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Bench & Bar

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

Remembering Veterans Day

BY MICHAEL G. CORTINA

Editor's Note: This article was written prior to Veterans Day.

This time of year, I always consider writing about Veterans Day. Many people see Veterans Day as simply a day off from work, while others acknowledge the sacrifice that veterans have made for this country in various ways—social media posts, flag raising ceremonies, moments of silence, etc. Consider, for a moment, how rare it is to run across a veteran in the practice of law.

Illinois has approximately 97,000 attorneys admitted to the bar. I could find no published statistics on the number of veterans that are admitted to the Illinois bar on short notice, but I was able to find a statistic that approximately 4.6% of the adult population of Illinois is a veteran. While no statistician in her or his right mind would assume that the percentage of veterans in the population matches the percentage of veterans in the practice of law, I am not a statistician. If 4.6% of Illinois attorneys are veterans, that means that 4,462 of active Illinois lawyers have served our country in uniform.

Veterans are generally different from the rest of the population. Service to our country, to our community, is part of who we are. We tend to put others before ourselves, oftentimes to our own detriment, because of this sense of service. This is not to say that we are superior to other lawyers because of our need to serve, it is simply a part of who we are. The last time there was a draft in the United States

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Editor's Note: Nominate Yourself for an ISBA Committee or Section Council

BY KIMBERLY DUDA

Take advantage of this ISBA leadership opportunity!

Serving on an ISBA Section Council or Committee is a meaningful way to shape the profession while expanding your professional impact. Appointments offer opportunities to write newsletters, plan CLE programs, propose legislation, and support fellow ISBA members across the state.

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The deadline to submit nominations is January 15, 2026.

Nominate yourself for an ISBA Committee or Section Council today.

Remembering Veterans Day

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was during the Vietnam War, and the draft ended in June of 1973. While there are likely a few active lawyers that were drafted during this time, most of us volunteered to serve. By volunteering to serve in the military, veterans often delayed their careers in order to wear a uniform for a given period of time. Being a veteran, however, is more than simply agreeing to don a uniform. Being a veteran means that you volunteered to take-up arms to defend this great nation from all enemies, foreign and domestic. Being a veteran means that you were willing to make the ultimate sacrifice for the People of the United States. Being a veteran means that you were willing to endure the harshest of conditions in order to protect the freedom that is often taken for granted.

The next time that you learn that a colleague is a veteran, consider how rare of an occurrence that is. If you reflect on that person's actions in a matter, you might find yourself understanding why that attorney is the way that s/he is when you overlay being an attorney with being a veteran.

Happy Veterans Day. ■

Bench & Bar

This is the newsletter of the ISBA's Bench & Bar Section. Section newsletters are free to section members and published at least four times per year. Section membership dues are $35 per year. To join a section, visit www.isba.org/sections or call 217-525-1760.

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No Access to Justice Without Access to a Lawyer

BY JUDGE JAMES A. SHAPIRO & JAMES J. HERDEGEN

Introduction

Self-represented litigants ("SRLs"), previously referred to as *pro se* litigants, play a major role in divorce and child custody cases in Cook County. Every year, the Domestic Relations Division handles approximately 40,000 divorce and child protection cases.[1] Of those, it's been reported that at least fifty percent to as many as eighty-five percent of cases involve SRLs.[2] Many of these litigants struggle to navigate the court system. On top of the necessary paperwork to fill out and hearing dates they are required to attend, many also struggle paying rent or earning enough to live above the poverty line. Some are intimidated by the language barrier, since they may not speak English.

These challenges put a burden on the court's ability to administer justice in child custody cases efficiently and fairly. Self-represented litigants often come to court without all the documents required to legally divorce them, causing the court to turn them away and reschedule their hearing for another time. Also, SRLs often make arguments that are not coherent, making it difficult for the court to follow. While courts can provide limited legal resources, they are supposed to hold SRLs to the same standard as family lawyers, some of whom have decades of experience. These complicating factors often leave SRLs wondering if justice has truly been served.

From my more than six years as a judge in the Domestic Relations Division, I've concluded we cannot achieve access to justice in family law without access to a lawyer. Self-represented litigants with few resources would be much better served with an objective understanding of the law from legal counsel instead of relying on their own subjective feelings, especially when a child's welfare is on the line. This can be accomplished through a right to counsel that already exists in criminal law and, in some jurisdictions, child custody cases. It is time for the legal profession to recognize its duty and advocate fiercely for the extension of this right. This article argues for the creation of a limited public defender system for indigent self-represented parties involved in child custody disputes. Only then will each litigant have access to justice.

Motivations of a self-represented litigant

Unsurprisingly, most people who choose to represent themselves do not have the money to hire a lawyer. A study in 2016 surveyed family courts across the United States and found more than 90% of SRLs indicated financial considerations were influential, if not determinative, in deciding to represent themselves.[3] Broken down further, 60% of those making under $20,000 per year said hiring a lawyer was unaffordable, while 50% of those making between $20,000 to $40,000 per year reported the same thing.[4] Bringing this data back home, 29% of custodial parents in Illinois's child support enforcement system live below the poverty line,[5] which in 2025 means an annual income of $15,650 per person.[6] While child support isn't the only issue I hear, this provides a compelling snapshot of how many people believe it is better to go through the courts alone. As one person reported, "[I]t's still not optional to go spend $4,000 or $5,000 on an attorney—that's more of a luxury really."[7] A *luxury*? It's an indictment of our judicial system that people believe access to legal representation is only available to those with money.

Even if affordability isn't a significant problem, some may see hiring a lawyer as inefficient. As one person surveyed said, "I'd much rather put that money toward supporting children than trying to fight them."[8] Unfortunately, some people don't realize that hiring a lawyer can actually put parents in the best position to support their children. A lawyer has the benefit of not being emotionally linked to a case and can understand when a deal benefits their client and ultimately the child.

Financial constraints are inevitably the most common challenge SRLs face. As a result, many rationalize the decision to forgo hiring a lawyer in divorce or child custody proceedings—an understandable choice that nonetheless reflects an unfortunate reality about the accessibility of our court system. Self-represented litigants often expect the process to be straightforward, yet in practice it's anything but.

The problems for self-represented litigation in Domestic Relations

Going to court without a lawyer is a risky and arduous endeavor, as even minor procedural missteps or misunderstandings of legal terminology can significantly harm a case's outcome. Yet the challenges are especially acute in family court. First, SRLs need to fill out and submit the necessary paperwork. During my prove-up hearings, it's not uncommon for a self-represented petitioner to either mishandle service of process—for example, by failing to properly notify the other party or not submitting proof to the court—or give incomplete, vague, or poorly considered answers when asked about the respondent. They often submit all necessary documents except the most important one, the proposed judgment, which is the form that actually divorces them. Unfortunately, I have to turn them away and reschedule them for a later date. This is understandably frustrating for

those who took time off work or had a long commute to the Daley Center. In contested divorce hearings, self-represented parties may also ask the court to review a specific issue but fail to submit the appropriate motion. Additionally, their inability to effectively convey an argument in court will only work against them. During a hearing, for example, SRLs might communicate a position that could be misinterpreted by opposing counsel or the court, often leading to unnecessary and time-consuming clarification. These mistakes expose the party to litigative risk, potentially leading to unnecessary court costs or unfavorable decisions.

Second, self-represented litigants in Domestic Relations are personally attached to the outcome, thus clouding their judgment. In child custody cases, where the goal is getting a court-ordered division of parental rights and duties swiftly and "with minimal amounts of acrimony and hostility . . .",[9] hurt and embittered parties may detrimentally prolong the litigation process. Representing themselves also leads to a taxing emotional experience when, in addition to preparing their case, they also need to continue their familial and professional obligations. Attorneys can lessen this pressure and serve as a buffer, allowing the parties time and space to deal with the trauma from separation while not also being forced to legally represent themselves.

Finally, the court is in a difficult position when comparing a self-represented litigant to a party represented by counsel. Under the ABA Model Code of Judicial Conduct judges "shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to the law."[10] Additionally, Illinois case law provides that SRLs cannot be held to a lower standard[11] and are expected to comply with the same rules of procedure as an attorney.[12] It is incredibly hard, if not impossible, for an SRL to operate like a practicing attorney, especially when some of the lawyers have decades of family law experience.

These issues aren't the only ones self-represented litigation poses in Domestic Relations, but their prevalence makes my job and theirs difficult. I tell SRLs that choosing to represent yourself is like taking out your own appendix—it's painful and arduous. Many would likely agree and prefer legal representation if given the opportunity. Fortunately, the Illinois Supreme Court and the Circuit Court of Cook County recognize this pressing issue and have provided resources to help SRLs, but more needs to be done.

Current Illinois and Cook County policy on self-represented litigants

Several initiatives in Illinois and Cook County have made the courts more friendly to SRLs. First, court adjacent resources provide self-represented parties with the necessary paperwork and legal information required to successfully navigate the court system. The Illinois Supreme Court Commission on Access to Justice has approved standardized forms SRLs can use on a range of family law issues, such as changing child support, requesting fee waivers, or filing an order of protection.[13] All Illinois courts must accept these forms.[14]

The Commission also supports Illinois JusticeCorps, an AmeriCorps program where volunteers are trained to give legal information and procedural guidance along with connecting them to legal aid groups.[15] Due to the Trump administration's dismantling of AmeriCorps, however, the program is currently in flux.[16]

During my Zoom hearings I also refer self-represented parties to three different "low bono" organizations that represent litigants on a sliding scale, in proportion to how much they earn: Chicago Advocate Legal, the Justice Entrepreneurs Project, and the Greater Chicago Legal Clinic. All three groups have been reliable partners in providing quality legal services at more affordable rates to those who need it. While these initiatives represent progress, self-represented parties may still struggle to locate the necessary resources, and even when they do, there's no assurance they'll be able to use them effectively. The legal aid groups only have so much capacity to take in clients too.

In addition to providing court-related resources, staff services have expanded in Domestic Relations to deal with the case volume. The court created the Hearing Officer Program in 2017 to employ administrative law judges who provide guidance to those who cannot afford a lawyer.[17] Available at the Daley Center, and all suburban districts, Hearing Officers mostly settle financial issues and specify the language in proposed judgments. They also assist in marriage dissolution.[18] By addressing these topics, Hearing Officers offer guidance by explaining procedural rules, allowing time to resolve simple logistical problems, and performing calculations.[19] Though helpful, the program is only available for certain types of cases. Situations requiring additional fact finding, such as orders of protection, cannot be brought before Hearing Officers.[20]

Another resource available for SRLs falls outside the adversarial system through a no-cost mediation service. Located across the street from the Daley Center, Family Court Services offers mediation to all parent litigants involved in disagreements such as parenting time for minor children.[21] The Illinois Supreme Court has mandated parties involved in child-related disputes to attend mediation.[22] Once the court orders it, parents have the opportunity to discuss their children's future after separation with the help of a neutral third party. The goal is for the parents, not the judge, to make decisions about their children's well-being. The program is valuable and can be well used, but unfortunately mediation can fail. Parents struggle to put their feelings aside and find a resolution, leading them back to my courtroom.

Illinois and Cook County have made Domestic Relations more accessible for self-represented parties, but the problem remains: SRLs, especially those with limited financial resources, struggle to navigate the court system. Juggling your own legal representation on top of your actual job and parenting responsibilities is too much to ask. The clearest solution is also the boldest: provide indigent SRLs with publicly funded attorneys, just as we do in criminal court. ■

Judge James A. Shapiro is a Circuit Judge with the Circuit Court of Cook County, Domestic Relations Division.

James J. Herdegen is a second year law student at University of Illinois College of Law in Champaign, Illinois, and a Member of Illinois Law Review.

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Externships Provide Real-Law Experience

BY JUDGE MICHAEL J. CHMIEL

IN THE SUMMER OF 2025, proceedings in my courtroom in the Twenty-Second Judicial Circuit in Woodstock (McHenry County) were buoyed through the efforts of three externs who were on *hiatus* from their school studies, including Aidan Seaver from McHenry County, Megan Kruse from DuPage County, and Sylvia Tolczyk from Cook County. By definition, externs work for experience and are not paid (versus, perhaps, interns or law clerks).

In August 2025, Aidan Seaver began his second year of studies at the University of Wisconsin Law School in Madison, Wisconsin. Previously, Aidan graduated from the University of Nebraska with a Bachelor of Science in Business Administration and a Minor in Political Science. Over the Summer, Aidan attended courtroom proceedings through Zoom, engaged in research and writing, and participated in the work of the Law-Related Education for the Public Committee of the ISBA. He was noteworthy in his use of artificial intelligence to facilitate his work. He continues to work with Judge Chmiel on revisions to the "Your Guide to Law-Related Careers" pamphlet of the ISBA and its webpage for civics education.

Pictured are Justice P. Scott Neville of the Supreme Court of Illinois, Sylvia Tolczyk, Aidan Seaver, and Judge Michael Chmiel, at the Annual Meeting of the Illinois State Bar Association in Libertyville, Illinois, on June 5, 2025; the picture was taken by Celeste Niemann of the ISBA.

In August 2025, Megan Kruse began her second year of studies at Marquette University Law School in Milwaukee, Wisconsin. Beforehand, she graduated from the University of Wisconsin – La Crosse, with a Bachelor of Science in Psychology. Over the Summer, Megan attended courtroom proceedings through Zoom, engaged in research and writing, and assisted the Court in preparing various Orders through a review of proceedings. Megan also served as an assistant manager at a retail store in Milwaukee to help finance her studies.

In August 2025, Sylvia Tolczyk began her third year of studies at Chicago Kent College of Law in Chicago. Before then, she graduated from Loyola University Chicago, with a Bachelor of Arts in Psychology and Minors in Sociology and Polish Studies, *Magna Cum Laude*. Over the Summer, Sylvia attended courtroom proceedings through Zoom, engaged in research and writing, and participated in the work of the Commercial Banking, Collections, and Bankruptcy Section Council of the ISBA, where she also joined the editorial team of its newsletter as an Assistant Editor. Halfway through the Summer, Sylvia continued her work as an extern from Poland, where she was able to work and meet with members of the Polish government. She also extended her externship through the Fall to facilitate efforts in the Civil Division of the Circuit to train guardians *ad litem* in guardianship cases and work on local rules.

Since 2013, I have worked with ten externs from various law schools through weekly meetings and remote observation of courtroom proceedings to not interfere with law school studies and other professional development. The externs have helped with research, writing, and discussion. The externs have been able to observe and learn about the practice of real law in real time.

Externships should be encouraged in the judiciary and law practices, as circumstances allow. Through externships, we can impart good practices and get help when resources are scant. In our digital age, technology allows students to Zoom into a courtroom from miles away, access court files, and engage prompt communications through telephone, email, and text.

In our Circuit, we recently established forms to facilitate

Pictured: Judge Michael Chmiel, Sylvia Tolczyk, Justice Elizabeth Rochford of the Supreme Court of Illinois, and Attorney Ron Menna of DuPage County at the Annual Meeting of the Illinois State Bar Association in Libertyville, Illinois, on June 5, 2025.

externships with the formalities of a law school structure or less, independent structure. Previously, we only allowed externships through a law school structure for fear of compliance with ethical rules, but with law schools typically charging students with tuition for this, allowances for independent externships have been successful and welcome.

In candor, the price is the time which the supervising judge or attorney needs to spend with the extern. After all, we want externships to be successful for both. Regular weekly meetings and written communications through email are encouraged and help in scheduling. In the end, dividends far exceed the price! ■

Judge Mike Chmiel serves as a Circuit Judge in the 22nd Judicial Circuit in the State of Illinois, which is in McHenry County, Illinois. He is a two-time Past Chair of the ISBA Standing Committee on the Law-Related Education for the Public, and a former Chief Judge of his Circuit.

This article was originally published in Law-Related Education (November 2025, Vol. 12, No. 1), the newsletter of ISBA's Standing Committee on Law-Related Education for the Public.

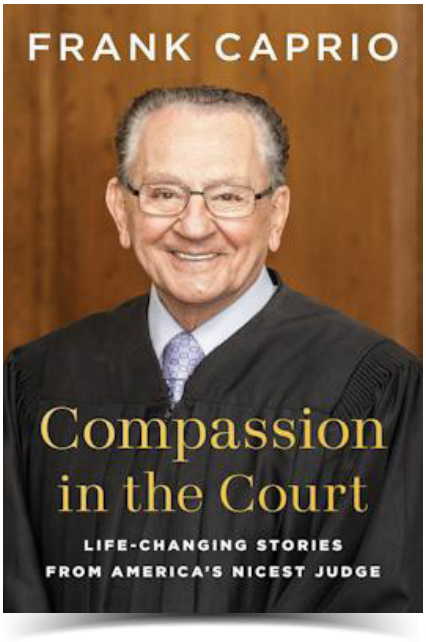
We Lost a Great Man, Fortunately We Have His Memoir: A Review of *Compassion in the Court*

BY HON. JOHN J. O'GARA

I WAS VERY SAD WHEN I LEARNED that Judge Caprio had passed away on August 20, 2025. I have been a big fan for several years; he was truly an amazing man. If you are a fellow channel surfer, or if you view court related YouTube videos, you may have come across the Hon. Frank Caprio on the TV show *Caught in Providence.* The show is a series of filmed court hearings in a court call of parking or other minor driving or vehicle infractions. The episodes often feature colorful litigants with challenging situations that Judge Caprio deftly addresses. You can sample it at www.youtube.com/@CaughtinProvidence. Or see his interview on CBS Sunday Morning, https://youtu.be/WS1Yu9whOY4?si=WI7jm1vq5dDYsdRt.

Earlier this year Judge Caprio released a book about his life, *Compassion in the Court* and he left us a great gift; he gave us more than just a memoir—he offered a heartfelt meditation on the role of kindness, empathy, and humanity within the justice system. Especially for practitioners and judges, this book gives us a deeper look at the philosophy behind his approach and is a textbook on how to model and deliver procedural fairness. The book ultimately is a call to members of the bar to improve upon how we approach our cases, our clients, litigants and witnesses, and how we practice law.

From the very first chapter, Caprio set the tone with personal stories from his childhood as the son of Italian immigrants in Providence, Rhode Island. He traced the roots of his values to his father, a hardworking fruit peddler who taught him that dignity and understanding should never be compromised—especially when dealing with people in vulnerable situations.



An early anecdote from this memoir which really moved me was the story of how the author's grandfather got arrested one time for a minor disturbance. His grandfather and grandmother were Italian immigrants and spoke very little English. At the court appearance, Judge Caprio's father and grandmother appeared and saw the when the judge appeared he was tall, ruddy looking, "great white-haired Irishman." Judge Caprio added, "He looked like every Italian Immigrant's nightmare." At that point, Caprio's grandmother screamed out to the judge in her broken English for mercy. The judge, then, noticing Caprio's father asked him to translate that the judge knew that his grandfather was a good, hard-working man who had a bad night. The judge further said that he understood that Mrs. Caprio needed him home and that he wanted her to cook him a good meal as he dismissed the case.

That judge made a lifelong impression on Judge Caprio's father by treating his father with "tremendous compassion and respect, without any prejudice or bias because they were immigrants, or because they were poor or because he was Irish and they were Italian, and with a great understanding of human foibles." Judge Caprio's father talked often of this, that judge was practically a saint in the Caprio household, and perhaps above all, it prompted Judge Caprio's father to want him to be a lawyer. Judge Caprio remembered this story often as he "hoped to treat each person with the same compassion and understanding that the judge gave my grandfather."

This is a remarkable vignette on several levels. To begin with we are challenged to see that someone can look beyond their life experiences and circumstances and find a shared humanity and common ground with a person from a different background. We are also confronted by the realization that our first fears and apprehensions based on perceptions and appearances are often misplaced. It is amazing to think that this one morning in a Providence, RI courtroom would plant the seed for a man not even born to want to ultimately become a lawyer and then serve as a judge dispensing justice in the very same courthouse. It reminded me in a profound way that as we practice law and handle cases, we often touch people's lives in a life changing way that we don't even realize. The kindness or compassion—or anger or ridicule—we have shown can truly affect people for generations.

Frank Caprio recounted a variety of real-life cases he presided over. His very first day in which he was less than understanding with a scared woman who could not pay her fines, and his father, who was initially so proud to witness his first day as a judge, was ashamed and called him out on his lack of patience. My favorite case involved ninety-six-year-old Victor Colella who was taking care of his sixty- three-year-old

handicapped son. The litigants were not just docket entries to Judge Caprio; the cases were windows into people's lives. He often told litigants that he was rooting for them, that he was listening to them and he showed them respect. His reflections on these stories revealed the power of treating every person in court as an individual, not just as another file to close.

What makes *Compassion in the Court* truly compelling is its underlying message: that the legal system, often seen as cold or impersonal, has room for empathy. Caprio challenged especially the legal profession to reimagine justice not only as a set of rules, but as a process shaped by understanding, fairness, and, yes, compassion.

Perhaps the most important lesson we can learn from Judge Caprio's remarkable life and story is that if we listen to one another and treat everyone with understanding and decency, we may just see that the results will be far better than we imagined. Promoting civility in the practice of law is more crucial with each passing day; the hurl of insults and invective in social media, in our public discourse as well as our less than kind interactions with other lawyers and the courts contributes mightily to the coarsening of attitudes and behavior. Judge Caprio's approach to all who appeared before him reveals a path for us to break free from incivility and make a difference. Just like he has done.

Compassion in the Court is a powerful example that justice and the practice of law, at its best, leads to a recognition and acceptance of our common humanity. Judge Caprio didn't just advocate for a better way to practice law or conduct court, he modeled for us what this better approach looks like, and how civility and decency can prevail. His life and legacy remain as an inspiration for me, and I hope you will be inspired as well. ■

Hon. John J. O'Gara is a Circuit Judge in the 20th Judicial Circuit, St. Clair County and a member of the ISBA's Standing Committee on Law-Related Education for the Public.

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Observations From a Judge on Collection Litigation, and Perhaps All Litigation

BY HON. MICHAEL J. CHMIEL

AS THE FIRST TO GRADUATE COLLEGE in my family, I was then graduated from the University of Illinois College of Law in 1990, when I went to work for the late United States Bankruptcy Judge Richard De Gunther in Rockford. We worked in the Western Division of the United States Bankruptcy Court for the Northern District of Illinois. I learned a lot in those 2.25 years, as Rockford, which was once the second largest city in Illinois, was working to exit the rust belt and the Division was dealing with the fastest growing county in the nation—McHenry County.

After my clerkship, I engaged in private practice, generally handling commercial law and local government law. And then, fourteen or so years after graduation, I found myself appointed by the Supreme Court of Illinois as a Circuit Judge, and was then elected as such in a new judicial circuit—the Twenty-Second Judicial Circuit, where I have handled a variety of cases, and served as the Presiding Judge of the Family Division, and then as the Civil Division, and then as Chief Judge.

Since January 1, 2025, I have handled what appears to be the busiest docket in our Circuit, including arbitration ("AR") cases, involving collections valued between $10,000 and $75,000, and Small Claims ("SC") cases, involving collections up to $10,000.

I have found the collections bar to be extremely professional. I suspect this emanates, in part, from the litigation over the years under the Fair Debt Collections Practices Act. As well, I suspect it reflects professionals who are working to effect efficient and effective results. Rarely do I find a collection attorney who is anything but professional, patient, and thorough.

As you may know, filings in the circuit courts in Illinois have trended downward over the past decade or so. However, in our Circuit at least, in comparison to the same period in 2024, filings from January 1 through September 30, 2025, are up 40% for AR cases and 36% for SC cases. These increases are more than in any other area in McHenry County, which is the sixth largest county in the state.

Interestingly, attorneys in these cases continue to avail themselves of the allowances for remote participation, as required through Rule 45 of the Supreme Court of Illinois. With this note, I still have many attorneys personally visit my courtroom as well each day.

Perhaps due to the professionalism of those mentioned above, I am also gratified to discuss lawsuits with defendants who will often come to court, in person and through Zoom, and in perhaps 90% of those cases, readily admit the money at issue in the pending complaints is owed. Often, they simply explain they are down on their luck or the challenges of life got in the way, whether it be with employment, health issues, or family issues.

For those who have any question about liability or deny it, I expeditiously move the case toward arbitration or small claims mediation, as the case may warrant. In our Circuit, through a pilot program approved by the Supreme Court, our Arbitration Administrator has been trained and certified as a mediator at Northwestern Law, and upon my referral, will work with parties to facilitate a resolution if possible. With the relatively smaller amounts at issue, the pace is rapid, especially in consideration of the admonitions of the Supreme Court through its time standards (which require 75% of small claims cases to be resolved within six months and 98% to be resolved within a year). Our Small Claims Mediation Program has had some success but often experiences failure in follow through by litigants, and then judgments by default or trials.

The time standards dictate a quick pace, which puts pressure on the judiciary to move cases. Having noted this, my judicial philosophy has always been and will always be to take whatever time is necessary. While we need to move things along, we also all need to engage a healthy pace. Collectively, we work to maintain and support the rule of law.

In practice, I learned from a now retired attorney and client, who practiced in this neck of the woods that it is wise to work with people to understand where they are and what they need, often in terms of time. Ron Carlson would often guide a project and allow for time, hoping for success, but with admonition that if the desired result was not achieved in the time requested, a consequence would likely arrive, typically resulting in a judgment or the recording of a deed or some such thing. Similarly, time is often afforded for discovery or settlement talks, with appropriate deadlines in place to get matters resolved within the timelines.

Technology continues to amaze and challenge us. Case management software is often challenged to keep up with increases in volume, especially when my dockets have included as many as 184 cases in a morning. Then on the back end, we often need to wait for draft orders, which are otherwise due within three hours.

Remote participation through Zoom facilitates *local* or stand-up counsel appearing for parties, who might not be fully acquainted with a particular case, which challenges the system, especially when opposing parties are ready to act. In such circumstances, I often refer to a former partner in Rockford who mentored me as a young lawyer to never say in open court—or perhaps anywhere in the representation of a client—*it is not my case*. To the extent a lawyer stands up on a case, unless perhaps an emergency is involved, the lawyer should always remember it is *the lawyer's case*.

Inspired and/or directed by Rule 45,

I do not limit proceedings to physical participation in the courtroom, unless certain rare circumstances warrant the same. While I am even open to remote or hybrid jury trials, I have often presided over hybrid and remote bench trials. Perhaps the primary issue involves the handling of evidence. In our Circuit, documents can be filed with the clerk or deposited in a portal available through our Circuit website for cases in our Circuit.

As far as mentors go, I often think of Judge Michael Sullivan, after whom we named our courthouse. Judge Sullivan told me as a younger judge to always include detail in an order. In other words, why is the case coming back? Exactly what is expected, as with what documentation is desired through a citation to discover assets? Also, I believe orders should reflect who participated and what was handled. While we can readily have a transcript produced, simple items can and should be included in orders to facilitate prompt review.

Outside of a properly constituted setting, cases should not be discussed by those outside the court family, so to speak. *Ex parte* communications are forbidden, though can be allowed for certain limited reasons involving procedure. But then, even in those situations, immediate effort should be made to tell the other side about what was discussed.

Most judges are using standing orders these days. I have worked over the years to bring that resource to our local equation, as it has been used elsewhere, especially in the federal courts. Just about all courts have websites these days, and those should be regularly checked to see if a judge might have a standing order which covers certain procedure for a courtroom.

These are observations after almost 21 years of work as a judge. Following the model of Presiding Judge Ken Wright of Cook County, I engage professionals who work in and around my courtroom on the first Monday of each month in an 8:15 a.m. setting, when we try to make the system even better. If you might like to join us, feel free to do so. Otherwise, I encourage everybody to keep working on the system as it is what we make of it. ■

Michael J. Chmiel is a Circuit Judge in the Twenty-Second Judicial Circuit of the State of Illinois. He is a Past Chair of what is now the Commercial Banking, Collections, and Bankruptcy Section Council of the Illinois State Bar Association and continues to serve as Editor of the Section's newsletter.

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Sometimes in Post-Convictions, *It Is What It Is*

Analysis and some take aways from *People v. Williams*, 2025 IL 129718

BY HON. JOHN J. O'GARA

POST-CONVICTION PETITIONS present some of the most difficult aspects of the practice of criminal law. To begin with, we have an individual who believes—correctly or incorrectly—sincerely or falsely—that at their trial or when they pled guilty, they have been deprived of substantial constitutional protections and were unconstitutionally or illegally incarcerated by the state. Almost always this person is without a lawyer and attempts to craft a post-conviction petition which will serve as their vehicle to freedom. We then have the Court reviewing petitions and determining whether the petitioner has stated the gist of a constitutional deprivation. If so, this triggers the appointment of counsel if the petitioner remains unable to hire a lawyer and then the involvement of the state's attorney's office.

Post-conviction petitions are often complex, time-intensive, frequently stressful and ultimately fraught with peril. The attorney for the accused wants to make sure that all claims of error are raised so that the aggrieved client will be able to properly have their day in court. Counsel is also ever mindful that if an issue is not raised in the petition, it might be waived forever. Counsel often feels the need to put in every possible contention of error after discussing the matter with their client, even if the claim is tenuous at best, in the hope that perhaps it will serve as grounds for relief.

Counsel is also required to file a Certificate under Rule 651(c). This rule guides the entirety of the process of preparing a post-conviction petition. The attorney certifies consultation with petitioner by phone, mail, electronic means or in person to ascertain his or her contentions of deprivation of constitutional rights, examination of the record of the proceedings at the trial, and that counsel has made any amendments to the petitions filed *pro se* that are **necessary** for an **adequate presentation of petitioner's contentions**. The pressure is on.

Often, after a post-conviction petition is filed, the prosecutor intervenes to seek dismissal and prevent the case from advancing to a third stage hearing.

The Court, then, is tasked with balancing the need to determine whether additional hearings should be held or that the record clearly refutes all claims for post-conviction relief. The laws on proper review, constitutional claims, and related ethical concerns can be quite complex and daunting.

In April 2025 the Illinois Supreme Court decided *People v. Williams*, 2025 IL 129718, which addresses the tensions present in a post-conviction proceeding.

Petitioner Michael Williams entered into a fully negotiated plea and sentence in which he pled guilty to two counts of aggravated battery with a firearm and received two consecutive ten-year sentences. He filed a *pro se* motion to withdraw the guilty plea. The motion was denied, and the 5th District Appellate Court ultimately affirmed the denial. Mr. Williams thereafter timely filed a *pro se* post-conviction petition which the Court advanced to a stage two hearing after finding that he raised the gist of at least one constitutional claim. Ultimately, the Circuit Court granted the motion to dismiss the petition

On appeal, the 5th Appellate District Court reversed the second stage dismissal. In a Rule 23 decision, 2023 IL App (5th) 220185-U, the Court found that post-conviction counsel's assistance was unreasonable, particularly for failing to develop evidence of prejudice under the two-pronged *Strickland* test (trial attorney's performance fell below an "objective standard of reasonableness," and there is a "reasonable probability" that, but for the attorney's deficient performance, the result of the proceeding would have been different). The Court noted at ¶ 26 "counsel's failure to include the required allegations and factual support in the post-conviction petition and the defendant's accompanying affidavit, and his complete inability to muster facts and arguments—as opposed to vague and conclusory allegations—in support of prejudice at the hearing, meant that the defendant's post-conviction petition claim of ineffective assistance of counsel had no chance of succeeding." The Court further chided defense counsel by noting "counsel's failure to argue—and support factually—claims of ineffective assistance of previous counsel as a means to overcome the bars of res judicata and forfeiture that the State raised in its motion to dismiss." The Court concluded further proceedings were warranted to further develop and properly present the allegations and reversed the Stage 2 dismissal.

The Illinois Supreme Court reversed. Recognizing that post-conviction counsel—whether appointed or retained—must provide a "reasonable level of assistance", the Court reiterated that this determination must "necessarily depend on the unique facts of each case". ¶ 43.

The *Williams* Court then analyzed the facts and noted that the Appellate Court "incorrectly **assumed** there were additional facts and allegations that counsel could have included in the petition." (Emphasis added) ¶ 46, "[T]here is nothing in the record to demonstrate Williams had a viable defense, and before this court, Williams does not suggest that such facts exist or that such a defense could have been alleged. Post-conviction counsel did not perform unreasonably in this case simply because his arguments were without merit (see *Perkins*, 229 Ill. 2d at 51) or because he was unable to make the petitioner's allegations

factually sufficient to require the granting of relief (see *People v. Spreitzer*, 143 Ill. 2d 210, 221.)."

The *Williams* Court held that the Appellate Court erred in assuming and concluding that the post-conviction petition failed to persuade the Circuit Court due to counsel's performance, rather than simply the petition's lack of merit. The Supreme Court noted that arguments can be unavailing yet still reasonable. In this case, counsel raised the strongest available issues and as such, "counsel cannot be said to have rendered an unreasonable level of assistance even if the arguments lacked legal merit, were not particularly compelling, and were ultimately unsuccessful." ¶ 49. The failure to satisfy *Strickland*'s prejudice requirement did not amount to unreasonable assistance.

Takeaways & legal significance

Post-conviction counsel is not ineffective simply because their arguments fail on the merits

- This case clarifies the scope of reasonable assistance at the **second stage** of post-conviction proceedings: if the best plausible arguments are presented, counsel is not deficient—even if the claims lack ultimate success.
- Unreasonable assistance of counsel applies **only** when counsel completely fails to raise **credible** claims or **additional factual support exists.**
- The *Williams* Court said ***that the duty to shape viable legal claim only applies when there is something to shape***. If the petition is factually thin, there's no error in declining to pad it with "unsubstantiated speculation."

For post-conviction defense counsel-don't fear filing thin but truthful petitions

If there's no affidavit or added facts, **counsel is safe** so long as:

- They evaluated the record.
- Attempted to enhance the claim.
- Documented their reasoning or certified under Rule 651(c).
- Include a brief statement explaining why additional facts or affidavits are unavailable (*e.g.*, "client unable to identify corroborating witnesses"). The *Williams* decision moves away from rigid formalism. Even where affidavits weren't added, it considered content and context, not just procedure.

While previous decisions were reversed on the basis that counsel had a duty to shape viable legal claims, *Williams* now holds that *duty only applies when there is something to shape.* If the petition is factually thin, there's no error in declining to pad it with "unsubstantiated speculation."

Counsel must steer clear of boilerplate claims of coercion or ineffective assistance unless supported by affidavits, record excerpts or detailed client correspondence.

Counsel might want to consider having the client acknowledge at Second Stage Dismissal Hearing that ALL contentions of error have been discussed and included in an amended petition for post-conviction relief in addition to the filing of the 651(c) certificate.

For the State, the impact of *Williams* is much like the saying "it is what it is." The State may wish to cite *Williams* when opposing advancement beyond second stage, particularly if:

- The claim is procedurally proper but legally doomed.
- May wish to emphasize that reasonable assistance of counsel does not require enhancing weak claims if no facts support them.
- May wish to emphasize *Strickland* standards and if they are even alleged or inferable.

Ethical dimensions for post-conviction counsel

And while the Supreme Court didn't frame *Williams* as an ethics opinion *per se*, its reasoning implicates key ethical duties for criminal post-conviction attorneys:

A. Duty of Reasonable Diligence (IRPC Rule 1.3)

- The **threshold is not perfection** or even persuasive argumentation, but in holding to the demands of post-conviction cases, it's **competent, honest effort with reasonable diligence and promptness in representing a client.** Post-conviction counsel must review the record, confer with the client, and shape available claims **AFTER** a thorough investigation.
- *Williams* confirms that **counsel is not ethically deficient** for failing to invent claims or polish weak ones.

B. Candor Toward the Tribunal (IRPC Rule 3.3)

- Attempting to inflate vague allegations into something more concrete without factual support can violate Rule 3.3.
- *Williams* implicitly protects counsel from feeling **compelled to misrepresent** claims just to avoid Rule 651(c) critiques.

C. Communication with Client (IRPC Rule 1.4)

- Though the case doesn't say if *Williams*' counsel conferred with him, effective representation requires meaningful communication, especially where the *pro se* petition makes personal or factual claims.
- Rule 651(c) certificates demand communication making Rule 1.4 even more critical.

D. Scope of Representation (IRPC Rule 1.2)

- Counsel must advance client-directed claims ***within reason***.
- **Ethical breach arises only when counsel abandons plausible claims** or fails to explain the strategic choice not to pursue them.

E. Competence (IRPC Rule 1.1)

Finally, defense counsel also must do some soul searching pursuant to Rule 1.1 before ever agreeing to represent a person seeking post-conviction relief. Counsel must be able to say that they have the knowledge, skills and the time to truly prepare and present what might be a person's last hope for freedom. ■

Honorable John O'Gara is a Circuit Judge in the 20th Judicial Circuit, located in Belleville, Illinois.

Recent Appointments and Retirements

1. Pursuant to its Constitutional authority, the Supreme Court has appointed the following to be Circuit Judge:
   - Hon. John Hay, 15th Circuit, September 2, 2025
   - Terra Costa Howard, 18th Circuit, 5th Subcircuit, October 17, 2025

2. Pursuant to its Constitutional authority, the Supreme Court has assigned the following judges to the Appellate Court:
   - Hon. Clare J. Quish, Cook County Circuit to First District, September 2, 2025
   - Hon. Robert C. Bollinger, 6th Circuit to Fifth District, September 29, 2025

3. The Circuit Judges have appointed the following to be Associate Judges:
   - Sierra D. Senor-Moore, 7th Circuit, September 4, 2025
   - Todd D. Scalzo, 18th Circuit, September 8, 2025
   - Eric J. Kalata, 19th Circuit, November 10, 2025

4. The following judges have retired:
   - Hon. Thomas J. Kelley, Cook County Circuit, 13th Subcircuit, September 15, 2025
   - Hon. Ellen Beth Mandeltort, Associate Judge, Cook County Circuit, September 26, 2025
   - Hon. Patrice Ball-Reed, Associate Judge, Cook County Circuit, September 30, 2025
   - Hon. Peter J. Vilkelis, Associate Judge, Cook County Circuit, September 30, 2025
   - Hon. Paul M. Fullerton, 18th Circuit, October 15, 2025
   - Hon. George D. Strickland, Associate Judge, 19th Circuit, October 31, 2025

ILLINOIS BAR FOUNDATION
Champions

Champions

Dear Future Champions,

At least twice a year at ISBA Annual and Mid-Year Meetings, we are pitched by colleagues and the Illinois Bar Foundation to become a "Champion." But what is a Champion really, and what's in it for us?

A **champion**, by definition, is a person who fights or argues for a cause or on behalf of someone else. As lawyers, we have the unique opportunity to make a positive impact on society by upholding justice and advocating for those in need. We have the power to shape laws, defend the innocent, and ensure fair resolution of disputes. By definition, *we are champions*, for our clients, our legal system and for our communities, but through the statewide reach of the Illinois Bar Foundation, we have the opportunity to increase our impact even more.

The Champions of the Illinois Bar Foundation were established more than 40 years ago and are comprised of a distinguished group of attorney and non-attorney Foundation supporters who believe in the value of justice and philanthropy. By committing to a pledge payable over ten years, Champions help create sustainable long-term funding support for more than 50,000 individuals and their families each year statewide. These funds make a direct difference for our colleagues and their families when they struggle with life-changing illness or injury through the support of the IBF's Warren Lupel Lawyers Care Fund, or when our neighbors seek low or no-cost legal aid services to help them stay in their homes, obtain guardianship of a loved one or an order of protection from an abuser, or better understand their rights and responsibilities as workers and citizens in Illinois.

Champions pledges:

- Start as low as $100 per year, or less than $9 per month
- Are 100% tax deductible
- Can be paid for with your ISBA Meeting reimbursement
- Can be restricted to an appellate district of your choice to help support your neighbors in need.

Champions receive:

- Special recognition at ISBA Annual & Midyear Meetings
- Champions badges that can be displayed on your website or email signature
- Recognition on the IBF website, social media and publications such as the *Chicago Daily Law Bulletin*, *Illinois Lawyer Now*, and the *Illinois Bar Journal*.

So while you may already be a champion in your profession, join me in helping to make Illinois an even better place by becoming a Champion of the Illinois Bar Foundation today. To secure your pledge, use this QR code or contact Jessie Reeves at jreeves@illinoisbarfounation.org.

Sincerely,

Jessica Durkin
Champions Chair
Illinois Bar Foundation