



BENCH & BAR

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

Chair's column

By Mike Chmiel

As we embark upon a new year for the Illinois State Bar Association, the Bench and Bar Section Council is looking to continue to serve as a resource for the judiciary and practicing attorneys alike. To such end, we welcome the involvement of all members of the Section. Further, we extend continued thanks to our immediate past chair, Thomas Bruno, under whose leadership the Section Council engaged lively review of legislation, conversed on professionalism and civility at DePaul (through helpful assistance from *Dean Warren Wolfson*), and adopted a long-range plan to help coordinate efforts of the Section Council for years to come.

Operating under its long-range plan, the Section Council is next looking to meet by telephone on August 26 and in person on October 14 and December 9. The Section Council is also looking to continue providing quality continuing legal education, through its biennial program for attor-

neys who represent children, among other offerings coordinated by its CLE Committee (chaired by Retired Administrative Law Judge **Ed Schoenbaum**). In tune with President John Locallo's focus on technology, the Section Council will work through its Technology Committee (chaired by **James Ayres**) to focus on various issues which demand attention in our new e-world. Through its Legislation Committee (chaired by Judge **Diane Lagoski**), the Section Council will continue to review bills which impact bench and bar. The Section Council's Long-Range Planning Committee will be chaired by Vice Chair and Justice **Ann Jorgensen**, Retired Judge **Michael Jordan** will chair its Supreme Court Rules Committee, **Willis Tribler** will chair its Professional Ethics Committee, Judge **Brad Paisley** will chair its Pro Se Committee, and Sandy Blake will chair its Membership Committee. ■

Gender and the Judiciary—A view from the newest justice on the Illinois Supreme Court

By Ellen Ogden, Class of 2011, Southern Illinois University School of Law

With the Honorable Mary Jane Theis' elevation to the Illinois Supreme Court during the past year, the state marked another significant milestone for women in the legal profession. Although Justice Theis is the fourth female to serve on the Illinois Supreme Court, this is the first time the Court has had three women on the bench at the same time.

Justice Theis was sworn in on Tuesday, October 26, 2010, filling the vacancy left by Retired Chief Justice Thomas R. Fitzgerald. The court is now comprised of four men and three women,

with Justice Theis joining Justices Rita B. Garman and Anne M. Burke, the second and third females to serve on the court. Retired Chief Justice Mary Ann G. McMorrow was the first woman on the court, winning election to the post in 1992 and serving as the chief justice from 2002 to 2005. Justices McMorrow and Garman served together from 2001 until 2006, when Justice McMorrow retired and Justice Burke was appointed to fill her vacancy.

Justice Theis has been on the path to success

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Gender and the Judiciary—A view from the newest justice on the Illinois Supreme Court

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since she graduated from Loyola University Chicago in 1971 with a Bachelor of Arts in History and went on to pursue a law degree from the University of San Francisco School of Law, graduating in 1974. Her legal career began as an assistant Cook County public defender, a post she held until 1983, when she became an Associate Judge for the Circuit Court of Cook County. In 1988, she was elected Circuit Judge of Cook County. Thereafter, Justice Theis was assigned to the First District Appellate Court in 1993, elected to that position in 1994 and served there until her appointment to the Supreme Court. As part of her service to the profession, she has been a member of the Women's Bar Association of Illinois (WBAI) since 1974 and received the Mary Heftel Hooten Award from the organization in 1998. The award recognizes women in the legal community who support the WBAI's "commitment to ensuring the success of women attorneys and advocacy for women's interests." Although Justice Theis is a role model and leader among women in the legal profession today, she speaks with humility about her accomplishments. In a statement to the Illinois State Bar Association after appointment to the Court, Justice Theis said, "I am humbled by the confidence the Illinois Supreme Court has placed in me. The fact is I love being a judge very much. I love the intellectual part of it. But most importantly, I have an opportunity to shape the law that affects the lives of the People of Illinois."

Not only has Justice Theis reached one of the major goals of women in the legal profession, but she has also managed to balance a family life in the midst of her career. She is married to Chicago attorney John T. Theis; they have two children and four grandchildren.

Recently, I had the opportunity to speak with Justice Theis about her status as an Illinois Supreme Court Justice, and discuss her perspective on how gender plays a role in the legal system—a topic that has gained greater prominence nationally with the expansion of the number of women on the United States Supreme Court, as well as some state supreme courts.¹

Ogden: What influenced you to pursue a legal career?

Justice Theis: Everyone's story is different. My dad was judge. As a very young per-

son, back when I was in grade school and high school, I would go to his courtroom whenever I had an opportunity and watch the proceedings. It was a time when the law was changing very rapidly. He heard a lot of narcotics cases, and it was a time when issues about the Fourth Amendment were not only on the front pages of the newspapers, but also were huge cases in the United States Supreme Court, and it seemed so compelling and exciting. I could see how all these big ideas related to real human beings who were standing in the courtroom—people who were suffering terribly from addiction—and it just seemed to me the courtroom was the place where the most important dynamics in our whole society were happening. I knew that I wanted to be a part of that.

Ogden: You spent most of your career with the public defender's office. Is that because you saw so many of the individuals come into your father's courtroom? Is that what sparked your passion for the defense side?

Justice Theis: Maybe yes, although I think there are certainly many prosecutors who are motivated by very strong concerns for the people they represent as well. Most importantly, I knew I wanted to be a trial lawyer. I wanted to be in court, and I wanted to be asking questions. There are many different ways to practice law. Certainly that style is what we see in movies and on television, but the fact is too, that I had the chance to see that. Also when I was in law school at the University of San Francisco, I participated in a clinical program in which the public defender's office allowed third year law students to handle all the misdemeanor cases in Marin County. So in my last semester, I didn't go to school, I practiced law as a public defender. A very key piece in my career was my law school experience. So it seemed very natural to move on and do that when I returned to Chicago.

Let me say this, though: when I read stories about how today's job market is the worst job market for new lawyers in 35 years, I identify very keenly with that, because if you do the math, that time frame is when I graduated from law school. It was very difficult to get work as a new lawyer back then, as it is today, so I was very, very fortunate to get that position as a public defender in Cook County, and I think it really helped that I had done

that clinical program in law school. My message to young law students is: these things are cyclical; you are going to be ok; you're going to find a job; you're in a good career. I had a hard time finding a job when I got out of law school, and now I am on the Supreme Court.

Ogden: Could you describe your law school experience. Do you feel like you had a different experience than the men in your class? Did you have many female classmates?

Justice Theis: My law school experience, as well as most of my career, really tracks the same pace in that I am not a pioneer. There were great women heroines in the law who were a little ahead of me. By the time I started law school, there was a huge increase in the number of women. Not the way it is today, with many law schools 50-50, men and women. I think there were seven women in the class ahead of me and thirty-five in mine. Thirty-five is not that many, but you can see there was a very significant change in just one year.

So, while certainly myself and the other women were a minority in the class, during the time when I was in law school, when I became a lawyer, and later when I became a judge, the decision makers recognized there was this huge increase in the number of women, and in fact encouraged women. For example, the program I just described in the Marin County Public Defender's Office was very competitive to get into, and there were a number of women who were able to participate in the program. In many ways, I was very fortunate that the timing in my career was such that the number of women was changing dramatically. I believe I was helped very much by that.

Of course, mine was a very different experience than the men in my class because, still at that point, while the number of women was increasing, it was historically something that was new. Men didn't have to think about those things. They were just going to law school. So that difference was there. But I know I did not face the challenges that the women ahead of me did.

Ogden: Something on the minds of many young attorneys, both male and female, is the idea of balancing your family and your career. You are married with two children and you have two grandchildren as well. How were you able to balance your family life with

your career? Do you have any tips or suggestions that really helped?

Justice Theis: I think this is the most difficult challenge in my professional career, and I think you will find that is true with most other people, especially women. There was a time when men accepted that they would miss out on their family life because they chose to be lawyers and that is just how it's going to be. I agree with you that younger lawyers, including male lawyers, don't want that either. They want to have a life with their families, and figure out how to balance work and family life. So I think it is a question for most young men and women.

I wish I had an easy answer. I cannot tell you how many times I will get a call from a young woman lawyer, who will ask to have lunch with me, and I know work-life balance will be a central part of the discussion. They ask, "Judge, please help me, I don't know how to do this." And I just keep saying I don't have a simple answer. The only advice I have is something we all know, the expression "it takes a village." I had wonderful support from my husband of course, but beyond that I have great friends, who were staying at home with their children, who would help me. My husband drove the carpool every day with our kids and a bunch of other families. That meant all those other moms came and picked up my kids after school and signed them up for swimming lessons and skating lessons. That helped me because they were able to take care of them until I got home.

It is very difficult because the practice of law is extremely demanding. It is not only demanding in office time, but lawyers are also leaders in the community. Participating in bar associations and all those other kinds of things that lawyers do beyond just being in their offices are incredibly time consuming. You can look at that as part of our obligation of being lawyers, but also as a piece of networking that is important in terms of client and career development. Somehow you have to find ways to balance all those things with your family.

I don't have an answer, except to know that the most important thing in your life is your family, and keeping your priorities straight and working towards the goal of balance is the key. You have to find a way to say no when you have to say no—to say my daughter's ballet recital is more important than the next bar association meeting.

Ogden: Running for office must be a major source of stress for your family and your

career. What were the circumstances surrounding your decision to run for office?

Justice Theis: First, I have been extremely fortunate to have been in every level of the court system in Illinois. In Illinois there is the Supreme Court, the Appellate Court, and the Circuit Court. There are two types of trial judges as you may know. There are associate judges, who are chosen or appointed by the elected circuit judges, and then there are circuit judges who are elected by the people. I was first an associate judge, and that is a different way of running for office. If one wants to become an associate judge, of course you have to develop a career where you have been able to demonstrate your ability to handle the job, and also to meet people, and let them know your qualifications. That is the kind of thing that is important to do through the bar association work to get to know other lawyers and judges.

So I was first appointed an associate judge, where I heard traffic, misdemeanor, and smaller civil cases, those kinds of things. After doing that for five years, I was encouraged by others to take the incredibly tough jump to run for office, and as you may know, I was recently appointed to the Supreme Court. But to keep this position, I have to win the election in 2012. So I am currently a candidate. I am aware of how difficult it is to balance not only family life, but balance doing the incredible amount of work, important work for the court, and also being aware that I have to be a candidate and all that entails. So that is another thing I have to balance and you deal with a great deal of stress.

Ogden: From the perspective of a law student, you have accomplished what many of us aspire to become, a Supreme Court Justice. Do you have any further career goals or have you achieved everything you had hoped to be?

Justice Theis: If I win the election in 2012, that will be a 10-year term. If you have looked at my biography, which I know you have, you might be able to discern my age. I continue to think about so many people my age who are retiring, and here I am looking forward to a new job for ten years. I am very, very fortunate to be in a position to be looking towards the future. I am very energized by it. I am very excited by it. That is about as far as I can see right now.

Ogden: There have been multiple studies that have shown a difference between the way male and female judges, of similar ideology, vote in certain cases, and that the pres-

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ence of a female on the panel can influence the way her male colleagues vote. How do these findings match your experience?

Justice Theis: First, I have to say I am always very concerned about stereotypes, and that includes male stereotypes. I am very hesitant to say all men do this, even as hesitant to say all women do something else. So I am a little concerned about painting with a wide brush. Maybe at a different level your question is something about judging. There has been a lot of discussion about when Justice Sotomayor was criticized for talking about her judicial view of being a “wise Latina.” It seems to me when you think about judging, it is more than a computer problem where you plug in facts and you plug in law and the computer answers the question. Judges analyze facts, they interpret law, they apply the law to the facts, but each one of those verbs contains an element of judgment of choices.

I think that my own judicial philosophy is that we are human beings who have been chosen to take on these positions. We each choose, and decide, and interpret all those ideas and they come from our experience, world view, and training. And of course that includes who we are, our gender and our life experience. I think there have been similar studies suggesting that if you had broken groups up in political philosophies, you might find similar things. Also, I wouldn't be surprised that if you did geographic grouping, you may see groups of people decide one way or the other.

In terms of my own experience, I do believe that women come from a different experience when it comes to cases dealing with children. I am not saying that men don't love their children, but women have a different experience with having children. So their life experiences will change the way they view issues in these cases. That is one idea about the difference in the way men and women judges decide a case. I think it's just a difference and our life experiences factor into our decision-making process.

In terms of the presence of a woman on the panel, I do think there is something very interesting about that. I have also seen it when there is a different minority, an African-American, who is part of the panel. The dynamic of group decision making is interesting; I have learned a lot about it. On the Appellate Court, I have worked seventeen years where there were three decision makers, and now I am working with seven decision makers. When you change the mix of people and their life experiences, the dynam-

ics of the entity change, and having a woman will change things.

I truly believe there has been a change in dynamics on the Illinois Supreme Court in Illinois. I have experienced that coming on as the third woman. I think a woman alone, the first woman, is being just that—the first woman, and what is the woman's vote, and woman's point of view. The second woman probably has to deal with it as well. At this point we may have heard the expression “critical mass.” It tilts things. No one is noticing, the focus on what are the women doing on the court, and are they voting together and all those things. Things change when you have a larger percentage of the group being in that minority. I truly believe there has been a change in our court, and that is not just who I am necessarily, but because there are now three women out of seven.

Ogden: You think that changes the dynamics of the courts as well? Not just influencing the public perception of having three women, but you think dynamics are changing on the court?

Justice Theis: Absolutely!

Ogden: In litigation or even in just discussing a particular issue, do you think women have to learn to influence people or form their arguments differently than men?

Justice Theis: I think any good lawyer needs to present oneself as authentically as possible. In other words, a woman should be a woman, and a man should be a man. At some point in your career you realize the best voice you have is your own voice. So for a woman to try to argue a case as a senior male partner would argue, she might learn some things from him, but ultimately, she should argue it as herself. I have heard people say that there are so many of these woman lawyers who are too tough and too aggressive. Again, I believe that is a stereotype that is probably not statistically based, or evidence based. It is probably just something easy to say. There are woman who are very soft spoken, and gentle, and lyrical, and feminine, who are very persuasive, because they are who they are. Having said that, lawyers use the tools of the law, and the law is very much based on logic, and good argumentation, good writing. Good analysis is based on logic. There are those who would say that logic is something in the world of men, not in the world of women, and I think they are wrong. I think we can use the same tools. We just bring a different voice to them.

Ogden: Do you think if there were more women on the court the dynamics of the court would change? If so, how many women would you like to see on the court, or is that important?

Justice Theis: There are many courts which have a majority of women on the court. Of course the dynamic would change, just as it would if we had more than one African American on the court. One of the things I have learned in my short time on the court is the real brilliance of having a breadth of different types of experiences of different people coming together to make decisions.

Justice Karameier, for example, is such a lovely gentleman. He is from the teeny, tiny town of Nashville, Illinois, which is very rural. His experience is very different from mine, living in the city my whole life. But when he speaks, I listen very carefully, just because of who he is. His gentleness, his thoughtfulness, and his experience are so different from mine. He really influences me. I listen very carefully to everything he says, because, I know he brings such a different, and important, view and I have a lot to learn from him. I think that is true, as we would add more women to the court that we would be able to hear different voices. It would be great to hear from a downstate woman with a background that is different from my city view. She would bring something else to the court. That would be wonderful.

Ogden: Is there anything else that you would like to share with readers?

Justice Theis: I assume that most law students, at some level, made the choice to go to law school because they wanted to participate in the work of doing justice. I think at some point, most law students and many young lawyers feel very disillusioned with their work because they can't see what doing discovery and background review has to do with doing justice. It's a real challenge to find that. My advice to law students is to keep looking for justice. Keep looking and searching for your role in doing justice. I think that if you keep searching, that you will find meaning in your work.

Ogden: That is very encouraging. I want to thank you for your time. ■

Ellen Ogden is a licensed “711” in the Traffic-Misdemeanor Division in the office of the Madison County State's Attorney.

1. See http://www.abajournal.com/magazine/article/tipping_the_scales/, an ABA article on the women chief justices in the South.

Excerpts from the “state of the Federal District Court” address on June 20, 2011

By Chief Judge James F. Holderman

The “State of the Court” at this time, in a word is “Good,” but I am concerned. On June 16, 2011, I, and all federal judges in the country, received an e-mail from Jim Duff, the current Director of the Administrative Offices of the United States Courts, which gave us some grave budgetary news. I will quote from it:

The Judiciary faces the potential of unprecedented budget cuts in Fiscal Year (FY) 2012. Earlier today, the House Financial Services and General Government appropriations subcommittee, which funds the Judiciary, approved its FY 2012 appropriations bill.

Preliminary estimates indicate that if the House bill were to become law, the courts would have to cut spending on salaries [of court personnel] by the equivalent of about 5,000 court support staff through a combination of layoffs, furloughs, buyouts, and early outs [across the country].

As an initial step in addressing this severe situation, I urge all court units to implement immediately a hiring freeze on current vacancies as well as positions that become vacant. Further, I encourage all courts to limit spending this fiscal year to essential purchasing only.

I do not want to dwell on what the future may hold next year if Congress does not recognize the appropriate funding needs of the Third Branch. The people working on and for the courts of the United States have always been resilient throughout our country’s history no matter what the challenge. We intend to be so again.

I will discuss the “State of the Court” in the Northern District of Illinois in two areas:

1. “Core Court Functions” including key court personnel changes, caseload trends, and court services.
2. “Court Initiatives” to provide better access to justice in our court, to provide better justice when access is obtained, and to

provide the public, other branches of government, and judiciaries of other countries elsewhere in the world, information about court processes in our district, and across our country.

I. Core Court Functions

A. Key Court Personnel Changes

1. U.S. District Judges

In September 2010, U.S. District Judges Sharon Johnson Coleman and Gary Feinerman joined our bench, and in January 2011, District Judge Edmond Chang came on board. They are each doing an excellent job, but we still have three vacancies on our court. We appreciate the efforts of Senators Durbin and Kirk and hope that the vacancies can be filled soon.

The difficulty of the three vacancies is eased somewhat, because we are blessed to have the assistance of 14 senior judges. Several of our senior judges continue to receive a full share of new civil and criminal cases.

2. U.S. Magistrate Judges

In 2010, three new Magistrate Judges, Sheila Finnegan, Jeffrey Gilbert, and Young Kim joined our court and they have continued to do an outstanding job. Judge Sid Schenkier has continued to serve as the Presiding Magistrate Judge. Also, both Magistrate Judges Martin Ashman and Arlander Keys, who have both reached retirement age, have agreed to continue their judicial work in recalled status.

3. Bankruptcy Judges

Our Bankruptcy Court bench has remained steady this past year. We have a great group of judges on that bench. The term of Chief Judge Carol Doyle, who has done a tremendous job, however, ends on July 1st. So, the Honorable Bruce W. Black will be the new Chief Bankruptcy Judge. Bruce and I were classmates in law school and I look forward to working with him.

B. Caseload

Our district court’s civil filings increased in 2010, up 4.6% above the 2009 level - to a total of 8,844 civil case filings in 2010. Patent cases and mortgage foreclosures had signifi-

cant increases. Patent case filings increased by 35.7%. Although mortgage foreclosures are still a long way from the levels seen in 2003, we may have roughly 1,000 mortgage foreclosures filed by the end of this year.

As for efficiency, our district court, in 2010, continued to remain in the top 10% of U.S. District Courts across the country with a median time from filing to disposition of civil cases of 6.2 months.

On the criminal side, 2010 saw 945 defendants against whom felony cases were commenced, which was a 3.7% decrease below 2009 of 1,046. As in most years, fraud and drug-related offenses accounted for roughly half of the court’s criminal cases. A category that has grown in recent years is criminal cases involving immigration offenses. Immigration cases account for 15.0% of felony cases filed during 2010 in our district court.

Our Bankruptcy Court continues to face an ever-increasing case load because of our current economic times. In 2010, we saw a 15.2% increase over 2009, with 65,443 new bankruptcy cases commenced.

C. Trials

The number of civil jury trials grew by close to 60% during 2010. We had 57 civil jury trials during 2009, and 92 during 2010.

The increase in civil jury trials, however, appears to have continued through the first half of 2011 when compared to the first half of 2010: with the number of civil jury trials (64) up more than 50% of what they were last year at this time (41). On the criminal side, there were 68 criminal jury trials during 2009, and 56 during 2010, about a 15% drop.

D. Electronic Filing

1. Electronic Filing and Electronic Record Maintenance

As of June 1, 2011 there were over 28,500 registered electronic filers in our district, which is about 11% more than we had a year ago. On a daily basis, attorneys are currently e-filing an average 880 electronic documents every day, which is a 1.5% increase over the daily average of 867 documents a year ago.

2. Information Technology a. Courtrooms

By the end of August 2011, twenty-eight of our courtrooms will have new sound systems, and eight out of those twenty-eight will have integrated evidence presentation technology and video conference systems installed. This hopefully will assist all attorneys in presenting their cases in our courtrooms.

b. Building Kiosk System

The building kiosk system was upgraded with new web-based software designed and developed by a District Court staff member. The new design makes it easier for attorneys and members of the public to find daily court call information and the location of courtrooms and judges chambers.

c. Website

As for the court's upgraded Web site, <www.ilnd.uscourts.gov>, both the on-line version and mobile version, which went "live" a little over two years ago, we have received good feedback. We can always improve, and if you have a suggestion, please e-mail me and let me know.

I appreciate the efforts of Mark Tortorici, and the key folks under him in our Systems Department.

II. Court Initiatives

A. The Seventh Circuit E-Discovery Pilot Program

We presented the May 1, 2011 Seventh Circuit Electronic Discovery Pilot Program Interim Report on Phase Two at the Seventh Circuit Bar Association Annual Meeting and Judicial Conference on May 17, 2011. Although Phase Two was originally planned to last one year, the Committee early in Phase Two determined that a two-year duration, through May 2012, would be preferable and would allow a fuller evaluation of the Principles' application during Phase Two. Information about our Pilot Program can be found at <www.DiscoveryPilot.com>.

B. James B. Moran Second Chance Reentry Court

We recently celebrated the one year anniversary of the James B. Moran Second Chance Reentry Court program by hosting on April 21, 2011 a graduation ceremony for the five participants that completed the program. This program is for people recently released from prison. It targets offenders with substance abuse issues who are also at medium to high risk of re-offending in the community based on the Risk Prediction Index. The Reentry Program began with ten cases

under the direction of Judges Joan Gottschall, Ruben Castillo, and Sidney Schenkier.

C. Pro Bono Service

To better serve the needs of the entire district, starting August 1st of this year, we are going to make Trial Bar pro bono appointments on a district-wide basis. We don't expect Trial Bar members' names to come-up randomly more frequently than once a decade for pro bono appointments and do not want to burden counsel busy with paying clients, but we in our profession all have some obligation to give back.

We judges do appreciate your *pro bono* efforts and to say "thank you," as we have done for the past eleven years, in conjunction with the Chicago Chapter of the Federal Bar Association, we set aside an afternoon each year to acknowledge those members of our bar whose *pro bono* efforts are worthy of special recognition.

1. May 19, 2011 Awards Ceremony

"Awards for Excellence in Pro Bono Service" were presented by our judges to eleven area attorneys, including one newly appointed Cook County circuit court judge, Judge Stan Hill, for the contributions they each have made in helping those most in need of assistance through *pro bono* work in the Northern District of Illinois.

2. Access to Justice

As for further continuing initiatives providing access to justice, we continue to carry on, with funding assistance from the Chicago Bar Foundation, our court's *Pro-Se* Help Desk operated by attorneys Catherine Caporusso and Deanne Medina. We also have our *Pro Se* Settlement Assistance Program, overseen by attorney Cunyon Gordon of the Chicago Lawyers' Committee for Civil Rights Under the Law, which also includes the prison civil rights area, handled by the Prisoner Assistance Program, headed by attorney Jim Chapman.

In 2010, Ms. Cunyon Gordon took over for Ms. Laurie Wardell as the point person for the Lawyers' Committee for Civil Rights. The Settlement Assistance Program, in 2010, provided assistance in 50 civil cases: 39 were employment related cases, six were prisoner cases, and five were other types of cases. Of these 50 cases, there was a 78% success rate of settlement. Only 11 of the 50 did not settle in 2010.

During 2010, the Settlement Assistance Program had 65 volunteer lawyers who dedi-

cated upwards of 2500 hours toward easing the workload of the court and helping pro se litigants. Attendance at the court-sponsored training sessions of the Settlement Assistance Program and subsequent appointment as settlement counsel provides credit towards becoming a member of the Trial Bar. We have scheduled a new Settlement Assistance Program Training for Wednesday, September 7, 2011, from 3:00 to 6:00 p.m., in the Parson's Memorial Courtroom, room 2525, in the Dirksen U.S. Courthouse. You will learn from the best by attending.

Through these programs and others, we continue to strengthen and support the valuable public service we all have the obligation to provide to promote access to justice in our court. We again thank you for your services.

E. Our Court's Outreach Programs

1. National Judicial Involvement and Assisting Other Courts

Many of our judges, in addition to their work here in our district, continue to be involved on a national level.

a. MDL

For example, in addition to handling our own increased load of assigned civil cases in the Northern District of Illinois, as of June 1, 2011, 15 of our district judges also are presiding over 876 additional cases assigned to us by the U.S. Multi-District Litigation Panel.

b. U.S. Judicial Conference

Additionally, several of our judges serve on national advisory committees to the United States Judicial Conference, the governing body of the U.S. Courts. For the past several years, District Judges Aspen, Norgle, Zagel, Kennelly, Lefkow, St. Eve, Kendall, and Dow, Magistrate Judge Denlow, and Bankruptcy Judges Wedoff and Cox have been members of these national advisory committees. We appreciate their work.

c. Federal Judicial Center

In March 2011, I was honored to be appointed by Chief Justice Roberts to serve on the seven member board of the Federal Judicial Center. The Federal Judicial Center is the education and research arm of the federal judicial system. Chief Justice John Roberts personally presides at its board meetings and oversees its work. I will do my best throughout my 4-year term to develop and promote continuing education and training for federal judges and court employees, to make recommendations about the operation and study of the federal courts, and to develop and promote meaningful information and

analysis based on research regarding federal court procedures. We should always be looking for ways to do it better and those of you who know me well, know that I am personally committed to doing just that.

d. National Pilot Projects

Along the line of trying new things to do our job better, there are two hot-off-the-presses national pilot projects that have recently attracted some media attention, the "Cameras Pilot Project" and the "Patent Pilot Project." Our district judges voluntarily applied to participate in both, and we were selected.

1. Cameras Pilot Project

The "Cameras Pilot Project" is officially known as the "Digital Video Recording Pilot Project" because that is more appropriate and accurate of a description. The way it will work is: with the consent of the parties, in civil jury and bench trials, the court proceedings will be recorded digitally on court-operated cameras and after the trial will be made available on a national server, which will be capable of being linked through our court's Web site. Judges can volunteer, but the parties must consent and it is only in civil cases.

2. Patent Pilot Project

The "Patent Pilot Project," in which our district is also participating, was established by Congressional statute and signed into law by President Obama in January 2011. In each participating district, judges can volunteer to be a designated group of judges who agree to take on supervision of patent cases that their non-designated colleagues don't want to handle. The idea is to get the patent cases, which are typically complicated, on the dockets of judges who are most amenable to presiding in those cases. The Patent Pilot Project has a term of 10 years and periodic reports must be presented to Congress on the findings.

We U.S. District Judges in northern Illinois look forward to working in both of these new areas of these pilot projects. We will see what happens. I will report more next year.

e. Judges' voluntary work with other courts

Moreover, several of our judges also volunteered this past year to serve by designation on other federal courts, at both the trial and appellate levels. In doing so, we judges not only assist those other courts with their case loads, but again it helps us stay attuned to how we can do things better, which is helpful to you and to us here in our district.

2. Judges Providing Educational Programs

Regarding educational programs, almost all of the judges of our court have continued to volunteer their time on a variety of continuing legal education programs put on by various Bar Associations and Inns of Court, or continue to teach at various law schools. We encourage our judges to participate in such endeavors. Not only are these programs good for bench/bar relations, but we judges always learn something that makes us better at our job.

3. Visitors to Our Court

Also, our court is constantly being visited by people ranging from young school children from around the Chicagoland area to judges and dignitaries from foreign governments. We encourage this also.

As for the experiences we provide to school children and young adults, I have consulted with and appointed a court-annexed committee of educators who helped us develop uniform education programs. We placed these materials on our Web site to enhance the students' field trips from their schools to the Courthouse. I believe it is im-


portant that students, who are the future of our country, fully understand the judiciary's proper role in our government and in our society. These educational materials are designed to help that understanding.

4. Home-Front Government Relations

Turning to home-front government relations, this past year our Chicago courthouse hosted several different Congressional hearings for House and Senate members. In fact, both Senators Durbin and Kirk, and other members of Congress, have visited us more than once to use our court facilities for Congressional purposes. The experience has not only aided the public and those other governmental bodies, but also enhanced relations within our governmental branches.

IV. Conclusion

It is an honor and privilege to serve as your chief U.S. district judge. I thank our judges and each of you, who work for the court, along with all the members of our court's bar, for your assistance this past year, and I look forward to working with you on the challenges of the year to come. ■



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Letter to the editor

Editor's Note: From time to time we receive feedback on articles published in the Bench & Bar Newsletter. In a recent Newsletter, we published an article by Terri Mascherin, then President of the Chicago Bar Association, on the subject of judicial independence. In this issue, we print a letter from Judge Susan Zwick, Circuit Court of Cook County, and Ms. Mascherin's reply letter.

July 21, 2011

Editor, Bench & Bar

I am a member of the New Judge Faculty/Judicial Education Committee for the Illinois Courts. As a faculty member, I have the privilege of teaching newly-elected and appointed judges and preparing them for some of the more unexpected aspects of the job.

In the May, 2011 publication of *The Bench & Bar*, Terri Mascherin, President of the Chicago Bar Association, wrote about the importance of judicial independence in light of the circumstances surrounding Justice Kilbride's retention election, and the criticism weathered by Justices Thomas and Hall in the *Maksym v. Chicago Board of Election Commissioner* decision. Ms. Mascherin relied upon Justice John Paul Stevens to proffer the concept of judicial independence divorced from political referendum.

In April 2009, the Iowa Supreme Court voted unanimously to uphold a 2007 lower court ruling striking the state law that limited marriage to heterosexual couples. In November 2010 the Iowa electorate removed three of the state Supreme Court justices by refusing to retain these judges in their court. The media fury surrounding the unsuccessful retention bid of the Iowa judges was reportedly an attempt, by political action groups, to intimidate the judiciary and influence judicial decisions. The 2010 Iowa election was not an isolated occurrence; in 1986, Californians refused to retain Supreme Court Justices Bird, Grodin and Reynoso after they were targeted for their opposition to the death penalty in a high-profile media campaign.

The issue, as it has evolved, is not whether judges are intellectually independent from political pressure, but whether the electorate may sanction a judge for his or her judicial record. In a governmental system that abhors ultimate authority, the checks and balances created by retention elections are necessary. This includes the power of the voters to re-

move a politically unpopular judge.

The danger, as discussed by Ms. Mascherin is the "chilling effect" this system may create: judges may be reticent to decide issues that are unpopular or politically unfavorable. That, however, will depend first upon the prevailing law and second upon the courage of the individual jurist. The reality facing of today's judiciary is the knowledge that advancing legal and constitutional actions may subject the judge to media criticism and even, loss of a job. That is the risk any elected official takes when he or she enters the political process. Judges are not immune.

Very truly yours,

Susan Zwick

Judge, Circuit Court, Cook County

July 22, 2011

Editor, Bench & Bar:

I agree with most of what Judge Zwick says in her response to my recent column on the subject of judicial independence. Our views part ways, however, with regard to whether we should accept as inevitable the "chilling effect" that retention elections may have upon judicial independence.

My view is that Illinois would be better off with a method of judicial selection focused on merit, to minimize the influence of politics upon the judicial branch. But as Justice

Stevens recognized in the same speech from which I quoted in my column, regardless how judges are selected initially, so long as we have retention elections, sitting judges will always be subject to the type of "chilling effect" that resulted in the unseating of three members of the Iowa Supreme Court, as Judge Zwick points out. While I must concede that politics certainly enter into the equation whenever judges are appointed, I side with Justice Stevens in the view that even if we continue to elect judges in Illinois, we should do away with retention elections and move to a system more like the federal system, where judges, once seated, may only be removed for misconduct. Then, at least, a judge would feel free to exercise his or her independent view of the law without fear of removal for political reasons.


I recognize that this debate has raged in Illinois for many years, and my personal views on this specific issue are not necessarily the views of the Chicago Bar Association. I hope that the Chicago Bar Association and the Illinois State Bar Association can both be part of promoting change in the right direction in the future.

Very truly yours,

Terri L. Mascherin

Immediate Past President

Chicago Bar Association ■



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A look at first offender deferred judgment

By Joe Cataldo

ISBA's proposal #97-20 proposes a first offender deferred judgment sentencing option for certain felony offenses. This proposal would create a new statutory act: 730 ILCS 5/15-6-1.1. The purpose of the new statute is to allow certain first time criminal offenders to be given a special probation where judgment on the criminal conviction would be deferred. Offenders who successfully complete the probation would not have a felony conviction on their record. If they are unable to complete the probation, they would receive a conviction and be sentenced accordingly. This new statute would work very similar to the current first offender statutes for drug offenses. (720 ILCS 550/10 and 720 ILCS 570/410.)

In order to be eligible, the offender cannot have any prior criminal convictions or supervisions.

A person sentenced to this new probation will serve a 30-month probation and must:

1. Not violate any criminal statute of any jurisdiction;
2. Refrain from possessing any firearm;
3. Submit to drug testing; and,
4. Perform no less than 30 hours of community service.

The court may also require the person to pay a fine or costs, undergo various treatments, pursue vocational training, and several other conditions.

The statute excludes all non-probationable felony offenses or an offense contained in:

Article 8: Solicitation and Conspiracy
 Article 9: Crimes Against Person
 Article 10: Kidnapping and Related Offenses
 Article 11: Sex Offenses
 Article 18: Robbery
 Article 24: Unlawful Use of Weapons
 Article 29D: Terrorism
 Article 32: Interference with Judicial Procedure

There are some notable offenses not excluded by the statute as drafted:

Article 12: Aggravated Assault, Aggravated Domestic Battery, Intimidation, Hate Crime, Stalking, Aggravated Stalking, Aggravated Battery of a Senior Citizen and Vehicular Invasion.

(The statute, as written, may also not exclude several sex offenses under Article 12).

Article 20: Arson
 Article 21: Institutional Vandalism
 Article 24: Dog Fighting
 Article 31: Disarming the Police.

One major criticism of the statute is that it is too wide-ranging and includes too many crimes. Not excluding some of the above listed offenses may draw some opposition from various activists and groups. It is important to note this type of probation is not mandatory and is given at the discretion of the Court.

Clearly a felony conviction has serious consequences on people's lives. It can make it difficult for offenders to find employment, keep them from obtaining certain professional licenses, effect eligibility for the armed forces, along with many other detriments. This statute would allow some offenders a second chance that could be life-changing.

There is a variation of this idea currently being employed by the Cook County State's Attorney's Office. The State's Attorney's Office Deferred Prosecution Program is a diversion program for adult felony offenders without a felony conviction (and no prior misdemeanor conviction for a violent offense) who have been arrested for committing a specified non-violent offense. For purposes of this program, a "violent offense" is any offense where bodily harm was inflicted or where force was used or threatened against any person or threatened against any person; any offense involving sexual conduct, sexual penetration, or sexual exploitation; any offense of domestic violence, domestic battery, violation of an order of protection, stalking, hate crime, driving under the influence of alcohol; any drug case involving delivery or any evidence of an intent to deliver; and any offense involving the possession of a firearm or dangerous weapon.

This Deferred Prosecution Program will divert the select offenders into an intensive 12 month pre-indictment program and offer services to the offender with the goal of avoiding future criminal behavior. In addition to conditions that the offender not violate any criminal law, not possess a deadly weapon and not possess any controlled sub-

stance; the offender must:

- Make full restitution to the victim.
- Obtain employment. If unable to find employment, must perform no less than 96 hours of community service.
- Must obtain a high school diploma, G.E.D., or work toward completing a vocational training program.
- If needed, undergo treatment for drug or alcohol abuse.

When an offender successfully completes this program the charge will be dismissed. If the offender fails, the felony case will proceed to a felony courtroom where the prosecution of the defendant will continue.

Proponents of ISBA proposal #97-20 may want to take into consideration the Cook County State's Attorney's program and its early results in tailoring their legislation. Using the current Cook County program as a "test study" for the ISBA proposal can only be a positive in preparing and presenting this new legislation.

Deferred Judgment is definitely a positive addition to the system. The challenge is making sure that it is properly drafted. ■



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Too few Internet matchmaking lonely hearts jurisdictionally trump default judgment: *be2 LLC v Ivanof* (7th Cir. 2011)

By Joe Nabor, Jtnabo@fitcheven.com Fitch Even Tabin & Flannery. Copyright © Joseph Nabor, 2011.

A recent decision of the 7th Circuit gives further guidance on establishing personal jurisdiction in Illinois by virtue of internet Web sites in Lanham Act cases. *be2 LLC v. Ivanov*, No.10-2980 (7th Circuit April 27, 2011). Plaintiffs, be2 LLC and be2 Holding, A.G., together an Internet matchmaking service brought suit for trademark infringement in the Northern District of Illinois against Nikolay Ivanov, the alleged CEO of be2.net Web site. Ivanov is a resident of New Jersey. When Ivanov never responded to the complaint nor appeared at a status hearing, default judgment was entered and certain damages were proven and uncontested.

Following entry of the final default judgment, Ivanov appeared and filed a motion to vacate the default judgment based on a lack of personal jurisdiction. The District

Court found the testimony of Ivanov on the motion to not be credible—for example claiming his CEO title meant “Centralized Expert Operator” rather than the conventional Chief Executive Officer. Ivanov’s incredible testimony “undercut dramatically” the contention of lack of sufficient contacts with Illinois. As a result, the court denied the motion and Ivanov brought this appeal before the 7th Circuit.

On appeal, the court recognized that the Lanham Act does not authorize nationwide service of process. As a result, the court turned to the minimum contacts analysis under *International Shoe*. In doing so, the court stated that its purposeful availment inquiry is determined by whether or not “Ivanov purposefully exploited the Illinois market.” In doing so, owning or operating a Web site that is available in Illinois is not alone sufficient

to establish purposeful availment. Furthermore, the evidence submitted by the plaintiff on prove up that 20 people with Illinois addresses created profiles on the be2.net Web site was not sufficient to establish purposeful availment in Illinois. The court found this to be a “miniscule” number of registrants which was insufficient to evidence that Ivanov targeted Illinois.

A district court’s default judgment without personal jurisdiction over the defendant “is void, and it is a per se abuse of discretion to deny a motion to vacate that judgment.” As a result, the decision of the District Court was reversed and the court was instructed to dismiss the case for lack of personal jurisdiction. ■

This article was previously published in the ISBA Intellectual Property Newsletter in June 2011.

Recent appointments and retirements

1. The Illinois Supreme Court, pursuant to its constitutional authority, has appointed the following to be Circuit Judge:
 - Regina A. Scannicchio, Cook County Circuit, 14th Subcircuit, July 5, 2011
2. The Judges of the Circuit Court have appointed the following to be Associate Judges:
 - Karen C. Eiten, 13th Circuit, July 5, 2011
3. The following Judges have retired:
 - Hon. William P. Balestri, Associate Judge, 13th Circuit, June 30, 2011
 - Hon. Ronald S. Davis, Associate Judge, Cook County Circuit, June 30, 2011
 - Hon. Ellar Duff, Associate Judge, 3rd Circuit, June 30, 2011
 - Hon. George J. Sotos, Associate Judge, 18th Circuit, June 30, 2011
 - Hon. Glenn H. Collier, Retired Judge Recalled, 10th Circuit, July 6, 2011
 - Hon. David Delgado, Cook County Circuit, 6th Subcircuit, July 8, 2011
 - Hon. Lawrence C. Gray, Associate Judge, 12th Circuit, July 19, 2011
 - Hon. Jennifer Duncan-Brice, Cook County Circuit, July 31, 2011
8. The following Judge is deceased:
 - Hon. Lois A. Bell, 7th Circuit, July 2, 2011 ■

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September

Tuesday, 9/6/11- Teleseminar—Social Media Issues and Employer Liability in the Workplace. Presented by the Illinois State Bar Association. 12-1.

Wednesday, 9/7/11- Webinar—Conducting Legal Research on FastCase. Presented by the Illinois State Bar Association. 12-1.

Monday, 9/12/11- Chicago, Frankie's Scappone—Five Star Service: Ethically Satisfying your Client's Appetite for Great Customer Service. Presented by the Illinois State Bar Association. 5:30-7:30.

Tuesday, 9/13/11- Teleseminar—Joint Venture Agreements in Business, Part 1. Presented by the Illinois State Bar Association. 12-1.

Wednesday, 9/14/11- Teleseminar—Joint Venture Agreements in Business, Part 2. Presented by the Illinois State Bar Association. 12-1.

Friday, 9/16/11- Webcast—IP 101: An Intellectual Property Primer for In-House Attorneys. Presented by the ISBA Corporate Law Section. 12-2.

Friday, 9/16/11- Galena, Eagle Ridge Resort and Spa—Hot Topics in Consumer Collection. Presented by the ISBA Commercial Banking, Collections and Bankruptcy Section; co-sponsored by the ISBA Young Lawyers Division. 8:45-4:30.

Friday, 9/16/11- Carbondale, SIU School of Law—A Roadmap to the New Illinois Religious Freedoms and Civil Union Act. Presented by the Standing Committee on Sexual Orientation and Gender Identity. 2-4.

Tuesday, 9/20/11- Teleseminar—Franchise Law: What You Need to Know Before Your Client Buys. Presented by the Illinois State Bar Association. 12-1.

Wednesday, 9/21/11- Webinar—Advanced Legal Research on FastCase. Presented by the Illinois State Bar Association. 12-1.

Thursday, 9/22/11- Teleseminar—Generation Skipping Transfer Tax Planning. Presented by the Illinois State Bar Association. 12-1.

Friday, 9/23/11- Fairview Heights, Four Points Sheraton—Current DUI, Traffic and Secretary of State Related Issues- Fall 2011. Presented by the ISBA Traffic Laws/Courts Section. 9-4.

Tuesday, 9/27/11- Teleseminar—Metadata: The Hidden Digital World of Client Files in Litigation. Presented by the Illinois State Bar Association. 12-1.

October

Tuesday, 10/4/11- Teleseminar—Fixing Broken Trusts. Presented by the Illinois State Bar Association. 12-1.

Wednesday, 10/5/11- Webinar—Conducting Legal Research on FastCase. Presented by the Illinois State Bar Association. 12-1.

Thursday, 10/6/11- Teleseminar—Environmental Liability in Real Estate Transactions. Presented by the Illinois State Bar Association. 12-1.

Monday, 10/10/11- Chicago, UBS Towers—Advanced Workers' Compensation- Fall 2011. Presented by the ISBA Workers' Compensation Law Section. 9-5.

Monday, 10/10/11- Fairview Heights, Four Points Sheraton—Advanced Workers' Compensation- Fall 2011. Presented by the ISBA Workers' Compensation Law Section. 9-5.

Tuesday, 10/11/11- Teleseminar—Drafting LLC Operating Agreements, Part 1. Presented by the Illinois State Bar Association. 12-1.

Wednesday, 10/12/11- Teleseminar—Drafting LLC Operating Agreements, Part 2. Presented by the Illinois State Bar Association. 12-1.

Wednesday, 10/12/11- Teleseminar—Drafting LLC Operating Agreements, Part 2.

Presented by the Illinois State Bar Association. 12-1.

Friday, 10/14/11- Springfield, INB Conference Center—Divorce Basics for Pro Bono Attorneys- 2011. Presented by the ISBA Delivery of Legal Services Council. 1:00-4:45.

Thursday, 10/13/11- Chicago, USB Towers—Collaborative Law: The Nuts and Bolts. Presented by the ISBA General Practice, Solo and Small Firm Section; co-sponsored by the ISBA Alternative Dispute Resolution and the ISBA Young Lawyers Division. 8-12.

Friday, 10/14/11- Chicago, ISBA Chicago Regional Office—Family Law Nuts and Bolts Chicago 2011. Presented by the ISBA Family Law Section. 8-5

Monday, 10/17/11- Chicago, ISBA Chicago Regional Office—Hot Topics in Consumer Collection. Presented by the ISBA Commercial Banking, Collections and Bankruptcy Section; co-sponsored by the ISBA Young Lawyers Division. 8:45-4:30.

Tuesday, 10/18/11- Teleseminar—2011 Americans With Disabilities Act Update. Presented by the Illinois State Bar Association. 12-1.

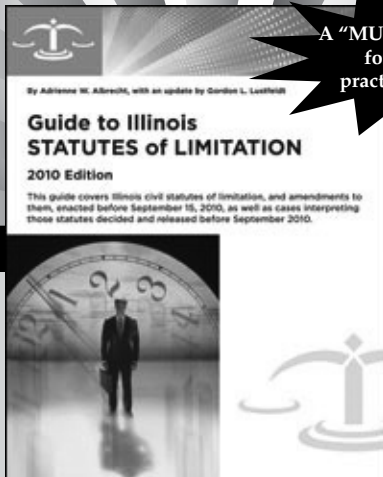
Tuesday, 10/18/11- Chicago, ISBA Chicago Regional Office—What You Need to Know About LLCs. Presented by the ISBA Corporation Securities and Business Law Section. 12:30-4:45.

Wednesday, 10/19/11- Webinar—Advanced Legal Research on FastCase. Presented by the Illinois State Bar Association. 12-1.

Thursday, 10/20/11- Chicago, ISBA Chicago Regional Office—The IMDMA and the Welfare of Pets. Presented by the ISBA Animal Law Section; co-sponsored by the ISBA Family Law Section and the ISBA Human Rights Section. 1:00-4:30 pm.

Thursday, 10/20/11- Live Webcast—The IMDMA and the Welfare of Pets. Presented by the ISBA Animal Law Section; co-sponsored by the ISBA Family Law Section and the ISBA Human Rights Section. 1:00-4:30 pm. ■

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