

# Mental Health Matters

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

## Letter from the Chair

BY BARBARA GOEBEN

**Promoting an understanding of mental illness is one of the goals** of this newsletter and of this committee. The practice of Mental Health law presents the challenging balance of protecting the rights of those individuals who are diagnosed with a mental illness against the rights of society to protect itself.

This balancing act is something that a majority of legal professionals will face at least once in their career. The prevalence of mental illness is greater than most think. According to the National Institute of Mental Health as of 2013, 10 million U.S. adults (or 4.2 percent) have a serious mental illness which substantially interferes with a major life activity. An

estimated 43.8 million U.S. adults (or 18 percent) have some form of mental illness.

Hopefully, both this newsletter and our committee's continuing legal education programs will help guide you through this interesting area of the law.

Thank you for taking an interest in this issue. I would also like to take this opportunity to thank all of the committee members, who have not only focused their professional careers on this issue, but have also gone the extra mile in working on this newsletter and in our continuing legal education programs. I would particularly like to thank Sandy Blake for all of her efforts in editing this newsletter. ■

## The living room alternative to ER visits for mentally ill patients in crisis

BY SUSAN O'NEAL

**The Living Room concept has been used in Illinois for several years now**, the first one established at Turning Point Behavioral Health in Skokie. Just as it sounds, the space is set up like a living room. There is a television set, comfortable chairs, a couch, and a separate, darker room with a couch, where a person can just go lie down and relax, with no outside

stimuli.

Those who visit the Living Room are offered a snack. After being evaluated by a psychiatric nurse to make sure the guest is not experiencing a medical emergency, such as an adverse reaction to medication, the guest then meets with a trained peer

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## The living room alternative to ER visits...

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counselor. The peer counselor is someone who has a mental illness, but is doing well in his or her recovery. There are also therapists available, if necessary, because the Living Room is open at a time that Turning Point is also open.

Patients in a mental health crisis, who present to an Emergency Department (ED) at a hospital, are often kept there for hours, if not days. It is a sterile, unfriendly, and often frightening environment. The patient is not truly free to leave, and could even be restrained. Plus, this visit costs thousands of dollars, while not accomplishing much most of the time.

The Living Room model has many advantages over a hospital ED. It is easier to convince someone to go to the Living Room, because it is a much less threatening and much more pleasant environment. The guest is always free to go. The cost savings is not only to the guest, but also to the hospital, where this guest would likely end up otherwise, and ultimately to the taxpayers, as often the guest is a Medicaid recipient.

The Living Room in Skokie is funded by the State of Illinois, Division of Mental Health, but they have started billing Medicaid for some services. While there are many advantages, on the down side, their hours are limited. They are not open every day, and when they are, the hours are only from 3:00 - 8:00 p.m. Additionally, they are not really close to any hospital, in the event of a true medical emergency, or for referrals.

Lutheran Social Services of Illinois has opened a "Welcoming Center" in Chicago, across from Swedish Covenant Hospital. It is open Monday through Friday, 8:00 a.m. - 8:00 p.m. It has the benefit of case management services, which offer the guest up to 90 days of assistance in accessing housing, food, outpatient mental health treatment, public benefits applications, employment services, etc. They also do follow-ups with the guests, whereas the Living Room at Turning Point in Skokie does not. Because they do not do any follow-ups with their guests, it is hard to know if the number of patients they claim

to have diverted from the EDs and the millions of dollars they claim to have saved everyone are really accurate. They may have prevented someone from going to the ED or a psychiatric inpatient hospitalization that day, but there is insufficient data to determine whether the guest ended up needing those services in the days that followed.

Another group in the near western suburbs of Chicago has been meeting to discuss opening a Living Room in the area of Oak Park, River Forest, Forest Park, or Berwyn. The principals in this discussion include MacNeal Hospital, Riveredge Hospital, NAMI Metro Suburban, Oak Park/River Forest Township, Pillars, and Thrive. Location and funding seem to be the biggest hurdles.

As lawyers, we should be interested in the Living Room concept because it potentially represents the most humane and least restrictive means of defusing a mental health crisis. ■

Susan O'Neal is a part-time Assistant Public Defender in Juvenile Court in a Peoria County and has a private practice devoted to representing persons with disabilities. She is also certified to teach and does teach the NAMI Family-to-Family Class.



**Chair Barbara Goeben presents a plaque to Scott D. Hammer in recognition of his leadership during the inaugural year of the Mental Health Section Council.**

## Mental Health Matters

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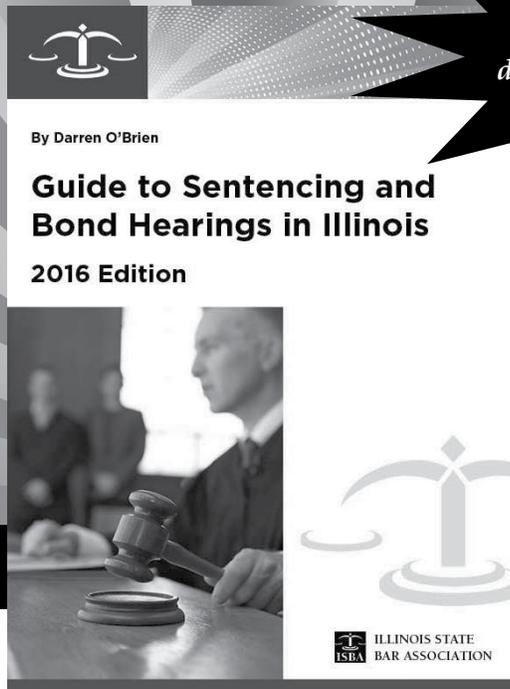
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# Competitive, integrated employment: The next step in achieving community integration for people with disabilities

BY CHERYL R. JANSEN

## Introduction

This year marks the 25th anniversary of the Americans with Disabilities Act (ADA).<sup>1</sup> As the U.S. Supreme Court held in *Olmstead v. L.C.*, the ADA requires states to ensure that people with disabilities are served in the most integrated setting appropriate to their needs.<sup>2</sup> While it is important to celebrate the advances made by people with disabilities since the ADA was passed, it is equally important to examine what remains to be done.

People with disabilities wish to be integrated into all aspects of society, including the workplace. Yet nationwide, people with disabilities are employed at a rate of 19.5 percent compared with 68.5 percent of the general population.<sup>3</sup> In Illinois, only 264,874 of the approximately 736,900 people with disabilities are employed.<sup>4</sup> To fully realize the community integration mandate of the ADA, this employment gap must be bridged.

## The Concept of Employment First

Across the nation, states have endeavored to increase community-based services for people with disabilities. In keeping with this trend, the concept of Employment First has gained momentum. Thirty states now have an Employment First policy either in statute or Executive Order.<sup>5</sup> Employment First means that “employment in the general workforce is the first and preferred outcome in the provision of publicly funded services for all working age people with disabilities, regardless of level of disability.”<sup>6</sup> As envisioned by this concept, employment should occur in an integrated setting and pay a competitive wage—not in a sheltered or segregated setting that pays below minimum wage or no wage at all.

## Illinois Employment First Act

In 2013, Illinois enacted a law to make competitive and integrated employment the first option considered when serving people with disabilities of working age. The Illinois Employment First Act requires state agencies to follow this priority and ensure its effective implementation in their programs and services.<sup>7</sup> In 2014, Governor Quinn issued an Executive Order requiring the development of a preliminary five-year plan by December 31, 2014, and a final plan by June 30, 2015, to improve community-integrated private employment outcomes for people with disabilities statewide.<sup>8</sup> It calls for the appointment of an Employment First Liaison (Liaison) within the Governor’s Office who is responsible for developing the preliminary and final plans in collaboration with state agencies and the Economic and Employment Opportunities for Persons with Disabilities Task Force (Task Force). A preliminary plan was developed by the Task Force by the stated deadline.<sup>9</sup> However, an Employment First Liaison has yet to be hired and progress towards devising a final plan has been delayed.

## Illinois Employment First Blueprint

The enactment of the Illinois Employment First Act prompted Equip for Equality<sup>10</sup> to examine employment services in Illinois and to conduct a survey of every state and Washington, D.C. to discern what others have done to implement Employment First. Highlighting the promising practices of other states, Equip for Equality released the Illinois Employment First Blueprint (Blueprint) in October 2014.<sup>11</sup> The Blueprint identifies reforms needed in six key areas to effectively implement Employment First in Illinois and sets forth recommendations to achieve those reforms. The following

discussion is based on the findings and recommendations of the Blueprint regarding employment services for people with mental illness.

## Supported Employment Services

Supported employment provides personalized supports for people with significant disabilities to find and keep paid employment. It is based on the principle that with the proper supports, all individuals, regardless of the nature or extent of their disability, can be gainfully employed.<sup>12</sup> Since 2005, Illinois has offered supported employment services using an evidence-based practice that is targeted to individuals with serious mental illness. This model, known as Individual Placement and Support (IPS), integrates employment services with mental health services. Developed at Dartmouth University, the IPS model is predicated on seven core principles:

1. Consumer choice—all individuals who are interested in working are eligible for IPS;
2. Integrated services—vocational and mental health services are part of the overall treatment approach;
3. Competitive employment in regular work settings—there is no pre-employment training or placement in sheltered or segregated work settings;
4. Place and train—individuals are placed in competitive work settings as soon as they feel ready, without extensive training or a career exploration period;
5. Personalized follow-on support—after placement, individuals and their employers receive ongoing support, if desired, for as long as it is needed;
6. Person-centered service—the job search and follow-on supports are driven by the individual’s personal preferences,

experiences, strengths, and choices, not the judgment of the employment specialist; and

7. Benefits counseling—provided to clients to ensure that they can successfully handle any impact of employment on Medicaid or Social Security benefits.<sup>13</sup>

In the final quarter of Fiscal Year 2014, 1,662 people were receiving IPS services in Illinois.<sup>14</sup> For agencies providing these services, a case is considered successful when an individual is employed in a competitive, integrated setting, usually for a minimum of three out of six months. In Fiscal Year 2014, the success rate for this program was 72 percent, an increase from 63 percent in the previous fiscal year.<sup>15</sup>

Yet despite its success rate, the number of people with mental illness in Illinois who are unemployed has not significantly declined. This is attributable to several factors. One is that funding has been inadequate. Another is that there are not enough qualified providers of IPS services to support the number of individuals with mental illness who need them. An employment specialist working for a provider of IPS services may not exceed 20 consumers on his or her caseload at one time. Because most providers have only one or two employment specialists on staff, the number of individuals they can serve is very limited. Further, because ongoing support services are not Medicaid billable and not reimbursable under IPS, they are difficult to fund. And while provider agencies may hire qualified employment specialists who are well-trained in the IPS model, many clinicians have yet to embrace employment as a necessary part of service delivery or the need to incorporate it into clinical services.<sup>16</sup>

## Lessons to be Learned from Other States

To have a significant impact on the employment rate of people with mental illness in Illinois, use of the IPS model should be expanded. Existing IPS sites should be allowed to serve additional consumers and the number of IPS sites should be increased.<sup>17</sup> In this regard, having sufficient funding is critical. New Hampshire provided specific earmarked funds to community mental health providers to enable them to integrate

evidence-based supported employment practices, offer training and technical assistance about these practices and build the infrastructures needed to sustain them.<sup>18</sup>

In addition to adequate funding, providers and clinicians must understand the critical role that employment plays in service delivery and recovery and how to deliver the supports that are needed in an appropriate way. Missouri provided technical assistance to providers to encourage them to integrate employment services into their mental health services and guidance on appropriate delivery of employment supports. The state also employs a support team to assist and provide technical assistance to providers.<sup>19</sup> Illinois should take similar actions to effectively implement its Employment First policy.

## Conclusion

Increasing opportunities for people with mental illness and other disabilities to procure and retain competitive, integrated employment is the next logical step in rebalancing Illinois' disability service system towards community-based services. Taking that step will bring Illinois closer to compliance with the ADA's integration mandate, increase the independence and productivity of people with disabilities and, in turn, reduce their dependence on publicly-funded programs. ■

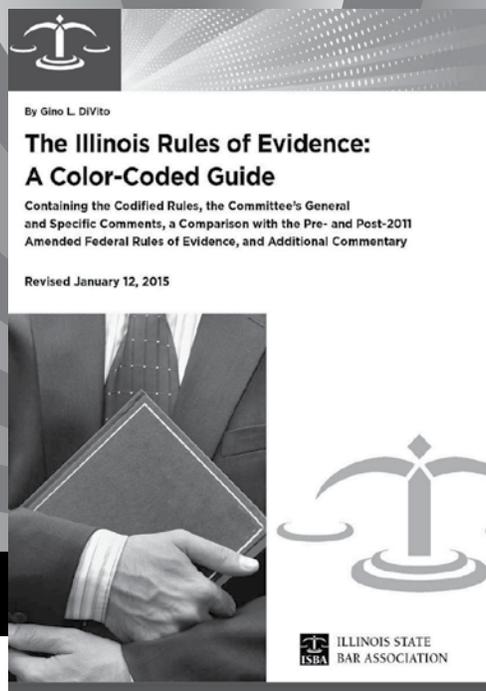
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Cheryl R. Jansen is the Public Policy Director of Equip for Equality. For nearly 25 years, she was a private practitioner in Springfield, Illinois, conducting civil litigation in state and federal court, with a concentration in employment discrimination and civil rights law. In 2005, she joined the Public Policy Program of Equip for Equality, an independent, not-for-profit organization designated by the Governor to implement the federally mandated Protection and Advocacy (P&A) system for people with disabilities in Illinois. As Public Policy Director, she works to advance the rights and full inclusion of people with disabilities in community life through proactive participation in the state legislative and public policy processes. During her tenure, she has successfully advocated for and secured passage of legislation that directly impacts the lives of people with disabilities, including a law establishing the due process rights of adult wards faced with involuntary sterilization. Ms. Jansen also authors an annual Legislative Summary and Analysis to assist the disability community, judges, attorneys and the public in

understanding actions of the state legislature that have an impact on children and adults with disabilities.

1. 42 U.S.C. § 12101 et seq.
2. 527 U.S. 581 (1999).
3. U.S. Department of Labor, Office of Disability Employment Policy, Current Disability Employment Statistics, <<http://www.dol.gov/odep/>> (last visited August 31, 2015).
4. John Butterworth, et al., StateData: The National Report on Employment Services and Outcomes 133 (2014), available at <[http://www.statedata.info/sites/statedata.info/files/files/statedatabook\\_2015\\_Fpdf](http://www.statedata.info/sites/statedata.info/files/files/statedatabook_2015_Fpdf)>.
5. Cheryl R. Jansen, Melissa O. Picciola & Barry C. Taylor, Illinois Employment First Blueprint 5, 30-32 (2014), available at <<http://www.equipforequality.org/wp-content/uploads/2014/10/Equip-for-Equality-Employment-First-Blueprint.pdf>>.
6. Id. at 1, citing to Association of People Supporting Employment First, Employment First Statement, <http://www.apse.org/employment-first/statement/>.
7. 20 ILCS 40/1 et seq.
8. EO 14-08, available at <[https://www.illinois.gov/Government/ExecOrders/Pages/2014\\_8.aspx](https://www.illinois.gov/Government/ExecOrders/Pages/2014_8.aspx)>.
9. See <<http://www.equipforequality.org/wp-content/uploads/2015/01/Employment-First-Strategic-Plan-Draft-12-29-14-FINAL.pdf>>.
10. Equip for Equality is an independent not-for-profit organization designated by the Governor in 1985 to implement the federally mandated Protection and Advocacy System for people with disabilities in Illinois.
11. Cheryl R. Jansen, Melissa O. Picciola & Barry C. Taylor, Illinois Employment First Blueprint (2014), available at <<http://www.equipforequality.org/wp-content/uploads/2014/10/Equip-for-Equality-Employment-First-Blueprint.pdf>>. This publication was made possible by funding from Searle Funds at The Chicago Community Trust and the U.S. Department of Health and Human Services: the Administration on Intellectual and Developmental Disabilities.
12. Id. at 7.
13. Id. at 9-10, citing to Deborah M. Becker, M.Ed. & Robert E. Drake M.D., Ph.D., Supported Employment for People with Severe Mental Illness, A guideline developed for the Behavioral Health Recovery Management Project.
14. Id. at 10.
15. Id., citing to E-mail from Katherine Burson, Statewide Director of Rehabilitation, Division of Mental Health to Brian Pflaum, Equip for Equality (August 19, 2014) (on file with the authors).
16. Id. at 11.
17. Id. at 13.
18. Id. at 11, citing to Granite State Employment Project, An Overview of Employment Infrastructure Improvements and a Guide for the Future 14 (2012).
19. Id. at 11-12, citing to Missouri Department of Mental Health, Division of Behavioral Health Employment Services, <<http://dmh.mo.gov/mentalillness/adacpsemploymentservices.htm>>.

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## January

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**Monday, 01/04/16- Webcast Replay**—Just the facts: Overview of Revisions to the Illinois Marriage and Dissolution of Marriage Act effective January 1, 2016. Presented by the ISBA Family Law Section Council. 12:00- TBD End time.

**Tuesday, 01/05/16- Teleseminar**—What Business Law Practitioners Need to Know about ACA. Presented by the ISBA. 12-1 pm.

**Tuesday, 01/05/16- Webinar**—Illinois Document Assembly Software, the Ultimate Efficiency Tool - Introduction to HotDocs. Practice Toolbox Series presented by the ISBA. 12-1 pm.

**Monday, 01/11/16- Webcast Replay**—Overview of the Revisions to the Parentage Act effective January 1, 2016. Presented by the ISBA Family Law Section Council. 12:00- TBD End time.

**Tuesday, 01/12/16- Teleseminar**—Structuring an Equity Investment in Real Estate. Presented by the ISBA. 12-1 pm.

**Wednesday, 01/13/16- Teleseminar**—Employees v. Independent Contractors: Employment & Tax Law Issues. Presented by the ISBA. 12-1 pm.

**Thursday, 01/14/16- Teleseminar**—Asset Protection Planning in Estate Planning. Presented by the ISBA. 12-1 pm.

**Friday, 01/15/16- Teleseminar**—Ethics of Preparing Witnesses. Presented by the ISBA. 12-1 pm.

**Tuesday, 01/19/16- Webinar**—Fight the Paper! Paper Reduction & Electronic File Management Workshop. Practice Toolbox

Series presented by the ISBA. 12-1 pm.

**Wednesday, 01/20/16- Teleseminar**—2016 Nonprofit Law/Exempt Organizations Update. Presented by the ISBA. 12-1 pm.

**Wednesday, 1/20/16- Webcast Replay**—Custody, Visitation and Removal. Presented by the ISBA Family Law Section Council. 12:00- TBD End time.

**Thursday, 01/21/16- Teleseminar**—Estate Planning for “Portability.” Presented by the ISBA. 12-1 pm.

**Friday, 01/22/16- Teleseminar**—Lawyer Ethics When a Client Won't Pay Your Fees. Presented by the ISBA. 12-1 pm.

**Friday, 01/22/16- Webcast**—Immigration Law Update. Presented by the ISBA International and Immigration Section Council. 12:00-1:30 pm.

**Monday, 01/25/16- Webcast Replay**—Property and Maintenance. Presented by the ISBA Family Law Section Council. 12:00- TBD End time.

**Tuesday, 01/26/16- Webinar**—Presented by the ISBA Standing Committee on Law Office Management and Economics. Practice Succession and Transition: Part I: Ideas for Getting Started. 12:00-1:00 pm.

**Tuesday, 01/26/16- Teleseminar**—Estate Planning in 2016: A Look Forward to Issues in the New Year. Presented by the ISBA. 12-1 pm.

**Wednesday, 01/27/16- Live Webcast**—Legislative Changes Affecting Juvenile Court Practitioners 2016. Presented by the Child Law Section Council. 12:00-1:00 pm.

**Wednesday, 01/27/16- Webcast**—Getting Adult and Juvenile Criminal Records Expunged: The Legal Process in Illinois. Presented by the Standing

Committee on Racial and Ethnic Minorities. 2:00-3:00 pm.

**Thursday, 1/28/16- Teleseminar**—Drafting Material Adverse Change (MAC) Clauses. Presented by the ISBA. 12-1 pm.

**Friday, 01/29/16- Teleseminar**—Professionalism for the Ethical Lawyer. Presented by the ISBA. 12-1 pm.

## February

**Monday, 02/01/16- Webcast Replay**—Attorney's Fees and 750 ILCS 5/513. Presented by the ISBA Family Law Section Council. 12:00- TBD End time.

**Monday, 02/01/16- Teleseminar- Live Replay**—Estate Planning with Annuities & Financial Products. Presented by the ISBA. 12-1 pm.

**Tuesday, 02/02/16- Webinar**—Trial Technology Workshop. Practice Toolbox Series presented by the ISBA. 12-1 pm.

**Thursday, 02/04/16- Teleseminar**—Choice of Entity for Service Businesses. Presented by the ISBA. 12-1 pm.

**Friday, 2/05/16—CRO**—Federal Tax Conference 2016. Presented by the Federal Tax Section Council. ALL DAY.

**Friday, 2/05/16**—Bloomington Normal Marriott Conference Center—Hot Topics in Agricultural Law 2016. Presented by the Agricultural Law Section Council. ALL DAY.

**Monday, 02/08/16- Webcast Replay**—Civil Procedure and the Revised Statutes. Presented by the ISBA Family Law Section Council. 12:00- TBD End time

**Tuesday, 02/09/16- Teleseminar**—Guarantees in Real Estate Transactions. Presented by the ISBA. 12-1 pm. ■

## MENTAL HEALTH MATTERS

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