ILLINOIS STATE BAR ASSOCIATION

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Diversity Matters

The newsletter of the Illinois State Bar Association's Diversity Leadership Council

The Future Will Be One of Inclusion

BY KHARA COLEMAN

On May 23, 2022, the ISBA presented its DEI Update[1] for ISBA members. Later in the week, a copy of the report was made available on the ISBA website.[2] Your DLC Chair Bianca Brown and I encourage every member to watch the recording of this update, and to review the report prepared by the ISBA's consultants, Richard D. Harvey, Ph.D. of Saint Louis University and Professor Kimberly Norwood of Washington University in St. Louis School of Law.

I applaud all efforts of the ISBA to take seriously issues of diversity, equity, and inclusion in the profession and within

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It's a Sign of the Times

BY SANDRA M. BLAKE

While many lament the snail's pace of societal change, I submit that the speed of change, like beauty, is in the eye of the beholder. In the November 2021 issue, *Diversity Matters* published "It's a Sign of the Times" for the first time. I intend to continue that theme in this and future issues to celebrate advances in diversity and inclusion.

When Justice Stephen Breyer announced his retirement, President Joe Biden promised the appointment of an African American woman to take his seat. On February 25, 2022, he nominated Judge Ketanji Brown Jackson as the 116th associate justice of the US Supreme Court. According to a White House press release, President Biden sought a candidate with exceptional credentials, unimpeachable character, and unwavering dedication to the rule of law. He sought an individual who is committed to equal justice under the law and who understands the profound impact that the Supreme Court's decisions have on the lives of the American people. That person is Justice Ketanji Brown Jackson, who is reputed to be one of our nation's brightest legal minds and has an unusual breadth of experience in our legal system, giving her the perspective to be an exceptional Justice. A bipartisan group of senators confirmed her nomination on April 7, 2022.

Judge John Z. Lee of the U.S. District Court for the Northern District of

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The Future Will Be One of Inclusion

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our organization. It is always of great relief to see an organization pay more than lip service to diversity and equity issues.

However, I write this article to acknowledge the import of this particular report on the future of the DLC. While the DLC was not directly involved in the ISBA's present DEI study and initiative, it does affect the DLC in ways that the DLC did not anticipate. As a DLC leader, I have questions and anticipate that you may have questions as well.

As to the diversity work of the DLC, the report states, "**With respect to DEI, there is no person primarily in charge. There is a DEI committee, but it is not currently functioning. As constituted, the committee does not appear to have a particular structure or set role.**"[3]

The presentation on May 23 made explicit that the DEI committee to which the consultants referred is, in fact, the Diversity Leadership Council.

Among others, the findings of the report were as follows:[4]

- "Acquire a DEI leader with authority at the executive level who is knowledgeable about and committed to DEI."
- "Reconstitute a DEI committee with a clear decision-making role and structure around the bridging functions of the GDEIB (i.e., communication, DEI metric/tracking, training and development)."

As DLC secretary and incoming vice-chair, I was beyond surprised to see that there might be any concern or perception within the ISBA that the DLC is not a "functioning" council or committee. (It is almost ironic, that within an ISBA DEI study, the work of the DLC appears to have been invisible.) After speaking to the current DLC chair and other constituent committee members, I confess that we are unable to explain at this time what this means, what happened in the interviews conducted by the consultants, or what will happen to the DLC. As of this week, Chair Bianca Brown and I do not know what the specific recommendations of the consultants for a reconstituted DEI committee might be.

But we believe that the DLC, through its constitution committees, has done excellent work for many, many years, and is not only *functioning*, but *thriving*. That is my message today: that YOUR work—that of the community of diverse attorneys and allies—is *not* invisible, and we hope that no one is discouraged by these messages and findings. We are working to get clarification on the future of the DLC, and to understand how the DEI recommendations will impact the operation of the DLC during the coming bar year.

Regardless of what happens to the DLC as currently constituted, there is work to be done, because the only feasible and prosperous future is one of inclusion. We look forward to working together with all of our allies within the ISBA towards a more equitable and inclusive profession.■

1. https://youtu.be/smVc_H31wrI.
2, https://www.isba.org/barnews/2022/05/isbareleases-deiassessment.
3. Assessment Report, Diversity, Equity, and Inclusion Needs at Illinois State Bar Association, at 3. https://www.isba.org/barnews/2022/05/isbareleasesdeiassessment.
4.Assessment Report, Diversity, Equity, and Inclusion Needs at Illinois State Bar Association, at 7, 10.

Diversity Matters

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It's a Sign of the Times

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Illinois has been nominated by the Biden administration to the 7th Circuit Court of Appeals. If confirmed, he will be the first Asian American judge to serve on that bench.

More recently, trailblazing Justice Rita B. Garman has announced her retirement from the Illinois Supreme Court effective July 7, 2022. Exercising its constitutional authority to fill interim judicial vacancies, the Supreme Court appointed another trailblazing justice, Fourth District Appellate Justice Lisa Holder White, to fill Justice Garman's seat.

Times are changing in entertainment, as well. Sesame Street, the children's television show that aired some 50 years ago, has welcomed a new occupant, Ji-Young, the first Asian American muppet. She is a seven-year-old Korean American with a passion for playing her electric guitar and skateboarding.

One of the finalists on season 30 of ABC's Dancing with the Stars was Peloton instructor Cody Rigsby, who was partnered with dance pro Cheryl Burke. Throughout the season, the camera showed Rigsby's boyfriend and friends in the studio audience. The judges called his final freestyle dance "flamboyant," noting that Cody's performance was "out, loud and proud." Another finalist, pop star and TV personality JoJo Siwa, made history with her dance partner, Jenna Johnson, competing throughout the season as the first same-sex couple.

Season 21 of NBC's The Voice feature the father-son duo of Jim and Sacha Allen, who made it into the show's Top 8. Sasha, who transitioned when he was in high school, revealed that he was transgender during their package for the blind auditions.

In the November 2021 issue of Diversity Matters, we noted the changes that Mattel was making to Barbie, in recognition of the many complexions, sizes and abilities of the children who play with the doll. Most recently, the toy manufacturer has produced a doll in the image of transgender activist and actress Laverne Cox, of Orange is the New Black fame.

Most of the change taking place in athletics seems to be in the advancement of women's issues. During the NCAA March Madness basketball tournament, a truly impactful ad was shown. The television screen was completely black, and there was the sound of cheering and an excited announcer's voice. White lettering in all caps began to appear on the screen: "ON MARCH 20, 2015, MISSY FRANKLIN SWAM ONE OF THE GREATEST RACES IN NCAA HISTORY, BUT YOU PROBABLY DIDN'T SEE IT. OVER 40% OF ATHLETES ARE WOMEN, BUT THEY GET LESS THAN 10% OF THE MEDIA COVERAGE, BUICK IS COMMITTED TO RAISING THAT PERCENTAGE. BUICK, PROUD PARTNER OF NCAA #SEE HER GREATNESS."

Rachel Balkovec had already made history in November 2019, when she became the New York Yankees' hitting coach, the first woman to hold such a position full-time. She made history again this year when the Yankees announced that she would manage the Low-A Tampa Tarpons in 2022, making her the first woman to manage in affiliated baseball.

Perhaps most significant, just weeks ago, the U.S. Women's Soccer team achieved something that many thought was unattainable—equal pay with their male counterparts. In landmark contracts with the U.S. Soccer Federation, players representing the United States men's and women's national soccer teams will receive the same pay when competing in international matches and competitions. The deals also include a provision, believed to be the first of its kind, through which the teams will pool the unequal prize money payments U.S. Soccer receives from FIFA, world soccer's governing body, for their participation in the quadrennial World Cup. Starting with the 2022 men's tournament and the 2023 Women's World Cup, that money will be shared equally among the members of both teams.■

Legal Issues Impacting Communities of Color

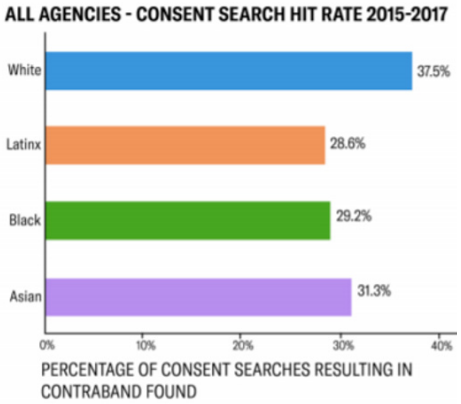
BY JUDITH MILLER, ESQ. & TEMPIA COURTS, ESQ.

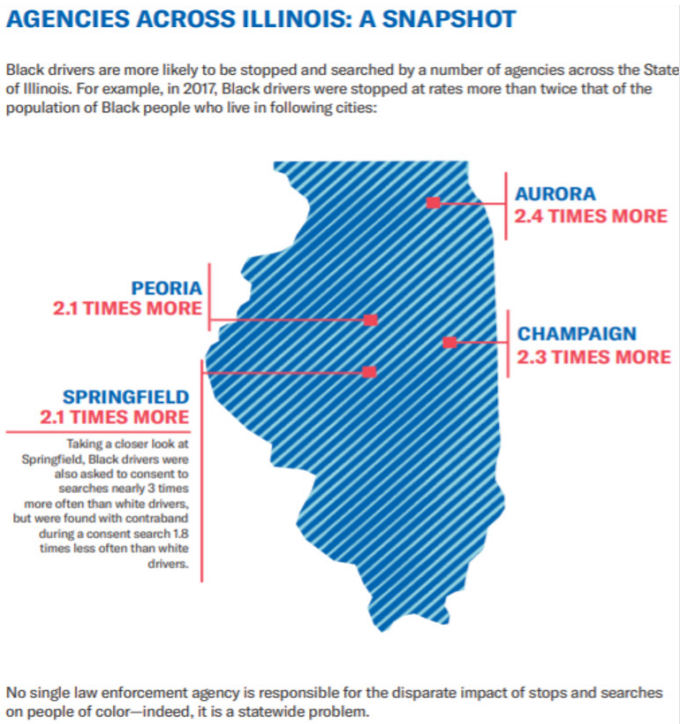
As we consider some of the legal issues that impact communities of color, we assert that although this exploration is not about criminal records, it is inherently about criminal records. We further assert that while this topic is not directly about a lack of resources for communities of color, that is what it is all about.

This article does not cover all legal issues that impact communities of color. Issues around housing and expungement, for example, will not be covered here. This article is an examination of traffic violations and consumer debt, and the challenges of post-prison reentry.

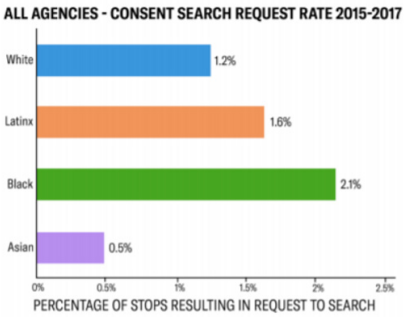
Starting with traffic violations, people of color are disproportionately stopped for traffic violations and burdened with debt resulting from fines and fees. Research data from 2017 shows that minority drivers were stopped approximately 1.5 times more often than White drivers.[1]

Breaking down that stop-rate statistic further, African American and Latinx drivers were searched at significantly higher rates than White drivers. Searches on a traffic stop were conducted approximately 1.8 times more often when the driver was African American than White. When the driver was Latinx, searches were conducted approximately 1.4 times more often.[2]





The disparity continues when looking at which drivers were asked to consent to a search. Again, African Americans faced a near doubling of the rate of their White neighbors, and Latinx were also more likely than their White counterparts to get a request for a search. Notably, the higher search rates did not result in discoveries of contraband (e.g., drugs). In fact, those searches were less likely to yield contraband.[3]



We frame the issue of traffic stops and searches as a consumer debt issue because a higher rate of traffic stops naturally results in the assessment of more fines and fees for people of color. These assessments can snowball quickly for those who are already living on the financial edge. The doubling of unpaid fines has severe ramifications, including bankruptcy, within low-income communities. This financial burden can spill into systemic barriers, considering that some states require payment of fines and fees as a prerequisite to restoration of voting rights after criminal conviction.[4]

Mounting unpaid fines can push people into the payday loan office where exorbitant interest rates create a consumer debt loop that leads to a downward financial spiral. Illinois Attorney General Kwame Raoul states it plainly: "If you're struggling to make ends meet, chances are you'll be even worse off if you take out a payday loan."[5]

A payday loan, by definition, is a short-term loan (e.g., two weeks or less) subject to high interest rates using a borrower's post-dated check (or electronic access to a borrower's bank account) as the only form of collateral. In the cycle of financial strain, a payday loan disproportionately impacts people of color who often do not have assets to offer as collateral. It is no wonder, then, that payday loan "stores" are heavily

concentrated in African American and Latinx neighborhoods.[6]

In some areas of the country, African American neighborhoods have three times as many such stores per capita as White neighborhoods. The stores are more than twice as concentrated in African American and Latinx communities.[7]

Payday lenders, often called "predatory lenders," charge interest rates exceeding 400% in many states. Illinois lawmakers decided recently to push back against such high rates. With nearly unanimous bipartisan support, Illinois lawmakers passed Senate Bill 1792, the Predatory Loan Prevention Act (PLPA) to cap interest rates on consumer loans, including payday loans. On March 23, 2021, Illinois Governor J.B. Pritzker signed the bill into law, making PLPA effective immediately, *See* 815 ILCS 123 *et seq*. The cap was set at 36% annual percentage rate (APR) and fell in lockstep with 17 other states and the District of Columbia.[8]

While traffic stops and payday loans are abundant within communities of color, the resources needed for re-entry from prison into community life are sparse. According to the Illinois Criminal Justice Information Authority, "People of color returning to underserved communities that have been disproportionately impacted by mass incarceration are particularly impacted by the challenges of reentry."[9] These challenges plague the formerly incarcerated in ways that circle back to prison. The U.S. Department of Justice reports that more than 10,000 ex-prisoners are released from state and federal prisons every week, and over 650,000 released from prison every year, approximately two-thirds of which "will likely be rearrested within three years of release."[10]

Recidivism is costly. It is not only costly to the individual going back to prison – in terms of lost freedom, lost opportunities, and lost community ties – but it is costly for the victims of crimes committed by post-prison parties. In addition, it is enormously costly for the state and local community. It is estimated that during the five-year period ending 2023, recidivism will cost the state of Illinois more than $13 billion.[11]

xThe Illinois Criminal Justice Information Authority has identified 13 key needs of formerly incarcerated persons. These needs include the expected employment, housing, food, transportation, and social support. In addition, these needs include the satisfaction of legal debts (e.g., court fines and fees) and the availability of legal assistance (e.g., expungement, child custody, support).[12] Without appropriate intervention and support services, including job training, a vicious cycle continues: leave prison, return to crime, return to prison – repeat.

Reentry programs are designed to provide critical support services to help formerly incarcerated persons successfully "reenter" their communities and society at large. The lack of successful reentry programs continues the debilitating cycle of low-wage earners. It limits access to stable housing, educational opportunities, and quality healthcare. Moreover, it drives the need for costly short-term fixes (e.g., payday loans) that drain resources from vulnerable communities.

As asserted at the beginning of this article, the legal issues that impact communities of color are not solely about criminal records and lack of resources. Nonetheless, these two factors play into all the issues.

Administer Justice is one of the resources available in Kane County for those seeking help with the type of civil legal issues that impact under-resourced individuals. Administer Justice builds teams of volunteers who serve one morning a month at one of several locations across the county. These teams are comprised of at least one attorney. This attorney is supported by a collection of non-attorneys who provide holistic wrap-around services for the client. The goal is to empower vulnerable individuals by providing a legal consult that lays out a clear path forward.

Post-appointment surveys from those who received legal consult from a volunteer attorney reveal the gratitude of those who are able to access legal services that are otherwise cost-prohibitive. In the words of an Administer Justice client: "I had a lot of anxiety from unanswered questions and being able to get some perspective in a low-pressure, low-cost environment was very reassuring."

Access to legal services and the advice of counsel – even if limited in time and scope – can be the difference between getting stuck in a vicious cycle of legal tangles or breaking free of it. If you are interested in finding out more, visit https://explore.administerjustice.org/ or contact Judy Miller at jmiller@adminsiterjustice.org.■

This article was previously published in the Kane County Bar Association's Bar Briefs, *January/February 2022.*

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Tempia Courts is a partner with the law firm of Pluymert, MacDonald, Hargrove & Lee, Ltd. A graduate of the University of Illinois College of Law, she concentrates her practice in the areas of business and corporate law and not-for-profit law. She currently serves on the governing board of Administer Justice and volunteers monthly in a virtual legal clinic offering pro bono services.

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Delving Into the Law Office's Closet for LGBTQ-Affirming Knowledge: Coming Out—What It Means and Why It Matters

BY RYAN R. LEE

Over the past few years, the collective celebrity closet has been becoming more and more vacant as headlines about celebrities "coming out" have become more mainstream. In December 2020, Elliot Page, the actor known for such roles as Juno MacGuff in 2007's *Juno* and Vanya Hargreeves /The White Violin /Number Seven /Viktor Hargreeves in the ongoing Netflix series *The Umbrella Academy* came out as a transgender man.[1] Then, in January 2021, JoJo Siwa, an actress, singer, dancer, influencer, and YouTube personality, came out as queer.[2] A few months later, Demi Lovato, a singer, songwriter, and actor, followed up on their earlier coming-out as non-binary by confirming that they are also pansexual.[3] All three are globally known stars, and as such, their coming out invariably led to many conversations around the phenomenon known as "coming out." Pride rainbows have even been infiltrating the heretofore incredibly cisgender and straight sports community via recently out athletes like Las Vegas Raider's defensive end Carl Nassib, who announced in June 2021 that he is gay.[4] In the ensuing days and weeks after such events, it is common to have many conversations with co-workers and family members about the process—why is it such a big deal? Why is it even necessary in 2022? What does it all mean? As members of a profession that should strive to be as inclusive and validating to everyone as possible, it is imperative that attorneys and others in the law community understand this phenomenon and how best to deal with and celebrate it.

Before delving into the importance of coming out, and what law professionals should know about it, establishing some foundational terms will facilitate more fluid discussion. First, it is imperative to note the difference between "sex" and "gender"—stated simply, "sex" refers to a person's body, and "gender" refers to how a person utilizes socioculturally-defined identifiers to perform a particular—or lack of— body sex. "Man" and "woman" are the most common sex terms, and "male," "female," and "nonbinary" are the most common gender terms. Relatedly, but not intrinsically so, is "sexual/romantic orientation," which simply means to what sex/gender a person is romantically and/or sexually attracted. Some common terms related to these are "homosexual," "lesbian," "gay," etc. Finally, "queer" can mean any identity that falls outside of the cisheteronormative culture in which a person finds themselves. This is all, of course, a general oversimplification; for a more in-depth discussion of these terms, I would encourage you to reference my piece in the November 2021 Illinois State Bar Association *Diversity Matters* newsletter.[5]

Now that we have the terminology down, it should be easier to conceptualize what "coming out" means. While "coming out" can mean different things to different people, it is ultimately the act of making an aspect of one's life, self, or identity—whether about their sex, gender identity, sexual orientation, etcetera— known to someone who previously did not know that detail about that person.[6] One can come out to another in many ways. It can be relatively innocuous—for example, telling someone that you prefer pronouns other than those which might

be suggested by your apparent gender. An apparently male coworker could come out to you by telling you that they prefer they/them/their pronouns instead of he/him/his pronouns. Or, one can come out in relatively larger ways, such as by revealing that you are not, in fact, cisgender or heterosexual. Any of these comings out can be very easy, or very difficult, depending on the individual and the environment into which they are coming out. However, the only person who gets to determine if it is the right time, or the wrong time, is the person doing the coming out.[7] Some people come out when they are children, and some don't come out until they are adults. Some people come out multiple times (like Demi Lovato, who came out first as nonbinary, then later as pansexual; or Gigi Gorgeous Lazzarato, who came out first as gay, then as transgender, then gay again, and then pansexual).[8] No matter what, there is no "wrong" time for a person to come out.

A person may choose *not* to be out for a multitude of reasons. They simply might not feel safe doing so—a study by GLSEN (formerly known as the Gay, Lesbian and Straight Education Network) indicated that four out of five students who identified as LGBTQ faced frequent bullying due to their identity, and it is not uncommon for a person to be harassed, or even outright killed, for their sexual orientation or gender identity.[9] So, a person might stay "closeted" for their safety. Or more simply, a person might not deem it relevant for the particular social situation at hand. This can be analogous to any aspect of a person's private life—just like a person might not discuss their sex life at work, for example, they might choose to also not discuss their sexual orientation or gender identity.

For those who might not have ever had to contemplate coming out, the magnitude of the process might not be readily apparent. After all, celebrities are typically praised when they do so, and Illinois schools and workplaces are technically banned from discriminating based on sex and gender, especially under President Joe Biden's administration.[10] Technically, yes, that is true—during his first day in office, President Biden signed an executive order that was to "direct [federal] agencies to take all lawful steps to make sure that federal anti-discrimination statutes that cover sex discrimination prohibit discrimination on the basis of sexual orientation and gender identity, protecting the rights of LGBTQ+ persons";[11] and more recently, President Biden emphasized his support of the LGBTQ community by stating, "I want every member of the [LGBTQ] community [. . .] to know that you are loved and accepted just as you are. I have your back, and my Administration will continue to fight for the protections and safety you deserve."[12] Illinois has the Human Rights Act[13] in place, which makes explicit discrimination against non-heterosexual and non-cisgender employees illegal. However, the Federal Equality Act still has yet to pass,[14] and even with these laws in place, people are unlikely to be protected from all of the subtle repercussions that result from coming out. A person who is recently "out" at work might face subtle harassment from coworkers via microaggressions (that is, subtle, and sometimes unintentional, statements that bely racism, sexism, homophobia, etcetera on behalf of the speaker),[15] or even outright ostracization. And, it is important to remember that members of the LGBTQ community face much higher rates of violence and murder than their "straight" peers (some sources report that members of the LGBTQ community are four times as likely to be victims of violence), so there might be safety in remaining "in the closet."[16] LGBTQ youth are oftentimes encouraged to have a backup-plan in place in case their coming out to parents results in them getting kicked out of the home.[17] People might choose to remain "closeted" simply to uphold their safety and sanity in the workplace or at home.

On the other hand, a person might *want* to come out for any number of reasons. They might have a genuine desire for others to know their true, authentic self—if others assume they are cisgender or heterosexual, they might seek to set the record straight. Coming out and living one's truth can be a frightening, yet remarkably positive experience. For example, when coming out as transgender, Elliot Page stated that he, "can't begin to express how remarkable it feels to finally love who I am enough to pursue my authentic self;"[18] JoJo Siwa reported that she is "the happiest that I've ever been" since coming out.[19] Alternatively, a person might wish to utilize their social privileges or cultural capital (that is, a status of cultural legitimacy and thus authority within a field, conferred upon a person by society)[20] to promote visibility for the less-privileged in their cohort and advocate for positive change. That is, if they feel safe coming out and normalizing their identity, others who enjoy less privilege might feel safe coming out in the future. An example of this is when Elliot Page came out and addressed fellow trans people by saying, "I see you, I love you and I will do everything I can to change this world for the better."[21] When JoJo Siwa came out, others celebrated it for the fact that it might inspire LGBTQ children who have never had an icon to look up to finally have a pop-culture icon who identifies like they do. Finally, Carl Nassib, member of the NFL Las Vegas Raiders, stated when he came out publicly that: "I just think that representation and visibility are so important. I actually hope that, like, one day [coming out statements] like this and the whole coming-out process are just not necessary, but until then I'm going to do my best and my part to cultivate a culture that's accepting, that's compassionate."[22] For this reason, anyone who is able to come out might do so to make it easier for those in their community.

Now, with all of this in mind, people who have never thought this much about the coming-out process might be wondering how they can show acceptance and respect, if not even love, for their non-cisgender / non-heterosexual colleagues when and if someone should come out to them. The main points to keep in mind is to be supportive and respectful.[23] The person doing the coming out must truly trust and respect the person to whom they are coming out, so this is quite the privileged position in which to be.[24] Expressing your support is a good place to start, and generally, if the moment allows, asking respectful questions can be OK and can show that you genuinely want to understand the other person.[25] Try asking questions like, "What does this mean for you?" "Are there better ways that I can be

addressing you?" (Do they prefer different pronouns or an entirely different name?) "How many others know?" Questions such as these can not only help you understand the other's position better (because everyone's position within the LGBTQ spectrum is unique to them), but they also show that you respect their experience and wish to be the best possible ally for them, which includes not outing them to people who are not privy to their identity yet.[26]

Now, that being said, there are a few important "don'ts" to keep in mind—namely, never invalidate the person or their lived experience by laughing, asking confrontational questions like "are you sure?" (because if the person has done the mental work to come out to you, you can be confident that they are indeed all but certain of this aspect of their identity), or by saying, "Oh, I knew it!" or "Yeah, that makes sense" (as this basically says that you have preconceived notions of what a transgender person, gay person, etc., is—probably based on less-than-ideal stereotypes perpetuated by the media—and that the person before you fits these preconceived notions). Also, it is inappropriate and invalidating to say something like, "But you don't *look* trans (or gay, etc.)," as that suggests that a person who looks as if they are cisgender is the goal. Elliot Wake, a transgender person, described this conversation as, "[the speaker] assume[s that] if I'm trans, my ultimate goal must be to look as much like a binary cis male as possible—and that trans masculine folk who don't look like cis men have somehow failed that unstated goal."[27] Most importantly, no matter what (and this cannot be understated), it is NEVER appropriate to turn around and subsequently out that person to others without the person's permission or consent. Doing so could put their safety or job security at risk; they chose *you* and possibly *only* you, as a safe, supportive ally, to whom to come out.[28] Outing them to others that they themselves have not personally vetted is a betrayal of trust and is never OK.

All of this is to say, the coming out process can be an extraordinarily big deal, even for people without the cultural capital of Elliot Page, Carl Nassib, or JoJo Siwa. However, by keeping all of this in mind, a person can be confident that should another trust them enough to reveal this aspect of their lives to you, you will be able to take it in stride. If a person is looking to signal to those around them that they are an ally, and thus safe to come out to, they can do so in a handful of simple ways. For example, consciously using inclusive language,[29] being respectful of pronoun usage,[30] and engaging in relevant discussions in ways that signal that even if you personally are not a member of the LGBTQ community, you're still a supportive ally, can all go a long way. All of these can make people still "in the closet" feel safe and comfortable enough to let you know their true, authentic self when they decide the time is right.

There are a handful of circumstances in which this might be specifically relevant to people in the legal community. A major reason to know how to best handle an individual's coming out involves one of the biggest imperatives to law professionals—to show respect and deference to the bench. Judges who are members of the LGBTQ community are nothing new; former President Bill Clinton appointed the first openly-gay federal judge to the bench in 1994.[31] The Alliance of Illinois Judges, formed by the Lesbian and Gay Judges of the Circuit Court of Cook County, states the third part of their mission is to "promote and encourage respect and unbiased treatment for Lesbian, Gay, Bisexual, Transgender and Queer individuals as they relate to the judiciary, the legal profession and the administration of justice."[32] By being well-versed in LGBTQ issues such as the importance of being out versus not, an attorney before a member of the Alliance of Illinois Judges has already achieved that goal; and, as all attorneys know, the better one can appear in front of a judge, the better the outcome is likely to be for their client. As Cook County had one of the highest populations of out gay or lesbian judges in the country as of 2010,[33] attorneys would do well to be prepared to be in front of a judge who is either a member of, or ally to, the LGBTQ community.

Furthermore, attorneys who represent children would do well to be privy to LGBTQ issues and know how to deal with potential clients coming out. I am thinking especially of guardians *ad litem,* who might be appointed for minors in custody or divorce cases. As guardians *ad litem* have a duty to advocate for "the best interests of the child," which are informed at least partially by "the expressed wishes of the child,"[34] it is not difficult to imagine a situation in which a child's sexual orientation or gender identity might be an issue in a custody or divorce case. For example, if a ward confides in their guardian *ad litem* that they are gay, but only out to their mother and not their violently homophobic father, that should certainly influence custody and placement concerns. However, if the guardian reacts negatively to the ward confiding this information to them, it is conceivable that the ward could minimize the importance of it, and then it would not be considered when the guardian would make their report to the court—this is a prime example of how it can be imperative to know how to empathetically and appropriately react to someone coming out. This is not only important to guardians who work with older children—studies suggest that among transgender or gender non-conforming adults, "75 [percent] report that they first experience gender dysphoria by the age of seven,"[35] so any guardians *ad litem* could benefit from being prepared to work with children in the LGBTQ community.

Finally, legal issues germane to the LGBTQ community are only going to be increasing in frequency as the topic becomes less taboo and more frequently discussed. LGBTQ rights have been described as "the next major battleground in civil rights legislation;"[36] an example of this is the story of former Illinois incarcerated person Cristina Nichole Iglesias, who will be the first federal prisoner to receive gender affirmation surgery as a result of the advocacy of her Illinois American Civil Liberties Union attorney, Ed Yohnka.[37] As stories such as this become more commonplace, it is not unreasonable to expect more discussions of LGBTQ issues in the workplace, which could then conceivably lead to more people feeling comfortable coming out to their coworkers. While frequent, casual comings out are probably still some time in the future. Now

is the time for legal professionals to do their homework and be prepared for whenever that time should come.

Whether one wishes to be a more supportive ally in the workplace, appear more well-informed in front of the growing number of LGBTQ judges in Illinois, be better prepared to represent non- cisgender or heterosexual clients, or just have a better vocabulary in regards to non-traditional clients, any person in the legal field would do well to become well-informed on "coming out" and what it means. It could mean the difference between alienating a client or judge, and making that connection with them that truly shows that the counselor genuinely cares.

Finally, as this piece will be published in June, I would like to wish all fellow members of the LGBTQ community and our allies—whether out or not—a very happy, safe, and celebratory Pride.■

The author thanks Sarah R. Lee, PhD, for her contribution of resources stressing the clinical importance of recognizing and validating the identity of others—particularly minors—such as that cited in footnote 35.

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Illinois Human Rights Act Amendment Limits Use of Criminal Convictions in Employment Decisions

BY PETER E. HANSEN

Illinois has long limited employers from considering an applicant's or employee's *arrest records* in making employment decisions, but a recent amendment to the Illinois Human Rights Act ("IHRA") goes a step further by extending that prohibition to employment decisions based solely or in part on conviction records.[1] Effective March 23, 2021, unless otherwise authorized by law, an employer may only consider an individual's criminal conviction history if there is a "substantial relationship between one or more of the previous criminal offenses and the employment sought or held," or if the individual's employment raises an "unreasonable risk to property or to the safety or welfare of specific individuals or the general public."[2] Moreover, before denying employment to an applicant or employee because of a conviction record, the employer must engage in an "interactive assessment required for disqualifying conviction."[3]

What Is a Conviction Record?

Notably, the IHRA's definition of "conviction record" is fairly expansive and includes more than just information employers receive via a typical background check. For this purpose, "'conviction record' means information indicating that a person has been convicted of a felony, misdemeanor or other criminal offense, placed on probation, fined, imprisoned, or paroled pursuant to any law enforcement or military authority."[4] There is very little agency guidance or case law at this stage – but "information indicating a person has been convicted of a [crime]" appears to encompass news articles, employee gossip, and other "unofficial" records. Put another way, an employment-related decision based on information indicating that an individual has a conviction record, even if the individual has no conviction record, is a decision based on conviction record.

Substantial Relationship

The first and likely most common reason for excluding applicants and employees based on their conviction record is a "substantial relationship" between the criminal offense for which the individual was convicted and the employment in question. For this purpose, a "'substantial relationship' means a consideration of whether the employment position offers the opportunity for the same or a similar offense to occur and whether the circumstances leading to the conduct for which the person was convicted will recur in the employment position."[5]

Stated in slightly less legalese: when considering whether a "substantial relationship" exists, consider whether the employment position offers the opportunity for the same or a similar offense to occur, and whether the circumstances leading to the conduct for which the person was convicted will recur in the employment position.

Unreasonable Risk

The IHRA does not define "unreasonable risk" (I know, right?) but provides some general guidance via six factors[6] that employers must consider when determining whether an unreasonable risk[7] exists:

1. the length of time since the conviction;
2. the number of convictions that appear on the conviction record;
3. the nature and severity of the conviction and its relationship to the safety and security of others;
4. the facts or circumstances surrounding the conviction;
5. the age of the employee at the time of the conviction; and
6. evidence of rehabilitation efforts.

Employers should generally go beyond the surface-level questions in each of the above factors. For example, in considering length of time since conviction, also consider employment history during that time. Has the employee held a similar position with no problems? In considering number of convictions, are they for similar offenses?

All told, whether an "unreasonable risk" exists will likely be determined by a reasonableness standard looking at the totality of the circumstances – specifically including the 775 ILCS5/2-103.1(B) factors.

Interactive Process

When determining whether a substantial relationship or unreasonable risk exists, of course, specifics matter – hence, the "interactive process" designed to allow the individual to tell their side of the story. The process is broken down into three steps: the employer notification, the employee response, and the final decision.

The employer notification must contain all of the following:[8]

1. notice of the disqualifying conviction or convictions that are the basis for the preliminary decision and the employer's reasoning for the disqualification;
2. a copy of the conviction history report, if any; and
3. an explanation of the employee's right to respond to the notice of the employer's preliminary decision before that decision becomes final that informs the employee that the response may include, but is not limited to, submission of evidence challenging the accuracy of the conviction record that is the basis for the disqualification, or evidence in

mitigation, such as rehabilitation.

The individual then has "at least 5 business days to respond," after which the employer must consider any information the individual submits.[9] If the employer decides to move forward with the disqualification or other adverse employment action, it must issue a final decision – even if the individual does not respond to the initial notification. The final decision must contain:[10]

1. notice of the disqualifying conviction or convictions that are the basis for the final decision and the employer's reasoning for the disqualification;
2. any existing procedure the employer has for the employee to challenge the decision or request reconsideration; and
3. the right to file a charge with the Illinois Department of Human Rights.

All three steps must be followed before an employer takes *any* adverse employment action, not just termination of employment – if an employer denies a promotion based on a conviction record, the interactive process applies.

Unless Otherwise Authorized by Law

The new law includes some carveouts that, more often than not, are occupation-specific. Examples include teachers,[11] child care providers,[12] health care workers,[13] State Police officers,[14] private security contractors,[15] and FDIC-governed positions.[16] Employers with applicants and employees subject to these and similar background check laws should continue adhering to the applicable state and federal conviction record laws – but, according to the Illinois Department of Human Rights' Conviction Record Protection Frequently Asked Questions,[17] the employer must still engage in the interactive process detailed above.

So, to summarize, the new law does not prevent employers from running background checks, nor does it necessarily prevent employers from making any employment-related decision on the basis of a conviction record – but it certainly creates additional hurdles.■

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2. 775 ILCS 5/2-103.1(A)(1)-(2).
3. 775 ILCS 5/2-103.1(C).
4. 775 ILCS 5/1-103(G-5).
5. 775 ILCS 5/2-103.1(A).
6. 775 ILCS5/2-103.1(B).
7. The statute suggests that employers should also consider these factors to the "substantial relationship" test, but they appear to be directed more towards the "unreasonable risk" analysis. *See* 775 ILCS 5/2-103.1(B), indicating the factors should be considered "In making a determination pursuant to [the "substantial relationship" and "unreasonable risk" analyses in] subsection (A)."
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9. 75 ILCS5/2-103.1(C)(2).
10. 75 ILCS5/2-103.1(C)(3).
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12. 89 Ill. Adm. Code 50.430.
13. 225 ILCS 46/5.
14. 20 ILCS 2610/9.
15. 225 ILCS 447/25-10.
16. 12 CFR §§ 303.220-.231.
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Sandra M. Blake Wins 2022 Diversity Leadership Award

BY EMILY MASALSKI

Sandra M. Blake is the recipient of the 2022 ISBA Diversity Leadership Award.

The nomination, written by Emily Masalski and endorsed by Hon.Veronica Armouti, Umberto Davi, Alana M. DeLeon, Ebony R. Huddleston and Marijane Placek, notes: "We proudly nominate Sandra M. Blake for the 2022 Illinois State Bar Association Diversity Leadership Award. The ideals of the award are indeed those exemplified by Blake, as she has made significant contributions to the advancement of diversity within the Illinois legal community, its judiciary, and the ISBA." We highlight the following for the committee's consideration:

Sandy's career exemplifies the importance of diversity to the legal profession.

Blake has dedicated her legal career to the pursuit of justice through her work as a Cook County assistant state's attorney, an attorney advocating for the rights of the underprivileged at Life Span, and in her current work as an assistant Kane County public defender. But she did not take on these roles without plenty of grit and determination. In doing so, she paved a path for many women lawyers and

underrepresented lawyers.

In 1982, Blake graduated *cum laude* from Clarke College (now University) in Dubuque, Iowa, where she double majored in Spanish and bilingual journalism. She spent her junior year abroad in Madrid, Spain, perfecting her language skills. Upon graduation, she taught and tutored Spanish, then accepted a position in the public relations division of Lions Clubs International, the world's largest service club organization. Blake served as the assistant editor of THE LION Magazine for seven years.

She continued to work full-time while attending law school part-time at Loyola University Chicago. While at Loyola, she earned spots on the law journal and one of the school's moot court teams. She also won a legal internship with The Reporters Committee for Freedom of the Press in Washington, D.C., where she researched, analyzed and wrote about freedom of information issues, and was a visiting student at Georgetown University Law Center. Upon her return to the Midwest, Blake secured a law clerk position with the Communications Workers of America, assisting in the representation of 60,000 union members in a five-state district. In addition, she was a 711 law clerk at the Cook County State's Attorney's Office. She also participated in an appellate practicum and argued a pro bono case before the U.S. Court of Appeals for the 7th Circuit before she was admitted to the Illinois bar.

Blake enjoyed an extended career with the Cook County State's Attorney's Office. Early on, a mentor told Blake that as a prosecutor, she wore the white hat and represented all the people of the state of Illinois, including the accused. It was her responsibility to ensure that the accused's rights were protected. Therefore, justice has always been the focus of Blake's career. While in the State's Attorney's Office, she tried one of the first state-demand violent juvenile offender jury cases at juvenile court. Among other highlights, she was assigned to the Child Advocacy and Protection Unit at 26th and California, working with law enforcement, health care providers and forensic teams on the investigation of sexual abuse of children, including multiple victim cases.

Later, Blake coordinated and managed the State's Attorney's Office's drug treatment court program in the 4th Municipal District in Maywood. In that role, she revised the State's Attorney's Drug Abuse Program protocol and began inviting police chiefs to the drug court graduation ceremonies, drawing the community's attention to the program's successes. In addition, she reviewed and responded to approximately 100 expungement petitions monthly, presenting the state's attorney's position in court and frequently assisting pro se petitioners to properly complete court documents. During this time, she also presented segments on expungements at ISBA Criminal Law seminars in Chicago and Bloomington, earning her a statewide reputation as an expert in expungement law. Blake also worked with supervisors to train young ASAs and law enforcement, presenting on issues such as properly preparing criminal complaints, criminal and procedural law updates. She drafted and compiled manuals with supporting materials. In addition to her work, Blake served on the advisory board of the Proviso Children's Advocacy Center.

Blake later served as a staff attorney at Life Span, providing direct legal representation in civil court to battered women in a full range of family law matters, including civil orders of protection, dissolution of marriage, custody and visitation, parentage and child support. Her clients came from five continents and spoke languages many have never even heard of. Moreover, many did not qualify for legal aid. For this reason, Blake was especially appreciative of the Illinois Bar Foundation grants to Life Span that helped support her work there. As an IBF Gold Fellow (now Gold Champion), Blake was honored that the foundation she supported in turn supported her.

Sandy leads innovative and meaningful initiatives related to improving diversity within the legal profession.

We have witnessed first-hand Blake's warm welcome to law students, new bar admittees, young lawyers, women lawyers, and underrepresented lawyers to committees and bar associations. She serves as a sounding board and trusted mentor within the legal profession. Blake is a past president of the West Suburban Bar Association and past president of the Clarke University Alumni Association Board. She is an active member of the Chicago and Kane County Bar Associations, and a board member of the Catholic Lawyers Guild. In these leadership roles, she serves as an exceptional supporter and ally. In 2011, Blake became a member of the ISBA Diversity Leadership Council ("DLC"), when she was appointed vice-chair of The Standing Committee on Women and the Law. She was elected secretary at the first DLC meeting and has been actively involved in the ISBA's diversity initiatives ever since. She was co-editor of the *Diversity Matters* newsletter for two years, and has been the sole editor since 2015. Notably, Blake has kept the momentum of the ISBA *Diversity Matters* newsletter during the COVID-19 global pandemic.

During her year as chair of the DLC, Blake contacted participants in the ISBA Diversity Leadership Fellows program for feedback on the program's various components and helped to develop the Program Proposal for 2013-2015. Blake worked with fellow DLC members (ISBA Past President Mark Hassakis, Cory White, and Daniel Saeedi) to plan the inaugural diversity reception, which she named *Count Me In*.

In addition, Blake does the actual work to help others rise and thrive in ISBA committee involvement and the ISBA Assembly (where she served multiple terms). She is currently a member of the Bench and Bar Section Council and a member and newsletter editor of the Mental Health Law Section Council. Blake was one of the first women chairs of the Criminal Justice Section Council (2007-2008). She has also chaired the Standing Committee on Women and the Law (2012-2013), the Diversity Leadership Council (2013-2014), the Bar Election Supervision Committee (2008-2009, 2014-2015), the Mental Health Section Council (2018-2020) and the Bench and Bar Section Council (2020-2021). She continues to focus

her efforts not only on diversity (inviting people to the party), but also on inclusion (asking people to dance).

Sandy has demonstrated commitment to diversity beyond the ISBA and within the broader legal community.

Blake's efforts to advance diversity are not limited to the ISBA. In 2017, she served as president of the West Suburban Bar Association. Near the conclusion of her term, she advanced a slate of candidates for officers and directors that changed the complexion of that organization to better reflect the demographics of the Cook County 4th Municipal District, then worked to ensure their election. Blake also enjoys serving as an evaluator/judge for the Kane County Mock Trial tournaments.

Her advocacy in the field of mental health law has helped so many who may not otherwise have a voice during tumultuous life circumstances. As an assistant public defender in Kane County, Blake represents respondents in civil mental health petitions, including involuntary commitment and forced medication matters. She defends respondents against involuntary commitment on Sexually Violent Persons petitions and advocates on post-conviction matters. In addition, Blake served as a representative on the Kane County Mental Health Coordinating Council. She has presented several CLE programs on the Sexually Violent Persons Commitment Act, including for the Kane County Public Defender's Office and the DuPage County Public Defender's Office.

Blake's dedication to promoting diversity within the legal profession and commitment to public service are unparalleled.■

Cindy G. Buys, Recipient of the 2021 ABA Rasmussen Award for the Advancement of Women in International Law

BY MEGAN RICE

In thrilling news, our very own Cindy G. Buys is the 2021 recipient of the American Bar Association's ("ABA") Mayre Rasmussen Award for the Advancement of Women in International Law.

Mayre Rasmussen, the namesake of the award, was largely regarded as one of the first women to break into the field of International Law and quickly became known as a pioneer in the field. Prior to transitioning to corporate law, Rasmussen worked for a Coudert Brothers, a major international law firm at the time. Rasmussen was also one of the first women to hold a senior leadership position with the ABA International Law Section. Rasmussen made a name for herself as a mentor of numerous current and former Section leaders, specifically focused on women who wished to rise in the ranks within the Section, and the ABA. Rasmussen was also one of the founding members of the Women's Interest Network ("WIN"). For decades, WIN has been dedicated to "promoting and protecting the rights and interests of women around the globe and to advancing the engagement of women in the practice of international law."[1]

Since 1999, the ABA International Law Section has awarded the Mayre Rasmussen Award to "individuals who have achieved professional excellence in international law, encouraged women to practice international law, enabled women lawyers to attain international law job positions from which they were excluded historically, or advanced opportunities for women in international law."[2]

In 2021, Cindy G. Buys was the esteemed recipient of the Mayre Rasmussen Award for the Advancement of Women in International Law. Cindy was also selected for the U.S. Department of State's Fulbright Specialist Program.[3]

Cindy G. Buys currently serves as a Professor of Law at Southern Illinois University School of Law where she teaches International Law, International Business Transactions, Constitutional Law, Immigration Law, in addition to various other international law and study abroad courses. Cindy has been a member of the SIU School of Law faculty since 2001. During her tenure, Cindy has served as a Professor, Director of International Law Programs, and Interim Dean.

Prior to transitioning to academia, Cindy spent a decade in both public and private practice in the D.C. area. Cindy received her bachelor of arts in political science from the State University of New York at Albany. Thereafter, she obtained a juris doctor and master of arts in international relations from Syracuse. Not stopping there, Cindy later obtained a Master of Laws in international and comparative law from Georgetown University.

In addition to the Mayre Ramussen Award, Cindy is a two-time Fulbright senior specialist, was a visiting professor at Bangor University in Wales, was named Outstanding Teacher of the Year and Outstanding Scholar

of the Year, and has received countless other state and national awards. Naturally, Cindy has published numerous works on a variety of topics.[4]

Please join us in congratulating Cindy for this esteemed award. The Human and Civil Rights Section council is lucky to call her a member. ■

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Oaths of Office Taken by Judge Elizabeth K. Flood and Judge Bianca Camargo

BY SANDRA M. BLAKE

Diversity and *inclusion* have become watchwords for the legal profession, and in Kane County, they serve as more than aspirations. The December 10 swearing-in ceremony and reception honoring Judge Bianca Camargo and Judge Elizabeth K. Flood reminded all present of the strides being made in the 16th Judicial Circuit. Each of the honorees recognized the strides being made by standing on the shoulders of those who came before.

One of the trailblazers, retired Judge Patricia Piper Golden, spoke about some of the first women attorneys and judges in Kane County in her introduction of Judge Flood. Judge Golden recalled that when she joined the State's Attorney's Office in 1975, there was only one other female attorney in the office—Pam Mann. In the early 1980s, a group of 10-12 women attorneys formed what they called the Journal Club. They met at least monthly for dinner, with the original intent to write articles on legal issues. The meetings took place in the law offices of Susan B. Tatnall, who became the first woman president of the Kane County Bar Association.

Although Judge Golden didn't mention any specific articles that were published as a result of those meetings, she did note that at the time the Journal Club was getting together, there were no female judges in the 16th Judicial Circuit, which at the time was comprised of Kane, Kendall, and DeKalb counties. The group became a support system for its members and the members promoted one another in professional endeavors. They also wrote a letter to the circuit court judges, lobbying for the appointment of women judges. Although the letter may not have received the immediate consideration they had hoped for, in 1987, Pamela K. Jensen was appointed the first woman associate judge in the 16th Judicial Circuit. Three additional members of the Journal Club also became judges: Judith Brawka, Patricia Piper Golden and Karen Simpson. Judith Brawka later became Kane County's first female chief judge in 2012.

It was these women who paved the way for Elizabeth Flood, who is only the fifth woman in the history of the Kane courts to be elected to a full circuit judgeship. Flood was raised in Elgin, attending Hillcrest Elementary, Kimball Middle and Larkin High schools. While in high school, she took a pre-law class in which she and her classmates conducted a mock trial at the old courthouse in Geneva, perhaps sparking an interest in the law. Flood earned a BS degree in Finance from the University of Illinois College of Commerce. While in college, she took several philosophy classes that furthered her interest in the law. After completing her undergraduate degree, she then attended the University of Illinois College of Law, studying and working her way through law school, including a stint as a skating instructor. Between her second and third year, Flood interned at the Kane County State's Attorney's Office, where she began her legal career in 1995.

She began as a criminal prosecutor. During her eight years in the criminal division, she prosecuted in every criminal courtroom, including traffic, misdemeanor, DUI, and felonies. Flood then transferred to the Kane County State's Attorney's civil division, where she represented county officials and employees in state and federal courts in cases involving election law, employment law, personal injury, property damage, and federal civil rights litigation. In that capacity, she argued before the Illinois Second District Appellate Court and the 7th Circuit Court of Appeals.

When a Kane County judge asked Flood if she'd ever considered applying to be a judge, she said she hadn't. She gave the idea more consideration and warmed to the thought. "The thing that I really liked so much was that our job was to try to do the right thing on behalf of the citizens," she said of being an assistant state's attorney. A judgeship, Flood said, followed in that same vein.

Flood was appointed as an Associate Judge in the 16th Judicial Circuit, in 2013. There, she presided over traffic and misdemeanor cases, bond call, orders of protection, and forfeiture hearings. Since 2016 she has been assigned to the Family Division. In October 2019, Judge Flood was appointed by unanimous vote of the Illinois Supreme Court to be a judge in Kane County. She won a contested election against a female opponent for the seat in November 2020, by a margin of more than 7,000 votes.

See Judge Flood's remarks in the accompanying article.

In his introduction of Judge Bianca Camargo, another trailblazer spoke about the strides being made toward diversity and inclusion in Kane County's judiciary. Currently serving as presiding judge of the Misdemeanor and Traffic Division of the 16th Circuit, Judge René Cruz was the first Hispanic judge in Kane County when he was appointed to the bench in 2012. He was appointed by the Illinois Supreme Court to fill the seat of retiring Circuit Judge Judith Brawka, in 2016, and was elected to retain that seat in 2018. See **Judge René Cruz: A Lifetime of Service and the Community Service Award Winner for 2021** by Kim DiGiovanni, *Bar Briefs,* September/October 2021.

Judge Cruz noted that "to some extent, all aspects of government should strive to be representative of the demographics they serve." He added that studies demonstrate that diverse representation is meaningful on many levels. In addition to being representative of the community that it serves, "diversity of thought, ideas, experiences and backgrounds exchanged in a work community creates a greater understanding of those we serve." Diversity on the bench may even inspire confidence in the justice system.

Judge Cruz recognized the progress that has been made since his appointment. He nodded to his robed colleagues, which now include four more Hispanic judges, one African American judge and one Asian American judge. Judge Cruz noted that the present composition of the Kane County bench is a close representation of the Kane County population. The most recent addition to the Hispanic judges is Bianca Camargo.

In July 2021, Judge Camargo was appointed by the Illinois Supreme Court to fill the vacancy created by the retirement of Circuit Judge James Murphy. This appointment made her the first Latina circuit judge in Kane County. She is one of only five women to ever be appointed by the Illinois Supreme Court to serve as a circuit judge in Kane County, and is proud to join such a distinguished group.

Born and raised in Aurora, Judge Camargo attended Northern Illinois University (NIU), where she earned a BA degree in Sociology. She joined the Kane County State's Attorney's Office in 2006, as a victim advocate, supporting and guiding violent crime victims through the justice system. Camargo returned to NIU, and earned her J.D. in 2010. She became an assistant state's attorney in Kane County that same year. Her career was marked by hard work and dedication, modeling the example of her Mexican-born parents who moved to Aurora as teenagers. See **Judge Camargo: The Newest Member of the 16th Judicial Circuit** by Nydia Molina, *Bar Briefs,* September/October 2021.

Judge Camargo is running to retain her seat in the 2022 election. She and her family continue to live in Aurora and remain active in the Aurora community. ■

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Sixteenth Judicial Circuit Swearing-In Ceremony Address

BY HON. ELIZABETH K. FLOOD

I want to thank the chief judge, my colleagues, and everyone who is attending here today, especially my friends and family. Especially on a Friday afternoon. I asked to move this from yesterday, as my parents just returned back to town, and I am grateful to have them here today.

I also want to thank retired Judge Patricia Piper Golden, who has been a role model and mentor to me for a long time. She will not talk about herself, but before coming to Kane County to work in the State's Attorney's Office, Judge Golden was the first woman to become an elected state's attorney in a contested election in the State of Illinois, among her many other achievements as a judge.

As you heard, I met her when I was an intern at the Kane County State's Attorney's Office, where she was the first director of the newly opened Child Advocacy Center, and she was, and has always been, intelligent, fair, hard-working, polished, and kind. I was lucky to learn from her, and to continue to cross paths with her throughout both of our careers.

As I said during my first swearing in as an associate judge in 2013, I am very grateful and proud to be a judge in Kane County. To borrow from Theodore Roosevelt: "Far and away the best prize that life offers is the chance to work hard at work worth doing." As judges, we have the opportunity to walk into court every day and try to make sense out of chaos, set the scales right, and make decisions that ensure the public's faith in the fairness of our judicial system. Every day I am proud to work beside my fellow judges in Kane County, whose dedication, integrity,

and work ethic is inspiring.

I was also proud to be only the fourth woman to be appointed by the Illinois Supreme Court to become a Circuit Judge in 2019. Accepting this appointment meant giving up my associate position and taking the risk of an election to fully earn this title. Many people asked me why I was willing to do this, and, frankly, it is a question I asked myself many times during my campaign, like, practically every day.

I'll provide a little background. I have been very lucky to work with and learn from many talented men and women throughout my career, but there haven't historically been many women in these positions.

In 1996, just a year after I was hired as an assistant state's attorney, Patricia Piper Golden was only the third woman to *ever* become a judge in Kane County, and there was only *one* female circuit judge, Judge Pamela Jensen. In the following two decades, three other women were elected circuit judges—Judith Brawka, Karen Simpson, and Susan Boles (who is here today). Throughout these years, more women *were* appointed as associate judges, many of whom are my colleagues today, and I was lucky to be sworn in as an associate judge with both Judges Tracy and Downs, who I had worked with in the State's Attorney's Office. But because of retirements, at the time of my appointment in 2019, Judge Boles was again our only female circuit judge, out of the 14 elected circuit judges. However, the success of the women before me showed me that, though difficult and still rare, the path was possible.

Circuit judges have the opportunity to shape the judiciary by appointing associate judges. Only circuit judges can become the chief judge, and historically circuit judges have been appointed to be the presiding judges of their divisions and have been assigned to the courtrooms with the most significant legal issues.

When I was a new associate judge, the other female circuit judges encouraged us all to consider running for office to be a circuit. At the time, that concept was as foreign, and as appealing to me, as flying a spaceship to Mars. (Just to be clear, I do not want to go anywhere where I cannot survive, including space, Everest, and scuba diving, so unappealing).

So why did I take the risk of running to be a circuit judge? The reasons are simple: first, I believe in equal opportunity, and having women in these positions not only gives a more balanced perspective in our judiciary, but it is an example to all others of what is possible with hard work and dedication, regardless of gender. When I campaigned, I was told several times that I do not "look like a judge". But every woman or minority who attains these positions and succeeds, helps to change the perception for others. And I do believe, based on my experiences today with my colleagues, we have come a long way.

On a personal note, I also ran because I do love this work, and I hoped that my career and opportunities to contribute would not be limited by the risks I was unwilling to take, or the work I was unwilling to do.

But to put it mildly, the campaign itself was not easy, as my colleagues, friends, and relatives are aware.

The biggest lesson I would like to share is my firm belief that judges should not be elected by political party. We do not advance anyone's political agenda, and we are required to put politics aside in the courtroom. So partisan elections are, frankly, nonsensical. Judges are required to know and understand law and procedure, as well as the court system, in order to be effective. You would not choose a doctor based on political party, and judges should not be chosen on that basis either. It is my sincere hope that one day judges in Illinois will be elected in non-partisan elections.

But what I want most today is to thank everyone who supported me, whether it was moral support, or through words, acts, or donations.

I especially need to thank my family, friends, colleagues, and former colleagues, who were with me every step of the way. Many of my friends are attending today, and many were unable to be here, but it is impossible to run a county-wide election in a presidential year without legions of people willing to help and support you in myriad ways. Although the campaign was hard, it made me appreciate my true friends and everyone who cared enough about me and the judiciary to give their time and effort to help with fundraisers, signs, car magnets, social media, parades, and everything else. I am so lucky and eternally grateful.

My family—my parents, daughters Kate and Ava, and husband Steve: I could not have done it without you. My dad was not only my campaign treasurer (if you're going to run a campaign, it helps to have a retired accountant in the family), but donned a campaign t-shirt to help deliver signs and friend-to-friend cards. My mom was my biggest and most vocal supporter all over the Elgin area. Just ask anyone she talked to over the last two years. My daughter Kate, a new driver at the time, learned all of the county roads delivering signs and car magnets, and my daughter Ava helped me stamp and address endless invitations and thank you notes. They also endured countless nights when I was tired, distracted, or absent, and gave me endless encouragement and hugs. Finally, Steve, my partner in life and through my whole career—no one could have worked harder or been more supportive than you. I love you and will never believe I deserved everything you did to help me achieve this.

And after all of it, I am very proud today to stand before you as the fifth woman to ever be elected as a circuit judge in Kane County. I am even more happy to be part of this historic ceremony, where, for the first time ever, two women are taking the oath of office as circuit judges, and I welcome Judge Camargo, who you will hear from next, and who is also our first Hispanic female circuit judge.

I am grateful for your time, and for continuing to serve in Kane County.

This *is* my prize. ■

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Do Million-Dollar Settlements Lead to Law and Policy Change? Record High Settlement in Civil Rights Case Involving Fatal Police Use of Force

BY KHARA COLEMAN

On May 25, 2020, a cell phone recording allowed the world to witness the last moments in the life of a black man named George Floyd in Minneapolis, Minnesota. The fatal encounter was triggered by use of an allegedly counterfeit $20 bill. Floyd died handcuffed, with his neck under the knee of a local police officer for eight minutes and forty-six seconds.

A few months later, Floyd's family filed a civil rights lawsuit in federal district court.[1] In March 2021, less than a year after the filing of that lawsuit, the City of Minneapolis settled this lawsuit for $27 million.[2] This settlement has been called a "historic" or "record" settlement, the "largest pretrial settlement in a civil rights wrongful death lawsuit in U.S. history."[3]

Lawyers, academics, and activists continue to debate whether or not a settlement in such an amount will send a different message—a stronger message, perhaps even a "warning"—to cities and departments across the country about disproportionate, often fatal, use of force against black Americans. But will this work?

A brief survey of about a decade of municipal payouts after such incidents serves as an outline of repeated attempts to use civil rights verdicts and settlements to send a message concerning the need for stronger laws and policies, and greater accountability.

ROBERT RUSS. Early in the morning on June 5, 1999, a 22-year-old black Northwestern University student died days before his college graduation in a traffic stop on the south side of Chicago, on the Dan Ryan Expressway (Interstate 90/94). Pursued by officers for moving violations, Russ's vehicle crashed to a stop. Officers approached, broke the rear window of Russ's vehicle, and shot him.[4] At trial in October 2003, a Cook County Circuit Court jury awarded Russ's toddler son $9.6 million.[5] Some jurors reportedly called the version of events offered by the officers "impossible."

FLINT FARMER. In July 2011, 29-year-old Flint Farmer died after being shot by a Chicago police officer. It was the officer's second fatal shooting in six months. The incident was captured by a dash-board camera, which appeared to show the officer standing over Farmer as he shot Farmer in the back. The officer supposedly mistook a cell phone for a gun.[6] In February 2013, the City of Chicago settled the civil lawsuit for $4.1 million.[7] The officer was not charged with any crime.

JASON MOORE. Moore, 31 years old and 135 pounds, died in Ferguson, Missouri, on September 17, 2011. Moore suffered from mental illness and, at the time of his arrest, was running down the street naked, reportedly screaming, "I am Jesus" and "God is good."[8] Moore was tased repeatedly, including three times after he was already on the ground, and once in close proximity to his heart. The taser blasts were applied one to two seconds apart. In November 2016, a federal civil jury delivered a verdict of $3 million.[9] Jurors reportedly found the Ferguson officers had been "very loose" with use of force.[10] The officers were not charged with any crime.

ERIC GARNER. Unarmed 43-year-old Eric Garner died in July 2014, as a result of a chokehold used by a New York City police officer, who was arresting Garner for illegally selling loose cigarettes. The local prosecutor put the indictment decisions to a grand jury, which declined to indict anyone involved. Having filed a "notice of claim," in July 2016, the family settled with the City of New York for $5.9 million.[11]

MICHAEL BROWN. In August 2014, Michael Brown also died in Ferguson, Missouri. Brown, 18 years old, was unarmed and had been approached by a local officer upon suspicion of having stolen cigarillos, worth about $48.99,[12] from a convenience store. The officer shot Brown from inside his patrol car, claiming that Brown had charged him and tried to take his gun. A March 2015 United States Department of Justice report found that the officer had *not* acted "with the requisite criminal intent" and that "it cannot be proven beyond reasonable doubt to a jury that [the officer] violated 18 U.S.C.§ 242 when he fired his weapon at Brown."[13] The officer was not indicted and the DOJ did not pursue any civil rights charges against Ferguson. However, in a separate investigation of the City of Ferguson Police Department, the DOJ found "a pattern or practice of unlawful conduct within the Ferguson Police Department that violates the First, Fourth, and Fourteenth Amendments to the United States Constitution, and federal statutory law."[14] In June 2017, Brown's family settled with City of Ferguson for $1.5 million.[15]

LAQUAN MCDONALD. Teenager Laquan McDonald died in October 2014 after a member of the Chicago Police Department shot him 16 times. Chicago Police called it a clear-cut case of self-defense.[16] Eventually a dash-camera video showed that story as documented by Chicago Police officers was partly fabricated – McDonald had been too far away from

officers to pose a physical threat. In the video, released after contested legal proceedings, the world watched a CPD officer, moments after arriving on scene, empty his gun into the body of McDonald. Laquan McDonald's family announced that they would sue for $16 million, asking for $1 million for every bullet.[17] The City ultimately settled with the family settled for $5 million, before the family actually filed a civil lawsuit in federal or state court.

TAMIR RICE. On November 22, 2014, Tamir Rice was 12 years old and in 6th grade. Responding to a report of a "man waving a gun," a Cleveland police officer saw Rice in a recreational area with a pellet gun tucked in his waistband.[18] Rice was shot twice as the police car stopped feet away from him at 3:30 in the afternoon. The local prosecutor left the charging decision to a grand jury, which declined to indict in December 2015. The lawsuit was originally filed in federal court in December 2014, the First Amended Complaint was filed in January 2015, and the lawsuit settled in April 2016 for $6 million.[19]

FREDDIE GRAY. Twenty-five-year-old Freddie Gray died in April 2015. He died after having been in a coma for several days, with severe neck injuries, including a spinal cord injury. The moments leading to his death were recorded and went viral online. Several officers were charged and later acquitted; charges were dropped against remaining officers.[20] Gray's family agreed to a $6.4 million settlement in September 2015.[21]

PHLANDO CASTILE. In July 2016, Castile was pulled over by an officer in St. Anthony, Minnesota. Castile informed the officer that he had a handgun in his vehicle. The officer claimed that Castile disobeyed commands, pulling a gun out of his pockets; Castile's girlfriend testified otherwise, and streamed the aftermath of the incident on Facebook. [22] Amidst public protests, the officer was charged, but soon acquitted.[23] Without filing a legal complaint in state or federal court, Castile's family reached a settlement with the City of St. Anthony and others, pursuant to which Castile's mother received $3 million and his girlfriend $800,000.[24]

BREONNA TAYLOR. Taylor died in March 2020 when Louisville, Kentucky, police officers entered the wrong apartment pursuant to a "no-knock" warrant in the middle of the night. The officers shot Taylor while her boyfriend attempted to defend their home from what they believed to be intruders. In September 2020, the City of Louisville agreed to pay Breonna Taylor's family $12 million and made promises to reform police practices.[25] Two officers were recommended for termination, one was fired (though not the officer who shot Breonna Taylor), and although one officer was later charged by indictment before a grand jury, he was charged for endangering neighbors, not for the death of Taylor.[26]

The Real Verdict?

Do such large civil settlements change law, regulation, or policy? Sometimes, but not in a uniform manner. The verdict, so to speak, is not in yet on the long-term effects of such civil settlements.[27] Although advocates hope, and sometimes believe, that such high settlement amounts may result in revised use of force policies, or greater accountability when such policies are violated, the fact remains that there are more *civil payouts* than *criminal convictions*. One journalist's tally found only three officer convictions resulted from a sample of 15 incidents of police use of force.[28] In this very moment, history is being made as Derek Chauvin, the officer whose knee was pressed into George Floyd's neck for over 8 minutes, faces murder charges (second and third degree) in a criminal trial. Only time will tell whether high civil settlements, often paid by insurance policies, not through taxpayer funds, can have the same deterrent effects as criminal convictions against the involved officers. ■

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Illinois Appellate Court Affirms Transgender Individuals Are Protected Under the IHRA

BY RONALD S. LANGACKER

In a matter of first impression, the Illinois Second District Appellate Court found that Hobby Lobby discriminated against employee Meggan Sommerville on the basis of her gender identity by denying Ms. Sommerville access to the women's restroom throughout her 20-year period of employment. (*Hobby Lobby Stores, Inc. v. Sommerville*, 2021 IL App (2d) 190362).

Plaintiff, Meggan Sommerville, was born in 1969 and designated as male at birth. Hobby Lobby hired Sommerville in 1998. In 2007, Sommerville began transitioning from male to female. Two years later, she disclosed her female gender identity to Hobby Lobby, and in 2010, formally informed Hobby Lobby of her transition and requested that that she be allowed to use the women's restroom.

Despite Hobby Lobby having changed Sommerville's personnel records to reflect her female identity, Sommerville's manager denied her request to use the women's bathroom and ordered Sommerville "to produce evidence that she legally changed her sex or binding legal authority which mandated that Respondent allow her to use the women's restroom."

Sommerville provided Hobby Lobby with a driver's license, Social Security card, a court order for her name change, and medical records from her doctor outlining her transition and affirming Sommerville's use of the women's restroom. Sommerville also helpfully gave Hobby Lobby a copy of the Illinois Human Rights Act.

Though Sommerville had complied exactly with Hobby Lobby's demands, she was still denied access to the women's restroom at the Hobby Lobby store. Sommerville was forced to physically leave the premises in order to use a women's restroom at a neighboring business and began to limit her fluid intake to reduce the number of times she would need to use the restroom.

Still, Hobby Lobby disciplined Sommerville for use of the women's restroom on several occasions, now informing Sommerville that she could use the women's restroom if she produced "proof of surgery," and/or a revised birth certificate listing her biological sex as female.

In early 2013, Sommerville filed two complaints with the Illinois Human Rights Commission alleging violations under both the employment and accommodation provisions of the Illinois Human Rights Act.

In 2015, the Commission issued a recommended liability decision finding that Hobby lobby had violated the employment and accommodations provisions of the Act.

A subsequent hearing on the damages was held, and the Commission recommended injunctive relief requiring Hobby Lobby to allow Sommerville access to the women's bathroom, and an award of $220,000.00 for Sommerville in emotional distress damages, stating that Hobby Lobby had "subjected [Sommerville] to intimidation and embarrassment." The Commission adopted all of these recommendations in a final order entered April 10, 2019.

Hobby Lobby subsequently appealed the ruling to the Second District Court of Appeals.

Hobby Lobby's appeal was based on the usual reductive reasoning of gender essentialists that Hobby Lobby's bathroom access policy specifically related to their employee's genitals, and thus does not violate the Act.

Hobby Lobby argued that the Commission improperly equated "sex" with "sexual orientation" and "gender identity," defining "sex" as being determined solely by one's "reproductive organs and structures." *Hobby Lobby* at ¶ 25.

They also attempted to use argument that Sommerville was somehow a threat to other women who would be using the restroom.

The court disagreed, affirming the decision of the Commission.

The court noted that "sex" and "gender identity" are not synonymous, but also added: "neither are these two terms wholly unrelated." *Id. at* ¶ 27. The court states definitively, "Sommerville's sex is unquestionably female," also noting that the state of Illinois, the federal government, and Sommerville's employer also acknowledged that Sommerville was female. *Id*. at ¶ 29.

Despite the acknowledgment of Sommerville's gender identity, Hobby Lobby "treated Sommerville differently than its other female employees and customers," and the Court concluded that Hobby Lobby's conduct "falls squarely within the definition of unlawful discrimination under the Act." *Id.* at ¶ 24.

The court also rejected Hobby Lobby's argument that Sommerville presented a danger, noting that "the presence of a transgender person in a bathroom poses no greater inherent risk to privacy or safety than that posed by anyone else who uses the bathroom." *Id.* at ¶ 39, quoting *Whitaker v. Kenosha Unified School District No. 1 Board of Education*, 858 F.3d 1034, 1053, 1055 (7th Cir. 2017).

The court affirmed the damages award of $220,000 and granted Sommerville's request to remand the matter back to the Commission for a determination of any additional damages and attorney fees that may be due. *Id*. at ¶ 58.

The court has clearly ruled that discrimination on the basis of a person's gender identity will be unlawful pursuant to the Illinois Human Rights Act. This precedent will help protect transgender, non-binary, and other gender non-conforming employees from discriminatory conduct in the workplace.■

Ronald S. Langacker, of Langacker Law in Urbana, concentrates his practice on plaintiff's employment matters in east central Illinois.

90 Days Means 90 Days, Not 91 Days

BY MICHAEL J. MASLANKA

Brian Lax felt that his employer, the Federal Emergency Management Agency ("FEMA"), discriminated against him based on his disability and other health-related factors. FEMA placed him on indefinite suspension, a move Mr. Lax believed was an adverse employment action. He felt FEMA discriminated against him under the Rehabilitation Act of 1973. 29 U.S.C. § 701 et seq.

The Department of Homeland Security's Office for Civil Rights and Civil Liberties ("CRCL") felt that FEMA did not discriminate against Mr. Lax. CRCL subsequently sent him a notice of rights, informing him of his right to file a civil action against FEMA in federal court within 90 days of his having received the decision. CRCL sent the decision to Mr. Lax by e-mail.

Mr. Lax opened the e-mail from CRCL indicating that he had been sent his notice of appeal rights but could not open the attachments until the following day. He filed his federal lawsuit not 90 days from the day he received the e-mail from CRCL, but 90 days from the following day, when he opened the attachments. As a result, CRCL filed a motion to dismiss Mr. Lax's complaint for being untimely, a motion that the federal district court for the Northern District of Illinois ultimately granted. Mr. Lax appealed the Northern District's decision to the Seventh Circuit Court of Appeals.

The case was argued on November 2, 2021, and on December 20, 2021, the Seventh Circuit affirmed the dismissal. *Lax v. Mayorkas*, 20 F.4th 1178 (7th Cir. 2021).

The seventh circuit found that, based on the statute and the regulations, Mr. Lax had 90 days from the date of *receipt* of the notice within which to file his lawsuit, which he did not do. The court considered the date of receipt to be the date on which he received the email, *not* the date on which he opened the attachments. Thus, the seventh circuit agreed that the filing was untimely.

The seventh circuit also stated that there was no equitable tolling of the time within which to file the complaint, since Mr. Lax did not allege any extraordinary circumstances which prohibited him from filing on time. The court indicated that technical difficulties are generally insufficient to allow for equitable tolling to support a late filing. ■

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Disability Rights on the Global Stage

BY ABIGAEL SCHULZ

Disability rights incorporate basic human rights principles that should be integral to all societies. Then has the United States failed to protect those rights on the international stage? The United States, a global leader, has not become a party to the U.N. Convention on Rights of Persons with Disabilities (CRPD). The CRPD was the "first international treaty to address disability rights globally" according to Esme Grant from the United States International Council on Disabilities.[1] In the United States alone there are 61 million adults who live with a disability who currently are not afforded protection abroad.[3] The continued discrimination against persons with disabilities highlights the need to adopt a legally binding instrument that sets out legal obligations on states to protect rights of persons with disabilities.

The CRPD and its Optional Protocol was adopted on December 13, 2006 and was opened for signature in March 2007. On opening day for signatures, the CRPD received the highest number of signatories in history to a U.N. convention. The Convention was negotiated during eight sessions of an Ad Hoc Committee of the General Assembly from 2002 to 2006, which made it the fastest negotiated human rights treaty.[4] The ACLU reported that the Convention also had "record input from people with disabilities acting under the umbrella of the International Disability Caucus, an advocacy organization."[5] Though the United States participated in negotiating sessions, it has so far failed to ratify the CRPD. In 2009, President Obama signed the CRPD and the administration transmitted it to the Senate for advice and consent to ratification in 2012. However, the treaty was not brought to the Senate floor for a vote.[5] Because the United States has one of the worst treaty ratification records—which some commentators have argued "adversely affects the ability of the United States to conduct foreign policy"—it comes as no surprise to some that the United States has not ratified the CRPD.[6]

Prior to the adoption of the CRPD, the United Nations had only adopted other documents which protected some rights of certain groups of people with disabilities, but none of them were binding or comprehensive. Beginning in 1981 with the World Programme of Action concerning Disabled Persons, the United Nations

"provided a policy framework to enhance the prevention of disability, the rehabilitation of persons with disabilities and promoted the goal of equality." While it recognized the need to protect people with disabilities, the Programme maintained the notion there were external "causes of impairment that vary throughout the world, as to the prevalence and consequences of disability."[7] The Programme focused on the link between poverty and disability—for example, where lack of access to food can cause nutritional deficits to one's physical health.

This Programme lacked protection or recognition for people with mental health disorders or people who were born with disabilities unrelated to external forces. In 1991, the United Nations provided the Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care, which filled a gap left by the previous Programme, but the language was broad in scope in that it left the determination of who has a mental illness to "be made in accordance with internationally accepted medical standards."[8] The Standard Rules on the Equalization of Opportunities for Persons with Disabilities was adopted in 1993 and the Declaration on the Rights of Disabled Persons was adopted in 1995.

The CRPD was formed to address gaps left by the previously adopted policy guidelines that address international protection to the disabled community. Though it is modeled similarly to the Americans with Disabilities Act (ADA) from the United States, in 2001, former President George W. Bush stated that the United States would not support the CRPD despite the ADA having been signed into law by his father in 1990. President George Bush indicated the reason the United States would not sign the Convention was because there was "no need for an international treaty since national law in the United States already prohibited discrimination on the basis of disability and that such a convention may be viewed as an unwelcome intrusion into national sovereignty."[9] But the CRPD is more than an anti-discrimination law, because it goes beyond the protections afforded by the ADA. Moreover, the existence of disabilities laws in other countries (such as Europe, Australia, and Asia) became a reason for those countries to support the CRPD, not a reason to refuse ratification.

The CRPD shifts the language and thinking of the ADA from viewing people with disabilities as those in need only of state protection, charity, or medical treatment, to "a view of people with disabilities as right holders, capable of enforcing their own rights under international law" and therefore infuses a social model of disability with a human rights approach.[10] Ratification of the CRPD by the United States could enhance the rights of Americans with disabilities by "moving from the purely anti-discrimination mandate of the ADA to a more comprehensive view of substantive equality, as envisioned in the CRPD."[11] For example, an obligation of the Convention includes "to undertake or promote research and development of universally designed goods, services, equipment and facilities."[12] However, the ADA only prohibits discrimination in the context of employment, access to public services, and access to places of public accommodations.[13] It does not contain language promoting acceptance or an obligation to promote research and development of services in society.

Additionally, the CRPD recognizes the specific obstacles women face in achieving equal treatment where "Article 6 requires States Parties to recognize that women and girls with disabilities are subject to multiple discriminations, and to take all appropriate measures to ensure the full development, advancement and empowerment of women."[14] Children are also specifically recognized in the CRPD by incorporating a principle that establishes "respect for the evolving capabilities of children with disabilities and respect for the right of children with disabilities to preserve their identities."[15]

Since the CRPD is consistent with the goals of the ADA, ratifying it would bolster the ADA and other domestic laws by supporting Americans with disabilities domestically and abroad. For example, ratification of the CRPD could "increase the ability of the United States to improve physical, technological, and communication access in other countries" for people with disabilities.[16] Additionally, the concern that the Bush administration shared regarding sovereignty is inconsistent with the plain language of the Convention. If a violation by a State of the Convention were filed, the receiving State of the complaint would "submit to the Convention Committee a written explanation clarifying the matter and the remedy that may be taken by that State."[17] Therefore, State sovereignty is naturally preserved by the Convention to handle complaints filed against the State if there were alleged violations of the CRPD. The Home School Legal Defense Association also shared a concern for state sovereignty with the Senate in 2012 when the group stated its belief that treaty ratification would harm parental rights and make changes to domestic law that would put children with disabilities under the control of the United Nations.

However, the experts on the CRPD Committee are civilians, with the majority being people with disabilities. The Committee only reviews country reports to assist states with complying with the treaty and can only provide suggestions and cannot "compel a country to do anything."[17] The Committee is a body of 18 independent experts which monitors implementation of the Convention. The members of the Committee serve in their individual capacity, not as government representatives. They are elected from a list of persons nominated by the states at the Conference of the State Parties for a four-year term with a possibility of being re-elected once. This process is provided in Article 34 of the Convention.[18]

The CRPD holds member states accountable to its goals through this Committee as the states write reports regarding implementation or concerns on how to implement a provision. The Committee then drafts reports every two years to the General Assembly for suggestions on goals, implementation strategies, and for feedback. There is a conference every year to discuss best practices, implementation strategies, and new advancements that only member states can attend. As a non-party, the United States is not entitled to the benefits of learning the best practices or new advancements the CRPD establishes for people with disabilities. The United States falls behind as a global

leader and fails to provide the best quality of life for people with disabilities.

As President Obama indicated in his support for the ratification of the CRPD, "while Americans with disabilities already enjoy these rights at home, they frequently face barriers when they travel, conduct business, study, or reside overseas. Ratifying the Convention would reaffirm America's position as the global leader on disability rights and better position us to encourage progress toward inclusion, equal opportunity, full participation, independent living, and economic self-sufficiency for persons with disabilities worldwide."[19] To support global equity for people with disabilities, the United States should join the 177 countries that have ratified the Convention on Rights of Persons with Disabilities. ■

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Abigael Schulz is a third-year law student at Southern Illinois University School of Law. She received her bachelor's degree from Hanover College in Madison, Indiana in Social Justice and Inequality, a major she self-designed. While she attended Hanover College, she was able to explore her broad array of interests through study abroad experiences in Norway and Jamaica and through an internship with Indiana Disability Rights. She also created a volunteer program with the local Women's Correctional Facility in Madison, Indiana to assist the women in the work release program create resumes and elevator pitches.

Abigael spent a gap year before attending law school in Pittsburgh, Pennsylvania where she worked for Hockey Sticks Together, a nonprofit whose mission is to provide access to hockey for children and adults with different abilities. She quickly became involved in the Carbondale community by becoming a cycling instructor at the rec center and is now the president for the International and Immigration Law Society organization. She works as a law clerk at the Jackson County Courthouse in Murphysboro, Illinois. Her involvement at SIU has stretched to becoming a Lexis representative, a research assistant for professors, and an editor for an appellate attorney in Indiana. She would not be where she is today without her brother Sam and supportive family. Abigael hopes her passions will continue to take her around the world meeting new people and hearing their stories whether by bike, plane or train.

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Special Immigrant Juvenile Status Update: Age of Protection in Illinois Extended From 18 to 21

BY HILLARY RICHARDSON

Special Immigrant Juvenile Status (SIJS) is a form of immigration relief for eligible children and youth under the age of 21 who have been abused, neglected, or abandoned by a parent, and for whom it would not be in their best interest to return to their home country. Federal law requires that a child first petition an appropriate state court to make specific findings (called an "SIJS predicate order"). Illinois Public Act 101-0121, signed into law in 2019, brought Illinois law into compliance with federal standards, confirming that Illinois state courts have jurisdiction to issue an SIJS predicate order. However, vulnerable youth ages 18 to 21 were still left unprotected even though they qualify for SIJS under federal law, because the age of majority in Illinois is 18.

Public Act 102-0259, signed into law on August 6, 2021, protects vulnerable youth ages 18-21 by allowing them to access Illinois courts in a way that complies with federal immigration law. This new law:

- Allows certain vulnerable youth ages 18-21 to be placed under the guardianship of an adult over 21 with their consent. This adult guardian may be a parent or a non-parent.
- Allows an existing minor guardianship to be extended to the age of 21 with the consent of the youth, allowing them to request SIJS findings.
- Allows youth subject to such a guardianship to be referred for medical or psychological services deemed necessary as a result of parental abuse, neglect, or abandonment.
- Ensures consistency between state and federal law in protecting abused, abandoned and neglected children and youth under 21.

This law sends a clear signal to immigrant minors that if they are abused, neglected, or abandoned by one or both parents, the State of Illinois is fully prepared to assist and protect them to the full extent permitted under federal law. For attorneys interested in helping, the National Immigrant Justice Center has an SIJS Predicate Order Pro Bono Program, which provides training and extensive technical support to licensed attorneys willing to file cases in state juvenile courts. SIJS predicate order cases may be completed in as little as three to six months and are a great opportunity for volunteer attorneys interested in working with immigrant children and families.

For more information about the SIJS Predicate Order Pro Bono Program, please contact Rebekah Rashidfarokhi at 3123327399 or rebekah@cvls.org or Hillary Richardson at 773-672-6601 or hrichardson@heartlandalliance.org. Training, sample materials, and malpractice insurance are provided. No experience is necessary. ■

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Relief or Obligations That a Practitioner Must Be Aware of When Dealing With Immigrant Populations

BY CARLOS CISNEROS-VILCHIS

Most of us may not think about it, but a lot of our clientele in the state of Illinois could be foreign born. Approximately 15 percent of the population in Illinois is foreign born, and only around half of these individuals are U.S. citizens. This means that many of our clients could require additional assistance in their legal issues, or at least a better understanding of the possible ramifications of certain decisions. For ease, we will be referring to these individuals as noncitizens. Noncitizen status in the USA could run the gamut from legal permanent residents (LPRs), Deferred Action for Childhood Arrivals (DACA) recipients,

visa holders, or they could have no status at all. You do not have to be an expert in immigration law to be able to issue spot things that your noncitizen clients could miss. This article aims to give you a brief overview of where immigration law intersects with other areas of the law to help you make certain decision to provide the best legal relief for your clients.

Criminal Law

The first area we will discuss is criminal law. Criminal cases could have a huge impact on immigration cases. Many criminal convictions have immigration consequences. Criminal convictions could make your clients inadmissible into the U.S. (8 USC 1182) and/or deportable (8 USC 1227), depending on the offense and the noncitizen's status. Advising noncitizens in this area is ripe with potential pitfalls for the unwary practitioner.

For instance, since 2010, noncitizens have the right to know the immigration consequences of certain criminal convictions. In *Padilla vs. Kentucky*, 559 U.S. 356 (U.S. 2010), the U.S. Supreme Court held that immigration outcomes are closely linked with the outcome of criminal proceedings. For this reason, criminal defense attorneys have a Sixth Amendment obligation to advise noncitizen defendants of the immigration consequences of their criminal cases.

A quick example of the above could be advising a DACA applicant about the ramifications of agreeing to a plea deal for driving under the influence (DUI). A DUI is considered a "significant misdemeanor" under the DACA program and accepting that plea agreement may perpetually disqualify that noncitizen from DACA's protections. An unwary criminal law practitioner could be opening themselves to an ineffective assistance of counsel claim by not directing their client to seek competent immigration advice concerning the criminal case, especially if that case is close to a plea deal.

Family Law

The most common form of relief available to noncitizens is through marriage with a U.S. citizen. As such, family law holds the most "benefits" to noncitizens. For example, a U.S. citizen is able to petition for their spouse as an immediate relative. What this means is that there is always an immigrant visa available to the spouse of a U.S. citizen. This sort of visa availability is lost through divorce.

Additionally, going through divorce proceeding may impact beneficiaries of certain immigration applications. For example, in some cases, spouses will receive conditional permanent residence from their family-based petitions. Confusingly, a conditional resident is a permanent resident. The difference lies in that the noncitizen needs to apply to remove their conditions within two years of their admission into the country. Failure to apply to remove conditions could lead the noncitizen to be placed in removal (deportation) proceedings. A noncitizen can seek to remove their conditions from their residency either together with their U.S. citizen or resident spouse; or they can seek waivers based on good faith marriage that unfortunately ended in divorce. Some noncitizens may be stuck due to the process, but family law attorneys should invite them to speak with an immigration attorney to make sure the client is complying with their obligations under the Immigration and Nationality Act (INA).

On a related note, there are several provisions in the INA that provide relief to noncitizens who have been victims of extreme cruelty at the hands of their spouses in the U.S. These issues can come up during divorce or during order of protection (OOP) proceedings. A battered noncitizen spouse can have access to different immigration relief if they are survivors of domestic violence at the hands of their spouses. Key protections are provided by the Violence Against Women Act (VAWA). Protections under VAWA expire if the noncitizen does not apply within two years of the finalized divorce. In certain cases, noncitizen spouses or partners can also access protections under the U nonimmigrant visa program if they reported the crime of domestic violence (either to the police or through an OOP).

Employment Law

Noncitizens enjoy some rights in terms of employment law. A noncitizen has a right to receive at least the minimum wage for all hours worked. Immigration status or lack of work authorization is not relevant in wage and hour cases. The only relevant question is whether the individual actually performed the work that they are alleging in their complaint. As such, in complaints regarding work actually performed and not prospective relief, the status of a noncitizen is not at issue in the case. Practitioners would be supported by the new rules of evidence establishing a new procedure when seeking to introduce a party's status. 735 ILCS 5/8-2901. Another option would be to seek an order in limine prohibiting questions about immigration status if opposing counsel is adamant about getting it on record. *Kim v. Hakuya Sushi, Inc.,* No. 1:15-cv-03747 (N.D. Ill. July 5, 2017).

However, a noncitizen without work authorization does not have the right to reinstatement or back pay under discrimination or retaliation provisions. *Hoffman Plastic Compounds, Inc. v. National Labor Relations Board*, 535 U.S. 137 (U.S. 2002). Prospective relief is barred under *Hoffman*, which means that some noncitizens may be barred from receiving unearned wages, back pay, and other prospective (i.e., unworked) damages. It is important to be aware that, depending on what happened while at work, it might still be worthwhile to file a claim in these instances. Sometimes, the situation that the noncitizen may find themselves in could also be considered criminal conduct, such as discrimination claims due to sexual assault, harassment, or possible witness tampering during workplace investigations. In these situations, filing a claim with the appropriate agency might lead to the availability of relief in the form of U or T visas. These are humanitarian visas for victims of certain criminal offenses or human trafficking in the U.S. These humanitarian visas could provide a pathway to citizenship to undocumented individuals, but they require cooperation with a prosecuting agency for noncitizens to have access to this relief. The federal labor agencies USDOL, EEOC, NLRB and their

state/local equivalents may be willing to work with the noncitizen regarding their humanitarian relief.

The above is only a brief overview of how immigration law impacts different areas of the law, and there many other areas that impact immigration cases. While you may currently not practicing immigration law, this does not mean you are insulated from one day having to delve into it. Immigration law intersects with many different practices and it impacts all of them differently. If immigrant population trends continue increasing, there is a possibility that in the future one out of every five U.S. residents could be foreign born. As mentioned earlier, it currently stands at around 15 percent in Illinois. Therefore, understanding the possible relief or dangers of immigration law in your own practice may help you to better represent your clients.

You may be asking yourself, how do I know if my future or actual client is a noncitizen? Easy, you ask them directly. Your intake questionnaire could have a simple non-discriminatory question: where were you born? If your client says U.S., you may not need to follow up on that line of questioning. However, if your client says something else, you may want to gather more information to better serve your clients and to avoid possible pitfalls as detailed above. ■

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Rule 8.4(g) Case Update: Eliminating Bias v. the First Amendment

BY ATHENA T. TAITE

The Supreme Court of Colorado issued an opinion on June 7, 2021, responding to an argument that its ethics rule, intended to address bias in the legal system, improperly limits free speech. Such rules have been scrutinized since the American Bar Association adopted Model Rule 8.4(g), which makes it a violation of the ethics rules for a lawyer to engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status. In June, the Supreme Court of Colorado found in *In re Abrams*, 2021 CO 44, that its ethics rule, Colorado Rule of Professional Conduct 8.4(g), serves a compelling state interest and does not violate the First Amendment. As the Supreme Court of Colorado explained, "'[i]n his private life, [a lawyer] is free to speak in whatever manner he chooses. When representing clients, however, [a lawyer] must put aside the schoolyard code of conduct and adhere to professional standards.'" *Abrams* at ¶ 39 (citing the disciplinary hearing board).

The attorney conduct that led to the *Abrams* decision was an email that a Colorado attorney sent to clients about a judge. The attorney, who described himself as having a Chicago street sense, thought the judge had been rude and hostile towards him in a case management conference in the clients' case. Later, in explaining the status of the case to his clients and addressing his clients' concern about his relationship with the presiding judge, the attorney sent his clients an email, describing the judge using an anti-gay slur. The attorney later asserted to a disciplinary board that he was letting out his frustration about the judge's behavior. The attorney also said that his choice of words was not meant to be an insulting reference to a person's sexual orientation, although he understood the word he used to be an anti-gay slur. The attorney apologized for his conduct and presented evidence to show that he is not biased against the LGBTQ community.

Colorado Rule 8.4(g), which prohibited the attorney's anti-gay slur, differs from Model Rule 8.4(g) in ways that were significant to the Supreme Court of Colorado's decision. Unlike the Model Rule, Colorado Rule 8.4(g) prohibits expressions of bias in representing a client. The conduct must also be directed to other counsel, court personnel, witnesses, parties, judges, judicial officers, or any persons involved in the legal process. The Colorado rule also prohibits conduct exhibiting or intended to engender bias against a specific person on account of a protected characteristic. As such, the language of the Rule, which Colorado enacted decades ago in then Colorado Rule 1.2, is narrower than the Model Rule.

The court found the limiting provisions of Colorado's rule to be narrowly tailored to meet the state's compelling interests to promote and ensure public confidence in the legal system and to ensure the effective administration of justice. In pursuing the elimination of bias in our adversarial system, Colorado Rule 8.4(g) protects persons from discrimination and harassment, as well as derogatory language. By prohibiting the attorney in *Abrams* from using the anti-gay slur in communicating with his clients about the presiding judge, the court further served its interest in protecting the integrity of the

legal profession.

The attorney argued that Rule 8.4(g) was unconstitutionally vague in that it did not detail the exact speech that would violate the Rule. Since the attorney admittedly understood that his choice of words was usually considered to be derogatory, it's difficult to believe that he had no notice that the anti-gay slur was prohibited under the rules. Indeed, the court found that any objective person would find the anti-gay slur to come within the speech prohibited by the ethics rules in their effort to eliminate expressions of bias. *Abrams* at ¶ 33. While the attorney may have shown some positive ties to the LGBTQ+ community, his purported lack of bias was not the issue. His intent and knowledge were at issue. He knew the meaning of the anti-gay slur, and he purposefully directed the slur to a person involved in the legal process to engender bias against another person based on sexual orientation. In regulating action, not bigotry, in the representation of a client by an officer of the court, Colorado's rule intended to eliminate bias currently survives constitutional challenge. See *Abrams* at ¶ 26, 39. ■

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A Revitalized Illinois Commission on Discrimination and Hate Crimes

BY CINDY BUYS

The United States has seen a substantial increase in the number of hate crimes reported in recent years, with more hate crimes reported in 2020 than in any other year since 2008.[1] According to data collected by the Federal Bureau of Investigation (FBI), the majority of hate crime victims are targeted because of the offender's bias against race or ethnicity.[2] Moreover, there has been an particularly alarming increase in anti-Asian hate crime that has occurred since the pandemic began in March 2020. The non-profit, Stop AAPI Hate, has received more than 9,000 anti-Asian incident reports between March 2020 and June 2021.[3] Specific instances of these hate crimes include a fatal assault on an 84-year-old retired man from Thailand living in San Francisco[4] and an Asian-American family being assaulted in Washington, D.C.[5]

While hate crimes perpetrated against Asian Americans have been at the front and center of recent news coverage, other groups are being targeted as well. FBI statistics regarding hate crimes in 2020 show that approximately 13.4 percent of individuals were targeted because of bias against religion and 20.5 percent because of their sexual orientation.[6] This trend has continued in 2021, as shown by a Tennessee man who admitted to attacking a Muslim family because of their religion[7] and a Louisiana State University student being assaulted and left in a coma because of his sexual orientation.[8] Attacks based on gender also remain a concern as shown by the case of an Ohio man who identified as "incel" or "involuntarily celibate" and who planned a mass shooting of sorority students at an Ohio university because he believes he was unjustly denied sexual or romantic attention.[9]

What Is a Hate Crime?

Statutory definitions of hate crimes vary by jurisdiction. To commit a hate crime in Illinois, the perpetrator must be motivated to act by one of the personal characteristics listed in the Illinois hate crimes statute and must commit one of the specific crimes enumerated in the statute. Illinois law defines a "hate crime" as follows:

A person commits hate crime when, by reason of the actual or perceived race, color, creed, religion, ancestry, gender, sexual orientation, physical or mental disability, or national origin of another individual or group of individuals, regardless of the existence of any other motivating factor or factors, he or she commits assault, battery, aggravated assault, intimidation, stalking, cyberstalking, misdemeanor theft, criminal trespass to residence, misdemeanor criminal damage to property, criminal trespass to vehicle, criminal trespass to real property, mob action, disorderly conduct, transmission of obscene messages, harassment by telephone, or harassment through electronic communications as these crimes are defined in . . . this Code.[10]

The Illinois Hate Crimes statute does not create new crimes, but rather takes the approach of enhancing sentencing if particular crimes are motivated by bias against a protected person or group. Hate crimes are most often committed against persons[11] but may also be committed against property.[12] According to FBI data from 2019, the most common hate crime is intimidation (40 percent) followed by simple assault (36.7 percent).[13]

Underreporting of hate crimes remains a serious problem. Of the 15,588 law enforcement agencies participating in the

FBI Uniform Crime Reporting Program in 2019, 86.1 percent reported no hate crimes in their jurisdiction.[14] In Illinois, 700 out of 935 law enforcement agencies reported hate crime data to the federal government, but most of them did not report any hate crime activity in their jurisdiction.[15] In 2020, law enforcement agencies documented 56 hate crimes in Illinois, with the largest number (25) falling in the category of "anti-black or anti-African American."[16] Consistent with federal data, intimidation and assault were the two most frequent types of hate crimes in Illinois in 2020.[17]

The Commission and Its Work

Partly in response to this rise in hate crimes, Governor Pritzker has revitalized the Illinois Commission on Discrimination and Hate Crimes (Commission).[18] The Commission originally was established in 2007 by Governor Blagojevich. Its purposes include:

(1) To identify and uproot sources of discrimination and bias at the source; (2) To assist with the development of resources, training, and information that allow for a swift and efficient response to hate-motivated crimes and incidents; (3) To work with educators throughout Illinois on issues concerning discrimination and hate, teaching acceptance, and embracing diversity at academic institutions; (4) To help ensure that this State's laws addressing discrimination and hate-related violence are widely known and applied correctly to help eradicate and prevent crimes based on discrimination and intolerance; (5) To make recommendations to the Governor and the General Assembly for statutory and programmatic changes necessary to eliminate discrimination and hate-based violence; (6) To help implement recommendations by working with State agencies, the General Assembly, the business community, social service community and other organizations.[19]

The Commission consists of 21 members, including its chair, who are appointed by the Governor and confirmed by Senate. The current chair is Jim Bennett, director of the Illinois Department of Human Rights. As of this writing, there are 18 active commissioners, the majority of whom are from Cook County, with four members residing elsewhere around the state.[20]

The Commission has organized its work into three subcommittees. The first seeks to identify the root causes of discrimination and hate crimes and appropriate responses.[21] A second is examining the legal and regulatory environment to ensure that Illinois law reflects best practices with respect to charging and prosecuting hate crimes.[22] The third seeks to identify or create better education and training programs and engage in outreach to affected persons and communities.[23] The Commission is directed by statute to provide an annual report on its work and recommendations to the Governor by March 30 each year.

The full Commission meets every other month, while the three subcommittees meet monthly. Meetings are open to public and interested persons are encouraged to be engaged in the Commission's work. The Commission also is hosting Town Hall meetings to hear from the public. Information about meetings and Town Hall events may be found on the Commission's website.[24] The Commission invites everyone to be part of this vital work. ■

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CLE Spotlight: 'The $250,000 Difference: What Does Gender Have to Do With It?'

BY DINA M. NINFO & CHLOÉ G. PEDERSEN

On November 12, 2021, the ISBA Standing Committee on Women and the Law presented a CLE program entitled :"The $250,000 Difference: What Does Gender Have to Do With It?" This program addresses the ongoing gender wage gap within the legal community and features panelists Stephanie A. Scharf of Scharf, Banks, Marmor, LLC, Roberta "Bobbi" D. Liebenberg of Fine, Kaplan, and Black, R.P.C., and Eileen M. Letts of Zuber, Lawler, LLP. This program is moderated by Chloé G. Pedersen of Fletcher & Sippel LLC, and Dina M. Ninfo of the Illinois Department of Central Management Services and was sponsored by Fletcher & Sippel LLC.

The written materials for this program are comprised of a compilation of studies and articles authored by the panelist that address various topics such as real-life experiences and perceptions of women attorneys, the retention of women in the profession with a focus on the retention of women of color, and the effects of the pandemic on those retention efforts. The legal profession was no exception to the mass exodus of women from the workforce during the pandemic. Forty-two percent of attorneys who left law firm jobs in 2020 were women, even though women only comprise 30 percent of the attorneys employed in law firms. These inspiring panelists brought both their expertise and personal experience to the discussions on how to address the gender wage gap and retention difficulties through policy, diversity goals, diversity equity and inclusion best practices, compensation plans and models, succession planning, mentoring, sponsorship, and self-advocacy. This program provides a comprehensive overview of the gender wage gap that exists in the legal profession beyond the typical focus on compensation in a vacuum. Additionally, these panelists provided diverse perspectives and offered action-based solutions and best practices. This CLE program continues to be available on the ISBA Online CLE catalog.

Almost 60 years have passed since President John F. Kennedy signed the Equal Pay Act into law in 1963. However, women continue to earn approximately 82 percent of their male counterparts. This wage gap widens for women of color. Additionally, this wage gap has remained essentially stagnant for well over a decade. This is true despite the fact that women are now commonly sole earners for their families, comprise half of the job market, and the fact that millions of working women and their families would be lifted out of poverty if the general wage gap was eliminated. The wage gap that exists in the legal profession is a reflection of the national wage gap and we must do better. These conversations must occur often and must bring more men to the table as advocates. We are grateful for the ISBA Standing Committee on Women and the Law being a catalyst for these discussions.■

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