The Public Servant

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

2016 Roz Kaplan Government Service Award recipient Allen J. Spellberg

BY MARYLOU LOWDER KENT, IMMEDIATE PAST CHAIR

Roz Kaplan devoted her life to public service. She worked in the Attorney General's Office and the Attorney Registration and Discipline Commission. A long-time member of the ISBA's Committee on Government Lawyers, this award, posthumously named in her honor, recognizes government attorneys whose dedication and service made a difference in their communities. The award recognizes attorneys who, like Roz Kaplan, have dedicated their careers to government service.

The 2016 recipient of the ISBA Roz Kaplan Government Service Award, Allen J. Spellberg, truly exemplifies the spirit of the award. His legal career has been dedicated to government service in the Cook County State's Attorney's Office Criminal Appeals Division where he has successfully defended hundreds of convictions and sentences.

After graduating from Loyola University Chicago School of Law in 1992, Allen clerked for the Honorable Gino L. DiVito in the Illinois Appellate Court for two years. Although he at first considered a career in 2016 Roz Kaplan Government Service Award recipient Allen J. Spellberg

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Open Meetings Act – A companion resource list

BY PETER J. ORLOWICZ

If you missed our committee's live CLE presentation on November 17, 2016, or were able to attend but want more information sources on the Open Meetings Act, we're happy to help. Here are some informative links to online sources about the Open Meetings Act.

•The Open Meetings Act – 5 ILCS 120/1 et seq.

As government lawyers, we know

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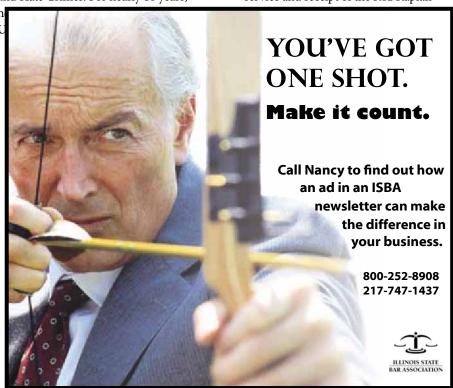
health care law, a position opened up in the Appellate Division of the Cook County State's Attorney's Office after his clerkship. He decided to apply because he had enjoyed his experience at the appellate level. Allen there found his calling.

Allen estimates that he has written over 1,000 appellate briefs and has appeared at least 40 times before the Illinois Supreme Court. Certain cases stand out to him because of the victims involved. One case in particular is that of Donald Armstrong who was convicted of brutally murdering an elderly woman with her own cane. Allen successfully defended Armstrong's death penalty conviction at the appellate level. Assuring this conviction was upheld was particularly important to him because of the viciousness of the crime.

Allen serves as the Cook County State's Attorney's designate on the Illinois Sentencing and Policy Commission. He has also served on the Illinois Supreme Court Committee on Character and Fitness and the Illinois Commission on Discrimination and Hate Crimes. For nearly 10 years, Allen is currently a member of the ISBA and is a former Chair of the Criminal Justice Section Council. In addition, he is a member of the Chicago Bar Association, Appellate Lawyers Association, Prosecutors Bar Association and the Lake County Bar Association. Married for 25 years with four children ranging from a senior in college to a seventh grader, Allen keeps busy with family matters and with walking his dog, Daisy. He is also very active with the North Suburban Synagogue Beth-el in Highland Park.

When asked why he decided on this particular career path, Allen stated that he appreciates being able to stand up for the people of the State of Illinois who deserve a society that is good, safe and just. He believes that a career in government service is a good place to begin or end a legal career because there are so many different areas in which to get involved. Moreover there is the satisfaction of working not only for one's self-interest but also for the common good.

We congratulate Allen on his exemplary service and receipt of the Roz Kaplan



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Published at least four times per year.

To subscribe, visit www.isba.org or call 217-525-1760.

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Articles are prepared as an educational service to members of ISBA. They should not be relied upon as a substitute for individual local research.

The articles in this newsletter are not intended to be used and may not be relied on for penalty avoidance.

Postmaster: Please send address changes to the Illinois State Bar Association, 424 S. 2nd St., Springfield, IL 62701-

Open Meetings Act – A companion resource list

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the most important place to start is the statutory text of the law with which we are dealing. The Illinois General Assembly website hosts a version of the Illinois Compiled Statutes, including the Open Meetings Act:

http://www.ilga.gov/legislation/ilcs/ilcs3. asp?ActID=84&ChapterID=2

•The Public Access Counselor

Substantial revisions to the Open Meetings Act became effective January 1, 2010. Among these changes was the establishment of the Public Access Counselor (PAC) within the Illinois Attorney General's Office. The Open Meetings Act authorizes the PAC to review state agency compliance with the state Freedom of Information Act. and to determine if public bodies have complied with the Open Meetings Act by issuing binding opinions. The PAC also provides a wealth of educational resources on the Open Meetings Act, including FAQs directed at both public bodies and members of the public. In addition, the PAC hosts electronic training on the Open Meetings Act for members of public bodies. A version of the training is also available for the general public.

Main PAC website: http://foia. ilattorneygeneral.net/Default.aspx

Public training for Open Meetings Act: http://foia.ilattorneygeneral.net/ Training.aspx

Binding PAC opinions from 2010 to present:

http://foia.ilattorneygeneral.net/bindingopinions.aspx

Educational materials (FAQs, PAC Guide, and links to statutes):

http://foia.ilattorneygeneral.net/foia_educationalmaterials.aspx

Attorney General Opinions Bureau

Prior to the creation of the PAC on January 1, 2010, the Illinois Attorney General handled Open Meetings Act questions and issues through its Opinions Bureau. A searchable database of Attorney General Opinion letters is available on the Attorney General website:

http://www.illinoisattorneygeneral.gov/opinions/index.html

Citizens' Advocacy Center informational brochures

Non-governmental sources can also be helpful for quick reference and to understand how the public interacts with our agencies and the laws for which we are responsible. The Citizens' Advocacy Center last revised its Open Meetings Act brochure in 2012 to include material on the PAC. Its website also has information on other state laws such as the Local Records Act and Freedom of Information Act. The list of brochures is here:

http://www.citizenadvocacycenter.org/brochures.html

Municipal Minute blog

Municipal Minute is a blog written by lawyers with the law firm Ancel Glink who specialize in representing local government clients. The posts cover a wide cross-section of local government issues, but always cover new amendments to the Open Meetings Act and also summarize any new binding PAC opinions that are released, usually with some helpful discussion of how other local government units might view the decision or apply it to their policies. The blog has a specific category for "Open Meetings" which can be selected on the left margin of the blog:

http://municipalminute.ancelglink.com/search/label/Open Meetings

• Other ISBA resources

On February 13, 2015, the Education Law section of the ISBA presented a CLE on the Open Meetings Act and the Illinois Freedom of Information Act. That program is available as a webcast through the ISBA's online CLE library:

http://onlinecle.isba.org/store/seminar/seminar.php?seminar=32634

Other ISBA members have written about the Open Meetings Act in section

newsletters in the past, including some of our committee members. A list of ISBA newsletter articles on the Open Meetings Act is here:

https://www.isba.org/publications/ sectionnewsletters/subjects/ openmeetingsact

If you know of other great resources for information on the Open Meetings Act, let us know by contacting the author or one of the officers of the committee.

Mr. Orlowicz is General Attorney, United States Railroad Retirement Board, Office of General Counsel. The statements and views expressed in this article are entirely Mr. Orlowicz's own, and do not represent the views of the Railroad Retirement Board or the United States Government.

It's Campaign Season for the 2017 Election

Run for ISBA Office—

Positions Available:

- 3rd VP
- BOG:
 - Cook (2)
 - Under Age 37 Cook County (2)
 - Under Age 37 Outside Cook County (1)
- Assembly:
 - Cook (21)

The 2017 ISBA Notice of Election (http://tinyurl.com/jabs3xk) is now available. Find out more at www.isba.org/elections.

Candidate filing begins January 3, 2017 and ends January 31, 2017.

What's app?

Every attorney needs to be aware of e-discovery obligations. With technology exploding and electronically storing evidence, we should all commit to continually educating ourselves.

We've advocated the 7th Circuit e-discovery Pilot Program's website before – www.discoverypilot.com – and suggest you visit regularly for new updates and free CLE opportunities.

There are also apps to help you in your access to your e-discovery:.

• DocReviewPad isn't cheap but it allows

- you to organize, search, and make notes to your documents. This app even allows you to add Bates numbers.
- Google Apps Vault is an add-on for Google Apps that lets you retain, archive, search, and export email and chat messages for your e-discovery and compliance needs. You can also search and export files in Google Drive. Vault is entirely web-based and is included with Google Apps Unlimited or Google Apps for Education, or you can buy Vault licenses.
- eDiscovery Assistant allows you to access important e-discovery information. You can access the federal rules, pilot projects (mentioned above), case digests, and a glossary.
- The Veritas eDiscovery Exchange App is designed for legal and IT professionals looking for all of the best e-discovery and information governance news in one location.

These are only a very few of the apps available. Please explore and find one that is right for you. ■

Government organizations as clients

BY PAUL THOMPSON

The Illinois Rules of Professional Conduct of 2010 provide the fundamental ethical parameters for private practitioners in their representation of an individual client in civil, regulatory and criminal domains. The rules also address, however, the role of in-house or contract counsel for clients that are not individuals, but are instead organizational entities. Even within this sector, the rules are instructive to government attorneys and some of the unique issues that may intersect with their particular area of practice for organizations that are public agencies or bodies politic. To begin, Rule 1.13 outlines the duties and responsibilities of lawyers who are attorneys for all types of organizations, whether they are public or private entities. As a couple of the main provisions describing the generalities of this expansive relationship, the first two paragraphs of this rule set the stage for further discussions of their explanatory comments. Subsections (a) and (b) address this unique attorney-client relationship by noting that the attorney represents the organization as a whole and not necessarily the directorate or administrative staff as explained in the following excerpted provisions:

RULE 1.13: ORGANIZATION AS CLIENT

(a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

(b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a crime, fraud or other violation of law that reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization. Unless the lawyer reasonably believes that it is not necessary in the best interest of the organization to do so, the lawyer shall refer the

matter to higher authority in the organization, including, if warranted by the circumstances, to the highest authority that can act on behalf of the organization as determined by applicable law.

As is generally the case, the courts provided additional insight into the policy underpinnings and practical applicability of the rules as applied to governmental attorneys. For example, the United States Court of Appeals for the Seventh Circuit, No. 01-3386, in *In Re: A Witness before the Special Grand Jury* 2000-2, No. 98 GJ 596 (April 23, 2002), noted for Illinois, within the realm of attorney-client confidentiality, the following generalized principle in organizational representation:

First, government lawyers have responsibilities and obligations different from those facing members of the private bar. While the latter are appropriately concerned first and foremost with protecting their clients--even those engaged in wrongdoing-- from criminal charges and public exposure, government lawyers have a higher, competing duty to act in the public interest. pp. 7, 8.

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In this case, the U.S. Attorney's Office moved to compel the Chief Counsel of the Secretary of State to testify before a grand jury regarding criminal matters relating to that governmental office. Although the court and the parties concurred on the applicability of attorney-client privilege for organizations in civil and administrative matters, the court ruled that the protection of this discourse did not apply in Illinois for criminal cases. Even more instructive and to the point, the court reasoned through precedent the following formulation:

Public officials are not the same as private citizens precisely because they exercise the power of the state. With this responsibility comes also the responsibility to act in the public interest. It follows that interpersonal relationships between an attorney for the state and a government official acting in an official capacity must be subordinated to the public interest in good and open government, leaving the government lawyer duty-bound to report internal criminal violations, not to shield them from public exposure. pp. 8, 9.

Comment number nine to Rule 1.13 of the Illinois Rules of Professional Conduct of 2010 also provides some supplementary insight specifically for legal counselors serving governmental agencies to add context to the underlying rule and cited court opinion. The comment addresses in some respects the complexities encountered by governmental attorneys not only with the limits and extensions of their purview, but also with the difficulties in providing legal counsel to elected or appointed officials as well as agency employees who act presumably on behalf of the overarching organizational client. These particular provisions are set out as follows:

[9] The duty defined in this Rule applies to governmental organizations. Defining precisely the identity of the client and prescribing the resulting obligations of such lawyers may be more difficult in the government context and is a matter beyond the scope of these Rules. See Scope [18]. Although in some circumstances the client may be a specific agency, it may also be a branch of government,

such as the executive branch, or the government as a whole. For example, if the action or failure to act involves the head of a bureau, either the department of which the bureau is a part or the relevant branch of government may be the client for purposes of this Rule. Moreover, in a matter involving the conduct of government officials, a government lawyer may have authority under applicable law to question such conduct more extensively than that of a lawyer for a private organization in similar circumstances. Thus, when the client is a governmental organization, a different balance may be appropriate between maintaining confidentiality and assuring that the wrongful act is prevented or rectified, for public business is involved. In addition, duties of lawyers employed by the government or lawyers in military service may be defined by statutes and regulation. This Rule does not limit that authority. See Scope.

The court recognized and acknowledged the differing levels of governmental authority that are commensurate with distinctive attorney roles in the governmental hierarchy. The explanatory "Scope" as referenced by this Note 9 to Rule 1.13 provides some additional guidance for governmental attorneys that differentiates their role from other private, organizational lawyers. For example, the comment acknowledges that government lawyers may have more authority in acting for their clients than a private practitioner and that an agency staff attorney requires the assistance of a state's attorney or attorney general for certain aspects of litigation. This scope is set out in note 18 to the Rules' Preamble as excerpted in the following provision:

> [18] Under various legal provisions, including constitutional, statutory and common law, the responsibilities of government lawyers may

include authority concerning legal matters that ordinarily reposes in the client in private client-lawyer relationships. For example, a lawyer for a government agency may have authority on behalf of the government to decide upon settlement or whether to appeal from an adverse judgment. Such authority in various respects is generally vested in the attorney general and the state's attorney in state government, and their federal counterparts, and the same may be true of other government law officers. Also, lawyers under the supervision of these officers may be authorized to represent several government agencies in intragovernmental legal controversies in circumstances where a private lawyer could not represent multiple private clients. These Rules do not abrogate any such authority.

Of particular note for these provisions under the Illinois Rules of Professional Conduct of 2010, the corresponding Model Rules of Professional Conduct as issued by the American Bar Association unsurprisingly in their comments to the Preamble [18 Scope] and Rule 1.13 [9 Government Agency], respectively, contain the same provisions. Illinois adopted its own current changes in 2010 to include the commentary, policy and intent for the similar textual provisions. Both sets of rules also rightly acknowledge the impact of other legal and regulatory requirements placed upon government lawyers that must also be complied with in the course of providing advocacy services and legal counsel to a governmental entity as a client.

Please note that the cited state and national provisions mentioned in this summarized overview are merely a starting point from which to begin associated legal research. Please consult the subject laws, rules and interpretations directly for further details on the applicable requirements and obligations generally affecting governmental attorneys as well as affected public employers.

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

Tuesday, 01-10-17- Webinar— Technology and Business Planning for a Law Firm. Practice Toolbox Series. 12:00 -1:00 p.m.

Thursday, 01-12-17- Live Webcast— Immigration Law Update Spring 2017— Changes which Affect Your Practice and Clients. Presented by International and Immigration. 12:00- 1:30 p.m.

Friday, 01-13-17- Chicago, ISBA Regional Office—Implicit Bias in the Criminal Justice System. Presented by Criminal Justice. 9:00 a.m. – 4:45 p.m.

Wednesday, 01-18-17- Live Webcast— The Nuts and Bolts of Drafting Non-Disclosure Agreements: Tips for the Practicing Lawyer. Presented by Business & Securities. 10:00 a.m. – 11:00 a.m.

Wednesday, 01-18-17—Live Webcast— Presented by Labor and Employment. 12:00 p.m. – 1:30 p.m.

Tuesday, 01-24-17- Webinar—How to Stop the 8 Things Killing Your Law Firm. Practice Toolbox Series. 12:00 -1:00 p.m.

Wednesday, 01-25-17- Live Webcast— Helping Immigrant Children- Special Immigrant Juveniles. Presented by International and Immigration; cosponsored by Bench and Bar. 11:00 a.m. – 12:00 p.m.

Wednesday, 01-25-17- Live Webcast— Housing Justice v. Housing Injustice: How Unfair Housing Practices Keep Segregation Intact. Part 1: SCOTUS Opinion, Fair Housing Policies and Housing Voucher Programs. Presented by REM; multiple cosponsors (see agenda). 1:00 – 3:00 p.m.

Thursday, 01-26-17—Chicago, ISBA Regional Office—Family Law Table Clinic Series—Session 3. Presented by Family Law.

Friday, 01-27-17- Chicago, ISBA Regional Office & Live Webcast—Recent Developments in State and Local Tax— Spring 2017. Presented by SALT. 8:30 a.m. – 12:45 p.m.

February

Wednesday, 02-01-17—Chicago, ISBA Regional Office—Cybersecurity: Protecting Your Clients and Your Firm. Presented by Business Advice and Financial Planning; co-sponsored by IP (tentative). 9:00 a.m. – 5:00 p.m.

Friday, 02-03-17- Springfield, Illinois Department of Agriculture—Hot Topics in Agricultural Law- 2017. Sponsored by Ag Law. All Day.

Friday, 02-03-17- Chicago, ISBA Regional Office—2017 Federal Tax Conference. Presented by Federal Tax. 8:20 a.m. – 4:45 p.m.

Monday, 02-13 to Friday, 02-17— Chicago, ISBA Regional Office—40 Hour Mediation/Arbitration Training. Master Series, presented by the ISBA—WILL NOT BE ARCHIVED. 8:30 -5:45 daily.

Tuesday, 02-14-17- Webinar— Hardware & Software: You Bought It, You've Got It... Now Use It! Practice Toolbox Series. 12:00 -1:00 p.m.

Monday, 02-20-2017- Chicago, ISBA Regional Office & Fairview Heights—Workers' Compensation Update - Spring 2017. Presented by Workers' Compensation. 9:00 a.m. - 4:00 p.m.

Wednesday, 02-22-17- Live Webcast—Housing Justice v. Housing Injustice: How Unfair Housing Practices Keep Segregation Intact. Part 2: Landlord Privileges/Defenses and Tenant Rights/Remedies. Presented by REM; multiple cosponsors (see agenda). 1:00 – 3:00 p.m.

Thursday, 02-23-2017—Webcast— Written Discovery Part 2: Electronic Discovery – How to Seek, Locate, and Secure. Presented by Labor & Employment.

Friday, 02-24-2017- Chicago, ISBA Regional Office—Wrongful Death, Survival, and Catastrophic Injury Cases. Presented by Tort Law. 8:45 a.m. – 1:00 p.m.

Tuesday, 02-28-17- Webinar— Introduction to Microsoft Excel for Lawyers. Practice Toolbox Series. 12:00 -1:00 p.m.

March

1:00 - 3:00 p.m.

Thursday, 03-02-17—Chicago, ISBA Regional Office—Family Law Table Clinic Series—Session 4. Presented by Family Law.

Friday, 03-03-17- Chicago, ISBA Regional Office & Webcast—8th Annual Animal Law Conference. Presented by Animal Law. 9:00 a.m. – 5:00 p.m.

Thursday, 03-09 and Friday, 03-10— New Orleans—Family Law Conference NOLA 2017. Presented by Family Law. Thursday: 12:00 pm – 5:45 pm; Reception 5:45-7:00 pm. Friday: 9:00 am – 5:00 pm.

Tuesday, 03-14-17- Webinar—Matter Management Software- Why Outlook Isn't Good Enough. Practice Toolbox Series. 12:00 -1:00 p.m.

Wednesday, 03-22-17- Live Webcast—Housing Justice v. Housing Injustice: How Unfair Housing Practices Keep Segregation Intact. Part 3: Mortgage Fraud, Subprime Lenders, and Foreclosure Crisis. Presented by REM; multiple cosponsors (see agenda). 1:00 – 3:00 p.m.

Friday, 03-24-17- Chicago, ISBA Regional Office—Jury Selection

Techniques and the Use of Jury Focus Groups. Presented by Labor and Employment. TIME TBD—full day.

12:50 p.m. - 5:00 p.m.

Wednesday, 03-29-17- Chicago, ISBA Regional Office & Live Webcast— Professional Responsibility and Ethics— Spring 2017. Presented by General Practice.

Tuesday, 03-28-17- Webinar—Access Your Documents from Anywhere and Share Them with Others. Practice Toolbox Series. 12:00 -1:00 p.m.

Friday, 03-31-2016 – iWireless Center, Moline—Solo and Small Firm. Title TBD. ALL DAY.

April

Thursday, 04-06-17- Chicago, ISBA Regional Office—Housing Justice v. Housing Injustice: How Unfair Housing Practices Keep Segregation Intact. Part 4: Resources for Rebuilding. Presented by REM; multiple cosponsors (see agenda). 1:00 – 5:00 p.m. (program). 5:00 – 6:00 p.m. (reception).

Friday, 04-07-2017—NIU Hoffman Estates—DUI and Traffic Law Updates—
Spring 2017. Presented by Traffic Law and Courts. 8:55 – 4:00.

Tuesday, 04-11-17- Webinar—TBD. Practice Toolbox Series. 12:00 -1:00 p.m.

Wednesday, 04-19 to Friday, 04-21—Starved Rock State Park—Allerton Conference—Title TBD. Presented by Civil Practice and Procedure. Wednesday: 12:00 p.m. – TBD. Thursday: TBD. Friday: TBD-12:00 p.m.

Tuesday, 04-25-17- Webinar—TBD. Practice Toolbox Series. 12:00 -1:00 p.m.

May

Tuesday, 05-09-17- Webinar—TBD. Practice Toolbox Series. 12:00 -1:00 p.m.

Thursday, 05-18-17—Chicago, ISBA
Regional Office—Family Law Table Clinic
Series—Session 5. Presented by Family
Law.

Tuesday, 05-23-17- Webinar—TBD. Practice Toolbox Series. 12:00 -1:00 p.m.

June

Friday, 06-02-2016—NIU Conference Center, Naperville—Solo and Small Firm. Title TBD, ALL DAY.

Tuesday, 06-13-17- Webinar—TBD. Practice Toolbox Series. 12:00 -1:00 p.m.

Wednesday, 06-21-2016—Chicago, ISBA Regional Office and Live Webcast—Title TBD- Marty Latz Negotiations. Master Series Presented by the ISBA. Time TBD.

Tuesday, 06-27-17- Webinar—TBD.

Practice Toolbox Series. 12:00 -1:00 p.m. ■

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