ILLINOIS STATE BAR ASSOCIATION

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YLD News

The newsletter of the Illinois State Bar Association's Young Lawyers Division

Avoiding legal malpractice claims

BY DAVID NEIMAN

In order to learn how to practice law, one must actually practice. Young lawyers can – and will – make many mistakes along the way. Even meritless claims can burden you and your firm with both financial and emotional costs. This article will highlight common mistakes young lawyers make that may result in malpractice claims, most of which are easily correctable and amount to nothing more than a good learning experience.

1. Maintain a dependable and accurate calendaring system.

A reliable, organized calendaring system is critical to meeting deadlines and prioritizing multiple obligations. Failing to properly calendar events and key dates can lead to missed deadlines and other disasters. Young lawyers tend to rely upon senior team members, or their paraprofessional staff or administrative

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Top 5 legal blogs you need to visit

BY JUSTIN GREEN

As a new family law attorney, I am always looking to keep up on current events in the family law field. However, I believe it is important for every attorney, whether new or experienced, to have access to current events in the fields they do not practice in. One of the best ways to accomplish this is to become an active blog reader. Blogs are a great way to learn from your fellow peers in your field(s) and others. Here are the top five blogs you need to visit.

1. Lawyerist

The *Lawyerist* is a great blog for firms and lawyers who are looking for advice on marketing, practice management, technology, and so much more. In addition to daily articles, the *Lawyerist* also provides a weekly podcast and Q & A section where lawyers can get answers

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Looking the part: Essentials in a young lawyer's wardrobe

BY KATHRYN CONWAY

Entering the legal profession presents a multitude of challenges, including developing a professional wardrobe and determining what to wear on a day-to-day basis. Indeed, once you graduate and enter the work force full-time, your wardrobe needs change instantly. To aid the young lawyer in making the best wardrobe investments straight off the bat, I have developed a list of professional wardrobe essentials that every young lawyer should have in his/her closet.

A few general tips first: every work place is different, and certain legal jobs allow casual or business casual attire, while others require formal suiting on a daily basis. Once you have accepted your first legal position, ask what attire is required. From there, take note of what others in the office are wearing to develop a fuller understanding of what is appropriate in your office. The below lists relate to an office setting that is somewhere in between business casual and formal, and can be adjusted based on your specific needs. When in doubt as to what to wear to work, err on the side of formality and go with a suit. An attorney will rarely, if ever, look out of place in a suit.

Men should consider investing in two suits of different shades, neither of which should be too bold and thus will enable flexibility in their wear. A navy blue, charcoal and/or medium gray are great choices. Additionally, men should have another few pairs of slacks, several button-ups, a blazer, a few ties, and a few sweaters. Like the suit colors, opt for more neutral/basic shades to create a nice foundation for your wardrobe and expand to include more interesting colors and patterns from there. (Ties are the one exception, as they can be colorful or patterned from the get-go.) A brown pair of shoes and a brown belt are a must, and a more casual pair of shoes are also recommended. Black is construed by many, but not all, to be appropriate for formal events only, i.e. weddings, black-tie events, and funerals, which is why I recommend you go with brown to start. Finally, a wristwatch with a metal or brown leather strap and a briefcase round out the necessities for your professional wardrobe.

For women, the list is similar. Women should have two different suits. Unlike men, the color black is perfectly appropriate and can serve as a nice foundation for your wardrobe. Additionally, women should have at least one button-up as well as several blouses or shells to wear under suits and with separates. A sheath dress is a must, and can easily be worn with a suit jacket or with a button-up underneath to add sophistication. In addition, a pencil skirt and a cropped pant make great separates. A blazer or cropped jacket will also afford a lot of flexibility in your wardrobe and will help create additional outfit options. Finally, skinny belts, wrist watches, pearl stud earrings, a briefcase, a couple pairs of heels to match your suits and/or a sophisticated pair of flats will complete your foundational wardrobe. As with men, I recommend building your wardrobe around neutrals or a specific color scheme in order to allow for maximum mix-and-matchability between pieces.

For those on a budget, Nordstrom Rack, The Limited, Ann Taylor LOFT, Zara, H&M, Charles Tyrwhitt, Tie Bar, and JoS. A. Bank are great places to shop. ■

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Top 5 legal blogs you need to visit

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quickly from their peers on virtually any topic.

2. *The Law Insider*

The *Law Insider* prides itself as the leading legal tech blog in the industry. It tracks trends in the field of legal technology with a concentration on the field of business law. The "Legal Tips" section provides advice from how to maximize social media for your firm to protecting your knowledge and competitive advantage with emerging technology.

3. *The Wall Street Journal's Law Blog*

The *Wall Street Journal's Law Blog* covers all the hot cases currently pending in the country with an emphasis on important Supreme Court decisions. In addition to covering current cases, the *Law Blog* covers topics such as pending state legislation, current issues facing both law schools and students, and emerging personalities in the legal world. The blog is headed by Jacob Gershman, and receives contributions from many other highly respected individuals in the legal community.

4. SCOTUSblog

I believe it is important for every attorney to keep up with the rulings of the Supreme Court. That is why I recommend visiting the *Supreme Court Of The United States blog*. The blog stays on top of every ruling coming out of the high court and provides easy to understand analysis of each case. The "Resources" section of the blog provides short biographies for each of the Supreme Court Justices as well as a breakdown of Supreme Court procedure. This blog is a must for any constitutional lawyer.

5. *Above the Law*

Above the Law provides a comprehensive look at current trends in the world of law. The blog covers topics ranging from the current job markets in both the private and public sectors to tips for running your own law firm. *Above the Law* does a great job of hitting topics that affect those lawyers in private practice and those in the public sector.

These are just five blogs that I believe all attorneys should visit. However, with thousands of more blogs out there, I encourage you to take some time and browse the internet. Blogs are not just a good source for practical information, they also provide entertainment value, which all attorneys need. ■

Avoiding legal malpractice claims

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assistants, to calculate and calendar deadlines. It is imperative that young lawyers take responsibility to confirm all dates and deadlines placed on their calendar, and/or maintaining your own personal calendar as a back-up to your firm's or practice groups calendaring system.

2. Accountability extends to meeting the deadlines too

Even if properly calendared, young lawyers must be mindful of and meet all deadlines. The consequence of not taking timely legal action can be drastic. You do not want to learn the lesson of respecting deadlines the hard way. Claiming insufficient or poor supervision from a supervising attorney is not excuse if you miss a deadline. Also, young attorneys must allow ample time and opportunity for the assigning attorney or client to review the draft, edit it, and explain what additional work needs to be done, all while accounting for their busy schedules. You should not cut things too close, and do not presume that the client or assigning attorney will have time to process your work product the day it is due or even the day before it is due. Because the law is a service profession, many times you will have to do things when the client wants them done or in compliance with a court ordered deadline, even if it is inconvenient for you. Ask your supervising attorney for his or her due date to be safe.

3. Don't JUST rely on senior attorneys

Striking a balance between taking initiative versus deferring to your senior team members is tough. You don't want to over-rely on senior attorneys for instruction, guidance, assignments, projects, proofreading, etc. If you are assigned to a case, you should presume that you are responsible for all deadlines and events on the calendar. Inquire in advance of an upcoming event whether and how you can be of assistance. Also, don't assume that the senior attorney's knowledge of the rules is so superior to yours that you don't need to look at the rules personally. In many cases, the senior attorney may have no better understanding of the actual court or procedural rule than the beginning attorney. The senior attorney often relies upon the beginning attorney, without actually saying so, to make sure that they are fully complying with all applicable rules. Always check the rules! Don't presume that the assigning attorney or more senior member of the team has assured compliance with the rules.

4. Effective client communication

Poor evaluation of a case, or inadequate communication with a client can result in the client's surprise at the outcome of a case. Both errors may lead to disbelief by the client, which would be most unfortunate, but it is possible that the misjudgment with respect to strategy or exposure could be judged far more harshly by the client than a failure to accurately report developments in the case. Indeed, a client may be more willing to forgive a surprising result if all efforts by the lawyer were conducted in the manner expected by the client; however, poor reporting which denied the client an opportunity to evaluate the risk before damages were realized will likely be judged more harshly. The consequences of a mistake may vary based on the professionalism displayed by the lawyer.

5. Failure to appreciate gravity of professional responsibility

While many young lawyers desire work/life balance, you must appreciate the gravity of the professional responsibility you undertook when becoming a lawyer. Being a professional in some respects means being "on call" at all times. Timely completing legal projects does not always fit neatly between the hours of 9:00am - 5:00pm, Monday through Friday excluding holidays and other major life events. Young lawyers who fail to appreciate this may be in for a rude awakening. While this may not lead to malpractice claims, it may lead to a quick end of your employment!

Your reputation begins to build on the first day of law school and continues to grow (or decline) throughout your entire career. Your reputation will be comprised of your skill, talent, personality, integrity, ethical standards, imagination, judgment and diligence. You want to be regarded as reliable, intelligent, diligent, practical, talented and trustworthy. If you make the mistakes outlined above, they will become part of your reputation and will be difficult to overcome. Many attorneys have survived making these mistakes, but that is no excuse for repeating them. ■

David Neiman is a Council Member of the Young Lawyer's Division. He is a trial lawyer with Baizer Kolar PC that dedicates his practice exclusively to representing victims and their families in personal injury and wrongful death matters arising out of medical malpractice, auto and trucking collisions, airplane crashes, and other catastrophic accidents.

E-mail etiquette at work

BY KATHY XIAHOU

A big part of my time at work is spent writing and responding to e-mails. So I thought I would compile a few tips on e-mail etiquette in the professional setting. The following may be no-brainers, but still serve as good reminders for those who spend time at work communicating electronically.

Remember, an e-mail is forever

Even if you thought you deleted an e-mail, it can still be recovered. Do not send anything in an e-mail that you would not want to see published in the front page of the local newspaper. If you are angry or upset, take a breather. A momentary lapse during a bad mood can be commemorated forever in an e-mail. Attempts at evoking humor through e-mail can be misinterpreted and lead to misunderstandings. Keep the tone professional and straightforward. Do not use emojis. Remember that typing in all caps means you are shouting and should be avoided.

Think twice before hitting "Reply All"

When you are copied on a large group e-mail, use discretion when hitting the "Reply All" button. If what you are about to send does not add to the group conversation, consider not sending or sending to a smaller group. It will save people the hassle of reading and deleting an e-mail that does not pertain to them.

Do not forget to attach attachments

Have you ever sent out an e-mail that was supposed to include attachments and realized after the fact that you forgot to attach? I have, and it is annoying and embarrassing to have to send a follow-up e-mail, usually with some self-deprecating statement about why you forgot to attach. One trick I have learned is as soon as you type the word "attached" (e.g., "Please find attached…") to immediately attach the documents in question before writing the remainder of the e-mail.

Proofread, proofread, proofread

Take the time to read over an e-mail before hitting send to avoid typos that could be embarrassing. Sometimes omitting a word or a letter could make a huge difference in what you are trying to say. Do not confuse their/there/they're and other such homophones. Check spelling and grammar. Do not always rely on spellcheck to do it for you. Make sure that what you are saying makes sense, especially if it is a long note. Sometimes, it helps to read the e-mail out loud before sending.

Consider the venue

Sometimes e-mail may not be the best way to deliver a message. E-mail is a quick and non-intrusive way to communicate with one person or multiple people at the same time. However, if it is an emergency and you need to speak with someone right away, or if the message is complicated or involves a sensitive topic, it helps to pick up the phone or even walk down the hall to explain personally. Your voice inflections and facial expressions can sometimes help more than words on a computer screen. Sometimes, I will call someone to explain an issue and then follow up the conversation with an e-mail. I find that this gets the message across more clearly and avoids miscommunication and confusion.

You have worked hard to establish your reputation at work. Do not let an e-mail misstep negatively affect your professional image. ■

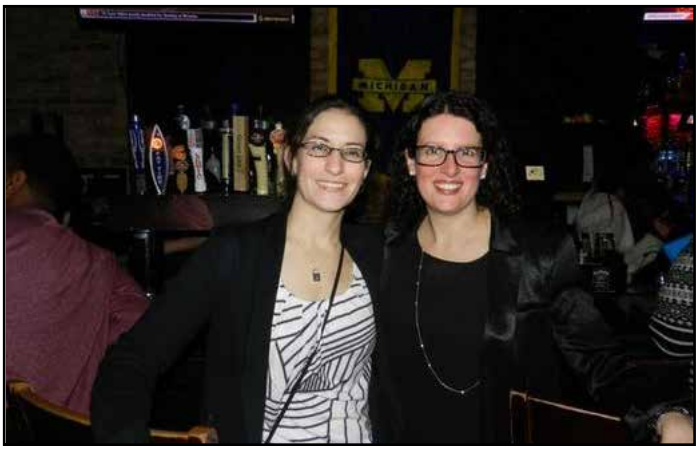
YLD members gather at the 18th Annual YLD Holiday Party

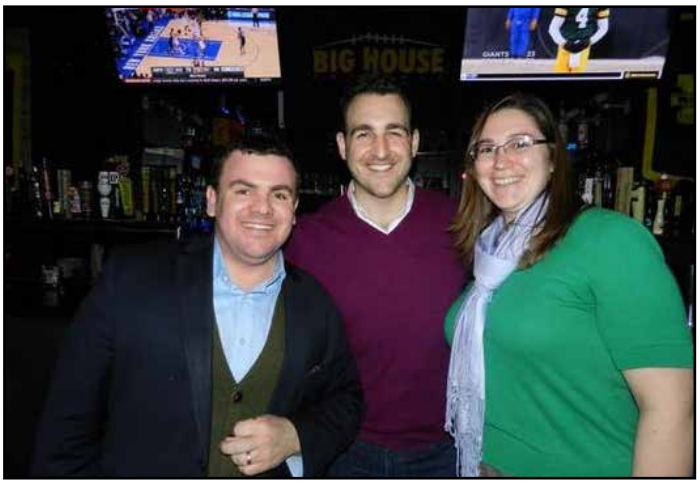
BY MARIE K. SARANTAKIS

On Friday, December 4th, 2015, young lawyers, law students, and ISBA leaders mixed and mingled at Duffy's Tavern and Grille in Chicago, Illinois. The annual event is not only an excellent time but also helps to fund a worthy cause. Proceeds from ticket sales and sponsorship help to benefit the Children's Assistance Fund.

The Children's Assistance Fund was initially developed to help create children's waiting rooms in courthouses throughout the State of Illinois. Today, the organization also helps to reduce juvenile recidivism rates and incidents of domestic violence involving families and children.

Due in great part to the YLD Annual Holiday Party, the ISBA YLD has been able to provide approximately $300,000 in grants to the Children's Assistance Fund over the past sixteen years. A big thank you to all of our members who helped make this year's event a great success. Cheers! ■





Supreme Court Rule changes: 2015 end-of-year report

BY JUSTICE LLOYD A. KARMEIER, SUPREME COURT OF ILLINOIS

Since I last reported on Supreme Court rule changes at the mid-year meeting in June, the Supreme Court has considered a large number of proposals to amend our rules. What follows is a brief summary of some of the more significant changes approved by the Court.

1. Amendments to the Rules of Professional Conduct and Their Comments

During its September term, the Supreme Court approved multiple amendments to the Rules of Professional Conduct and the comments to those rules. The amendments were originally proposed by the Supreme Court's Committee on Professional Responsibility and underwent public hearings before being presented to the Court for approval. Many of the changes track the ABA's Ethics 20/20 amendments to the Model Rules of Professional Conduct. Here are highlights:

a. Rule 1.1 of the Rules of Professional Conduct – Comment

Effective January 1, 2016, the Committee Comment to Rule 1.1 of the Rules of Professional Responsibility, which addresses attorney competence, is amended to include new subsections 6 and 7. The new subsections deal with considerations and procedures which should be taken into account when an attorney wishes to retain or contract with lawyers outside the attorney's own firm, including obtaining informed consent from the client and clarifying the scope of the lawyers' respective services and responsibilities.

b. Rule 1.2 of the Rules of Professional Conduct: Scope of Representation and Allocation of Authority Between Client and Lawyer

Because the cultivation, sale and use of marijuana is still prohibited by federal law, enactment of the Illinois Compassionate Use of Medical Cannabis Pilot Program Act poses an ethical problem for attorneys whose clients need counsel with respect to the new Illinois law. To address that problem, the Court has amended Rule 1.2 effective January 1, 2016, to permit lawyers to "counsel or assist a client in conduct permitted by Illinois law that may violate or conflict with federal or other law, as long as the lawyer advises the client about that federal or other law and its potential consequences."

c. Rule 1.6 of the Rules of Professional Conduct

Effective January 1, 2016, a new subsection (b)(7), with corresponding revisions to the Committee Comments, has been added to Rule 1.6, which deals with the confidentiality of information. The new subsection permits attorneys to reveal information relating to their representation of a client in an additional circumstance: where the lawyer reasonably believes the disclosure is necessary "to detect and resolve conflict of interest if the revealed information would not prejudice the client." A new subsection (e) has also been added. It requires lawyers to "make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client. Corresponding changes to the Committee Comments have been made with respect to this change as well.

d. Rule 3.8 of the Rules of Professional Conduct: Special Responsibilities of a Prosecutor

Three new subsections have been added to this rule and the Committee Comments have been amended. The changes, which become effective January 1, 2016, are intended to make clear that prosecutors have a duty to disclose material evidence creating a reasonable likelihood that a convicted defendant did not commit the offense for which he or she was convicted and, where such evidence exists, that prosecutors have an affirmative duty to attempt to remedy the conviction.

e. Rule 4.4 of the Rules of Professional Conduct: Respect for Rights of Third Persons – Errant Emails

As the practice of law has increasingly moved online, new concerns have arisen that electronically-stored information may be transmitted to opposing parties or their lawyers accidently. Rule 4.4(b) and its corresponding Comment have been amended effective January 1, 2016, to make clear that if a lawyer knows that electronically-stored information was sent to him or her inadvertently, the lawyer is required to take the same steps as when a conventional document is sent accidently, namely to promptly notify the sender in order to permit that person to take appropriate protective measures.

f. Rule 5.5 of the Rules of Professional Conduct: Unauthorized Practice of Law; Multijurisdictional Practice of Law

Effective January 1, 2016, subsections (d) and (e) of this Rule are amended to make it easier for lawyers authorized to practice law in a foreign jurisdiction and in good standing to provide legal services through an office or other systematic and continuous presence in Illinois without running afoul of the prohibition against unauthorized practice of law.

g. Rules 7.2 and 7.3 of the Rules of Professional Conduct: Advertising and Solicitation of Clients

In another nod to the advent of the internet age, the Comment to Rule 7.2 governing lawyer advertising has been

amended to address internet-based advertisements and to permit payment to others for generating client leads provided certain standards are followed. In addition, the Comment to Rule 7.3 on client solicitation specifies that certain conduct, including internet banner advertisements, does not constitute solicitation within the meaning of the provisions barring direct solicitation of client for pecuniary gain.

2. Amendments to the Illinois Rules of Evidence

Pursuant to its designated responsibilities, the Supreme Court Committee on Illinois Evidence proposed that the Court approve a range of amendments designed to address Supreme Court cases interpreting the Rules of Evidence or to achieve consistency between the Rules of the Supreme Court and the Rules of Evidence. The proposal, whose key components are summarized below, was approved by the Court and took effect October 15, 2015.

a. Rule 103

This rule, which deals with rulings on evidence, was amended by the addition of a new subsection (b). The new subsection, which is consistent with the Court's opinion in *People v. Denson,* 2014 IL 116231, specifies the steps that must be taken in order to preserve claims of error regarding the admission of evidence in both civil and criminal cases.

b. Rule 410

Amendments to this rule clarify and elaborate upon the circumstances when evidence of a plea discussion or plea bargain is not admissible in criminal cases.

c. Rule 412 – NEW

New Rule 412 informs judges and practitioners of the existence of the Illinois "rape shield statute" and is consistent with *People v. Patterson,* 2014 IL 115102, which upheld the rape shield provision in the Criminal Code as well as its civil counterpart. The rule specifies that evidence of the sexual activity or reputation of a person alleged to be a victim of a sexual offense is inadmissible at trial except in limited circumstances.

d. Rule 413 – NEW

New Rule 413 codifies when evidence of other offenses is admissible in criminal cases. It arises from and is consistent with three Supreme Court cases approving statutes related to the admission of evidence of prior offenses, *People v. Donoho,* 204 Ill.2d 159 (2003), *People v. Dabbs*, 239 Ill.2d 277 (2010) and *People v. Chapman,* 2012 IL 111896.

e. Rule 611

Subsection (b) of Rule 611, which deals with the scope of cross-examination, has been amended to clarify that matters affecting the credibility of the witness – matters which are a proper subject of cross examination – include "matters within the knowledge of the witness that explain, qualify, discredit or destroy the witness's direct testimony." This change is consistent with the Court's decisions in *People v. Steven,* 2014 IL 116300; *People v. Williams*, 66 Ill.2d 478 (1977); and People v. Provo, 409 Ill. 63 (1951).

3. Supreme Court Rule 39: Appointment of Associate Judges

Effective October 15, 2015, this rule was changed to clarify the definition of "circuit judge" for purposes of eligibility to vote in elections for associate judges. Under the prior version of the rule, judges who were recalled to judicial service and assigned to serve as a circuit judge in the circuit from which they had been elected were permitted to vote in associate judge elections in that circuit. Questions arose, however, as to whether recalled judges who had been appointed but never elected prior to their retirement could also vote. The amended rule makes clear that they can.

4. Supreme Court Rule 63(a)(5)(e): New Exception to Prohibition Against Ex Parte Communication to Permit Consultation with Problem Solving Court Teams

On December 8, 2015, the Supreme Court released standards and certification procedures for "problem solving courts," *i.e.* drug, mental health, veterans, DUI, and other non-adversarial courts designed to "facilitate intensive treatment to monitor and assist participants in making positive lifestyle changes and reducing the rate of recidivism." Because of the unique operation of such courts, where judges serve as a type of team leader rather than as traditional umpires, the Special Supreme Court Advisory Committee recommended adding a new subsection to Rule 63(a)(5) dealing with the prohibition against *ex parte* communications. Under the new subsection, codified as Rule 63(a)(5)(e), a judge will be permitted to consult with members of a problem solving court team when serving as a judge in a certified problem solving court. This change takes effect January 1, 2016.

5. Supreme Court Rule 99: Mediation Programs

Effective October 15, 2015, local rules for mediation programs must include a provision specifying that required reports to the Supreme Court shall be conducted in a manner and method as prescribed by the Administrative Office of the Illinois Courts. This change was made to enhance the accuracy of data in order to provide better feedback regarding how well mediation programs are working and whether the programs are receiving appropriate resources.

6. Supreme Court Rule 308: Certified Questions

In 2014, the Chicago Bar Association (CBA) submitted to the Supreme Court Rules Committee various proposed changes to rules affecting appellate practice. Following public hearing and further revision, the Court this fall adopted proposed amendments. One pertains to Rule 308. Effective January 1, 2016, the time for filing an application for leave to appeal from an interlocutory order involving a certified question under Rule 308 has been extended from 14 days to 30 days. This change is intended to bring the deadline for 308 appeals into line with other appeal provisions.

7. Supreme Court Rule 313: Fees in the Reviewing Court

On December 7, 2015, and effective July 1, 2016, the Court amended Rule 313 to raise the fees to obtain a law license and to certify documents. The changes, the first since 1919, are authorized by the legislature and will increase the fee

to obtain an initial law license from $5 to $50 and the fee to certify documents in the state's reviewing courts from $1 to $5. Prior to this change, Illinois had one of the lowest law license fees in the country. The fees are now in line with what other states charge for similar services. In addition, the amendment to Rule 313 creates new and separate fees for obtaining a replacement law license and an attorney certificate of good standing. Attorneys will be charged $25 for replacement licenses, $15 for the initial copy of a certificate of good standing and $5 for each additional certificate. Copying charges remain unchanged at 25¢ per page. The amended rule makes various additional changes, including placing all fees for reviewing courts in a single location within the rules in order to make it easier for practitioners and pro se litigants to determine what fees they will be charged.

8. Supreme Court Rule 324: Preparation and Certification by the Circuit Clerk of the Record on Appeal

A second change proposed by the CBA and adopted by the Court pertains to Rule 324. Effective January 1, 2016, the rule now allows a filing stamp by the clerk of the circuit court to suffice as authentication of the record on appeal. The rationale for this change was that because the clerk of the circuit court will not accept documents unless they are either the original or come with a stipulation by the parties, requiring additional authentication before a document could be included in the record on appeal created unnecessary delay.

9. Supreme Court Rule 335: Direct Review of Administrative Orders by the Appellate Court

A third change proposed by the CBA concerns Rule 335. Effective January 1, 2016, where administrative review lies directly to the appellate court, the rule will require that the petition for review be filed within 35 days from the date when the order or decision to be review was served on the affected party unless another time period is specifically provided in the statute authorizing such review. The prior version of the rule lacked a specific deadline. It merely called for application of various other provisions of the Supreme Court Rules "insofar as appropriate." This created uncertainty regarding the applicable filing period and engendered separation of powers concerns, a matter the Supreme Court addressed last year in *People ex rel. Madigan v. Illinois Commerce Commission*, 2014 IL 116642. The rule change was intended to address these problems.

10. Rule 604(d) – Appeal by Defendant from a Judgment Entered Upon a Plea of Guilty

On December 3, 2015, and effective immediately, the Court amended Rule 604(d) to comport with its holding in *People v. Tousignant*, 2014 IL 115329 that if a motion to withdraw a plea of guilty is to be filed, the defendant's attorney must certify that he or she has consulted with the defendant to ascertain the defendant's contentions of error with respect to both the sentence *and* the entry of the plea of guilty. The language of the prior version of the rule was phrased using the disjunctive "or." The court concluded in *Tousignant*, however, that in order to effectuate the intent of Rule 604(d), the "or" must be read as "and," requiring counsel to certify that the consultation with the defendant addressed both the sentence and the guilty plea. This amendment codifies that interpretation and is intended to eliminate confusion which persisted in the lower courts even after *Tousignant* was decided. Consistent with this change, the rule also now expressly provides that counsel must certify that he or she has examined both the report of proceedings of the plea of guilty and the report of proceedings in the sentencing hearing. To comply with this certification requirement, counsel must now complete a specific form. The form is included with the amended rule. Finally, in recognition of technological developments, the amended rule permits counsel to undertake the required consultation not only by mail or in person, but also by telephone or electronic means.

11. Rule 705 – Admission on Motion

Effective January 1, 2016, the rules on admission on motion (reciprocity) are being changed to reduce, from five down to three, the number of years an attorney must practice before being eligible for admission on a foreign license.

12. Rule 716 – Limited Admission of House Counsel

Effective January 1, 2016, the opportunity to take advantage of the procedure for limited admission of house counsel has been extended to attorneys licensed to practice in foreign jurisdictions, as well as those admitted in other U.S. states and territories.

The changes to Rules 705 and 716 were recommended by the Court's Rules Committee following review and a public hearing held in July. As explained in the Court's official press release, "[t]he changes were intended to address client needs and market demands in an increasingly borderless legal environment. *** [They] make it easier for attorneys authorized to practice in other jurisdictions to be admitted to the Illinois bar and provide legal services as in-house counsel here while ensuring they are qualified and familiar with Illinois' ethics rules."

13. Rule 796 - Enforcement of MCLE Requirements

Rule 796 requires the MCLE Board, which the Court created to administer its MCLE program, to send attorneys a notice to submit a certification stating whether he or she complied with the continuing legal education requirements or is exempt from the requirements.

Effective February 1, 2016 , the rule has been amended to give the MCLE Board the option to send the notices to attorneys using either their preferred mailing address or email address on file with the ARDC. In addition, attorneys will now be required to submit certifications through the MCLE Board's online reporting system. Previously, use of the online system was optional. These changes follow similar innovations implemented by ARDC earlier this year and are designed to improve the efficiency and lower the cost of the MCLE reporting system. ■

This article was originally published in the December 2015 issue of the ISBA's Bench & Bar newsletter.

Step-by-step civil juries in a nutshell

BY JUDGE JIM RYAN AND ASSOCIATE JUDGE JOSEPH D. PANARESE OF THE CIVIL JURY SECTION FOR THE FIRST MUNICIPAL DISTRICT OF COOK COUNTY

You have a right to a jury trial in most civil cases such as those involving personal injury, property damage, breach of contract or eviction. Cases involving child custody or a request for an injunction, you are not entitled to a trial by jury. If you are entitled to a jury, and you decide that you want a jury to examine the evidence and decide your case, you must become familiar with the process and rules that go along with requesting a trial by jury and those that go along with actually trying the case in front of a jury.

Filing the lawsuit

To begin a civil lawsuit a Plaintiff must first file a complaint. 735 ILCS 5/2-201. The Plaintiff must request a trial by jury and pay the corresponding filing fee at the time the complaint is filed. The failure to request a jury trial at the time the complaint is filed forfeits the plaintiff's right to a trial by jury. 735 ILCS 5/2-1105. Upon filing the complaint, the Circuit Court Clerk will give the plaintiff a summons with a date that the defendant will be required to respond to the complaint and assign the matter a case number.

Serving the defendant with summons and complaint

The plaintiff must then serve the defendant with a copy of the summons and complaint. The summons and complaint may be served on the defendant wherever they may be found in the state provided the person that serves the summons is authorized to serve process. 735 ILCS 5/2-202(b). In Cook County, the Sheriff must be given the first opportunity to serve the defendant with the summons and complaint. 735 ILCS 5/2-202 (a). However, in counties with a population of less than 2,000,000, a sheriff may use civilian personnel or a private detective agency to serve the complaint. 735 ILCS 5/2-202 (a). The plaintiff may also file a motion and request that the court appoint a private citizen to serve the summons and complaint. A private person must be over 18 years of age and not a party to the lawsuit. The private person must file an affidavit attesting that he/she gave or served the defendant with the summons and complaint. 735 ILCS 5/2-202(a). The corresponding forms and documents for the Plaintiff may be found in the circuit court clerk's office or on the clerk's website.

The defendant's response

Once served with the summons and complaint, the defendant must file an answer, including any defenses to the complaint and counterclaims. 735 ILCS 5/2 602-604. In lieu of an answer, a defendant may file a motion to dismiss the complaint. 735 ILCS 5/2-615; 735 ILCS 5/2 619. A defendant desirous of a trial by jury must then demand a jury and pay the corresponding fee at the time the defendant's answer is filed. The failure to demand a jury trial at the time of answering the complaint forfeits the defendant's right to a trial by jury. 735 ILCS 5/2-1105. Again, all forms and documents for the defendant may be found in the clerk's office or on the clerk's Web site.

Mandatory arbitration

Litigants should be aware that even though a proper and timely jury demand has been filed, cases involving personal injury, property damage and breach of contract may be subject to the mandatory arbitration process applicable to the judicial circuit, wherein the complaint is filed. Ill. S. Ct. Rs. 86-95. Mandatory Arbitration is a hearing before a panel of three attorneys. The hearing is similar to a trial in that the parties may appear with or without an attorney and present evidence to the arbitrators. Once the arbitrators, who act as the jury make a ruling (called an "award"), the parties are free to accept or reject the award. The party that rejects the award must file a Supreme Court Rule 93 rejection with the clerk of the court within 30 days of the award and pay the corresponding fee at the time the rejection is filed. Ill. S. Ct. R. 93. Upon the proper filing of a rejection, by either party, the case is then assigned to a trial room for a trial before a judge or a jury.

The trial

Upon assignment to a trial room, the trial judge will begin to prepare the case for trial. In cases where the dispute will be heard by a jury, the plaintiff or defendant may present any pretrial motion or motions in limine to be ruled on by the judge outside the presence of the jury. Questions of law are decided by the judge and questions of fact are decided by the jury. The judge will rule on these motions to determine what evidence may or may not be used during trial, and what legal instructions will be read to the jury. Jury Instructions are the legal principles that the jury will use to make their decision.

The jury, just like a judge, will be required to examine the evidence and decide whether by a "preponderance of the evidence" (more probably true than not) the defendant should be held responsible for the damages claimed by the plaintiff in the complaint.

The first step of the jury trial process is to select a jury. During jury selection, the court will first question the jury on their qualifications to be a juror, and then the court will allow the parties to question prospective jurors. 705 ILCS 305/2. The jury is picked in panels of four. 734 ILCS 305/21. The parties are entitled to five preemptory challenges of the jurors and an unlimited number of challenges for cause. 735 ILCS 5/2-1105.1;735 ILCS 5/2-1106.

Generally, once the jury is selected, the case will proceed in the following order:

1. The plaintiff may make an opening statement outlining his/her case;
2. Then the defendant may also make an opening statement outlining his/her case (opening statements are not evidence but an aid to assist the jury in understanding the evidence. It is a statement by the party outlining what he

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Step-by-step civil juries in a nutshell

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or she expects the evidence to show);
3. The plaintiff then introduces evidence; (witnesses, exhibits etc.)
4. At the conclusion of the plaintiff's evidence the defendant may, but is not required to introduce evidence;
5. Rebuttal evidence may be introduced
6. At the conclusion of the evidence, the parties may make their closing arguments to the jury (closing arguments are not evidence but a summary of what an attorney contends the evidence has shown);
7. After closing arguments the court will read the instructions to the Jury;
8. The jury will then deliberate and arrive at their verdict. The jury must decide the case by a unanimous decision. The judge will read the decision of the jury and enter a judgement based on the verdict.

Conclusion

Many litigants start out wanting a jury trial without taking into consideration the rules with respect to a trial by jury that must be followed and the extra work needed to prepare for a jury trial. If you are not prepared to follow the rules or do the extra work necessary for a jury trial, then you may want to consider a bench trial and let the Judge decide your case. ■