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Mental Health Matters

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

Court's Improper Denial of Pro Se Right Results in New Trial for Defendant

BY NICHOLAS HENGELS-CHINN

People v. Rodriguez-Aranda, **2022 IL App (2d) 200715, opinion filed June 29, 2022**

The second district appellate court reversed the judgment of the circuit court of Winnebago County and remanded the case for a new trial due to the circuit court's denial of defendant's request to represent himself *pro se* and the improper shackling of defendant during the court proceedings of the bench trial. ¶ 1. The appellate court agreed with defendant that the court erred in denying his request to represent himself

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Limits on Disclosure of Client Records After Resolution of the Case

BY JOSEPHINE SHANE

Doe. v. Burke Wise Morrissey & Kaveny, LLC., **2022 IL App (1st) 211283, opinion filed October 7, 2022**

Introduction

To protect the confidentiality of records and communications of people who receive mental health services, the Mental Health and Developmental Disabilities Confidentiality Act (740 ILCS 110/1 *et seq.*) ("Act") authorizes disclosure of a client's records and communications for limited purposes, including that of medical malpractice litigation.[1] However, once those purposes have concluded, releasing identifying details in the client's records goes beyond the scope of authority under the Act. [2]

In *Doe v. Burke Wise Morrissey & Kaveny, LLC*, the First District held that Doe established a viable claim against his attorneys, who represented him in a medical malpractice lawsuit, when they published identifying details of plaintiff's mental health relevant to the medical

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Court's Improper Denial of Pro Se Right Results in New Trial for Defendant

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and in leaving him mostly shackled for the duration of the trial. ¶ 1.

Background

On November 20, 2015, defendant purportedly stabbed his wife in a jealous rage, and upon realizing what he had done, turned the knife on himself with suicidal intent. ¶ 7. After being discovered at the brink of death the following morning, defendant was taken to the Order of St. Francis Medical Center for treatment. ¶ 7 Defendant then spent a week in hospital before he was placed under arrest, read his *Miranda* rights, and interviewed on November 30, 2015. ¶ 8.

On September 13, 2016, defendant's counsel filed a motion to suppress defendant's statements made in the November 30, 2015, interview, arguing that defendant did not have the capacity to waive his *Miranda* rights, because he had been diagnosed with schizophrenia, prescribed psychotropic medication, and was in a compromised physical state due to his suicide attempt. ¶ 12. The State hired Dr. Lichtenwald to examine the defendant and prepare a report on defendant's capacity to waive his *Miranda* rights. ¶ 12. While the motion to suppress would eventually be withdrawn by defendant's counsel, Dr. Lichtenwald's report still entered the record before that time. ¶ 12.

Dr. Lichtenwald's report concluded that defendant was competent to waive his *Miranda* rights. ¶ 15. While a hospital psychiatrist had initially diagnosed defendant as schizophrenic and prescribed defendant psychotropic medication during his initial stay in the hospital, ¶ 13, in the following months, defendant denied having any mental illness, denied experiencing suicidal ideation beyond the first two days of his hospitalization, and showed no signs of mental illness even after having been off all psychotropic medications for over a year. ¶ 14.

Following the withdrawal of the motion to suppress, when asked by the trial court if he intended to accept a plea deal arranged by his trial attorney on May 3, 2018, defendant made a request of the court. Defendant declared that he did not wish to plead guilty and after stating his preference that he be assigned new counsel that spoke Spanish, requested that he be allowed to represent himself. ¶ 17. The court told defendant that while he did not have to plead guilty, it would not assign new counsel, and at length, admonished defendant as to the ill-advisedness of representing oneself generally, with particular emphasis put on the fact that the defendant neither read nor spoke English. ¶ 19. The court then inquired into whether defendant had ever received a mental health diagnosis and was informed by the present attorneys that defendant had at one point been diagnosed with schizophrenia. ¶ 19. When asked if there was any evidence in reports that was inconsistent with that diagnosis, neither attorney could recall any such evidence offhand and this was accepted by the court. ¶ 20. The court then entered an order denying defendant's request to proceed *pro se* on three bases: his schizophrenia diagnosis, his inability to understand English, and his disruptive behavior in court. ¶ 21. Defendant would again express his dissatisfaction with his assigned counsel and request that he be allowed to proceed *pro se*. ¶ 23.

When the case proceeded to bench trial the defense counsel requested the defendant have his hands unshackled for the trial. ¶ 25. Only defendant's right hand was unshackled so that he could take notes. ¶ 25. In a post-trial motion defendant alleged that his trial counsel was ineffective, the court erred in denying his request to represent himself, and the court erred in leaving his left hand shackled at trial. ¶ 26. The trial court denied his motion, and regarding defendant's shackling, the court stated that the right not to be handcuffed or shackled in a jury trial does not extend to bench trials. ¶ 27.

On appeal, the state maintained that "defendant did not clearly, unequivocally, and unambiguously request to proceed *pro*

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se and that his main request was for a new attorney. . . or a new interpreter[.]" ¶ 35.

Analysis

Defendant's Right to Self-Representation

Regarding the State's claim that defendant did not unequivocally and unambiguously request to proceed *pro se*, the appellate court found that three requests and the trial court's lengthy admonishments clearly established that the court understood the defendant's request and that this understanding was sufficient. Citing, *Rainey*, 2019 IL App (1st) 160187, ¶ 43. ¶ 37.

The court also found that the trial court had "intricately" linked the defendant's inability to read and speak English to his legal ability to represent himself. ¶ 40. The court held this denial of the defendant's right to proceed *pro se* was improper, as such denials can neither be based merely on a lack of legal knowledge and ability, nor on the courts belief that it would be unwise for a defendant to proceed in such a manner. ¶ 41.

Concerning the trial court's finding that defendant had forfeited his right to self-representation, the court found no basis to support such a finding. ¶ 45. The court held that given that the right to represent oneself is fundamental, trial courts must endure some degree of unorthodox or even irritating behavior from *pro se* defendants. ¶ 45. While the court stated that had his behavior required his removal from the court room, had he threatened or insulted the court, or had he refused to participate in proceedings, such behaviors might justify baring defendant from representing himself. ¶ 45. However, defendant's behavior did not cross the bounds within which trial courts must tolerate the rough demeanor of *pro se* defendants. ¶ 45. The court expanded on this, finding that the mere fact that the trial court had admonished defendant for the occasional interruption or for speaking too quickly, it did not signal that his behavior rose to the level of egregiousness necessary to bar *pro se* representation, and that behavior merely less respectful than typical does not reflect that the defendant was abusive or insulting toward the court. ¶ 45.

Furthermore, the court found "the trial court abused its discretion when it denied defendant's request to represent himself, based simply on a prior diagnosis of schizophrenia without reviewing all the medical records. . . and without otherwise more fully considering defendant's present ability to conduct trial proceeding by himself." Citing *Rainey*, 2019 IL App (1st)160187, ¶ 76. ¶ 60. The court held that a bright-line ruling precluding the defendant from proceeding *pro se* on grounds of his schizophrenia diagnosis and the trial judge's reliance on the fleeting recollections of detailed documents by the present attorneys did not satisfy the need for an individualized inquiry due when contemplating this type of right's restriction. Citing generally, *Indiana v. Edwards*, 55 U.S. 164 (2008). ¶ 51. The court noted that the mere presence of a severe mental illness is insufficient to support the denial of defendant's right to proceed *pro se* and must instead demonstrate defendant is delusional or irrational at the time of trial. Citing *People v. Washington,* 2016IL App (1st) 131198. ¶ 54.

The court agreed with defendant that his purported diagnosis, with no findings on how said diagnosis affected his ability to represent himself, did not support the trial court's finding that he was incompetent to conduct trial proceedings on his own. ¶ 55. The court found in this case that the trial court was insufficiently familiar with defendant's mental health, ¶ 57, to the point that it appeared that no one present had thoroughly examined the report upon which they purportedly based their findings. ¶ 58. Upon review of Dr. Lichtenwald's report, the court found support for the notion that defendant's prior diagnosis did not render him unable to represent himself. ¶ 58. The court further observed that the trial court's consideration of defendant's attempted suicide over two years prior to the proceedings, without any subsequent suicidal ideation or attempts, had little bearing on defendant's current competency to represent himself at trial. ¶ 59.

Based on the multitude of structural defects in defiance of harmless error analysis in the trial court's findings above, the court reversed defendant's conviction and remanded for new trial. ¶ 60.

Leaving Defendant Partially Shackled at Trial was Improper

The court then briefly touched on the issue of defendant remaining shackled at trial. On this issue the court found that the trial court's assertion that the defendant's right to be unshackled extended only to jury trial proceedings was incorrect. Citing, *People v. Allen*, 222 Ill. 2d 340, 346 (2006). ¶ 63. The court held that the trial court should have either fully granted the request to be unshackled or held a hearing to determine the shackles' necessity in accordance with Illinois Supreme Court Rule 430. ¶ 64.■

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Limits on Disclosure of Client Records After Resolution of the Case

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practice suit in a press release and Law Bulletin article.[3] The appellate court found that the details in the press release and Law Bulletin article contained "records" and "communications," which are protected under the Act.[4]

Facts & Background

Defendant attorneys represented plaintiff, John Doe, in a medical malpractice action against a hospital and other medical staff.[5] Plaintiff's suit against the hospital contained allegations stemming from a suicide attempt while in the hospital's care.[6] Throughout the course of that litigation, a qualified protective order under the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Sec 1320d (2012)) ("HIPAA") was entered, limiting the disclosure of plaintiff's medical records.[7] During his jury trial, plaintiff testified as to the state of his mental health and the resulting effects of his hospital stay.[8] The jury awarded plaintiff $4 million in damages.[9]

After the trial, defendants published an article and issued a press release containing details of plaintiff's medical malpractice suit, including plaintiff's name, his diagnoses, his suicide attempt at the hospital that led to his injuries, and the effects of those injuries.[10]

Plaintiff subsequently filed a multi-count complaint against the defendants. In pertinent part count I alleged that, by releasing confidential information about plaintiff's mental health and diagnoses without his informed consent, defendants violated both HIPAA and sections 5(d) and 10(a)(8) of the Act.[11] Defendants moved to dismiss count I under 735 ILCS 5/2-615, asserting that the Act did not apply to them because: 1) they did not have a therapeutic relationship with plaintiff, as required by the Act, 2) that the information disclosed in the press release was public information because of the public nature of the trial, and 3) that plaintiff waived the confidentiality of his records by placing his medical condition at issue in the medical malpractice litigation.[12]

Plaintiff's response maintained that the Act prohibited the release of any information that would identify someone as a recipient of mental health services, such as the information disclosed in the press release and article.[13] After a hearing on the motion, the trial court dismissed the count with prejudice, holding that a therapeutic relationship was required for the Act to apply, while also highlighting the public nature of the trial.[14]

Consequently, plaintiff filed an amended complaint and included new allegations for his claim under the Act.[15] The court struck the claim without leave to replead.[16] Plaintiff then filed a motion to reconsider the orders dismissing count I and striking the amended claim, asserting that defendants violated the HIPAA order that was entered in the medical malpractice case, which in turn violated the Act.[17] After a hearing, the trial court denied plaintiff's motion to reconsider.[18]

Plaintiff then filed a motion to voluntarily dismiss a remaining count in his complaint, and all the other counts had previously been dismissed with prejudice.[19] The trial court dismissed the remaining count without prejudice, and plaintiff appealed.[20]

Appellate Review

On appeal, the First District reversed the trial court's order dismissing count I of the complaint, holding that plaintiff sufficiently alleged a claim against defendants under the Act.[21] The appellate court further explained that the information disclosed in the press release and the article were "records" and "communications" as defined by the Act.[22]

The appellate court observed that one of the main purposes of the Act is to protect the confidentiality of records and communications of people who receive mental health services.[23] The medical records defendants received in plaintiff's medical malpractice case revealed mental health services plaintiff received, summarizations of his hospital stay, and his condition upon leaving the hospital.[24] Concerning defendants' argument that there needed to exist a therapeutic relationship between them and plaintiff to be found liable under the Act, the First District found it irrelevant that defendants, themselves, did not provide those mental health services to plaintiff.[25] The appellate court found it was enough that defendants disclosed details identifying plaintiff as someone who sought mental health services.[26]

To the extent that plaintiff consented to disclosing his mental health information to defendants for the medical malpractice litigation, the First District noted that Section 10(a)(1) of the Act provides an exception allowing for plaintiff's medical records and communications to be disclosed in a "civil, criminal or administrative proceeding," as an element of his claim or defense.[27] However, the exception did not extend to defendants' disclosure of such information in the subsequent press release and article.[28] Such information included in the press release and article fell under section 5(d) of the Act, which provides that "[n]o person or agency to whom any information is disclosed under this Section may redisclose such information unless the person who consented to the disclosure specifically consents to such redisclosure. 740 ILCS 110/5(d)."[29]

Defendants also asserted that any confidentiality protections plaintiff claimed were irrelevant due to his detailed testimony at his medical malpractice trial.[30] Under the Act, however, the appellate court noted that the information had restrictions on its use and plaintiff did not waive the Act's protections simply by testifying.[31] Consequently, defendants' subsequent disclosure of plaintiff's mental health history was found to extend beyond the scope of the medical malpractice trial.[32] Plaintiff's records and communications were created "in the course of addressing his mental health in the presence of physicians and nurses, who were 'therapists' under the Act.[33] Ultimately, the appellate court found that the plain language of the Act supported plaintiff's complaint against his former attorneys for their disclosure of his confidential records and communications.[34]

Conclusion

For attorneys handling client records,

whether they are protected by legislation or are generally private in nature, *Doe* reminds us to take into account the fact that there are restrictions on (re)disclosure of case details beyond their resolutions. Particularly when a HIPAA qualified protective order has been entered or the Mental Health and Developmental Disabilities Confidentiality Act applies, the court in *Doe* stated that attorneys who redisclose a client's protected records and communications, may be exposed to potential liability despite: 1) the lack of a therapeutic relationship between attorney and client,[35] 2) prior disclosure of the confidential medical information in an civil, criminal, or administrative proceeding,[36] or 3) the client's testifying at trial in detail as to his mental health treatment.[37] Ultimately, it is important to pay close attention when dealing with protected records and communications and to always be able to point to statutory exceptions prior to disclosure.■

Josephine Shane, a member of the Mental Health Section Council, practices law with Kelly & Castagna in Bloomington, IL. She can be contacted at www.kellyandcastagna.com.

1. Mental Health and Developmental Disabilities Confidentiality Act (740 ILCS 110/1 *et seq*.).
2. *Id.*
3. *Doe v. Burke Wise Morrissey & Kaveny*, LLC, 2022 IL App (1st) 211283 (October 7, 2022).
4. *Id.* at ¶14.
5. *Id.* at ¶3.
6. *Id.*
7. *Id.*
8. *Id.*
9. *Id.*
10. *Id.*
11. *Id.* at ¶4.
12. *Id.* at ¶5.
13. *Id.* at ¶6.
14. *Id.* at ¶7.
15. *Id.* at ¶8.
16. *Id.*
17. *Id.* at ¶9.
18. *Id.*
19. *Id.* at ¶10.
20. *Id.*
21. *Id.* at ¶1.
22. *Id.* at ¶14.
23. *Id.*
24. *Id.* at ¶15.
25. *Id.* at ¶19.
26. *Id.* at ¶15.
27. *Id.* at ¶16.
28. *Id.*
29. *Id.*
30. *Id.* at ¶17.
31. *Id.*
32. *Id.*
33. *Id.* at ¶18.
34. *Id.* at ¶19.
35. *Id.*
37. *Id.* at ¶16.
38. *Id.* at ¶17.

When a Health Care Agent Objects to Administration of Psychotropic Medication

BY SUSAN M. GOLDBERG

In re Craig H., **2022 IL 126256, opinion filed September 22, 2022**

The Illinois Supreme Court, on September 22, 2022, issued an opinion[38] following the Fourth District Appellate Court's decision[39] affirming an order permitting involuntary administration of psychotropic medication. The recipient of services was Craig H., whose mother was named as his agent pursuant to his power of attorney (POA) for health care that he executed in 2013. At that time, he had been diagnosed with a mental illness (schizoaffective disorder, bipolar type) for about 24 years. Craig was then 49 years old and his mother was then 77 years old.

The Sangamon County Circuit Court's order was effective for a period not to exceed 90 days. Craig's treating psychiatrist, who had filed the petition pursuant to section 2-107.1 of the Mental Health Code, testified at the circuit court hearing that Craig's mother had repeatedly stopped Craig's medications in the past.

Craig argued on appeal that the decision to refuse psychotropic medications, made by his mother as his health care agent, should control. The Fourth District Appellate Court, and the supreme court, rejected this argument. The supreme court held that the Mental Health Code, in provisions acknowledging the potential for a recipient of services to have a health care power of attorney, reveals a "legislative intent to carve out a narrow exception to the general applicability of a power of attorney for health care."[40]

The supreme court rejected Craig's argument that the Powers of Attorney Law supersedes all other statutes, including the Mental Health Code. The supreme court noted that the POA Law supersedes only those statutes in existence on its effective date of September 22, 1987, and thus cannot supersede the pertinent provisions of the Mental Health Code which became effective in 1997.[41] The supreme court also rejected Craig's argument that the POA Law is the only vehicle for revoking a POA.

The supreme court's decision seems to conclude that just as a mental health recipient's refusal of psychotropic medication can be overridden by a proceeding under the strict standards of section 2-107.1, so too can the refusal of an agent—who stands in the shoes of the recipient—be overridden. Otherwise, section 2-107.1 would be rendered meaningless. If, for example, a recipient wanted a foolproof way to avoid receiving psychotropic medication, he or she would need only find an agent to make the refusal on his or her behalf. The supreme court noted the presence of safeguards in section 2-107.1: the requirements of clear and convincing evidence, and of findings that the benefits of the medication outweigh the potential harm and that less restrictive services were considered but found inappropriate.

Section 2-107.1 also requires that a petitioner must make a good faith attempt to determine whether the recipient has executed a health care POA and, if so, that

document must be attached to the petition, and the agent must be provided a copy of the petition and notice of hearing.

The supreme court's *In re Craig H.* decision has, at the time of this writing, been cited in only one appellate court decision. However, that case did not involve the question of the interplay of a health care POA and a section 2-107.1 proceeding. In *People v. Molina*, the Fourth District cited to *In re Craig H.* for the principle that statutes relating to the same subject are intended to be consistent and harmonious.[42]

Two appellate court decisions cited to the Fourth District Appellate Court's *In re Craig H.* decision. Neither of those cases addressed the interplay between a health care POA and a section 2-107.1 proceeding. Instead, in both cases, which involved petitions for involuntary administration of medication, the Fifth District found that an exception to the mootness doctrine applied where, as in *In re Craig H.*, "the events are capable of repetition yet are of such a short duration as to evade review."[43]

It is noteworthy that in both of those Fifth District cases, the court emphasized the importance of using the Illinois Supreme Court-approved standardized form order in involuntary medication hearings. This and other approved standardized forms are available on the supreme court's website.

The Second District Appellate Court had, in a 2016 decision, rejected a recipient's argument that the Mental Health Code was not the proper vehicle for ensuring the administration of hemodialysis treatments, which had been ordered in addition to granting permission for involuntary administration of psychotropic medications.[44] The recipient argued that the court should have either found him incompetent and appointed a guardian of the person, or appointed a surrogate under the Health Care Surrogate Act.[45]

In that case, the treating psychiatrist was unable to determine whether the recipient had executed a POA for health care or a declaration under the Mental Health Treatment Preference Declaration Act.[46] The second district noted that "[e]ven if one of these alternative vehicles had been used, and *assuming that the individual granted such authority would have consented*" to the medication, the psychiatrist would not have been adequately assured that she could administer the psychotropic medication.[47] Note that this decision did not address the situation where a substitute decision-maker refused to consent to the administration of medication.

Whether a "care and custody" order exists may also be relevant to a petition for involuntary administration of medication or for involuntary commitment. The statutory definition of "care and custody" includes authorization to an appropriate person to provide or arrange for "proper and adequate treatment" of a person subject to involuntary admission.[48]

The supreme court's *In re Craig H.* decision is an important one to keep in mind when advising clients on the limits of the decision-making power of their health care POA agent in the event that a petition for involuntary administration of medication is filed. In addition, the decision serves as a reminder to urge clients to safely store critical documents, such as executed POA documents, relating to themselves and their family members, so that the documents can be quickly located when a health care agent or other representative needs to be notified of a court proceeding.■

Susan M. Goldberg is a member of the Mental Health Law Section Council and the Child Law Section Council, and she is the current chair of the ISBA Immigration and International Law Section Council. Susan has been a Boone County CASA volunteer guardian ad litem for 16 years and is a former member of the ISBA Assembly and the Illinois Bar Foundation Board of Directors. Susan is the managing attorney for the UAW Legal Services Plan office in Belvidere, Illinois.

1. *In re Craig H.*, 2022 IL 126256.
2. *In re Craig H.*, 2020 IL App (4th) 190061.
3. *Id.* at ¶ 45.
4. *Id.* at ¶ 47.
5. 2022 IL App (4th) 220152) **at** ¶ 31.
6.*In re Harlin H.*, 2022 IL App (5th) 190108 at ¶ 19; *In re Leo M.,* 2022 IL App (5th) 190211 at ¶ 25.
7. *In re Clinton S.,* 2016 IL App (2d) 151138 at ¶ 30.
8. 755 ILCS 40/20.
9. 755 ILCS 43/1 *et seq.*
10. *In re Clinton S.,* 2016 IL App (2d) 151138 at ¶ 30 (emphasis added).
11. 405 ILCS 5/3-700 to 3-706, cited in *In re Commitment of Hans T.,* 2021 IL App (2d) 180387.

Illinois Mental Health Task Force to Host Action Plan Web Event

Showing a steadfast commitment to improving the court and community response to individuals with mental illness and co-occurring substance use disorders who encounter the criminal justice system, the Illinois Supreme Court spent the past year continuing its active participation on the National Judicial Task Force to Examine the State Courts Response to Mental Illness.

Through its Illinois Mental Health Task Force, the knowledge gained from the experience was applied and shared across Illinois, as hundreds of court professionals and justice partners participated in a statewide electronic community assessment survey and judicially led multidisciplinary, resource mapping workshops. Overall, these efforts achieved the following:

- Identified and shared information, resources, and gaps in service across the state;
- Introduced participants to evidence-based and best practices;
- Enhanced relationships across courts, state agencies, behavioral health providers, and social services.

Supported by a grant from the State Justice Institute, the National Center for State Courts assisted the Illinois Mental Health Task Force in using the information gained through these activities, along with extensive reviews of relevant research, to develop an Action Plan. The Action Plan embraces the Sequential Intercept Model (SIM), developed by Mark Munetz, MD, and Patricia Griffin, PhD, in conjunction with the SAMHSA's GAINS Center and includes recommendations supporting the following strategic goals:

- Courts as Conveners
- Training Opportunities Across the Intercepts
- Awareness Across the Intercepts
- Best Practices: Intercepts Zero – Five

Intercepts include Community Services, Law Enforcement, Initial Detention/Court Hearings, Jails/Courts, Reentry, Community Corrections.

The Illinois Supreme Court approved the Action Plan during its November 2022 Administrative Term.

As the Illinois Supreme Court and Illinois Mental Health Task Force move to effectuate the Action Plan, Chief Justice Mary Jane Theis and the task force members cordially invite all interested justice and behavioral health/social service partners to save the date and register to attend an Action Plan Web Event on Thursday, February 2 from 12:15-1:00 p.m.

For further information regarding the Illinois Mental Health Task Force, please visit Mental Health Task Force (illinoiscourts.gov) or contact Scott Block, Statewide Behavioral Health Administrator, Administrative Office of the Illinois Courts at sblock@illinoiscourts.gov or (312) 793-1876. ■

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.■