ILLINOIS STATE BAR ASSOCIATION

JANUARY 2023 VOL 66 NO 7

Family Law

The newsletter of the Illinois State Bar Association's Section on Family Law

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Chair Column: The Intersection of Immigration and Family Law

BY STEPHANIE L. TANG

Family law cases can be used to obtain helpful evidence for immigration cases. If a client reports to their attorney that they or their spouse is a recent immigrant, it is important for the attorney to ask additional follow-up questions to determine whether there are additional relevant considerations that may impact the family law case. Below are some common questions to consider that frequently arise.

How Do You Obtain a Copy of an Immigration File?

At times, clients go to their attorney's office and they are not even sure what their immigration status is or what documents have been filed in their case. Individuals

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Musings of a Mediator: 15 Years Later

BY CHRISTOPHER BOHLEN

When *Illinois Supreme Court Rule 905* was created it gave a deadline to circuit courts to create rules for mandatory mediation of child issues in dissolution and parentage cases by January 1, 2007. We have now had 15 years of experience in the mediation process. Because the underlying purpose of Rule 905 is to allow parents to resolve their issues regarding their child(ren) by agreement between them, a basic understanding of the process itself may help achieve those goals.

Initially it should be understood that parents often don't want to mediate as it appears to be a useless hurdle which impedes the progress to resolving their case. They are apprehensive about another part of the divorce process which is unknown to them.

For example, what mediator has not heard, "I really want to make a deal, but he/she won't even talk to me." Or, "I want 50/50 parenting time and won't settle for a minute less." Then, there are those who

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Chair Column: The Intersection of Immigration and Family Law

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can submit a Freedom of Information Act request to seek documents related to the immigration case, including any orders entered by a judge or any applications or other documents submitted. These requests should be as specific as possible to avoid processing delays. Form G-639 is a form developed for use in FOIA requests to the USCIS, ICE, and OBIM. There are several main agencies to submit FOIA requests to for immigration documents:

1. USCIS: A-file; removal, detention or deportation records; prior immigration petitions and USCIS decisions, certification of non-existence of a record; advance parole records obtained through USCIS
2. CBP: Documentation of records of entries and exits, apprehensions and detentions at the border
3. ICE: Documents related to ICE interactions, including ICE arrest records, detention center records, and bond requests
4. OBIM: Documents related to interactions with immigration officials in which fingerprints are taken (often encounters with border officials)
5. EOIR: Court orders, charging documents
6. DOS: Consular processing and other consulate records, visa applications, passport applications

The Immigration Legal Resource Center published a comprehensive guide to FOIA requests in September 2020, available here: https://www.ilrc.org/sites/default/files/resources/a_step_by_step_guide_to_completing_foia_requests_with_dhs.pdf.

What Work Restrictions Are Imposed Upon a Visa Holder?

The short answer to this is "it depends on the type of visa." This issue often arises in the context of determining a support obligation and whether it is appropriate to impute income to a spouse. But it may also become relevant when determining whether a visa holder spouse is being asked to enter an agreement (prenuptial, postnuptial, or a marital settlement agreement) that is unconscionable because they are going to be unable to work for a set period of time. Below are some common Visa restrictions:

1. K-1 (Fiancé) Visa: Holder can only work once they obtain an Employment Authorization Document (EAD) card. The average processing time is 60-90 days.
2. Tourist (B-2) Visa: Tourist visa holders are also ineligible to work. Notably, on top of the traditional "tourism" purposes, B-2 visas are also granted for participation in musical, sports, or similar events where the participant is not paid for participating, and enrollment in short recreational courses of study not for credit toward a degree
3. H-1B (Specialty Worker) Visa: Holders are admitted for a period of up to 3 years, could be extended to up to 6 years. Generally, if an H-1B visa holder loses their job, there is a sixty-day grace period to find another employer to submit an H-1B petition, change to another immigration status (i.e., Dependent H-4, F-1 Student, or B-2 Tourist visas) or depart the United States.
4. F-1 Student Visa: F-1 students are not permitted to work off-campus during their first academic year, but may accept certain on-campus employment positions. After their first academic year, they can pursue Curricular Practical Training, Optional Practical Training, or STEM Practical Training Extensions.

Will the Divorce Affect My Client's Immigration Status?

It depends. If your client only has a two-year conditional green card, then USCIS typically requires the couple to file a joint petition (I-751) at the end of the two years to remove the conditions. Your client may be able to file a waiver to the

Family Law

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petition, but it is best practices to consult with an immigration attorney under these circumstances to gather evidence such as Petitions for Orders of Protection with allegations of abusive behavior by the spouse and other allegations to support the client's case. Further, if the client is a nonimmigrant visa holder that is tied to marriage (i.e., H-4, L-2, or TD visas), they can fall out of legal status. Additionally, attorneys should inform clients that a non-citizen who was married to a U.S. citizen or permanent resident has two years from the final date of divorce to file a I-360 Violence Against Women Act (VAWA) self-petition if they otherwise qualify.

Does a Child Who Was Abused, Neglected, or Abandoned By Their Biological Parents Qualify for Special Immigrant Juvenile Status (SIJS)?

A child applicant may qualify for SIJS status if they are:

Under 21 years of age;

- Be currently living inside the United States with one biological parent or another third-party caregiver willing to pursue custody, guardianship, or adoption of the child;
- Be unmarried;
- Experience abuse, neglect, or abandonment by one or both biological parents
- Be unable to return to their country of nationality or residency;
- Be in the custody of the Department of Health and Human Services or a state agency, or dependent on the juvenile court; and
- Most relevantly for family law practitioners, obtain an order with specific findings regarding harm suffered by the minor/young adult and their inability to return to their country of nationality/residency due to harm.

Once the court makes the requisite findings in an order, the minor can complete an I-360 Petition and include the court order and proof of age. Notably, the USCIS recently announced a new deferred action policy for those with approved SIJ status who are stuck in the visa backlog. This went into effect on May 6, 2022 and provides applicants with the benefit of applying for work authorization (EAD/I-865) and gives them temporary protection from deportation. For further discussion, please review Judge Walker's article on SIJS in the June 2022 Family Law newsletter.

Can You Enforce an I-864 Affidavit of Support in State Court?

Yes. An I-864 Affidavit of Support is "a document an individual signs to accept financial responsibility for an applicant who is coming to live in the United States." (Department of State) In June 2021, the Illinois Appellate Court, second district, issued its first published opinion regarding enforcement of an affidavit of support in state court, *In re Marriage of Bychina*, 2021 IL App (2d) 200303). For further discussion, please see the September 2021 Family Law Newsletter article I wrote with Russell Knight. ■

Musings of a Mediator: 15 Years Later

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don't want to mediate. "This will never work". "(The other parent) won't agree to anything". "I am not sure, but I am concerned about the kids being abused by the new wife/husband." Or "I want you to read the past two years of printouts of (a) texts, (b) family apps or (b) social media posts. On occasion, the parent wants the children involved in the process "I want you to interview the kids to let the Judge know what they want." Each of the quotes are true and show a need for a better understanding of the purpose and practice of mediation.

The process of mediation initially begins with a need to screen the parents to assure that no impediment blocks the process. In some parts of the State this screening is accomplished through mediation questionnaires, while more typically it is done by individual sessions with the mediator and each parent.

Possible impediments include existing abuse of child(ren) or spouse, ongoing substance abuse or the existence of an order of protection which may require either court action or accommodation such as physically separating the parties to enable the mediation sessions. The screening is to assure that the parties are in a position to make a reasonable agreement and are not under threat or intimidation. If this screening is conducted in person, the mediator is also able to learn of the current situation of the parents and child(ren) and gain insight to the parties' understanding of the joint session which is to come. Finally, in this individual session the mediator can provide an explanation of what is expected from the parties.

At the individual session the confidentiality of the process is also explained. Most circuit rules require that mediators inform the parties that the mediation process is confidential. The process itself is confidential between the mediator and the parents, meaning that the mediator cannot testify regarding the statements of either party and ethically is not to disclose what either parent has said in the individual session. The issue of confidentiality is addressed in the *Illinois Uniform Mediation Act* 710 ILCS 35/1-99. It is also addressed in most circuit court rules regarding mediation, although, the statute and the rules are sometimes in conflict. Schmitz, Suzanne, *Survey of Illinois: Mediation to Maximize Confidentiality Protections for Family Mediations The Courts Should Rely on the Illinois Uniform Mediation Act* 2015 S. Ill. U. L. J. 591 The confidentiality aspect of mediation is essential to allow parents to speak without fear of reprisal. The issue should also be clarified by a

confidentiality agreement between the mediator and parties.

It is also in the individual sessions that the identity of the participants will be established. This author usually informs the parties that the new significant other will not be participating in the sessions nor will the children typically be a participant. The participation of a third party adds a dynamic that diverts the conversation between the parents and also compromises the confidentiality of the session. The opinions of the children are not particularly relevant in mediating an agreement between the parents.

The parties are also informed that unless they are using free court mediation services, such as Cook County, they will typically each be required to pay the mediator the percentage established by the court. Finally, they will also learn that the mediator has no authority and will not force either party to unwillingly agree. The mediator's reports to the court are limited to confirmation of the meetings and a statement informing the court whether the parties reached an agreement on all issues, a partial agreement or no agreement at all. All of this sounds and is very basic. However, because it is a new process to most parents, there is no explanation or information that is too elementary.

This mediator explains to the clients that the goal is to get an agreement that will work and this mediator will do whatever is ethical to help them get to that agreement which works for the parties and is consistent with the best interests of the children.

Consistent with explaining the goal, the mediator asks the question of each parent if the parent desires a judge to tell the parent what decisions they can make or when, where, and at what times they will be allowed to have time with their child or children. In that context the parents often become quickly aware of the attraction of those issues being based on their agreement, not that of a judge whose knowledge is limited to the evidence heard in the courtroom.

The parents need to know that much factual information will not be presented to the judge due to rules of evidence, time limits or the fact that their attorney may determine that such information is not helpful. They need to be educated that while the parents know almost all of the facts, although they disagree on the significance, the judge will know only very limited facts. The reality of litigation and the lack of predictability of the outcome of a hearing needs to be stressed.

What follows the individual session is one or more joint sessions with the parents. The success of those joint sessions is determined by the parents, the attorneys for the parents and the mediators, all of whom need a commitment to a successful outcome. The parents, with guidance from counsel must be willing and prepared to discuss issues and compromise if they can do so honestly. The mediator must lead a process focused on the child or children and provide a forum where parents are able to discuss and resolve issues.

It is very critical that attorneys prepare their clients. Most mediators agree that a mediation is more likely to be successful if attorneys, whom the clients trust, provide basic information to their client. This following list is very simple and obvious. However, the reality is that clients often show up with little of no understanding the process.

1. That problem can be solved if clients, who have not previously mediated, are educated of the following:
2. The process involves negotiation and compromise.
3. There are four areas for parenting decisions, along with a brief description of each of the areas.
4. It will be beneficial if clients have a realistic idea, in advance, regarding a schedule which might work best for week to week parenting time for the child(ren), for that parent and for the other parent and thoughts regarding a schedule including start and end times which will work for holiday and vacation parenting time.
5. The judge is not likely to look kindly on the parent who procrastinates or worse, chooses not to participate.
6. Although this may be counter to the attorney's interest, the client needs to understand that this process can save a lot of money and courtroom time, if the parties reach an agreement.
7. What standards the judge will consider if the mediation is unsuccessful.

Preparation may include additional advice, including strategy. A client having this basic information will at least have a foundation to understand what expectations are reasonable. Even more helpful, counsel should advise their clients to provide certain additional information which will further enhance the opportunity for success.

1. For post judgment mediation, copies of pending motions.
2. The client's current work schedule.
3. Access to school calendars/extra-curricular schedules
4. Have any medical diagnosis documents regarding any unusual health issues.
5. Clients should have a parenting schedule that parent wants and a back-up plan with a parenting schedule which would be acceptable.

If the parties are practical and accept the statutory goal to assure maximum involvement of each parent a mediation can be successful. The ultimate goal is an agreement acceptable to each parent regarding the issues which were considered and which is in the best interests of the child(ren) and which then is accepted by the court.

As family law attorneys it is incumbent upon us to educate our clients to the possible benefits, both present and future, and assure our clients' informed, educated and prepared participation of the mediation process. Parents who successfully achieve a parenting plan will realize that this success is a building block which can be the basis for resolving future issues and making their co-parenting more likely to succeed in the future. ■

The Ethics of Representing Children

BY LISA M. NYULI

Representing children's interests under the Illinois Marriage and Dissolution of Marriage Act is a very important task. Judges and attorneys consider the job to be very important, and how an attorney handles the task is crucially important and can impact a family for years to come. Training before appointment as a guardian *ad litem* (GAL) or child's representative is required by the Illinois Supreme Court, and a very important aspect of that training is broadly described as "ethics." This includes more than just following the Rules of Professional Responsibility, although that is both necessary and required; it encompasses a working knowledge of the statutory provisions that govern what you can and cannot do in each of these positions, so that you do not blur the lines and create a problem for the court or the family.

First, It Is Important to Know Your Role

When appointed by the court as a child's representative or *guardian ad litem*, an attorney needs to know what job you have been assigned. The order should tell you whether you are a child's representative, a guardian *ad litem*, or an attorney for the child. Whatever role you have been appointed to, you are governed by Section 506 of the Illinois Marriage and Dissolution of Marriage Act. 506(a) starts with a discussion of the duties in representation of a child and provides that in any proceedings involving the support, custody, visitation, allocation of parental responsibilities, education, parentage, property interest or general welfare of a minor or dependent child, the court may, on its own motion or the motion of any party, appoint an attorney to serve in the capacity of *guardian ad litem*, child's representative, or attorney for the child.

1. *Attorney for child* – When appointed as an attorney for the child, you have the same duties as in any attorney/client relationship, that is, to provide independent legal counsel for the child to whom you have the same duty of undivided loyalty, confidentiality and competent representation as would be due to an adult client.
   An attorney for the child has confidential relationship with child, cannot testify in the proceeding, can file pleadings, and issue discovery to investigate relevant matters. At trial, the attorney for the child can call witnesses, and offer argument.
2. *Guardian ad litem* – This role is traditionally described as being the Court's witness. Currently, 506 states that the guardian *ad litem*: **shall** investigate the facts of the case and interview the child and the parties; **shall** testify or submit a written report to the court regarding recommendations in accordance with the best interest of the child; and **may** be call as a witness for purposes of cross examination regarding the report or recommendations.
   There is a proposed modification to the statute that is an attempt to resolve some questions that arise when acting as a GAL, by adding language to Section 506 requiring written reports, written recommendations, or proposed parenting plans, and requiring the GAL to be available for deposition before trial. It also provides that at the discretion of the court the GAL may be present for all proceedings, including *in camera* interviews of the child, may issue subpoenas for records, and may file pleadings for procedural matters.
   Child representative – This person advocates what the child's representative finds to be in the best interests of the child after investigation, based on the facts and circumstances of the case. A child's representative **shall** meet with the child and the parties and investigate the facts of the case. A child's representative also **shall** possess all the powers of investigation as does a GAL. The child's representative **shall** consider, but not be bound by the expressed wishes of the child, **shall** have the same authority and obligation to participate in the litigation as does an attorney for a party, but **shall not** render an opinion, recommendation or report to the court, but shall disclose the position as to what the child representative intends to advocate in a pretrial memorandum. A child's representative **shall not** be called as a witness at trial, and **shall** only offer evidence-based legal arguments. Finally, a child's representative **shall not** disclose confidential communications made by the child.

When appointed in the role of guardian *ad litem*, child's representative or attorney for the child, you are also governed by Supreme Court Rule 907, which is entitled "Minimum duties and responsibilities of attorneys for minor children". This Rule provides every child representative, attorney for the child and guardian *ad litem* shall adhere to all ethical rules governing attorneys in professional practice, be mindful of any conflicts in the representation of children and take appropriate action to address such conflicts."

More specifically, the Rule provides:

1. As soon as practicable, you shall interview the child, or if the child is too young to be interviewed, observe the child. Supreme Court Rule 907(c).
2. You shall take whatever reasonable steps are necessary to obtain all the information pertaining to issues affecting the child. Supreme Court Rule 907(c).
3. Shall have the right to interview his or her client without any limitation or impediment. Supreme Court Rule

907(b).

4. Upon appointment, the trial court shall enter an order to allow access to the child, and all relevant documents. Supreme Court Rule 907(c).
5. Shall make appropriate recommendations to the parties in order to serve the best interests of the child. Supreme Court Rule 907(d).
6. Shall determine whether a settlement of the custody/allocation dispute can be achieved by agreement and shall attempt to resolve the disputes by an agreement to the extent feasible. Supreme Court Rule 907(d).

Know the Rules of Professional Conduct

Potential conflicts included past connection to the case, and usually this comes up when you have been appointed mediator, or have acted as a parental coordinator. Also, if you have connections to the parties or the attorneys, there may be a conflict. You can also create a conflict if during your investigation you begin working with one side, such as filing pleadings on behalf of one of the parties. Most commonly, this can occur when the two parents are self-represented litigants and aren't filing the correct pleadings.

Be aware of the Rules of Professional Conduct: Rule 1.7 – Conflict of Interest: Don't represent a client if the representation involves a concurrent conflict of interest, which would be when representing one client would be directly adverse to another client, or if there is a significant risk that representation of one will be materially limited by responsibilities to another client, former client or third person, or by the personal interest of the lawyer. Don't disregard your personal interests – if you have strong beliefs about something that is at issue in the case, do a gut check. Can you really put it aside and do a neutral investigation? If not, turn down the appointment.

Two interesting cases address conflicts of interest: *In re Marriage of Petrik*, 2012 IL App 110495 (2d Dist., 2012). In this case, the court issues a warning to attorneys regarding conflicts of interest, noting specific issues between Supreme Court Rule 1.6 (Confidentiality) and Supreme Court Rule 1.12 (Former Judge, Arbitrator, Mediator or Other Third-Party Neutral).

The case of *People v. Austin M.*, 2012 IL 111194 (2012) deals with a delinquency hearing where the trial court appointed a minor defendant's defense attorney as his *guardian ad litem*, and the opinion contains a discussion of conflicts of interest.

Know Other Relevant Statutory Provisions

Attorneys acting on behalf of children must be aware of the requirements of The Illinois Mental Health and Developmental Disabilities Confidentiality Act, 740 ILCS 110/4, which protects mental health records. Section 4(a)(5) of the Act allows a guardian *ad litem* who represents a minor 12 years or older to inspect and copy a recipient's record in any judicial proceeding, provided the court has entered an order granted the attorney this right. If the minor is under 12, either parent may consent to the GAL's access to the records. A GAL must be careful to avoid violations of the act which may come with redisclosure of information. See the case of *Mandziara v. Canulli*, 299 Ill.App.3d 593 (1st Dist., 1999) for a discussion of the necessity of a court order before subpoenaing mental health records.

Also, when acting on behalf of children, you should be aware of the potential impact of the Health Insurance Portability and Accountability Act of 1996, also known as HIPAA. This is a federal law which protects sensitive patient health information from disclosure without the patient's knowledge or consent. 45 C.F.R. Part 164 relates to the disclosure of individually identifiable information by health care providers and requires a patient's authorization for disclosure. Again, this is a rule where a GAL needs to be careful of redisclosure when giving a report to the Court.

Frequently, there have been interactions between the parties and DCFS. If a report is unfounded, 325 ILCS 5/7.14 provides: "Notwithstanding any other provision of law to the contrary, an unfounded report shall not be admissible in any judicial or administrative proceeding or action except for proceedings under Sections 2-10 and 2-21 of the Juvenile Court Act of 1987 involving a petition filed under Section 2-13 of the Juvenile Court Act of 1987 alleging abuse or neglect to the same child, a sibling of the child, the same perpetrator, or a member of the child's household."

In the case of *In re Marriage of Troy S.*, 319 Ill.App.3d 61 (3d Dist., 2001), the Court provides a useful analysis of confidentiality of records and testimony regarding the information that is contained in the records. This case also contained an interpretation of the Abused and Neglected Child Report Act, which provides, in Section 11, that "records concerning reports of child abuse and neglect … shall be confidential and shall not be disclosed except as specifically authorized by this Act or other applicable law". 325 ILCS 5/11. The court also noted that the Act further provides that it is a Class A misdemeanor to permit, assist, or encourage unauthorized release of any information contained in such reports, referrals, or records. 325 ILCS 5/11.

For a GAL or child's representative, a best practice would be to first try to obtain mental health records directly from the party. If that fails, get written authorization from the party, and/or the court, to obtain and use records if they are relevant. Finally, if there is any question about the records, consider seeking an *in camera* inspection by the court.

In summary, while assisting the court in a child-related matter can be very rewarding, it is imperative that we act in accordance with the statutes, Supreme Court Rules and Rules of Professional Responsibility to avoid further trauma and detriment to the family and possibly the case. ■

Timing Is Everything: Setting the Date for Valuation of Marital Property

BY JUDD FINEBERG

In the 2016 re-write the Illinois Marriage and Dissolution of Marriage Act, section 503(f) was revised from requiring marital assets to be valued as close to the date of trial as possible, to giving courts "the discretion to use the date of the trial or such other date as agreed upon by the parties, or ordered by the court within its discretion, for purposes of determining the value of assets or property."[1] But are courts using their discretion to select a valuation date, and what should practitioners argue to persuade a court to utilize a valuation date other than the trial date?

Since the IMDMA re-write, very few Illinois cases have come down on appeal involving this discretion (most of which are Rule 23 orders), leaving trial judges and practitioners with little guidance. One such case is *In re Marriage of Calk*,[2] in which the husband started a marital business with his brother, owning 70 percent while his brother owned 30 percent. In February 2014, the husband filed for divorce. Trial commenced in September 2017. The husband's expert testified at trial that the interest in the business was worth $15.3 million as of December 31, 2013, and that the same business had a value of $75.8 million as of December 31, 2016. The wife's expert opined that the husband's interest in the business was worth $94.1 million as of December 31, 2016. Husband argued to use the 2013 valuation date; wife argued to use the 2016 valuation date. The trial court found that the 2016 valuation date was appropriate, but made said finding based on a reference to an agreement by the parties to use that date, and valued the interest at $80 million. The trial court then considered the relevant factors of section 503(d), and awarded husband 70 percent of the value of the business interest, and awarded the wife 30 percent (giving the wife over $8 million more than the entire interest was worth in 2013). The appellate court disagreed with the trial court and found no agreement had been reached on the valuation date. However, the Appellate Court also found that the trial court did not abuse its discretion in selecting the 2016 valuation date. While the husband argued that the increase in value from 2013 to 2016 was due to the passage of time and his post-filing efforts, the appellate court found no abuse of discretion in selecting the 2016 valuation date. Unfortunately, the appellate court offered no insight into what circumstances may exist in which such a valuation date could be an abuse of discretion.

In *Roy v. Roy*,[3] the trial court utilized the *Hunt* formula in dividing the husband's pension. The parties were married in September 2004, separated in April 2012, the petition for dissolution of marriage was filed in November 2012, and judgment was entered in November 2015. Applying the *Hunt* formula,[4] the trial court calculated the marital portion of the pension using the date of marriage through the date of filing (rather than the date of entry of judgment). The wife contended that she was deprived of three years' worth of accumulated benefits by using the date of filing, rather than the date of dissolution. The appellate court affirmed, finding no abuse of discretion. Again, however, no insight was offered as to what circumstances could be an abuse of discretion.

In *In re Marriage of Budorick*,[5] the trial court divided all marital property equally, but valued the wife's retirement accounts as of the date closest to filing for divorce, and valued the husband's retirement accounts as of the date of trial. The trial court based its decision upon its finding that the husband delayed the proceedings, which actions were detrimental to the family's financial well-being. The appellate court reversed, finding an abuse of discretion, and stating that "the court must be consistent in setting a valuation date" and that the use of "inconsistent valuation dates cannot be used as a substitute for sanctions". The appellate court explained that the trial court could consider post-filing contributions in allocating property between the parties, but not in selecting a valuation date.

What is clear is that Illinois precedent is scarce on the issue of setting a valuation date. This question has confounded courts all across the country, with no uniform resolution. "In other jurisdictions in which the equitable distribution of marital property is provided for, there similarly has been no clear judicial consensus as to the date to be employed in the valuation of marital assets. In some states, the date of trial is used. In others, courts utilize the date at which the divorce is granted. Many states have declined to fashion a rigid rule, holding that the date of valuation is to be determined by the trial court after considering all of the circumstances of the particular case. The justification for this reluctance to create a simple formula for property division was well expressed by the Supreme Court of Wisconsin in *Lacey v. Lacey*:

The formula for division derives from the facts of the individual case. If it is argued that this approach gives great leeway and also places a heavy responsibility on trial courts in divorce cases, there is no gainsaying that fact. However, both flexibility and responsibility are called for by the endless variety of human situations that come to court in family cases. No two are exactly alike.

Other courts have explained that in order to achieve a truly equitable division of marital property, a court must be given the flexibility to utilize alternative valuation dates where reasonable under the facts presented. Since the value of one asset might change drastically during the course of the dissolution of a marriage, while the worth

of another remains stable, some courts have stated that there is discretion to employ different valuation dates for different assets."[6] In New York, their appellate court discussed circumstances in which valuation at the time of trial could be problematic, stating that, "practical problems could arise if proof of value at the date of trial is unavailable. Injustice could result if the value of an asset significantly decreased after commencement of the action due to wasteful dissipation or other fault of the owner spouse. In this type of circumstance, it might be unfair to, in effect, force the blameless spouse to share a portion of the loss. An asset such as, for example, a business, might suddenly appreciate in value due solely to the efforts of the owner spouse. If a considerable period of time has elapsed since the date of commencement or the date of separation, the court might be justified in establishing a valuation date earlier than the date of trial."[7]

In Kansas, their appellate court recognized that valuing property as of the date of trial is generally preferred to allow the trial court's division to be based on the most current financial information available, but it also reasoned that "several factual situations may arise in which property will be valued earlier than the trial date: when the parties have a lack of financial involvement with each other after the separation, when one party dissipates marital assets, when one spouse deliberately delays the divorce, or when marital assets appreciate during separation due to the efforts of one spouse."[8]

Giving trial courts the discretion to select a valuation date is good policy and should provide litigants with a more just and equitable division of property. However, that is only true if courts actually utilize that discretion in their cases, and if lawyers advocate for that flexibility. Using a valuation date other than the date closest to trial can provide litigants with creative solutions to avoid prolonged dissipation hearings, difficult-to-prove (and often disfavored) contribution arguments, and disincentivize parties from drawing out the litigation. Hopefully, we will see more cases use this flexibility to the benefit of our clients. ■

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1. 750 ILCS 5/503(f) (West 2022).
2. 2020 IL App (1st) 182512-U.
3. 2016 IL App (5th) 150549-U.
4. The marital interest in each payment will be a fraction of that payment, the numerator of the fraction being the number of years (or months) of marriage during which the benefits were being accumulated, the denominator being the total number of years (or months) during which benefits were accumulated prior to divorce. *In re Marriage of Hunt*, 78 Ill. App.3d 653, 663 (1979).
5. 2020 IL App (1st) 190994.
6. *Wegman v. Wegman*, 123 A.D.2d, 220, 232-33 (1986). (Internal citations omitted.)
7. *Id*.
8. *Matter of Marriage of Schwein*, 17 Kan.App.3d 498, 508 (1992).

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Update on the ISBA's Diversity, Equity, Inclusion, and Accessibility Initiatives Regarding Disability and Disabled People

BY PATTI CHANG

The Illinois State Bar Association (ISBA) strives to increase diversity, equity, inclusion, and accessibility (DEIA) in many ways and is making DEIA a top priority going forward. This article provides an update on the ISBA's DEIA initiatives with respect to disability and disabled people. But before moving on, a quick note regarding the verbiage used in this article is in order. We use identity first language intentionally because the author of this article prefers it, while at the same time, we acknowledge that not all people with disabilities have the same preference. So, we speak in terms of "disabled people" as opposed to "a person who is disabled."

We at the ISBA also believe that efforts around DEIA are helpful to all. Take curb cuts as an example; though originally developed to increase accessibility for people using wheelchairs, they are also helpful to those pushing baby strollers or pulling rolling suitcases too. Scanners and optical character recognition are also widely used technologies that were originally invented to aid the blind in reading printed materials which could then be translated from text to speech. The key takeaway here is that making changes to our world to make it more accessible to disabled people yields dividends for everyone.

The ISBA's Disability Law Committee

There is an axiom in the disability community—"nothing about us without us." As the ISBA is no exception, our DEIA efforts around disability begin with our Disability Law Committee. The Committee's charges include promoting fair and equal treatment of disabled people and providing a forum for education and advocacy as it relates to disabled people generally; as well as to further the professional development and inclusion of attorneys and law students with disabilities, and practitioners who serve disabled clients, by creating programming and other resources to support their professional needs. Additionally, the Disability Law Committee actively supports inclusivity within the ISBA through outreach to various stakeholders in the legal community.

The Committee also brings accessibility barriers to the attention of ISBA leadership and staff. For example, the Committee presses the ISBA to commit to using only accessible event venues that are welcoming to people using wheelchairs (see more on this below). The Committee also points out issues within the ISBA's web presence that would be inaccessible to blind people using screen reader software.

Another important role of the Committee is to provide perspective and feedback about problematic language to ISBA staff. A good example was when the Committee was helping to shape the ISBA Accessibility Statement, which originally stated that we "encourage the visually impaired to bring along an additional individual [to events] at no additional charge to take notes or assist." This suggestion, though well-intentioned, sounds custodial and has since been replaced by simply asking members if there are reasonable accommodations that would allow them to participate more fully.

More recently, the Committee has begun to engage with ISBA staff through regular meetings on DEIA within the Association. Meetings take place every couple of months and create an ongoing dialogue which is helpful in keeping the idea that disability is part of diversity at the forefront.

This journey has not always been smooth, but for the most part it has been moving forward and has led to positive change. The ISBA has come a long way from the author's first Midyear Meeting where she was unfortunately asked, "honey this is a meeting for lawyers. Where are you trying to go?"

Working Together in Many Areas

Through our regular meetings with ISBA staff, we are now sharing ideas and solutions. Because every disability is different and every disabled person is unique, DEIA around disability is especially complex. That said, we have been working on some key areas that I will touch upon below.

Meeting and Event Venues, Location, and Accessibility

The accessibility-related challenges inherent in meeting and event venues is best exemplified by considering the Abbey Resort in Wisconsin, where the ISBA Annual Meeting has been held many times in the past. Most attendees would attest that this venue is an accessibility nightmare with several different levels that are not easily accessed via elevators. While the ISBA did continue to return to the Abbey after accessibility barriers were pointed out by the Disability Law Committee, staff has assured us that it will no longer be a future venue for the ISBA.

As the above demonstrates, meeting venues typically pose significant challenges in relation to accessibility. Not only do we want facilities that can be easily maneuvered by all, but we also need venues that are accessible via public transit. Not everyone drives a car, and not everyone can afford to drive a car to a venue. When selecting

venues, we should be asking whether the venue has proper signage and if it is friendly to those with mental health issues. Accessibility-related issues should be top of mind when venues are sought out for ISBA meetings and events.

One way to be inclusive for disabled members and guests is to make clear that reasonable accommodations are possible and clearly state where such requests should be directed. This has been included in the ISBA Accessibility Statement, but the committee urges the ISBA to include a similar statement on all communications about virtual and in-person events that informs potential participants about the reasonable accommodation process.

Continuing Legal Education

The ISBA is thankfully encouraging CLE planners to seek out diverse speakers including disabled people. If lawyers do not see their disabled colleagues as experts in their own right, they will be less likely to have high expectations for disabled people, which impacts everything from socialization to hiring decisions. Moreover, CLE materials that are distributed to attendees should be readable by all. As such, speakers are discouraged from simply handing in scans of their materials that are images, and are encouraged to submit materials in text-based formats like Word, RTF, and text-based PDFs that allow blind people using screen readers to access those materials easily. By the way, text-based materials are searchable by all, which is a great example of how accessibility benefits everyone.

ISBA Website

The ISBA has worked hard to improve our accessibility on the web. Our accessibility statement page says it well in listing the following measures being taken to improve accessibility:

- Regular review of design and coding of website for accessibility improvements;
- Providing accessibility training for ISBA staff;
- Integrating accessibility into our procurement practices;
- Automated closed captioning available for all On-Demand CLE programs created after September 2021;
- All live CLE webcasts now offer closed captioning and transcripts via Zoom; and
- Reviewing PDFs, Word documents, and other files to prioritize documents to make accessible and to develop accessible templates for future documents.

One recent improvement the ISBA can be especially proud of is providing its judicial evaluations on the web in a more accessible format than the PDFs that had been previously used. Those statewide evaluations are available to the public and are used by almost a hundred thousand people in the November 2022 election. One grateful voter said "This is the first time I have found enough accessible information on the web in Illinois to make informed decisions in judicial races. I used to just not vote for them at all." This change also made the judicial evaluations mobile friendly and more user friendly generally, as another example of how making something accessible benefits everyone.

Future Efforts

Is there more to do? Of course, there is more to do. Twenty to twenty-five percent of the population has a disability, yet the ISBA membership includes few disabled people and is lacking disabled people in leadership positions. ISBA staff members with disabilities are also few. Sometimes it seems that our DEIA efforts leave out those with disabilities entirely, and staff and members likely exhibit hidden, implicit biases that unintentionally exclude people.

So, the ISBA should work on future DEIA initiatives, which might include:

- Actively recruiting law students, lawyers, and employees with disabilities and creating a pipeline to leadership through networking and mentorship;
- Hiring someone on ISBA staff who has expertise in diversity, equity, inclusion, and accessibility;
- Adopting a robust plan to ensure accessibility of future venues; and
- Providing more helpful information around the law in accessible formats to the general public.

If you want to help with these efforts or know someone we should recruit to help with these initiatives and others, please reach out to the author (PChang@nfb.org) and she'll relay the information to our Disability Law Committee.■