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ILLINOIS STATE BAR ASSOCIATION

Standing Committee on Government Lawyers

The newsletter of the Illinois State Bar Association's Standing Committee on Government Lawyers

From the Chair

By Lisle Stalter

It is hard to believe it is already fall and that a new issue of the newsletter is in the works. It has been a busy couple of months for the Committee on Government Lawyers. The Rules of Professional Conduct Program is set for December 10th. If you have not already registered, now is the time. Take advantage of the special $30 pricing and earn two hours of Professionalism credit.

The Committee has also planned a continuing legal education program for next Spring in conjunction with the Local Government Law Section Council. We hope to present the program in both Springfield and Chicago so that it will be convenient for all government attorneys to attend. The program will cover the recent amendments to FOIA and the Open Meetings Act contained in Public Act 96-542, effective January 1, 2010. One of the featured speakers is Michael Luke, Chief of the Attorney General's Public Access and Opinions Division. Mr. Luke will provide an update on, and hopefully a practical look at, how the Acts are being implemented through the Attorney General's Office. I expect to find this session particularly interesting as by the time of the program the comprehensive FOIA amendments will have been in effect for a few months. This will also give us the opportunity to take a look at their practical application.

The program will also include a presentation by Steven Sandvoss, General Counsel for the Illinois State Board of Elections. Mr. Sandvoss is slated to speak on election issues, such as when a public body becomes a local political committee triggering the application of the Election Code. Finally, the program will also include a discussion of conflicts for government attorneys. We have specifically asked the presenter to keep in mind that the audience will include attorneys who work for government, not just private practitio-

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Extra work is extra work

By Raymond A. Fylstra

On August 17, 2009, Governor Pat Quinn signed one of the most sweeping revisions of the Illinois Freedom of Information Act (5 ILCS 140/1) (the "Act") since it was adopted in 1983.

Citing the public policy of the State of Illinois that access to public records "promotes the transparency and accountability of public bodies at all levels of government," the Public Act 96-0542 as codified in the Act declares that "it is the fundamental obligation of government to operate openly and provide public records as expediently and efficient as possible." Further, the Act provides that irrespective of added cost to comply and technological advances, public records "shall" be made available upon request except when denial of access furthers the public policy underlying "a specific exception." Finally, as amended, the Act "presumes" all records in the custody or possession of a public body are open for inspection and where a public body asserts the record is exempt, the burden is on the public body to prove "by clear and convincing evidence" that an exemption applies. 5 ILCS 140/1.2.

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Save the Date

The New Rules of Professional Conduct for Government Attorneys

December 10, 2009

ARDC Offices in Chicago
10:00 a.m. – 12:00 p.m.

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From the Chair

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ners representing local governments, and the discussion should have applications that are relevant to us as well.

We continue with our efforts to identify more ISBA members who are government attorneys. Knowing the full extent of our ranks within the ISBA will help the Committee better address the needs of our membership. I think all of us on the Committee recognize that this will be a continuing effort, however, every little step we take is a step in the right direction. We are also working on some other things that I find very exciting but I will save those for the next newsletter.

As I am writing this at the last minute, I will leave you with a word of wisdom that I need to follow more often: "Don't procrastinate. Do what needs doing when it needs to be done."[1] I recognize that not all deadlines are met at their last minute because of procrastination but because of other priorities—I am sure you have experienced this—even so, these are words that are useful to keep in mind when procrastination is tempting. ■

1. Life's Little Instruction Book, 1991, no. 416.

Extra work is extra work

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In addition to presuming that all records are public, the amended Act specifically requires production (subject to certain redactions) of the use of all public funds (5 ILCS 140/2.5); all payrolls (5 ILCS 140/2.10); all arrest reports and criminal history records (5 ILCS 140/2.15); and all settlement agreements (ILCS 140/2.20).

The Act will prohibit public agencies from requiring the use of individualized FOIA forms nor can the public agency require the requester to disclose the purpose for the request. Further requests can be made by any method of communication, including oral requests. 5 ILCS 140/3(c). The public body must respond to the request within five (5) business days unless the public body meets the exceptions set out or the person making the request agrees to an extension. 5 ILCS 140/3(e). Significantly, the Act requires the public body to provide records which are in the possession of third parties with whom the governmental body has contracted to provide services which relate directly to governmental functions, and which are not otherwise exempt. 5 ILCS 140/7(2).

The Act distinguishes between requests for public records for a commercial purpose. A person requesting records for that purpose must initially disclose that the records are being sought for that purpose, 5 ILCS 140/3.1(c), and the time for the public body to respond is extended to twenty-one (21) working days after receipt of the request with a corresponding requirement that the requestor pay the public body its estimated compliance fee before the public body is required to begin copying records. 5 ILCS 140/3.1(a).

Getting public bodies to comply with the Act has also been significantly beefed up. Each public body is required to designate at least one FOI officer who will be responsible for receiving and complying with FOIA requests and an electronic or paper file will have to be kept on each request. 5 ILCS 140/3.5(a). Each designated FOI officer will be required to complete an electronic training curriculum to be developed by the Illinois Attorney General's office which is to designate a Public Access Counselor who will also be responsible for reviewing disputes involving FOI requests and asserted violations of the Illinois Open Meetings Act. 15 ILCS 205/7.

The Act requires public bodies to provide copies of requested materials in electronic format if requested and if so maintained by the public body (5 ILCS 140/6(a)) and if provided in paper format, the first fifty (50) pages must be provided at no charge and each subsequent page shall not be higher than the actual cost to the public body to copy the documents or fifteen cents ($.15) a page, whichever is less. The cost for certifications of public records cannot exceed $1. 5 ILCS 140/6(b.

There are still significant exemptions which are numerous and specific (5 ILCS 140/7) and statutory exemptions. 5 ILCS 140/7.5

Finally, the Act makes failures to comply subject to both administrative and judicial remedies. Administratively, the person who has been denied records can file a request for review with the Public Access Counselor who will have the ability to require the production of records for its review and determination as to the requirement to produce or appropriateness of withholding material. Alternately, the requester can file suit for injunctive and declaratory relief. While that remedy has been available, the Act now shifts the burden to the public body to establish by clear and convincing evidence that any denied record is exempt. 5 ILCS 140/11(f). Further the judicial remedy provides that the court "shall" award attorneys fees to a person seeking to inspect a public record if that person prevails and, more importantly, if the court determines that the public body "willfully and intentionally failed to comply with the Act, or otherwise acted in bad faith," a civil penalty of not less than $2,500 nor more than $5,000 shall be imposed upon the public body. ■

Frank M. Grenard is a shareholder and the chair of the Commercial Transaction group of the Chicago, Illinois law firm of Johnson & Bell, Ltd. A 1977 graduate of Northwestern University School of Law, Frank is licensed in the states of Illinois, Iowa, Indiana, Nebraska and Michigan and most federal courts within those jurisdictions. He concentrates his practice in the areas of corporate, commercial transaction, environmental, and real estate, and litigation related to those areas or law. He has been a member of the Illinois and Iowa State Bar Associations Corporate Law Departments Section Councils. He is also a member of the Illinois and Iowa State Bar Associations Military Affairs Committees.

This article was originally published in the September 2009 issue of the ISBA's *The Corporate Lawyer* newsletter, Vol. 47, No. 2, and is reprinted with permission.

Essay: Law in a time of cholera*

*By Dr. Mary L. Milano***

There was an incredible sense of giddiness in our office a week or two ago. In at least some quarters, one could say it was reminiscent of what most of us recall at the end of the bar exam or getting that first job offer. The occasion was one which would not make a lot of sense in the world of the private practice of law, or even in the worlds of a lot of public law offices. The State of Illinois had announced it was rescinding the suspension it had imposed on paying for the burials of indigents, which is the way many of our clients are referred to by those outside our office walls. The ban on payment was supposed to be one measure to get the State through one of its most recent budgetary crises. Its imposition, we can all fairly conclude, did not necessarily help achieve that result. But it did create all sorts of predictable issues—issues at least which could have been predicted by anyone who has ever been responsible for making final arrangements, particularly but not exclusively for someone who lacked their own or family resources. The celebration reminded me of the question I so often have asked about our lawyers (and other professionals) since I became the executive director of the State's Guardianship and Advocacy Commission four years ago—an agency which is, among other things, the guardian of last resort for those too poor, too disabled, too alone for anyone else to be responsible. That question is: why do they do it?

The question startled me again, when not too long afterwards, I peeked through an ajar office door and saw a highly qualified professional, with massive responsibilities, head held in her hands and I said "it can't be that bad!" And she answered, "Well, it's about a DNR order—for someone way too young." That is one of the things we do—give consents to proceeding with, withholding, or discontinuing treatment, for wards we have known and served, and as well for some for whom our only nexus is the statutory surrogacy chain. It is a matter with which our lawyers deal with the utmost seriousness, thoroughness, and compassion. It is a matter which has no rewards attached. It makes anyone who speaks with them about it ask: why do they do it?

This question poses itself again and again, as our lawyers represent people they have never met before who are facing involuntary commitment proceedings; as they attempt to fight the involuntary administration of psychotropic drugs; as they try and get the right to an education in the least restrictive environment, guaranteed by courts but too often dishonored by school districts short of money, resources, or understanding, implemented for a client with Down syndrome; as they struggle with denials of access to and by wards in institutional settings; as they do many things that they ought not have to do for the most marginalized in a society which, despite the economic downturns, is still fairly kind to those deemed most successful, most significant, most powerful, most firmly in the mainstream. Why do they do it?

They don't have to do it. They are exceptional lawyers. They could work anywhere. They went to the schools deemed excellent by the raters—Northwestern, Vanderbilt, the University of Illinois, Georgetown, St. Louis University, and Catholic University of America. They went to schools that their counterparts on the bench and in political circles of influence favored as well—Loyola, DePaul, Southern, Northern, Marshall, Kent. They have added graduate degrees to their credentials, in management, in the social sciences, in pastoral studies, in counseling. They hold LL.M.s achieved at their own cost and on their own time. They average 14 years of service. They teach, write, and lecture. They are respected by their peers across the country, by those on the bench and those in the bar who deal with similar issues for hourly fees or percentages of estate values. They study constantly. They are successful at the Illinois Appellate and Supreme Court levels. And they conduct their research, produce their briefs, and make their arguments with the encouragement of colleagues but in most cases without a single support staff member. Their clients will never get them tickets to a Cubs game, or even a cup of coffee. And while they may gain the respect of the judges before whom they appear, it is unlikely they will ever win the votes, either from the electorate or the full circuit judges who select associates, to join them on the bench. In much of their work, they encounter personal and legal situations so desperate and at the same time maze-like they know that they can literally "start anywhere." Why do they do it?

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This is a question which admittedly is asked by those who are thoughtful observers. It has rarely been a professional path whose responsibilities were well respected, or whose motivations were well understood. Government lawyers, like government employees in general, have often been seen by the general public as enjoying a too secure and too undemanding life on the public's dime. And they have been seen by the members of their profession in private practice as perhaps a bit less ambitious, and even a bit less talented, than the ones who go for the gold in high profile work on the "outside." And at least at one time government lawyers could, I admit, count on a fixed pension and guaranteed health benefits someday—but as we all now know, even that is no longer the case. But now, more than ever, the atmosphere can be exhausting and the workloads harsh. In just the last year, these lawyers have been tarred with the brush of a lawyer/governor impeached for misconduct and indicted for bribery, in many cases been threatened by "fumigation," had their salaries frozen, and in some cases reduced by mandatory furloughs, been called part of a bloated workforce at the base of an unbalanced budget, worried about layoff plans, and fought battles for clients with ever decreasing alternatives as social service providers struggled for funds due but deferred and with programs promised but unable to be provided. Why do they do it?

I look at our lawyers, these committed, talented, and under-compensated professionals of the highest possible competence and ask this question, now, more than ever. In the highly choleric atmosphere of public life, why do they do it, day after day, week after week?

The answers that emerge are those that are the stuff that continues to give life and spirit and purpose to our profession. The answers that our lawyers create "on the ground" are those that make our codes of professionalism have significance and meaning. The answers suggested by their lives and work on behalf of those who are truly voiceless remind us all of that which our lives as lawyers can attain. Why do they do it?

They do it because they believe. They believe that law is a vocation first and foremost, which requires that life be lived for and on behalf of others, with those "others" taken in both the general and the specific sense. The general sense is society as a whole, which for the preservation of its very nature can do with no less than the preservation and advancement of its values and aspirations, including most particularly that of justice for the least. The specific sense is the client without voice, without status, without resources, and sometimes without even an appreciation of his or her own peril or possibilities. The specific is the client who puts a face on the challenges with which society as a whole must successfully deal in order to be who we claim to be.

They do it because they remember. They remember the motivations that brought them to this vocation in the first place. They remember and recall each day of their working lives the ideals they brought to law school, the adversities they overcame, and the colleagues and professors who helped shape their ever-maturing understanding of those ideals and began to give them the tools to make them flesh in a world with too many sharp edges. They remember as well the lives of the clients and causes that first intrigued them. They remember the ideas and they remember the names, the places, the circumstances, and the things that should have been different, but weren't. They remember the successes and they remember so vividly the failures and their consequences.

They do it because they hope. They hope and they imagine and dream. They do these things about that which is or could become tangible with the right words and the right courage, counted among them that needs receive appropriate responses, that situations receive resources, that those who are poor find justice, that where there is weakness, it is aided, that what is human is respected, that what is broken is healed, and that when there is voicelessness, voice is given in strong chorus. They do these things in tangible ways, with their daily practice and their daily lives, their scrambling for resources, their articulate arguments, and their well-developed skills. They do this with the staying power that makes hope meaningful, imagination a tool of change, and dreams the cutting edge of new realities.

And they do it because they are here. Just here and just now, they themselves and no one else. They know that the responsibilities they have undertaken are in fact theirs. How this came about differs in each case. Why it is this lawyer and not another may be a matter of choice or chance or both. But however it came about, the very fact of being here, of being for and with those we serve has created for each a most specific obligation which asks each day—will you stay the course? Will you answer the call? Will you speak the word that no one else will speak? Will you be the bond that guarantees justice, dignity, and the possibility of light in an otherwise very dark world?

Why do they do it? Each time I ask this question about the lawyers of Guardianship and Advocacy I find new answers. And perhaps more important, each time I ask it I find new questions that turn themselves back to me and my own vocational imperatives, and do not relent in asking me to believe, to remember, to hope and to make tangible all that brought me to be and to remain a lawyer, and for this time and season at least, to have the honor of being here—just here and just now—a member of the community of government lawyers in the community of the Guardianship and Advocacy Commission. ■

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*With apologies to Gabriel Garcia Marquez.

**Mary Milano is Executive Director of the Illinois Guardianship and Advocacy Commission, a government lawyer, and a priest of the Episcopal Diocese of Chicago. She is currently the Secretary of the Standing Committee on Government Lawyers and an ISBA Assembly delegate.

Wondering whether a case has been covered in an ISBA newsletter? Just curious to see what's been published recently?

Check out the indexes of every article the ISBA has produced since 1993 at <www.isba.org/publications/sectionnewsletters>.

And if you want to order a copy of any article, just call or e-mail Janice Ishmael at 217-525-1760 (ext. 1456) or jishmael@isba.org

Public sector discipline: September 2009 Term of the Supreme Court

By Rosalyn Kaplan

In re Gable, Commission No. 08 CH 67, S. Ct. No. M.R. 23234 (September 22, 2009). Jarrett Ward Gable was an Assistant Public Defender in Cook County during the misconduct in question. On May 28, 2006, he was arrested at a music festival in Peoria and was charged with two counts of possession of psilocybin, a controlled substance that acts as a hallucinogen. The Illinois Supreme Court allowed the Administrator's amended petition to impose discipline on consent and suspended Gable for one year and until further order of the Court, with the suspension stayed in its entirety by a two-year period of probation, in view of his successful treatment for chemical dependency and his abstinence since July 2006.

In re Falcon, Commission No. 08 CH 82, S. Ct. No. M.R. 23255 (September 22, 2009), and *In re Kosiba*, Commission No. 08 CH 85, S. Ct. No. M.R. 23108 (September 22, 2009). Mary Jo Macalalag Falcon was employed by the City of Chicago in various positions from 1994 through 2005, including Director of Personnel of the Sewer Department, Assistant Commissioner of the Sewer Department and Assistant Commissioner of the Department of Water Management. In 1992, John Jerry Kosiba served as Assistant Commissioner of the City's Water Department, and, in 1998, he was the Commissioner of the Sewer Department. Both Falcon and Kosiba were subject to the *Shakman* decree (*see Shakman v. Democratic Organization of Cook County*, 481 F. Supp. 1315 ((N.D.Ill.1979)), which permanently enjoined employees of the City from allowing hiring decisions to be based on political considerations, under specified circumstances. To implement the *Shakman* decree, the City required officials who were responsible for hiring and promotions to maintain, as part of the hiring process, *Shakman* referral lists, documenting their understanding of the legal requirements and verifying that, to the best of their knowledge, "political considerations did not enter into the hiring decisions documented on this form."

During their employment with the City, both Falcon and Kosiba received lists of names prepared by the Office of Intergovernmental Affairs, a division of the Mayor's office, when they were conducting job interviews. The lists identified individuals who were expected to be interviewed and hired for certain positions because of their political involvement, affiliation or work on political campaigns. Both attorneys interviewed the required applicants, or arranged for hiring panels to conduct interviews, and then adjusted rating sheets, if necessary, to ensure that the listed individuals scored highly and would receive City jobs. The attorneys also falsely certified on *Shakman* referral lists that the hiring process had been conducted without political considerations.

Falcon and Kosiba cooperated with federal authorities, and both testified at the trial of Robert Sorich and his co-defendants with respect to the hiring of politically connected individuals for City jobs. They both received immunity from prosecution from the federal authorities. The Illinois Supreme Court allowed their petitions for discipline on consent and suspended each of them for three years.

The full text of the *Gable*, *Falcon* and *Kosiba* petitions, as well as the Supreme Court's final orders, may be accessed through the Attorney Registration and Disciplinary Commission's web site at <www.iardc.org>, by selecting "Rules and Decisions." ■

In-Sites

By Kevin Lovellette

From time to time, the Illinois Supreme Court Committee on Jury Instructions makes changes to the Illinois Pattern Jury Instructions for both civil and criminal cases, or the Committee may amend or update the Comments section on certain instructions. The changes usually go into effect immediately. Until these changes are published in a bound volume of the Illinois Pattern Jury Instructions, they may be found on the Illinois Courts Web site, <http://www.state.il.us/court/>. There are links to the modified civil and criminal instructions on the left side of the page under the "Legal Community" heading. Once the modifications are incorporated into a bound volume, they are removed from the Web site.

The Illinois Courts Web site also includes an e-mail notification service which will send an e-mail when an instruction is modified, <http://www.state.il.us/court/General/listservices.asp>. The Web site allows a user to sign up for other e-mail notifications as well, including Illinois Supreme Court and Appellate Court opinions, docket reports, rule changes, and other court orders and announcements. This is an excellent way for government attorneys to keep updated on these issues. ■

Law school student loan forgiveness update

*By Colleen Morgan**

On August 25, 2009, Governor Quinn signed the Public Interest Attorney Assistance Act which provides loan repayment assistance to "public interest attorneys." *See* Public Act 96-615, effective January 1, 2010. The Act allows for loan assistance of a maximum of $6,000 per year, up to a career maximum of $30,000 in qualified loan forgiveness.

Public interest attorneys covered by the Act include full-time assistant State's Attorneys, assistant Public Defenders, civil legal aid attorneys, assistant Attorneys General, assistant public guardians, Guardianship and Advocacy Commission attorneys, and legislative attorneys.

A benefit of the Act is that it defines eligible debt as including loans obtained from "commercial lending institutions or educational institutions." Most student loan repayment legislation has been confined to only government held loans. The Act does not apply to loans made by a private individual or family member, however.

The Act designates the Illinois Student Assistance Commission (ISAC) as the agency to administer the loan repayment program. ISAC is directed to create an advisory committee including representatives from the public interest legal sector, bar associations, and a public law school. ISAC will establish an application process, eligibility requirements, and prioritization criteria. In determining who will be eligible to benefit from the loan forgiveness program, ISAC will consider: the timeliness of the application, the applicant's salary level, the amount of eligible debt, the availability of other loan repayment assistance, length of service as a public interest attorney, and prior participation in the program.

Loan repayment assistance will be in the form of a forgivable loan. Implementation of the loan repayment program is contingent upon the availability of appropriations and, as of yet, no money has been dedicated to the program. However, the outlook for funding in the Spring of 2010 is generally positive. The ISAC Web site is at: <http://www.collegezone.com/>.

There are other forms of student loan forgiveness currently available to attorneys working in public interest.

The Public Service Loan Forgiveness Program is already operating and does not require application to initiate eligibility. Under the program, a borrower may qualify for forgiveness of the remaining balance due on any eligible federal student loans after making 120 monthly payments. Only payments on debts made after October 1, 2007, will be considered in calculating the 120 payments, and only payments made pursuant to certain repayment plans are eligible. The program also requires full-time employment in a "public service job" while those payments are being made. Consequently, the earliest cancellation of loan balances will not be until October of 2017. To retrieve your loan information and determine if you have an eligible loan go to the National Student Loan Data System at <http://nslds.ed.gov> or call the Direct Loan Servicing Center at 1-888-447-4460.

Additionally, many law schools currently offer school-specific loan repayment assistance programs to graduates who choose careers in public interest. Each school's criterion for eligibility is different, however, so interested attorneys should contact their law school financial aid department for information.

Some federal agencies also provide loan repayment assistance programs. Equal Justice Works maintains a list of participating agencies at their Web site <http://www.equaljusticeworks.org/>.

Also, additional federal student loan forgiveness may be forthcoming in the form of the Higher Education Reauthorization and College Opportunity Act. The Act includes four loan forgiveness programs applying to public interest lawyers including: state and local prosecutors and public defenders, federal public defenders, civil legal assistance lawyers and attorneys working with the disabled, and public interest attorneys working as broadly defined "public sector employees." However, although the program has been authorized and partially funded, it is still awaiting regulation and implementation.

Finally, on July 1, 2009, the new income-based repayment plan became available for the first time to borrowers of federal loans including both Direct Loans and federal loans from a private lender. The plan caps a borrower's monthly payments based on his or her income and family size and any debt and interest remaining after 25 years of payments will be forgiven. Also in July, Pell grant amounts were increased and the interest rates on new subsidized Stafford loans and existing variable-rate loans went down. Contact your lender to see if you are eligible to change your repayment plan.

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*Colleen Morgan is an Assistant Defender for the Office of the State Appellate Defender, Springfield.

Brief review of new provisions in the ADA Amendments Act of 2008

EEOC invites public comment and input on new regulations for the statute through November 23, 2009

By Eileen M. Geary

Last fall, Congress enacted the Americans with Disabilities Amendments Act of 2008 (ADA Amendments Act of 2008 or ADAAA), which became effective on January 1, 2009. *See* Pub. L. No. 110-325, 122 Stat. 3554 (codified as amended at 42 U.S.C. §§ 12101- 12103, 12111-12114, 12201, 12205a-12213). In the Act's Findings and Purposes, Congress stated its intention in enacting the ADA of 1990 that the statute "'provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities' and provide broad coverage." Further, the ADAAA states that "while Congress expected that the definition of disability under the ADA would be interpreted consistently with how courts had applied the definition of a handicapped individual under the Rehabilitation Act of 1973, that expectation has not been fulfilled." The statute then explicitly rejects holdings of the United States Supreme Court in *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999), and *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002). Congress stated that *Sutton* and *Toyota* "narrowed the broad scope of protection intended to be afforded by the ADA."

Further, Congress stated that the existing Equal Employment Opportunity Commission (EEOC) regulations defining "substantially limits" as "significantly restricted" "are inconsistent with congressional intent, by expressing too high a standard." *See* 29 C.F.R. Part 1630. The EEOC, therefore, is working on revising the regulations. Written comments on proposed new regulations are welcome and are being accepted through November 23, 2009. Comments with attachments can be sent electronically to <http://www.regulations.gov>, or by mail to Stephen Llewellyn, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 131 M Street NE, Suite 4NW08R, Room 6NE03F, Washington, D.C. 20507.

The definition of a "disability" in the ADAAA remains as: (1) a physical or mental impairment that substantially limits one or more major life activities; or (2) a record of an impairment; or (3) being regarded as having such an impairment. 29 C.F.R. 1630. One change to the "substantially limits" definition is that whether an individual has a disability that substantially limits a major life activity is to be made without regard to "the ameliorative effects of mitigating measures" including medication, prosthetics, "use of assistive technology," etc., except for "ordinary eyeglasses or contact lenses." 29 C.F.R. 1630.2(j).

Congress also broadened, or at least clarified, the definition of "major life activities" to include "caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working." Further, a major life activity also includes "the operation of a major bodily function," including functions of "the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions." 29 C.F.R. 1630.2. Also, an impairment that is "episodic or in remission is a disability if it would substantially limit a major life activity when active." 29 C.F.R. 1630.2(j)(4).

The ADA Amendments Act, therefore, provides for a more broad definition of disability than under the earlier statute, or, at a minimum, explicitly clarifies Congress' intention that "disability" must be broadly applied. In fact, Congress stated that a purpose of the statute is "to carry out the ADA's objectives of providing 'a clear and comprehensive national mandate for the elimination of discrimination' and 'clear, strong, consistent, enforceable standards addressing discrimination' by reinstating a broad scope of protection to be available under the ADA." Undoubtedly, the statute already has had significant effects on the employment relationship. Employers may be spending less time determining whether their employees have a disability, and focusing more on reasonable ways of accommodating the employees. Employees certainly must be more confident in seeking protection under the ADAAA. ■

Upcoming CLE programs

To register, go to www.isba.org/cle or call the ISBA registrar at 800-252-8908 or 217-525-1760.

January

Wednesday, 1/06/10 – Webcast—Illinois New Rules of Professional Conduct. Presented by the Illinois State Bar Association. 12-1. <https://isba.fastcle.com/store/seminar/seminar.php?seminar=2963>.

Thursday, 1/07/10 – Webinar—Conducting Legal Research on Fastcase. Presented by the Illinois State Bar Association. **An exclusive member benefit provided by ISBA and ISBA Mutual. Register at:* https://www1.gotomeeting.com/register/478190937 . 12-1

Thursday, 1/14/10 – Webcast—Mentor Training. Presented by the Illinois State Bar Association. 12-1.

Friday, 1/15/10 – Rockford, Radisson Hotel & Conference Center—Inside Divorce Mediation. Presented by the ISBA Alternative Dispute Resolution Section, Co-sponsored by the ISBA Family Law Section. Cap 50. 12:30-4:45.

Wednesday, 1/20/10 – Webcast—Illinois New Rules of Professional Conduct. Presented by the Illinois State Bar Association. 12-1. <https://isba.fastcle.com/store/seminar/seminar.php?seminar=2964>.

Friday, 1/22/10– Chicago, ISBA Regional Office—Meet the Agencies 2009. Presented by the ISBA Labor and Employment Section. 9-12:30.

Friday, 1/29/10 – Fairview Heights, Four Points Sheraton—Illinois New Rules of Professional Conduct. Presented by the Illinois State Bar Association. 12:30-4:45.

Friday, 1/29/10 – Chicago, ISBA Regional Office—Back to Basics: Tort Law. Presented By the ISBA Tort Law Section. 9-5.

February

Thursday, 2/04/10 – Webinar—Advanced Research on FastCase. Presented by the Illinois State Bar Association. **An exclusive member benefit provided by ISBA and ISBA Mutual. Register at:* https://www1.gotomeeting.com/register/825343825. 12-1.

Friday, 2/05/10 – Chicago, ISBA Regional Office—2010 Federal Tax Conference. Presented by the ISBA Federal Taxation Section. 8:30-4:45.

Friday, 2/05/10 – O'Fallon, IL, Regency Conference Center, Hilton Garden Inn

Documenting the Commercial Deal: Loans, Leases and Mortgages. Presented by the ISBA Commercial Banking and Bankruptcy Section. **Cap 75. 9-4:30.**

Friday, 2/05/10 – Normal, Bloomington – Normal Marriott

Hot Topics in Agricultural Law. Presented by the ISBA Agricultural Law Section and Co – Sponsored by the ISBA General Practice Solo & Small Firm Section. **Cap 150.** Time TBD.

Thursday, 2/11/10 – Chicago, ISBA Regional Office—Charitable Planning: Techniques to Help Your Client. Presented by the ISBA Trust and Estates Section. 9-3:45.

Friday, 2/12/10 – Fairview Heights, Four Points Sheraton—Worker's Compensation: Intake and Trail Issues for the Experienced Practitioner. Presented by the ISBA Workers' Compensation Section. Cap 75. Time TBD.

Monday, 2/15/10- Chicago, Conference Center at UBS Tower—Worker's Compensation: Intake and Trail Issues for the Experienced Practitioner. Presented by the ISBA Workers' Compensation Section. Cap 90. Time TBD.

Monday, 2/15/10 – Chicago, ISBA Regional Office—Documenting the Commercial Deal: Loans, Leases and Mortgages. Presented by the ISBA Commercial Banking and Bankruptcy Section. Time TBD.

Friday, 2/19/10- Springfield, IASA Office- 2648 Beechler Ct, 62703—Legislative Changes in Education for the Advanced Practitioner- 2010. Presented by the ISBA Education Law Section. Cap 45. Time TBD.

Friday, 2/19/10 – Chicago, ISBA Regional Office—Second Amendment and Department of Corrections Issues for Criminal Practitioners. Presented by the ISBA Criminal Justice Section. 9-3:45.

Thursday, 2/25/10 – Chicago, ISBA Regional Office—Women in the Criminal Justice System – Justice Delivered or Denied?. Presented by the ISBA Standing Committee on Women and the Law. 8:45-4:45.

Friday, 2/26/10 – Chicago, ISBA Regional Office—Countering Litigation Gamesmanship. Presented by the ISBA General Practice Solo & Small Firm Section, Co – Sponsored by the Federal Civil Practice Section. 9-5.

Friday, 2/26/10 – Bloomington, Holiday Inn & Suites—2nd Amendment and D.O.C. Issues for Criminal. Presented by the ISBA Criminal Justice Section. Cap 70. 9-3:45.

March

Thursday, 3/04/10- Chicago, ISBA Regional Office—Family Law Skills—Practice Makes Perfect. Presented by the ISBA Family Law Section. 8:30-5.

Thursday, 3/04/10 – Webinar—Conducting Legal Research on Fastcase. Presented by the Illinois State Bar Association. **An exclusive member benefit provided by ISBA and ISBA Mutual. Register at:* <https://www1.gotomeeting.com/register/812110961>. 12-1

Friday, 3/05/10 – Chicago, ISBA Regional Office—Administrative Adjudication in the City of Chicago and other Municipalities. Presented by the ISBA Administrative Law Section. Time TBD.

Friday, 3/12/10- Springfield, Illinois National Guard—Legal Issues for the Military Law Attorney. Presented by the ISBA Military Law Section. 8-12:30.

Friday, 3/19/10 – Chicago, ISBA Regional Office—Preparing for Trial. Presented by the ISBA Bench and Bar Section. 8:30 – 12:00.

Friday, 3/19/10- Chicago, ISBA Regional Office—Preparing for Appeal. Presented

by the ISBA Bench and Bar Section. 1:00-5:30.

Friday, 3/26/10 – Chicago, ISBA Regional Office—Divorce, Deportation and Disciplinary Complaints: Avoiding Immigration Pitfalls in Family Law. Presented by the ISBA International and Immigration Law Section. 9-1.

April

Thursday, 4/02/10 – Webinar—Advanced Research on FastCase. Presented by the Illinois State Bar Association. **An exclusive member benefit provided by ISBA and ISBA Mutual. Register at:* <https://www1.gotomeeting.com/register/458393744>. 12-1.

Saturday, 4/17/10 – Lombard, Lindner Learning Center—DUI, Traffic, and Secretary of State Related Issues. Presented by the ISBA Traffic Law Section. 9-4.

May

Thursday, 5/6/10 – Chicago, ISBA Regional Office—Law Practice Strategies to Weather a Stormy Economy. Master Series Presented by the Illinois State Bar Association. 8:30-12:45.

Friday, 5/7/10 – Bloomington, Bloomington-Normal Marriott—Law Practice Strategies to Weather a Stormy Economy. Master Series Presented by the Illinois State Bar Association. 8:30- 12:45.

June

Thursday, 6/3/10- Saturday, 6/5/10- Chicago, ISBA Regional Office—CLE Fest Classic Chicago. Presented by the Illinois State Bar Association. Time TBD.

Date TBD – Chicago, ISBA Regional Office—Legal Writing: Improving What You Do Everyday. Presented by the Illinois State Bar Association. Time TBD. ■

Save the Date!

What the Government Lawyer Needs to Know About the 2010 Illinois Rules of Professional Conduct

Sponsored by the ISBA Standing Committee on Government Lawyers

Chicago
Thursday, December 10, 2009
ARDC Office
One Prudential Plaza
130 East Randolph Drive, Ste 1500 (map and directions)
10:00 a.m. – 12:00 p.m.

2.0 MCLE credit hours, including 2.0 hours approved Professional Responsibility MCLE credit

Unlike the many programs that are designed to educate practitioners on the new Illinois Rules of Professional Conduct, this seminar is geared explicitly for the government attorney. Many of the new changes don't affect government lawyers, whereas some of the new rules are only applicable to them. The purpose of this program is to provide a comprehensive overview of those changes that directly affect government attorneys by answering two important questions: What has changed? What has stayed the same?

Program Coordinators:
Pat Driscoll, Deputy State's Attorneys Office, Chicago
Lisle Stalter, Lake County State's Attorneys Office, Waukegan

Program Moderator: Lisle Stalter

Program Speakers:
Rosalyn Kaplan, Attorney Registration & Disciplinary Commission, Chicago

To register, go to www.isba.org/cle or call the ISBA registrar at 800-252-8908 or 217-525-1760.