

Bench & Bar

The newsletter of the Illinois State Bar Association's Bench & Bar Section

GIPA: The Next Front for Illinois Privacy Litigation?

BY NICK KAHLON & BLAKE KOLESA

In 1998, the Illinois legislature passed the Genetic Information Privacy Act ("GIPA"), 410 Ill. Comp. Stat. Ann. 513/1, *et seq.* GIPA was intended to prevent employers and insurers from using genetic testing data for discriminatory purposes, *see* 410 ILCS 513/5(3), and, to that end, prohibits employers and insurers from seeking "genetic testing or genetic information" from applicants. *See* 410 ILCS 513/25(c)(1), 410 ILCS 513/20(a). For

25 years, there were no lawsuits brought under GIPA. That has changed, and multiple class actions have been filed this year asserting GIPA violations.

These lawsuits stem from a little-noticed decision last year, *Bridges v. Blackstone Group, Inc.*, No. 21-cv-1091, 2022 WL 2643968 (S.D. Ill. July 8, 2022). In *Bridges*, the plaintiffs brought a putative class action claiming that when Blackstone

Continued on next page

GIPA: The Next Front for Illinois Privacy Litigation?
1

Kane County Public Defender's Office Commemorates *Gideon v. Wainwright* Anniversary
1

Recent Appointments and Retirements
4

Kane County Public Defender's Office Commemorates *Gideon v. Wainwright* Anniversary

On March 18, 1963, the U.S. Supreme Court unanimously issued a landmark opinion in the case of *Gideon v. Wainwright*, extending the right to counsel to all those facing serious criminal charges who are unable to afford an attorney—a right which had previously been recognized as only extending to indigent defendants in capital cases.

March 18 is now known as Gideon Day

in honor Clarence Earl Gideon, the man who made history by appearing in court to argue on his own behalf, "The United States Supreme Court says I am entitled to be represented by counsel."

This year, the Kane County Public Defender's Office commemorated the 60th anniversary of this opinion with a luncheon

Continued on next page

GIPA: The Next Front for Illinois Privacy Litigation?

CONTINUED FROM PAGE 1

acquired Ancestry.com, it allegedly compelled the disclosure of their genetic information in violation of GIPA. The court dismissed the complaint because it found the plaintiffs failed to state a plausible violation of GIPA. *See* 2022 WL 2643968, at *4.¹ Before reaching that question, however, the court had to first decide whether the plaintiffs were an “aggrieved person” such that they could even bring a claim under GIPA. *See* 410 ILCS 513/40(a). The court found it was appropriate to apply the definition of “aggrieved person” used by the Illinois Supreme Court when interpreting the Illinois Biometric Privacy Act (“BIPA”) in *Rosenbach v. Six Flags Ent. Corp.*, 2019 IL 123186 (2019). Under this definition, an individual “need not allege some actual injury or adverse effect, beyond violation of his or her rights” under GIPA to qualify as an “aggrieved person.” *Bridges*, 2022 WL 3643968, at *3 (quoting *Rosenbach*, 2019 IL 123186, at ¶ 40).

Two class action lawsuits have already been filed under GIPA based on this definition of “aggrieved persons”: *Page et al. v. Ford Motor Co.*, No. 2023-CH-878 (Cir. Ct. Cook Cty., Ill., Jan. 27, 2023) and *Thompson et al. v. Amazon.com, Inc., et al.*, No. 2023-CH-2162 (Cir. Ct. Cook Cty., Ill., Mar. 3, 2023). The complaints allege that

an employer’s request for “family medical histories” constitutes a request for “genetic information” in violation under GIPA, thereby entitling the plaintiffs to statutory damages for each violation without the need for actual injury under *Bridges*. Specifically, the complaints seek statutory damages of \$15,000 for each intentional or reckless violation of GIPA, and \$2,500 for each negligent violation, along with injunctive relief and attorneys’ fees awardable under the statute. *See* 410 ILCS 513/40(a).

No court has yet decided if “family medical histories” constitute “genetic information” under GIPA. What is certain is that GIPA class action litigation has already started based on the statutory “aggrieved persons” language. If the history of BIPA litigation is any indication, these GIPA lawsuits will only continue to multiply. ■

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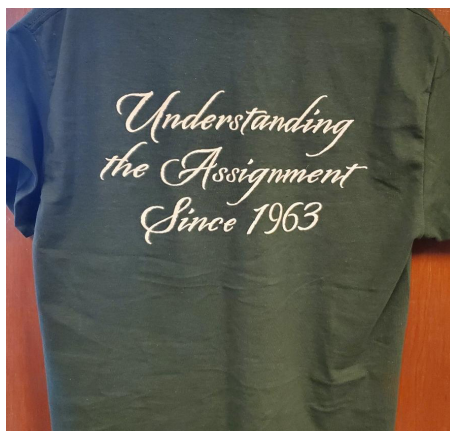
1. This decision is now on appeal to the seventh circuit.

Kane County Public Defender’s Office Commemorates *Gideon v. Wainwright* Anniversary

CONTINUED FROM PAGE 1

and a celebration of the work done by public defenders. Guest speakers included current Kane County Public Defender Rachele Conant, and former Public Defenders Thomas McCulloch and Hon. David Kliment. Hon. Julia Yetter also shared her rewards as both a DuPage and Kane County assistant public defender.

Photos by APD Eun Yoon ■



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Recent Appointments and Retirements

1. Pursuant to its constitutional authority, the supreme court has appointed the following to be circuit judge:

- Jennifer L. Barron, 18th Circuit, February 15, 2023

2. Pursuant to its constitutional authority, the supreme court assigned the following to the appellate court:

- Hon. David R. Navarro, 1st Dist., February 6, 2023

3. The circuit judges have appointed the following to be associate judges:

- Hon. L. Dominic Kujawa, (reinstated) 20th Circuit, February 3, 2023
- Katherine G. Legge, 10th Circuit, February 14, 2023
- Leah A. Captain, 20th Circuit, February 15, 2023
- Jennifer M. Becker-Roscow, 24th Circuit, February 21, 2023
- Nathan R. Bach, 10th Circuit, February 27, 2023
- Lucas H. Liefer, 24th Circuit, February 28, 2023
- Jennifer M. Rangel-Kelly, 14th Circuit, March 1, 2023
- Randy A. Yedinak, 11th Circuit, March 2, 2023
- Nathan A. Frisch, 4th Circuit, March 3, 2023
- Scott Paccagnini, 17th Circuit, March 9, 2023
- Amy Peterman, 17th Circuit, March 9, 2023
- Rolonda V. Mitchell, 12th Circuit, March 14, 2023
- Mohammad A. Ahmad, Cook County Circuit, March 27, 2023
- Hilda Bahema, Cook County Circuit, March 27, 2023
- Jerome C. Barrido, Cook County Circuit, March 27, 2023
- Sunil S. Bhave, Cook County Circuit, March 27, 2023
- Nicole Castillo Hasan, Cook County Circuit, March 27, 2023
- Jennifer Coleman, Cook County Circuit, March 27, 2023
- Torrie L. Corbin, Cook County

Circuit, March 27, 2023

- Athena James Frentzas, Cook County Circuit, March 27, 2023
 - Michele Ann Gemske, Cook County Circuit, March 27, 2023
 - Lakshmi E. Jha, Cook County Circuit, March 27, 2023
 - Sharon Arnold Kanter, Cook County Circuit, March 27, 2023
 - Edward J. Maloney, Cook County Circuit, March 27, 2023
 - Scott Norris, Cook County Circuit, March 27, 2023
 - Michael N. Pattarozzi, Cook County Circuit, March 27, 2023
 - Mary Anna Planey, Cook County Circuit, March 27, 2023
 - Brian R. Porter, Cook County Circuit, March 27, 2023
 - Mariano R. Reyna, Cook County Circuit, March 27, 2023
 - Pamela Saindon, Cook County Circuit, March 27, 2023
 - Natosha C. Toller, Cook County Circuit, March 27, 2023
 - John J. Tully, Cook County Circuit, March 27, 2023
 - Scott William Tzinberg, Cook County Circuit, March 27, 2023
 - Hon. John W. Wilson, (reinstated) Cook County Circuit, March 27, 2023
4. The following judges have retired:
- Hon. Thomas W. Funk, 11th Circuit, March 1, 2023
 - Hon. Richard L. Broch, Jr., 6th Circuit, March 31, 2023
 - Hon. James L. Roberts, 4th Circuit, March 31, 2023
5. The following judge has resigned:
- Hon. Colleen R. Lawless, Associate Judge, 7th Circuit, March 8, 2023
6. The following judges are deceased:
- Hon. Lana C. Johnson, Cook County Circuit, February 20, 2023
 - Hon. Edward M. Maloney, Cook County Circuit, 4th Subcircuit, March 9, 2023 ■