

Bench & Bar

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

Justice Anne Burke Retiring

BY HON. ALFRED SWANSON (RET.)

Recalling her early career experiences as a coach for the Chicago Park District and for the Special Olympics, Chief Justice Anne Burke views her tenure as chief justice as being the head coach of a very good team of judges and court administrators. Justice Burke's three-year term as chief justice ends October 25, 2022. She also informed the court at the beginning of its September term that she will retire from the court on November 30, 2022. After 16 years on the Illinois Supreme Court, Justice Burke said, "the race has been run and it is time to pass the

gavel to a successor."

As chief justice, that successor is Justice Mary Jane Theis who has served on the supreme court since October 2010. As a justice, the successor is Appellate Court Justice Joy Cunningham who will take office December 1, 2022.

Justice Burke's judicial career began in 1987 when she was appointed a judge on the court of claims. After seven years, Governor Edgar appointed her to be special counsel for Child Welfare Services. In 1995, Justice Burke was appointed and

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Choosing the Chief

BY JOHN A. LUPTON

Unlike the Supreme Court of the United States, Illinois is one of 23 states in which its supreme court chooses who will be the chief justice.¹ At the federal level, the president appoints the chief justice, but in Illinois, the justices select one of their own members. How that process is done is up to the court itself. The current unwritten custom in Illinois is that the longest-serving justice who has not yet been chief, will become the next chief. This practice dates to 1873 (with a few exceptions). But it wasn't always this way.

During the first Illinois constitutional period (1818–1848), justices were not popularly elected nor did the justices choose their chief. The constitution

mandated a court comprised of four justices, subject to change. The framers gave the legislative branch extraordinary powers, including appointments to the supreme court and to the chief justice position. At the first meeting of the General Assembly, the legislature chose Joseph Philips as the court's first chief.² According to the constitution, justices were to "hold their offices during good behavior,"³ meaning there were no term limits. Philips remained chief until he resigned from the court to run for governor in 1822. The legislature then appointed Thomas Reynolds, who was chief for three years until the legislature replaced him in 1825 with William Wilson. Wilson

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later elected to the appellate court. In 2006, she was appointed and later elected a justice on the Supreme Court. She became chief justice in October 2019.

Justice Burke cites as one of her major accomplishments as chief justice leading a revamping of the judicial branch through the impact of Covid. Those changes involved improving technology throughout the court system, particularly in rural counties downstate. Statewide there was the initiation of remote hearings via Zoom. Zoom hearings, she told me, will remain in some form. Justice Burke says the remote hearings are especially valuable for initial hearings in traffic court and in downstate counties where remote hearings can alleviate the long travel distance and travel time.

One of Justice Burke's efforts was a statewide series of listening events across Illinois in 2020 conducted in collaboration with the ISBA and its then-president, Dennis Orsey. Justice Burke credits those events with drawing attention to the needs of many counties across the state. One example was improved wi-fi access and new procedures in Whiteside County that enabled public defenders to communicate

electronically with their clients in custody and exchange documents with them.

Justice Burke notes there may be fine-tuning modifications to the new Safe-T Act that will, among other things, eliminate cash bail effective January 1, 2023. Part of the reforms in that law that encourages Justice Burke is a long-overdue expansion of pretrial services in all counties of Illinois. That program, she says, will provide more information on defendants so judges can be better informed in making decisions on whether a defendant should be kept in detention or released with conditions. The law, she says, will provide state funding to help cash-strapped counties have pretrial service officers to provide that information and public defenders to represent indigent defendants. Justice Burke points out that the role of the courts will be to implement the law that the legislature has drafted and approved.

While Justice Burke is looking forward to retirement and more time with family, she says she will not be disappearing from public view. She is not prepared to say what future plans she has, but she does say that she "will not be silent." ■

Choosing the Chief

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was chief for 23 years—the longest tenure of chief justice in Illinois history.

Illinois's first constitution had a number of problems but the legislature appointing nearly every position in state, county, and local government was a major one. The second constitution, which took effect in 1848, was influenced by Jacksonian Democracy, calling for citizens by popular vote to control who served in various positions. The intent was based on the idea that the people, in democratic elections, have a greater control over the administration of government and that those popularly elected would be more responsive to the public.

The 1848 constitution provided for the supreme court to be an elective body with nine-year terms and contested elections. Three justices would be popularly elected from three equally sized geographic districts of northern, central, and southern Illinois. The constitution also stipulated how chief justices were to be selected. In the first election, the three justices would be elected for a three-year, six-year, and nine-year term in order to stagger the tenures, then nine-year terms thereafter. The first justice with the nine-year term would become the chief, and the constitution added that the "judge having the longest term to serve shall be the first chief justice; after which, the

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judge having the oldest commission shall be chief justice.”⁴ The three newly elected justices drew straws to determine who would have the respective terms, and Samuel H. Treat drew the nine-year term, making him the first chief justice under the 1848 constitution.⁵

When Treat resigned in 1855 to become a federal judge, the court followed the precedent of the “longest term to serve.” Walter B. Scates became chief because he had just been elected in 1853. When he resigned from the Court in 1857, John D. Caton became chief because he had just been re-elected in 1854. This pattern of making the justice with the longest term to serve remained in effect until the new constitution of 1870.

The 1870 constitution provided that the court be made up of seven justices from seven geographic districts and that the “Chief Justice shall continue to act as such until the expiration of the term for which he was elected, after which the Judges shall choose one of their number Chief Justice.”⁶ Charles Lawrence had become chief in 1870 and remained until his term ended in 1873.

When Lawrence’s three-year term had completed, the court met at the June term 1873 in Mt. Vernon. It “made a rule under the new constitution electing one of their numbers as chief justice, to serve one year. Under this rule, Judge [Sidney] Breese was chosen for the first year; next it will be [Pinkney] Walker, and so on, through the entire bench, seniority taking precedence.”⁷ This became part of Supreme Court Rule 56: “On the first Monday in June of each year the Justice of this court being highest in rank shall be the Chief-Justice, and shall hold such office the term of one year.” If two or more justices were elected on the same day, they would “determine seniority by lot.”⁸

Because chief terms were only one year, nearly everyone who served on the Supreme Court during the 100 years of the 1870 constitution became chief justice at some point. In several situations, if a justice had a particularly long tenure on the court, he could serve as chief multiple times. For example, James Cartwright and Clyde Stone served as chief five times over their nearly 30 years on the Supreme Court. The years 1940 and 1961 each saw three chiefs as one term

ended, the new chief died in office, and then another chief succeeded him.⁹

When the Supreme Court consolidated its locations to meet only in Springfield in 1897, eliminating terms in Mt. Vernon and Ottawa, the court passed new rules. Rule 56 became rule 38 but required a justice to be on the court for at least two years before becoming chief and added that if “all eligible Justices shall have therefore served as Chief Justice, then the Justice whose last term as Chief Justice is the most remote shall succeed.”¹⁰ By 1933, Supreme Court Rule 38 became rule 56 again.¹¹

In 1964, Illinois adopted an entirely new judicial article to the 1870 constitution. It maintained the number of justices at seven but distributed them throughout the state differently: three from Cook County and one each from four other judicial districts roughly equal in population. The new article stipulated that the “judges of the Supreme Court shall select one of their number to serve as Chief Justice for a term of three years.”¹² In addition to adopting a new judicial article, the supreme court adopted new rules. It converted Rule 56 into Rule 31 but eliminated the method for choosing the chief. Rule 31 remains in effect today and only relates to seniority on the court.¹³

Ray Klingbiel was the last chief under the old judicial article, holding the position from September 9, 1963 to December 31, 1963, but the court reappointed him as chief to become the first chief under the new article, taking office on January 1, 1964 to serve a three-year term.¹⁴ When Chief Justice Klingbiel’s three-year term ended in 1966, the justices chose Roy Solfisburg as the new Chief, which was a departure from prior practice. In the rotational system, Robert Underwood should have been the next chief. When Solfisburg resigned from the court in 1969, Underwood became the chief. During Underwood’s tenure, Illinois voted on yet a new constitution, which adopted the 1964 article nearly in its entirety.¹⁵

The first selection of chief under the new constitution was mildly contentious, according to a newspaper report. Chief Justice Underwood was not interested in another term as chief, acquiescing because he was a Republican while the Democrats held a 4-3 edge in the make-up of the court.

Both Thomas Kluczynski and Charles Davis each received votes from their fellow justices but lacked a majority. Another ballot gave all votes to Underwood as a compromise candidate, and he served another three years as chief.¹⁶ Since then, the court has adopted the unwritten rule (but written prior to 1964) of the longest tenured justice who has not yet been chief, will be the next chief.

The justices consistently held three-year terms beginning January 1, until James Heiple resigned as chief in April 1997 because of several scandals. Charles Freeman succeeded Heiple but did not complete a full three years. He resigned as chief on December 31, 1999, and Moses Harrison became chief on January 1, 2000. When Moses Harrison retired in September 2002 before the end of his chief term, Mary Ann McMorrow was elevated to chief. McMorrow and her immediate successor Robert Thomas each served a full three-year term. Thomas Fitzgerald did not serve a full three years as chief due to health issues, and Thomas Kilbride became chief on October 26, 2010. Since that time, the end of October has been the approximate start date for the new chief justices: Rita Garman, Lloyd Karmerier, Anne Burke, and now Mary Jane Theis.

While methods to choose the Illinois chief justice have changed over the course of 200-plus years, the important role of the chief has not changed—to oversee all of the courts in Illinois and to set the agenda for the supreme court as a leader among equals.■

1. <https://www.ncsc.org/information-and-resources/trending-topics/trending-topics-landing-pg/faq-how-are-the-chief-justices-selected> (accessed September 27, 2022).

2. See <https://www.illinoiscourthistory.org/county-and-justice-directory/justices> (accessed September 27, 2022) for biographies of all Illinois Supreme Court justices, as well as John A. Lupton, *Adjudicating Illinois: Justices of the Illinois Supreme Court* (2018).

3. 1818 Illinois Constitution, Art. IV, Sec. 4.

4. 1848 Illinois Constitution, Art. V, Sec. 4.

5. Illinois State Journal, Dec. 20, 1848 at 4.

6. 1870 Illinois Constitution, Art. VI, Sec. 6.

7. Illinois State Register, June 19, 1873 at 1.

8. 93 Ill. 15 (1880).

9. 1940: Francis Wilson, Norman Jones, and Walter Gunn. 1960: Walter Schaefer, George Bristow, and Harry Hershey.

10. 168 Ill. 20 (1897).

11. 355 Ill. 50 (1933).

12. 1870 Illinois Constitution, Art. VI, Sec. 4 (1964).

13. <https://www.illinoiscourts.gov/supreme-court-rules> (accessed September 28, 2022).

14. Illinois State Journal, Sept. 20, 1963 at 21.

15. 1970 Illinois Constitution, Art. VI, Sec. 3.

16. Illinois State Register, Dec. 1, 1972 at 4.

Meet the New Chief Justice of the Illinois Supreme Court

BY HON. ALFRED M. SWANSON, JR. (RET.)

When Justice Mary Jane Theis becomes Illinois' 122nd chief justice and the 78th person to be chief justice¹ on October 26, 2022, she has three main goals in mind. She intends to immediately start working on achieving them.

1. Access to Justice.

While access to justice has been a court priority for more than a decade, Justice Theis wants to expand the access efforts. "What does access mean? Is it enough to get before a decision maker?" Or, she asks, is there more to access to justice? Justice Theis told me there are more areas of access that need consideration.

One area is the lack of public defenders and pretrial service officers in downstate rural counties. A large percentage of Illinois counties do not have either. Part of the problem is that judicial services, other than judges' salaries, are funded by the counties, which has led "to a patchwork of how the judicial system works." It is, she says, "clear that there are vastly different resources among the counties." The General Assembly is working on that problem with a newly established task force to study the issue and recommend solutions.

Another problem is access to justice on the civil side of the court system. The problem she identifies is that since civil filings are down approximately 40 percent from pre-pandemic numbers that reduces the filing fee dollars counties use to help fund the courts. Justice Theis also noted that most self-represented civil litigants are on the defense side. "What does this mean?" That is one of the questions, Justice Theis hopes to have answered during her three-year tenure as chief justice.

2. Mental and Behavioral Health Issues.

This is an issue, Justice Theis told me, that

affects many different areas of the justice system—problem solving courts, criminal courts, and juvenile court proceedings among others. She notes that many juveniles who start out in the system involved in abuse and neglect hearings often end up as defendants on the criminal side of juvenile proceedings. A part of her goal is to try to find ways to better serve the young people who get into the juvenile system and deal with this pattern and hopefully reduce the number of juveniles who end up as criminal defendants.

3. The Future Method of Efficiently Handling Court Proceedings. What Will the System Look Like and How Will it Operate?

In March 2020, Illinois courts faced a crisis with the shut down caused by Covid-19. Justice Theis is quick to praise the leadership of Chief Justice Anne Burke, for not only guiding Illinois courts through the pandemic, but even more importantly, in devising and implementing ways to quickly get, and keep, the courts functioning. Justice Theis pointed out that Chief Justice Burke did this through collaboration by reaching out to stakeholders in the various parts of the judicial system to find solutions. Justice Theis plans to continue "listening to lawyers, judges, and others to find ways to solve tomorrow's issues facing the courts."

Civility and Professionalism.

Not a new issue, but a continuing one. Justice Theis praised the leadership of Jayne Reardon in leading the Commission on Professionalism for many years. And, she speaks highly of the plans Erika Harold has for her leadership of the Commission.

Civility and professionalism remain a concern in this continuing era of remote hearings. Justice Theis said "it is a great benefit to have hearings where people are, especially for *pro se* litigants." But on the

other side of the issue, Justice Theis wonders if the lack of formality that accompanies many remote hearings means that the lack of civility happens more often. The concern she expresses is whether judges can deal with civility or professionalism issues as effectively in a remote hearing as during a face-to-face hearing in the courtroom.

Court Administration.

There are a lot of administrative issues that face the chief justice "of this huge system" that is the Illinois judiciary. In her 39+ years as a judge (at all levels: associate, circuit, appellate, and supreme), Justice Theis told me: "I enjoy policy work, where people come together to work on hard problems." The difficulty, as Justice Theis described it, is that looking at one issue often leads to several others that are related and equally vexing. As an example, she recalled a recent discussion among the justices about how best to make a record on appeal in this era of remote hearings. That led to a discussion on the availability of court reporters, electronic recording of the proceedings and how to make the system work among the numerous circuits with differing levels of resources to implement them. It was an ongoing discussion, she said, that resulted in the director of information technology attending one meeting to explain the difficulties and costs of wiring the various court houses across Illinois for computer access and wi-fi.

Another issue with various sub-issues is implementing the pretrial reform statute and elimination of cash bail issues that take effect January 1, 2023. The supreme court has had a task force developing plans and recommendations. The statute "requires significant change in how the courthouses run." The General Assembly is said to be considering some modifications to the law before it takes full effect. Whether any changes are enacted, Justice Theis told me

the Illinois court system will be ready to comply. As she put it: “Failure is not an option.”

With all of these administrative details and her plans for the future, Justice This is looking forward to working with new colleagues on the Supreme Court. Justice Lisa Holder White joined the court in July. Justice Joy Cunningham will join the court

in December. Also, they will be working with a new justice from the second district who will be elected next month and join the court on December 5, 2022. ■

1. John Lupton, director of the Illinois Supreme Court Historic Preservation Commission, explains in a companion article these different numbers and the history of the selection process.

Probate Challenges Extend Beyond the Pond

BY JUDGE MICHAEL CHMIEL

Probate is often too complicated, or so suggests Justice Mariusz Załucki of the Supreme Court of the Republic of Poland. Justice Załucki lectured on “The Challenges of Present Will Formalities” in the Chicago courtroom of the Supreme Court of Illinois on September 7, 2022. Chief Justice Anne Burke welcomed Justice Załucki with opening remarks and was joined by her colleagues in the courtroom and remotely. A full courtroom of seventy gathered to hear the lecture in person, and with several others participating therein remotely.

Justice Załucki argues the intentions of individuals should be respected in transferring property. In his 2021 book, *Wills Formalities versus Testator’s Intention: Functional model of effective testation for informal wills*, Justice Załucki further expands his contentions with focus on the many formalities, which are required by statutes. As a law professor specializing in civil and comparative law, with extensive knowledge of the Polish, European Union, and other (including American) legal systems, he also advocates for reform in the handling of probate cases to effectively help testators effectuate their desires.

The lecture served as the first part of a fuller program, which concluded with a panel discussion on the lecture. The program served the initial educational adventure of the Illinois Supreme Court Commission on

Elder Law, which was constituted earlier in the year as the court’s attempt to address emerging elder law issues in Illinois. The chair of the Commission, Attorney Kerry Peck, championed the program, and as a panelist, supported the need for will formalities to protect against unscrupulous actors. The panel discussion was moderated by Judge Mike Chmiel, and included Judges Ken Wright, who applauded the premise of the lecture but also saw the need for reform, Judge Dan Malone, who heads the Probate Division in Cook County and witnesses probate litigation firsthand, and Attorney Agnes Ptasznik, who recognizes the challenges of different systems requiring different formal requirements to be complied with, and referred to Polish law not recognizing trusts as a prime example of challenges faced in cross-border succession cases.

Dr. (and Attorney) Justyna Regan inspired the program with knowledge of the visit of Justice Załucki, following previous collaborations with him. The program and a luncheon were underwritten by Miller Canfield, Peck Ritchey, and Chuhak & Tecson; the program was co-sponsored by the Advocates Society, International Network of Boutique and Independent Law Firms, Illinois Judges Association, Illinois State Bar Association, and Chicago Bar Association.

Prior to the program, in his conference

room at the Daley Center, Chief Judge Timothy Evans of Cook County greeted Justice Załucki and his wife, Beata Stępień-Załucka, who is professor of constitutional law in Poland. Chief Judge Evans and several judges of Polish heritage from the state of Illinois discussed various challenges facing our legal systems, but also heard about what is happening in Poland with the immigration of millions from the Ukraine. ■

Judge Mike Chmiel is the presiding judge of the Civil Division of the Twenty-Second Judicial Circuit of the State of Illinois, a past chair of the Bench and Bar Section Council, and continuing legal education coordinator for the section council.

Chronological List of Chief Justices

1. Joseph Philips, 1818-1822
1818 Constitution
2. Thomas Reynolds, 1822-1825
3. William Wilson, 1825-1848
4. Samuel H. Treat, 1848-1855
1848 Constitution
5. Walter B. Scates, 1855-1857
6. John D. Caton, 1857-1864
7. Pinkney H. Walker, 1864-1867
8. Sidney Breese, 1867-1870
9. Charles B. Lawrence, 1870-1873
1870 Constitution
10. Sidney Breese, 1873-1874
11. Pinkney H. Walker, 1874-1875
12. John M. Scott, 1875-1876
13. Benjamin R. Sheldon, 1876-1877
14. John Scholfield, 1877-1878
15. Alfred M. Craig, 1878-1879
16. Pinkney H. Walker, 1879-1880
17. T. Lyle Dickey, 1880-1881
18. Alfred M. Craig, 1881-1882
19. John M. Scott, 1882-1883
20. Benjamin R. Sheldon, 1883-1884
21. John Scholfield, 1884-1885
22. John H. Mulkey, 1885-1886
23. John M. Scott, 1886-1887
24. Benjamin R. Sheldon, 1887-1888
25. Alfred M. Craig, 1888-1889
26. Simeon P. Shope, 1889-1890
27. John M. Scholfield, 1890-1891
28. Benjamin D. Magruder, 1891-1892
29. Joseph M. Bailey, 1892-1893
30. David J. Baker, 1893-1894
31. Jacob W. Wilkin, 1894-1895
32. Alfred M. Craig, 1895-1896
33. Benjamin D. Magruder, 1896-1897
34. Jesse J. Phillips, 1897-1898
35. Joseph N. Carter, 1898-1899
36. James H. Cartwright, 1899-1900
37. Carrol C. Boggs, 1900-1901
38. Jacob W. Wilkin, 1901-1902
39. Benjamin D. Magruder, 1902-1903
40. John P. Hand, 1903-1904
41. James B. Ricks, 1904-1905
42. James H. Cartwright, 1905-1906
43. Guy C. Scott, 1906-1907
44. John P. Hand, 1907-1908
45. James H. Cartwright, 1908-1909
46. William M. Farmer, 1909-1910
47. Alonzo K. Vickers, 1910-1911
48. Orrin Carter, 1911-1912
49. Frank K. Dunn, 1912-1913
50. George A. Cooke, 1913-1914
51. James H. Cartwright, 1914-1915
52. William M. Farmer, 1915-1916
53. Charles C. Craig, 1916-1917
54. Orrin Carter, 1917-1918
55. Warren Duncan, 1918-1919
56. Frank K. Dunn, 1919-1920
57. James H. Cartwright, 1920-1921
58. Clyde E. Stone, 1921-1922
59. Floyd E. Thompson, 1922-1923
60. William M. Farmer, 1923-1924
61. Orrin Carter, 1924-1925
62. Frank K. Dunn, 1925-1926
63. Clyde E. Stone, 1926-1927
64. Oscar E. Heard, 1927-1928
65. Frederic R. DeYoung, 1928-1929
66. William M. Farmer, 1929-1930
67. Frank K. Dunn, 1930-1931
68. Clyde E. Stone, 1931-1932
69. Oscar E. Heard, 1932-1933
70. Warren H. Orr, 1933-1934
71. Norman L. Jones, 1934-1935
72. Clyde E. Stone, 1935-1936
73. Lott R. Herrick, 1936-1937
74. Paul Farthing, 1937-1938
75. Elwyn R. Shaw, 1938-1939
76. Francis S. Wilson, 1939-1940
77. Norman L. Jones, 1940
78. Walter T. Gunn, 1940-1941
79. Loren E. Murphy, 1941-1942
80. Clyde E. Stone, 1942-1943
81. June C. Smith, 1943-1944
82. William J. Fulton, 1944-1945
83. Charles H. Thompson, 1945-1946
84. Walter T. Gunn, 1946-1947
85. Loren E. Murphy, 1947-1948
86. William J. Fulton, 1948-1949
87. Charles H. Thompson, 1949-1950
88. Jesse L. Simpson, 1950-1951
89. Joseph E. Daily, 1951-1952
90. Albert M. Compton, 1952-1953
91. Walter V. Schaefer, 1953-1954
92. George W. Bristow, 1954-1955
93. Harry B. Hershey, 1955-1956
94. Ray I. Klingbiel, 1956-1957
95. Charles H. Davis, 1957-1958
96. Joseph E. Daily, 1958-1959
97. Byron O. House, 1959-1960
98. Walter V. Schaefer, 1960-1961
99. George W. Bristow, 1961
100. Harry B. Hershey, 1961-1962
101. Roy J. Solfisburg Jr., 1962-1963
102. Ray I. Klingbiel, 1963-1966
1964 Judicial Article
103. Roy J. Solfisburg Jr., 1966-1969
104. Robert C. Underwood, 1969-1975
1970 Constitution
105. Daniel P. Ward, 1976-1978
106. Joseph H. Goldenhersch, 1979-1981
107. Howard C. Ryan, 1982-1984
108. William G. Clark, 1985-1987
109. Thomas J. Moran, 1988-1990
110. Benjamin K. Miller, 1991-1993
111. Michael A. Bilandic, 1994-1996
112. James D. Heiple, 1997
113. Charles E. Freeman, 1997-1999
114. Moses W. Harrison II, 2000-2002
115. Mary Ann G. McMorrow, 2002-2005
116. Robert R. Thomas, 2005-2008
117. Thomas R. Fitzgerald, 2008-2010
118. Thomas L. Kilbride, 2010-2013
119. Rita B. Garman, 2013-2016
120. Lloyd A. Karmeier, 2016-2019
121. Anne M. Burke, 2019-2022
122. Mary Jane Theis, 2022-■

Attorney Sanctioned Over Emails to Judge and Others; First Amendment Defense Fails

BY PAMELA SAKOWICZ MENAKER

An Illinois action before the Attorney Registration and Disciplinary Commission (ARDC) pits an attorney's First Amendment rights against allowable speech in emails commenting on a judge and her actions in a pending case.

In re Matter of Nejla K. Lane, ARDC No. 6290003 (filed Nov. 4, 2021) (Commission No. 2019PR00074), dealt with a lawyer alleged to have made "false or reckless statements impugning the judge's integrity" via email. *Id.* at 1.

Respondent Lane represented Barry Epstein in a divorce proceeding in state court who then alleged Epstein's wife Paula and her lawyer violated federal wiretapping laws by accessing his private emails without his authorization. Magistrate Judge Sheila Finnegan of the U.S. District Court of the Northern District of Illinois supervised discovery in the federal proceeding and maintained an email account known as the "proposed order account" that allowed litigants to electronically submit proposed orders and to address certain scheduling issues.

During litigation, attorney Lane, licensed to practice in Illinois, Texas, and Michigan, wrote several emails to the judge, her clerk and other parties that contained false and reckless statements attacking the judge's integrity and qualifications, which were intended to disrupt the court proceedings, and which prejudiced the administration of justice in violation of the Illinois Rules of Professional Conduct, specifically Rules 3.5(d), 8.2(a) and 8.4(d). *Id.* at 1. These inappropriate emails started on April 18, 2017, after Judge Finnegan denied Lane's emergency motion for an extension of time to take the deposition of the opposing counsel, Jay Frank, in the state court divorce proceedings.

It is important to repeat some of the email content to understand the severity of the language. The attorney's email response to

the judge's order was:

"Today in court, no matter what I said to you, you had already made up your mind, and even questioned my sincerity with regard to my preparation for upcoming trial ...

"...since the beginning, you never seem to doubt anything he says, as you appear to doubt me. Still, I stated to you in open court that 'I don't want to be hated' for doing my job, but it sure seems that way, as I never got a break. ...

"...It's not fair that my client (and I) is [sic] being treated badly for suing his wife/ex wife, and everyone is protecting Paula – why? Since when does 'two' wrongs make a 'right'? [sic]. How am I to prove my case if I am not given a fair chance to do my work, properly?" *Id.* at 4.

Judge Finnegan instructed Respondent Lane the next day that "the parties were not to use the proposed order to argue the merits of the motion, share their feelings about a ruling, or talk generally about the case with her. She told Respondent her email was improper and directed her not to send any such emails in the future." *Id.* at 4. Respondent Lane acknowledged she understood the judge's instructions.

Nonetheless, on June 23, 2017, Respondent Lane sent a second email to various parties commenting on the proposed order that stated in part:

"I'm very upset, I do not agree with Judge Finnegan's order and I will depose the former co-defendant, Jay Frank, despite the fact that this court is protecting him and his co-conspirer! Scott Schaefer's [defense counsel in federal case] had no standing to challenge my subpoena to depose Jay Frank! I'm entitled to depose him! And I will call him to testify [sic] at trial to show the world what a corrupt lawyer he is! And the judges who protect this criminal to escape punishment by forcing to shorten all deadlines!!!

"This Judge is violating my client's rights

first by the truncated discovery deadlines and now helping Plaintiff to escape punishment for wrongs she committed!

"I'm outraged by the miscarriage of justice and judges are in this to delay and deny justice for my client!

"I'm sickened by this Order!!!" *Id.* at 4-5.

Respondent Lane sent yet another email on June 26, 2017, that commented on the Judge's Order and stated in part:

"Plaintiff's motion is not late just because this court decided not to extend discovery deadlines, to protect the Defendant! I have asked this court numerous times for an extension of all cutoff deadlines, without avail. Take this into account when drafting your flawed order. ...

"For anyone to insult me in this degree calls question [sic] this court's sincerity and veracity....

"The more I read this order, again and again, I am sick to my stomach, and I get filled with anger and disgust over this 'fraudulent' order by this court? ..." *Id.* at 5. The next day, the Court entered an order admonishing Respondent for violating her directives and making highly inappropriate statements and asked her to immediately stop all email communication with her and her staff.

After the underlying dispute ended, Judge Finnegan brought a complaint about Respondent's conduct to the Executive Committee of the United States District Court for the Northern District of Illinois. Upon review, the Executive Committee decided to suspend Respondent from the federal general bar for six months and from the trial bar for 12 months. The Executive Committee found that Respondent used "unprofessional, inappropriate, and threatening language" in her emails. *Id.* at 6. To be reinstated, the Executive Committee also found that Respondent was required to obtain professional anger management assistance. Subsequently, Respondent was

reinstated to the general bar and the trial bar.

The ARDC administrator subsequently filed a complaint against the attorney Respondent stating that the Executive Committee's decision was separate from her conduct under state rules, and she still was subject to ARDC proceedings. In a 17-page Report and Recommendation, the Hearing Board reported that Respondent's statements "not only expressly questioned Judge Finnegan's 'sincerity and veracity' but accused her of protecting and assisting criminal conduct, participating in improper *ex parte* communications with attorney Schaefer, and entering a 'fraudulent' order." *Id.* at 7. These statements unquestionably crossed the line from expressing disagreement with rulings to making unsubstantiated accusations that maligned Judge Finnegan's honesty." *Id.* The Hearing Board found no reasonable basis for believing that any of Respondent's statements were true.

A nine-month period of suspension with the suspension stayed after six months to be followed by a six-month period of probation was recommended by the Hearing Board in November 2021.

The ARDC Review Board then heard the matter, reaffirming the Hearing Board's decision. *In the Matter of Nejla K. Lane*, Commission No. 2019PR00074, decided July 2022, at 26. The Review Board also took issue with Respondent's only expressing remorse "to some extent," but "Respondent has not fully accepted responsibility, nor wholly recognized the wrongfulness of her misconduct." *Id.* at 21. The Review Board pointed out Lane's half-hearted apologies including during the ARDC proceedings "calling one of the Administrator's questions 'so stupid' and accused others of criminal conduct in attempting to justify her own wrongful behavior." *Id.* at 12.

Instead, Respondent presented numerous reasons for her conduct, portraying herself as the victim, including stress, her client's abusive behavior, a dispute with a former law partner, and English not being her native language. She also contended that the second and third emails were addressed to the judge's clerk

and, therefore, didn't violate the court's order.

As the Hearing Board noted here, "[A]ttorneys may express disagreement with a judge's rulings but, as officers of the court, have a duty to protect the integrity of the courts and the legal profession." *In re Matter of Nejla K. Lane*, *supra*, at 7, citing *In re Walker*, 2014PR00132, M.R. 28453 (March 20, 2017) (Hearing Board at 21). "Subjective belief, suspicion, speculation, or conjecture does not constitute a reasonable belief." *Id.* at 8. Consequently, Rule 8.2(a) prohibits an attorney from making a statement concerning the qualifications or integrity of a judge that she knows to be false or with reckless disregard as to its truth or falsity. Ill. R. Prof. Conduct 8.2(a).

It is difficult to discern sometimes when opinions rise to the level of lies. The First Amendment protects opinions, but it does not protect defamatory speech. Respondent disputed that she knowingly or recklessly made false statements, but the Hearing Board and Review Board found she had no objective, factual basis for her comments. In fact, they held that Respondent's "misconduct was very serious" that rose to the level of "unfounded attacks on the judiciary [that] have the potential to damage the reputation of the judge involved and to undermine confidence in the integrity of the entire judicial process." *Id.* at 20, quoting the Hearing Board at 11. This attorney voiced a subjective belief about misconduct, thereby crossing the line from appropriate criticism or disagreement to impugning the integrity or motivation of a judge without any justification or proof.

The issue also was decided *de novo* by the Review Board that "Respondent's knowing and reckless falsehoods are not protected by the First Amendment." It was raised whether making the statements in *ex parte* emails rather than in a pleading or court document made a difference, particularly when referring to a judge's integrity and qualifications. The Review Board found that the fact that such statements were made in emails made no difference. "These statements unquestionably crossed the line from expressing disagreement with rulings

to making unsubstantiated accusations that maligned Judge Finnegan's honesty." This was found to be a violation of Rule 8.2(a). *In the Matter of Nejla K. Lane*, (Commission No. 6290003), *supra*, 2019PR00074, *supra* at 7.

The Hearing Board found that "The purpose of the disciplinary process is not to punish attorneys, but to protect the public, maintain the integrity of the legal profession, and safeguard the administration of justice from reproach." *Id.* at 10, citing *In re Edmonds*, 2014IL117696, ¶90.) The Hearing Board went on to say, "The Supreme Court has made clear that unfounded attacks on the judiciary have the potential to damage the reputation of the judge involved and to undermine confidence in the integrity of the entire judicial process." *Id.* at 11. That really is the crux of this action.

The matter will go before the Illinois Supreme Court for final disposition. At this writing, it is not on the Court's docket. ■

Recent Appointments and Retirements

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

- Gary A. Dobbs, 13th Circuit, August 2, 2022
- Todd L. Martin, 13th Circuit, August 2, 2022
- Geno J. Caffarini, 13th Circuit, August 15, 2022
- Hon. Julio Valdez, 16th Circuit, 2nd Subcircuit, August 16, 2022
- Bryan M. Kibler, 4th Circuit, August 22, 2022
- Hon. Suzanne C. Mangiamale, 22nd Circuit, August 22, 2022
- Hon. Neil H. Cohen, Cook County Circuit, September 8, 2022
- Arlene Y. Coleman Romeo, Cook County Circuit, September 16, 2022
- Donald W. Knapp, Jr., 11th Circuit, September 16, 2022
- Stewart J. Umholtz, 10th Circuit, September 19, 2022

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

- Hon. Lance R. Peterson, 3rd Dist. August 1, 2022
- Hon. George Bridges, retired Judge Recalled, 4th Dist. August 29, 2022

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

- Jill K. Konen, 23rd Circuit, August 15, 2022
- Carlo Colosimo, 23rd Circuit, August 19, 2022
- Anthony Peska, 15th Circuit, September 1, 2022

4. The following judges have retired:

- Hon. Marc Barnabei, 13th Circuit, August 2, 2022
- Hon. John A. Noverini, 16th Circuit, 2nd Subcircuit, August 15, 2022
- Hon. Edward A. Burmilla, jr., Associate Judge, 12th Circuit, August 31, 2022
- Hon. Thomas E. Little, 6th Circuit, August 31, 2022
- Hon. Edward Harmening, Cook

County Circuit, 3rd Subcircuit, September 11, 2022

- Hon. Grace G. Dickler, Cook County Circuit, 12th Subcircuit, September 25, 2022
- Hon. LaGuina Clay-Herron, Associate Judge, Cook County Circuit, September 30, 2022
- Hon. Nancy S. Fahey, 5th Circuit, September 30, 2022
- Hon. Mitchell L. Hoffman, 19th Circuit 4th Subcircuit, September 30, 2022
- Hon. Daniel J. Pierce, Cook County Circuit, 14th Subcircuit, assigned to 1st Dist. Appellate Court, September 30, 2022
- Hon. Carolyn Quinn, Associate judge, Cook County Circuit, September 30, 2022

5. The following judges have deceased:

- Hon. William Parkhurst, 16th Circuit, August 26, 2022 ■