29 That is precisely the situation we have in this case. Not only is there no evidence—none—that Stone Street had authorized Johnson to represent it at the administrative hearing, there is no evidence that he had any relationship with Stone Street at all. To be sure, Johnson did fill out a form supplied by the Department on which he claimed to appear on behalf of the corporation. As we have previously noted, however, the Department's form required the person completing it to specify, under oath, his relationship to the person or entity on whose behalf he purported to appear. Four choices were given: representative/owner, lessee, attorney, or authorized agent/representative. Mr. Johnson did not check *any* of these four options.

¶ 30 The form is straightforward and unambiguous. If Mr. Johnson left the four spaces blank because he did not understand what they meant, his capacity to understand the rest of the proceedings would be open to serious question. Even if one agreed with the City that the proceedings were so rudimentary that no "trained legal mind" was required, the bar for adequate representation is not so low that we

---

[4]Because resolution of the unauthorized practice of law issue is not necessary to the disposition of the case, any statements or holdings by the appellate court with respect to whether laypersons may represent corporations in proceedings before the Department without violating the prohibition against the unauthorized practice of law were wholly advisory, as would be any statements made by this court on the issue. We therefore vacate those portions of the appellate court's opinion which addressed that issue. See *Oliveira v. Amoco Oil Co.*, 201 Ill.2d 134, 157 (2002); *Italia Foods, Inc. v. Sun Tours, Inc.*, 2011 IL 110350, ¶¶ 41-42.

will deem it satisfied by someone who cannot make a check mark on the simplest of forms.

¶ 31 While Johnson is now deceased and cannot be questioned regarding his conduct, it seems evident that the reason he left the form incomplete is that checking any of the choices would have opened him to charges of perjury. The evidence in the record clearly shows that Johnson was not, in fact, the respondent/owner of the subject property; he was not the lessee—the address he gave for himself was down the street from the subject property; he was not a lawyer at all, much less a lawyer for Stone Street; and he was not the corporation's agent/representative. In fact, he did not work for Stone Street in any capacity. His only connection with the corporation was through Philip Farley, the now deceased elderly father of Brian Farley, the LLC's lawyer and one of its members. The senior Mr. Farley was in ill-health, having suffered from a stroke, and he was not involved in the management or affairs of Stone Street due to his diminished mental capacity. Mr. Farley lacked sufficient mental capacity to manage even his own affairs. That is where Mr. Johnson came in. He served as Mr. Farley's personal caretaker. To be clear, he was not the caretaker of the building. He was only the caretaker for Mr. Farley.

¶ 32 Why Mr. Johnson, a personal caretaker, would take it upon himself to appear at the September 1999 hearing on building code violations is unknown. Whatever responsibilities Johnson had with respect to the personal care of Mr. Farley, there is nothing in the record that would support a finding that he had any actual authority to act on behalf of Stone Street, the property's owner.

¶ 33 Nor is there any basis for concluding that Johnson possessed even apparent authority to bind Stone Street. Apparent authority arises where a principal creates, through words or conduct, the reasonable impression that the putative agent has been granted authority to perform certain acts. *State Security Insurance Co. v. Burgos*, 145 Ill. 2d 423, 431-32 (1991). The idea behind the doctrine is that if the principal created the appearance of authority, it should be estopped from denying that authority where doing so would operate to the detriment of a third party. *Id.* at 432; *O'Banner v. McDonald's Corp.*, 173 Ill. 2d 208, 213 (1996). Nothing like that occurred here. At no time did Stone Street ever take any action, overtly or even through acquiescence, that could reasonably have been construed as conferring authority on Johnson to act on its behalf at the hearing or for any other purpose. And while a principal can ratify and thereby retroactively authorize an agent's action by accepting the benefits of that action (*Christopher B. Burke Engineering, Ltd. v. Heritage Bank of Central Illinois*, 2015 IL 118955, ¶ 24), no such thing happened here either.

¶ 34 In the context of administrative hearings, due process of law specifically requires a definite charge, adequate notice, and a full and impartial hearing. *Ellison v. Illinois Racing Board*, 377 Ill. App. 3d 433, 444-45 (2007). These threshold requirements have been incorporated into the Illinois Municipal Code (65 ILCS 5/1-1-1 *et seq.* (West 2012)), which provides: "[p]arties shall be given notice of an adjudicatory hearing which includes the type and nature of the code violation to be adjudicated, the date and location of the adjudicatory hearing, the legal authority and jurisdiction under which the hearing is to be held, and the penalties for failure to appear at the hearing." 65 ILCS 5/1-2.1-5(b) (West 2012). The Chicago Municipal Code likewise provides that "[b]efore any administrative adjudication proceeding may be conducted, the parties shall be afforded notice in compliance with this section" (Chicago Municipal Code § 2-14-074(a) (amended Apr. 29, 1998)) and that the issuer of the notice specify

> "his or her name and department; where known, the name and address of the person or entity charged with the violation; the date, time and place of the violation; and the section of the code or departmental rule or regulation which was allegedly violated; and shall certify the correctness of the specified information by signing his or her name to the notice. A notice of hearing shall also include the date, time and location of the hearing and the penalties for failure to appear at the hearing." Chicago Municipal Code § 2-14-074(b) (amended Apr. 29, 1998).

¶ 35 To reiterate what we have already said, there is no dispute that Stone Street received no such notice with respect to the building code violations that gave rise to this litigation. The notice issued by the City was never served on the corporation's registered agent or sent to the corporation's principal place of business as required by section 2-14-074(c) of the Chicago Municipal Code (Chicago Municipal Code § 2-14-074(c) (amended Apr. 29, 1998)). As the appellate court correctly recognized (2014 IL App (1st) 123654, ¶ 14), the only possible way this fundamental lapse could be cured is if the lack of proper notice was subsequently waived by Johnson's appearance at and participation in the hearing. As we have already explained, however, no such waiver can be imputed to Stone Street. Because it is manifest from the record before us that Johnson's actions were neither authorized nor ratified by Stone Street, anything he did or failed to do at the hearing did not cure the City's failure to properly serve the corporation. Issues regarding the unauthorized practice of law are immaterial. Even if Johnson had been an attorney, his lack of actual or apparent authority to act on Stone Street's behalf and the absence of after-the-fact ratification of his conduct by Stone Street precludes any claim by the City that Johnson's conduct operated as a waiver by Stone Street of the company's objections to the City's failure to notify it of the violations or the hearing thereon as required by law.

¶ 36 The notice requirements were jurisdictional prerequisites that the Department was required to follow in order for it to have authority to hear the case and adjudicate the charges against Stone Street. *In re Abandonment of Wells Located in Illinois*, 343 Ill. App. 3d 303, 307 (2003); see *Newkirk v. Bigard*, 109 Ill. 2d 28, 36 (1985). Because Stone Street was never properly served with notice and because Johnson had no authority to appear on the company's behalf, the Department failed to acquire personal jurisdiction over it. The Department's 1999 judgment imposing fines on Stone Street was therefore void *ab initio* and could be attacked at any time, either directly or collaterally. See *In re Abandonment of Wells Located in Illinois*, 343 Ill. App. 3d at 307; *City of Chicago v. Fair Employment Practices Comm'n*, 65 Ill. 2d 108, 112-13 (1976); *Siddens v. Industrial Comm'n*, 304 Ill. App. 3d 506, 511 (1999); *People v. Smith*, 275 Ill. App. 3d 844, 850-51 (1995). Accordingly, regardless of whether the Department could itself have set aside the void judgment in the context of the 2011 administrative proceeding, the judgment could have been set aside by the circuit court as Stone Street requested. The appellate court was therefore correct when it held that Stone Street should have been permitted to pursue its claims to quiet title and obtain declaratory relief to invalidate all proceedings premised on the void 1999 judgment and that the portions of count II seeking such relief should therefore not have been dismissed by the circuit court.

¶ 37 Stone Street has cross-appealed, arguing that the appellate court's judgment should be affirmed for the additional reason that the 2009 judgment recorded against its property was null and void because the 1999 judgment on which it was based had expired by the time the City attempted to enforce it. Because we have already determined that the 1999 judgment was void and unenforceable for lack of notice, resolution of Stone Street's additional basis for challenging that judgment would not alter the outcome of this case. Whether or not Stone Street's argument is meritorious, the company may, on remand, pursue its claims to quiet title and obtain declaratory relief as set forth in count II of its complaint. The issue raised by Stone Street in its cross-appeal is therefore moot. See *Commonwealth Edison Co. v. Illinois Commerce Comm'n*, 2016 IL 118129, ¶ 10.

¶ 38 CONCLUSION

¶ 39 For the foregoing reasons, the judgment of the appellate court is affirmed, and the cause is remanded to the circuit court for further proceedings consistent with this opinion.

¶ 40 Appellate court affirmed.

¶ 41 Cause remanded.

¶ 42 JUSTICE FREEMAN, dissenting:

¶ 43 We granted the City's petition for leave to appeal in this case to address the appellate court's holding and the conflict it created regarding the representation of corporations in administrative proceedings. The majority does not address the unauthorized practice of law issue, finding it "immaterial" to the resolution of this case. *Supra* ¶ 35. I disagree. Not only does the majority not address this issue, it invalidates a final administrative order based on an incomplete and inadequate record. I cannot agree with this either. For the following reasons, I respectfully dissent.

¶ 44 The majority holds that, since the Department's notice of the building code violations to Stone Street was deficient and Johnson's appearance at the administrative hearing did not waive jurisdiction because Johnson was not authorized to represent Stone Street in any capacity, the Department's 1999 judgment was void *ab initio*, and Stone Street could pursue its claims to quiet title and obtain declaratory relief. *Supra* ¶¶ 29, 36.

¶ 45 I would hold that this court should not invalidate a final administrative order based on an incomplete and inadequate record such as the one here. Additionally, I would address the unauthorized practice of law issue and hold that the representation of a corporation at Department proceedings does not constitute the practice of law.

¶ 46 As the majority notes, personal jurisdiction, unlike subject-matter jurisdiction, can be waived. *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 333 (2002); *State Bank of Lake Zurich v. Thill*, 113 Ill. 2d 294, 308 (1986). I disagree with the majority that we are able to discern from the record here that there was no waiver of jurisdiction. Its finding is based on a record that can only be described as woefully inadequate. The majority acknowledges that the City destroyed "most" of the administrative record, yet it is willing to invalidate a final administrative order based on the incomplete record that remains.[5] The majority's conclusion is not only unwarranted but unwise. If we permit or even endorse such a practice here, the message we send to future litigants is that they can void an administrative agency's final order based on an incomplete and inadequate record. This should not be.

¶ 47 I set forth below some additional facts to explain why I believe the record is inadequate to conclusively establish that no waiver of jurisdiction occurred. In June 1999, a City building inspector found numerous building code violations at Stone Street's property at 44-46 East Superior Street in Chicago. To remedy the violations, Stone Street needed to install carbon monoxide detectors, remove garbage and debris from the rear of the building and from the ground floor rear hallway, install adequate lighting and exit signs in exit areas, recharge fire extinguishers, repair the rear door, and make arrangements to reinspect the property. The administrative law officer's order from the August 12, 1999, hearing indicated that someone appeared on Stone Street's behalf and that person claimed

---

[5]The administrative record was destroyed in accordance with the Local Records Act (50 ILCS 205/1 *et seq.* (West 2000)).

the violations had been corrected.[6] The property was reinspected, and the next hearing occurred on September 9, 1999. Keith Johnson appeared at that hearing, purportedly on behalf of Stone Street, and submitted two exhibits: a picture of a carbon monoxide detector that had been installed at the property and a copy of a contract for electrical work to be performed at the property. The contract was dated August 26, 1999, and was signed by "Phil Farley." The administrative law officer's order indicated that liability was contested and found Stone Street liable for five of the seven violations, resulting in a $1050 fine.[7]

¶ 48 On March 23, 2009, the Law Offices of Talan & Ktsanes, as special assistant corporation counsel for the City, sent a letter to Stone Street indicating that the City had recorded a lien against the property as a result of the Department's 1999 judgment. The letter was addressed to Stone Street Partners, LLC, and sent to its principal place of business at 1343 N. Wells Street in Chicago. A copy of the Department's 1999 judgment was included with the letter. An affidavit from Robert Talan indicated that he recorded the lien with the Cook County recorder of deeds on March 19, 2009, and notified Stone Street in a letter dated March 23, 2009.

¶ 49 Notwithstanding the 2009 letter from the Law Offices of Talan & Ktsanes, Stone Street claimed that it learned of the Department's judgment in 2011. Stone Street then sought to invalidate the judgment, first with a motion to vacate and subsequently by filing a complaint in the circuit court of Cook County. Its motion to vacate was supported by an affidavit from Brian Farley, a member of Stone Street. The affidavit indicated, as the majority notes, that Johnson was neither an attorney nor an employee of Stone Street and was not authorized to represent Stone Street.[8] It further indicated that Johnson was a caretaker for Philip Farley and that in 1999, Philip did not have the mental capacity to manage his own affairs and was not a manager or involved in the management or affairs of Stone Street because of his diminished mental capacity.[9] Brian further averred that "[i]f Stone Street had

[6]It is unknown who appeared on behalf of Stone Street at the August hearing, and the audio recording of the hearing was destroyed with most of the record.

[7]The audio recording of the hearing was destroyed with most of the record.

[8]Johnson died in 2004.

[9]According to Stone Street, Philip died in 2009.

been sent proper notice of this case, I would have appeared in 1999 on behalf of Stone Street and defended the charges," and that Stone Street "would not have sent a caretaker to defend the charges."

¶ 50 I first find problematic the fact that a hearing occurred on August 12, 1999, and the administrative law officer's order indicated that someone appeared on behalf of Stone Street and claimed the building code violations had been corrected. The majority briefly acknowledges the August hearing in a footnote but does not consider the hearing in its analysis. It only determines that Johnson's appearance at the September hearing did not waive jurisdiction. We do not know who appeared at the August hearing, what was said at the hearing, and whether that person waived jurisdiction.[10] We do know that the administrative law officer permitted someone to appear on Stone Street's behalf, and there is nothing to call into question the officer's determination that the appropriate parties were present to conduct the hearing.

¶ 51 Second, it is unknown how Johnson came to appear at the September 9, 1999, hearing and how he came to possess the exhibits he submitted at the hearing that corresponded to the building code violations. Since the audio recording of the hearing no longer exists, we do not know whether Johnson informed the administrative law officer of any purported relationship he might have had to Stone Street. I disagree with the majority's conclusion that the only reason Johnson did not check any of the boxes on the appearance form was because in doing so he would be committing perjury. We simply do not know why Johnson did not check any of the boxes or whether a discussion occurred at the hearing addressing the issue. Additionally, the contract for electrical work that was performed at the property, which was signed by "Phil Farley," raises more questions. Even Stone Street acknowledges that it does not know how Philip became aware of the building code violations. And, as the majority notes, there is a question as to Philip's competency to execute the document, if indeed he lacked the mental capacity to manage his own affairs or those of Stone Street, as Stone Street alleged.

---

[10]The person who did appear may not have been Johnson, since Johnson's appearance form was dated September 9, 1999. If Johnson had already appeared at the August hearing, it would have been unnecessary to file another appearance.

¶ 52 Next, we do not know why Stone Street was unaware of the 2009 letter from the Law Offices of Talan & Ktsanes. As it was addressed to Stone Street Partners, LLC, and mailed to its principal place of business, Stone Street should have received the letter. Though this fact does not shed light on the issue of whether Stone Street waived jurisdiction, it is another unanswered question due to the incomplete record in this case.

¶ 53 Lastly, I disagree with the majority's characterization of Brian Farley's affidavit as "uncontested." *Supra* ¶ 10. Brian claimed that had Stone Street been sent proper notice of the building code violations, he would have personally appeared to defend the charges. However, as alleged by Stone Street in its class action complaint, Stone Street sent a nonattorney to defend against a building code violation for an overflowing dumpster in 2013.[11] Shortly after the appellate court's opinion in this case, Stone Street filed a class action lawsuit against the City and the Department seeking to invalidate all of the Department's judgments, including fines, penalties, and costs, which resulted from Department proceedings where nonattorneys represented corporations. Brian also claimed that Stone Street would not have sent a caretaker to defend the charges. However, we do not know from the record the scope of Johnson's caretaking duties, the extent of his relationship with Philip and the Farley family, and his knowledge about real estate matters. The majority states that it is "unknown" why Johnson "would take it upon himself" to appear at the hearing. *Supra* ¶ 32. I agree that it is unknown what led to Johnson's appearance at the hearing, but I disagree with the conclusion that Johnson must have taken it upon himself to appear. It does not seem plausible that Johnson took it upon himself to appear at an administrative hearing to defend against building code violations for a property he knew nothing about and for a corporation with which he had no association. What is unknown here is the person or persons who became aware of the building code violations at the property and what steps were taken and by whom to attempt to remedy the violations.

¶ 54 I point out the above facts to show why I find problematic the majority's conclusion that no waiver of jurisdiction occurred here. The majority's conclusion is based on an incomplete record, which requires the majority to engage in

[11]See Class Action Complaint, ¶ 17, Stone Street Partners, LLC v. City of Chicago, No. 2014 CH 07058 (Cook Co., Apr. 24, 2014).

speculation, conjecture, and assumptions to arrive at its conclusion. Frankly, the minimal record we do have raises more questions than it answers. In challenging the Department's judgment, Stone Street bears the burden of establishing a lack of jurisdiction. See *Cullen v. Stevens*, 389 Ill. 35, 37-38 (1944) (in the case of a collateral attack on a judgment, all presumptions are in favor of the validity of the judgment attacked, and want of jurisdiction must appear on the face of the record). I disagree that Stone Street has met that burden based on the incomplete record here.

¶ 55 Additionally, I would address the unauthorized practice of law issue and hold that the representation of a corporation at Department proceedings does not constitute the practice of law. Further, I would find that Johnson was not engaged in the unauthorized practice of law at the Department's hearing.

¶ 56 The majority does not address the unauthorized practice of law issue. However, that issue was part of the appellate court's reasoning for invalidating the 1999 judgment. The appellate court held that Johnson did not waive jurisdiction because he was not authorized to represent Stone Street and because a nonattorney could not represent a corporation at Department proceedings. The appellate court also seems to have invalidated the Department's rule that permitted parties to be represented by "an attorney or authorized representative." The unauthorized practice of law issue and the validity of the Department's rule are squarely before us, having been adjudicated by the appellate court and now having been fully briefed in this court. Not only is it appropriate for this court to address, it is advisable. As a result of the appellate court's opinion, the Department's website includes a section titled "Stone Street Corporation Notice," which advises corporations that they must be represented by an attorney.[12] Even though the majority vacates those portions of the appellate court opinion that concerned the unauthorized practice of law, the Department will still wonder whether it must require an attorney to represent a corporation. We should not pass on addressing the issue today when it is properly before us only to have to revisit it in the future. I note that this case has consumed the time of numerous attorneys for the City and Stone Street, several administrative

[12] See City of Chicago, Stone Street Corporation Notice, https://www.cityofchicago.org/city/en/depts/ah/supp_info/Stone_Street_Corporation_Notice.html (last visited Feb. 14, 2017).

law judges, and all three levels of this state's judicial system over a period of 17 years. I would address the issue as follows.

¶ 57 This court has the inherent power to define and regulate the practice of law in Illinois. *Downtown Disposal Services, Inc. v. City of Chicago*, 2012 IL 112040, ¶ 14; *People ex rel. Chicago Bar Ass'n v. Goodman*, 366 Ill. 346, 349-50 (1937). The purpose of our rules is to safeguard the public from individuals unqualified to practice law and to ensure the integrity of our legal system. *Downtown Disposal*, 2012 IL 112040, ¶ 14. There is no mechanistic formula to define what is and is not the practice of law. *Id.* ¶ 15. The character of the acts themselves is examined to determine if the conduct constitutes the practice of law and each case is largely controlled by its own peculiar facts. *Id.* It is immaterial whether the acts are done in an office, before a court, or before an administrative body, since the character of the act done, and not the place where it is committed is the factor that is decisive of whether it constitutes the practice of law. *Goodman*, 366 Ill. at 357. We have said that the practice of law consists of " 'the giving of advice or rendition of any sort of service *** when the giving of such advice or rendition of such service requires the use of any degree of legal knowledge or skill.' " *People ex rel. Chicago Bar Ass'n v. Barasch*, 406 Ill. 253, 256 (1950) (quoting *People ex rel. Illinois Bar Ass'n v. Schafer*, 404 Ill. 45, 50 (1949)).

¶ 58 In *Downtown Disposal*, this court considered whether a corporation's president, who was not an attorney, was engaged in the unauthorized practice of law when he filed a complaint for administrative review on behalf of the corporation. The corporation maintained that the president had not engaged in the unauthorized practice of law because to file the complaint for administrative review, he had merely filled in blanks on a simple form that did not require the use of any legal expertise. Before rejecting this argument, we noted the general rule that a corporation must be represented by counsel in legal proceedings. *Downtown Disposal*, 2012 IL 112040, ¶ 17. The rule stems from the fact that a corporation is an artificial entity that must always act through agents and there may be questions as to whether a particular person is an appropriate representative. *Id.* We further noted that since the interests of the corporate officers and those of the corporation may not always be the same, requiring an attorney to represent a corporation in legal proceedings mitigates this problem. *Id.* In concluding that the corporation's president had engaged in the unauthorized practice of law, we reasoned that:

"A complaint for administrative review is essential to preserve one's right to appeal an administrative decision and invokes the appellate review mechanism. The filing of the complaint affects the substantial legal rights of the party seeking administrative review, in this case, Downtown Disposal. As such, only an individual representing the corporation itself can ascertain whether it is best for a corporation to pursue review of an administrative decision and invoke the appellate mechanism." *Id.* ¶ 18.

¶ 59 To determine whether a corporation must be represented by an attorney at administrative proceedings before the Department, we look to the character of the acts involved in the representation and whether those acts require the use of any degree of legal skill or knowledge. The Department is a municipal office created by chapter 2-14 of the Chicago Municipal Code (Chicago Municipal Code § 2-14-010 *et seq*. (added July 10, 1996)). It is authorized to conduct administrative adjudication proceedings for departments and agencies of the city and for other units of government acting pursuant to intergovernmental agreements with the city. Chicago Municipal Code § 2-14-010. The Department is extensive and currently maintains four divisions: the buildings hearings division, the environmental safety and consumer affairs hearings division, the municipal hearings division, and the vehicle hearings division. City of Chicago Department of Administrative Hearings R. 1.1 (amended Nov. 8, 2011).[13] The director of the Department is charged with adopting the rules and regulations that govern proceedings at the Department. City of Chicago Department of Administrative Hearings Rs. 1.2–1.4. These rules and regulations differ greatly from the rules that govern proceedings in the circuit courts. Most notably, the Illinois Administrative Practice Act, the Illinois Code of Criminal Procedure, and the Illinois Code of Civil Procedure do not apply to Department proceedings. City of Chicago Department of Administrative Hearings R. 1.7 (citing *City of Chicago v. Joyce*, 38 Ill. 2d 368, 373 (1967), *County of Macon v. Board of Education of Decatur School District No. 61*, 165 Ill. App. 3d 1 (1987), and *Desai v. Metropolitan Sanitary District of Greater Chicago*, 125 Ill. App. 3d 1031, 1033 (1984)). There are other significant differences as well. Discovery is not permitted except by leave of an administrative law officer. City of Chicago

[13] See https://cityofchicago.org/content/dam/city/depts/dol/rulesandregs/DOAHProceduralRules.pdf (last visited Feb. 14, 2017).

Department of Administrative Hearings R. 6.3 (amended Nov. 8, 2011). A subpoena may only be issued by an administrative law officer. City of Chicago Department of Administrative Hearings R. 6.4 (amended Nov. 8, 2011). A continuance may be granted only upon a finding of good cause. City of Chicago Department of Administrative Hearings R. 6.5. Prehearing motions are limited to motions for leave to request discovery, subpoenas, and continuances. City of Chicago Department of Administrative Hearings R. 6.2 (amended Nov. 8, 2011). Posthearing motions are limited to seeking enforcement of an administrative law officer's order (Chicago Municipal Code § 2-14-103 (added Apr. 29, 1998)), setting aside a default order (Chicago Municipal Code § 2-14-108 (added Apr. 29, 1998)), obtaining relief from a final order of liability entered in error (Chicago Municipal Code § 2-14-109 (added Apr. 29, 1998)), and obtaining review of fines of $10,000 or more (Chicago Municipal Code § 2-14-195 (amended Nov. 8, 2012)). City of Chicago Department of Administrative Hearings R. 11.1. The "formal" and "technical" rules of evidence do not apply, and hearsay evidence may be admitted if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. City of Chicago Department of Administrative Hearings R. 8.5. An administrative law officer may ask questions of the parties and witnesses, if necessary, to ensure the clarity and completeness of the testimony and the record. City of Chicago Department of Administrative Hearings R. 8.6 (amended Nov. 8, 2011). Further, certain violations of the Chicago Municipal Code may be adjudicated by mail rather than at a hearing. City of Chicago Department of Administrative Hearings R. 9.6 (amended Oct. 29, 2013).

¶ 60 In fact, the Department's rules and regulations are more akin to the rules that apply to small claims proceedings in the circuit court, which are governed by Illinois Supreme Court Rules 281 through 288. Small claims actions are commenced in the circuit court with the filing of a "short and simple complaint." Ill. S. Ct. R. 282(a) (eff. July 1, 1997). Although a corporation may not appear as claimant, subrogee, or counterclaimant unless represented by counsel, a corporation may appear as a defendant through any officer, director, manager, department manager, or supervisor of the corporation. Ill. S. Ct. R. 282(b) (eff. July 1, 1997). The rule broadly defines "officer" as the president, vice president, registered agent, or other person vested with the responsibility of managing the affairs of the corporation. *Id*. Small claims actions can be tried by a jury with only 6 jurors, and no discovery is permissible except by leave of court. Ill. S. Ct. Rs. 285

(eff. Jan. 1, 1964), 287(a) (eff. Aug. 1, 1992). No motions other than those as provided for in sections 2-619 and 2-1001 of the Code of Civil Procedure are permitted without prior leave of court. Ill. S. Ct. R. 287(b) (eff. Aug. 1, 1992). The court may, on its own motion or on motion of any party, adjudicate the dispute at an informal hearing. At such a hearing, all relevant evidence is admissible and the court may relax the rules of procedure and the rules of evidence. Additionally, the court may call any person present at the hearing to testify and may conduct or participate in direct and cross-examination of any witness or party. Ill. S. Ct. R. 286 (eff. Aug. 1, 1992).

¶ 61 Considering the character of the acts involved in the representation of a corporation at Department proceedings and whether those acts require the use of legal skill or knowledge, I would find that such representation does not constitute the practice of law. As noted above, the practice of law consists of the giving of advice or rendering of a service when doing so requires the use of any degree of legal knowledge or skill. See *Barasch*, 406 Ill. at 256. The character of the acts involved in proceedings before the Department do not require the use of legal knowledge or skill. When a person appears at Department proceedings, that person need not have any knowledge of procedural or evidentiary rules and the Department's administrative law officer can ask questions of the parties and witnesses to ensure the clarity and completeness of the testimony and the record. A person need only know factual information relevant to the ordinance violation at issue. Municipal ordinance violations do not involve the interpretation of complex legal concepts or terminology and are easily understood by laypersons. For example, it does not require a "trained legal mind" to comprehend and defend against the building code violations at issue here (failure to install carbon monoxide detectors, remove garbage and debris from the building, install lighting and exit signs in exit areas, recharge fire extinguishers, and repair the rear door). *Cf. Goodman*, 366 Ill. at 355-56 (interpreting the Workers' Compensation Act (now codified at 820 ILCS 305/1 *et seq.* (West 2014)) and holding that appearing before the Industrial Commission requires a high degree of legal skill and a "trained legal mind"). Appearing on behalf of a corporation before the Department to contest such violations or to present evidence that the violations have been remedied does not constitute the practice of law.

¶ 62 When a corporation defends itself against municipal violations at Department proceedings, it is in much the same position as when it appears as a defendant in a small claims proceeding, where it can be represented by a nonattorney. As noted above, the rules that apply to small claims proceedings and the rules and regulations that apply to Department proceedings are very similar. The fact that we have authorized the representation of corporations as defendants in small claims proceedings by nonattorneys lends support to the conclusion that a corporation may be represented at Department proceedings by a nonattorney.

¶ 63 I also find *Grafner v. Department of Employment Security*, 393 Ill. App. 3d 791 (2009), and *Sudzus v. Department of Employment Security*, 393 Ill. App. 3d 814 (2009), instructive. Both cases concluded that a nonattorney's representation of a corporation at an unemployment compensation hearing before the Department of Employment Security did not constitute the unauthorized practice of law. In *Grafner*, the defendant church was represented at the hearing by a nonattorney representative. The appellate court noted that the representative's participation during the hearing merely consisted of asking fact-clarifying, follow-up questions that did not require the use of legal knowledge or skill. *Grafner*, 393 Ill. App. 3d at 800. Noting that simplicity and informality are the intended features of such hearings, the court reasoned that the representative was not engaged in the unauthorized practice of law because his fact-clarifying questions were not of the nature requiring complex legal analysis and his actions did not require a lawyer's training for their proper performance. *Id.* at 801.

¶ 64 In *Sudzus*, the defendant corporation was represented at the unemployment compensation hearing by the corporation's owner, a nonattorney. The appellate court noted that the owner's actions consisted of giving simple, fact-based answers to questions and of asking clarifying questions at the hearing referee's request. *Sudzus*, 393 Ill. App. 3d at 823-24. The court reasoned that the owner had not engaged in the unauthorized practice of law because the character of his actions did not require legal knowledge or skill nor had he provided legal opinions or advice. *Id.* at 824.

¶ 65 I find the reasoning in *Grafner* and *Sudzus* persuasive. Similar to the nonattorney representative's actions in those cases, Department proceedings involve the presentation of fact-based information that does not require complex legal analysis. Since the appellate court's opinion is at odds with *Grafner* and *Sudzus*, we should address the conflict.

¶ 66 I also find *Downtown Disposal* distinguishable and the appellate court's reliance on it misplaced. In *Downtown Disposal*, we considered whether the act of filing a complaint for administrative review in the circuit court constituted the practice of law. We found that such an act was the practice of law since determining whether to file an appeal affects the substantial legal rights of the party seeking administrative review and only an attorney representing a corporation can ascertain whether an appeal is in the corporation's best interest. *Downtown Disposal*, 2012 IL 112040 ¶¶ 18-19. We did not in any way consider the issue presented in the case at bar—whether the representation of a corporation at Department proceedings constitutes the practice of law. Our statement that a corporation must be represented by counsel in legal proceedings should not be read so broadly or taken out of context. See *Touhy v. State Board of Elections*, 62 Ill. 2d 303, 310 (1976) (each opinion must be read in the context of the specific problem that was before the court). That statement preceded an explanation of the nature of corporations and how they must always act through agents. See *Downtown Disposal*, 2012 IL 112040, ¶ 17. If this court intended to bar nonattorneys from representing corporations in every legal proceeding, we would not have authorized such representation in small claims actions. I would conclude that the appellate court erred in holding that a corporation must be represented by an attorney at Department proceedings.

¶ 67 Having reached the above conclusion, I would also address whether Johnson's actions at the hearing constituted the unauthorized practice of law. Johnson submitted two exhibits at the hearing: a picture of a carbon monoxide detector that had been installed at the property and a copy of a contract for electrical work to be performed at the property. These acts did not require the expertise that only a lawyer is qualified to provide. In fact, no legal knowledge or skill was necessary to present the exhibits. Accordingly, I would find that Johnson was not engaged in the unauthorized practice of law at the hearing.

¶ 68 Regarding Stone Street's request for cross-relief, I would remand the cause to the appellate court for consideration of Stone Street's remaining contentions. See *Standard Mutual Insurance Co. v Lay*, 2013 IL 114617, ¶ 36.

¶ 69 In conclusion, I would hold that the record is insufficient for Stone Street to invalidate the 1999 judgment, the representation of a corporation at Department proceedings does not constitute the practice of law, and Johnson was not engaged in the unauthorized practice of law. I would reverse the appellate court's judgment and remand the cause to the appellate court for consideration of Stone Street's remaining contentions.

¶ 70 JUSTICES BURKE and THEIS join in this dissent.