The Counselor

The newsletter of the Illinois State Bar Association's Business Advice & Financial Planning Section

Use of an estate planning questionnaire as part of a coordinated process in your practice

BY DENNIS J. JACKNEWITZ AND BRIAN T. MCCARTHY, ATTORNEYS AT LAW

Estate planning engagements are processes that can be managed in one's practice more effectively by the use of an estate planning questionnaire. The importance of gathering proper asset and liability information at the beginning of the estate planning process cannot be overstated. Included with this article is a questionnaire form that we use to initiate discussions with the client at the beginning of the planning process. An estate planning questionnaire is a valuable source of information that enhances the attorney-client relationship and facilitates effective counseling of clients seeking to secure the peace of mind provided by an effective and comprehensive estate plan. For this reason, the estate planning professional should spend time and care to create a questionnaire that reflects the professional's *Continued on next page*

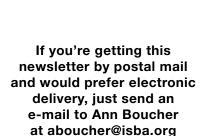
Pre-employment screening in Illinois

BY LAURYN E. PARKS

When making personnel decisions, such as hiring, promotion, or reassignment, employers often seek to examine the background of the applicant, including the applicant's credit history or criminal history. However, there is an ever-growing array of Federal, state and local laws and regulations that limit if or when employers may consider this information. Furthermore, under Title VII, an employer must also consider whether examining the arrest or conviction records Use of an estate planning questionnaire as part of a coordinated process in your practice 1

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Use of an estate planning questionnaire

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experience with his or her clients.

A questionnaire should be provided to the estate-plan-client in advance of an inperson consultation. Information reported on the questionnaire should place the estate planning professional in position to focus on the desires and challenges unique to a particular client.

PRACTICE POINTER

It is advisable to send an engagement letter to prospective clients that reflects an estate planning professional's understanding of what he or she is asked to provide. This will reduce future misunderstandings about the scope of representation and proper identity of who is the client. An engagement letter allows for introduction of such a questionnaire.

The practice of estate planning tends toward older clients whose adult children frequently assist aging parents with financial affairs. Like most professionals who practice in this area, I have encountered many an adult child who fails to appreciate the line between assisting an elderly parent with their decisions and making decisions for the elderly parent. Similarly, I have encountered other family members who claim this line has been crossed. In both regards, I rely on my own notes of client consultations and client responses to my questionnaire to demonstrate my efforts are directed toward the goals expressed by the client.

First, the most effective attorney-client relationship is based on a full disclosure of all factual information that may have a bearing on advice the attorney is called to provide. Accordingly, a questionnaire should seek enough detail about an estate-plan-client's identity, relationships and assets that allows the professional to make organize inquiries at an in-person consultation about the client's goal for his or her estate plan. It is advisable that the estate planning professional have sufficient information from his or her client about the best means to communicate during the planning process and to underscore the means by which the professional will keep all such communications confidential.

Identity information should be complete enough that the professional understands

the residential, marital, familial and business background of his or her client. Because of the increasing importance of governmental benefits available which can impact an estate plan, identity information should include comprehensive treatment of time in the armed services, as well as other state or federal employment.

Relationship information includes all necessary background on how an estateplan-client arranged and organized his or her interpersonal relationships. This includes the treatment of spouses, former spouses, children—natural, adopted or blended, as well as other relationships having significance to the client. It is important to make inquiry about specific means by which an estate-plan-client presently manages his or her financial decisions.

PRACTICE POINTER

An essential skill the estate planning professional brings to a consultation with the prospective client is thorough knowledge of possibilities for arranging an effective program for handling an individual's assets during periods of incapacity and after death. Creativity in the presentation of these possibilities sharpens the understanding of the client and yields a more faithful arrangement of the client's wishes.

In nearly every in-person consultation with putative clients and long-term clients, I engage in some form of role-playing. I find this approach to be a non-confrontational way to present to the client concerns that might be flagged in the responses to my estate planning questionnaire. Recently, in one example, I presented what I thought might be a reasonable concern of an adult child who lived a great distance from the client. The client responded, "My son would never say that. Never!" I started to explain that I merely wanted her to visualize a possible alternative way of viewing a particular disposition of her estate, and the client interrupted, saying, "... But his wife would." This rejoinder led to a very important discussion that will hopefully avoid future discord with this client's family.

Asset information should provide the estate planning professional with a clear picture of what assets the client understands

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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 62701-1779. he or she owns, how these assets are held, who may have a claim to these assets in addition to the client, and what the client wishes to become of the assets upon their death. A proper questionnaire should elicit information about a client's prior efforts to establish an estate plan and the reasons for a present consultation on estate planning. Within the inquiries as to assets, a questionnaire should also direct attention to life-care planning and funeral and burial plans. Life-care planning encompasses client choices as to long-term placement for health and medical care, designation of surrogate decision-makers, and end-of-life decisions. A proper estate planning questionnaire should elicit the status of any insurance the client has relative to relationships and assets.

The form of a questionnaire should reflect the realities of your practice. Bear in mind that the form is less important than the information gathered. A comprehensive form can ensure a thorough disclosure and complete analysis of the client's potential estate. A sample form used by the authors is included below. ■

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	JACKNEWITZ LAW OFFI ATTORNEY AT LA #2 PARK PLACE PROFESSION SWAN SEA, IL 6222 TELEPHONE: (618) 641	W NAL CENTRE 26
	ESTATE PLANNING INFORMATION AND	SUGGESTIVE IDEAS
I. PERSONAL		
		BIRTHDATE
		BIRTHDATE
		BIRTHDATE
	:	
•		StateZip
		<u> </u>
		StateZip
4. I ELEPHONE: KES:		CELL: OUSE:
	or	003E
0. TROR WIRKINGL(0).	Date of Dissolution	Name of Former Spouse
7. CHILDREN:	Name	Birthdate
Do you want to treat any of	your children differently from an estate planning pers	
8. GRANDCHILDREN:	Name	Birthdate
Please complete on addition	al sheet if needed.	
9. PLEASE LIST PERSONS	OR ORGANIZATIONS THAT YOU WISH TO LEAV	/E PROPERTY TO:
[Other than persons prev	riously listed hereinabove]	
War-time Veteran?	No □ U.S. Citizen? Yes □ No □ Yes □ No □ War-time Veteran? Service Number	Yes 🗆 No 🗆

If yes, list any benefits you are currently receiving:	
Were you at any time the widow or widower of a wartime veteran? Yes □ No□ If yes, name and date of death of veteran:	
STATE PHARMACEUTICAL PLAN	
Are you currently on PAAD (Pharmaceutical Assistance to the Aged and Disabled Progra Yes No 10. PRENUPTIAL OR OTHER PROPERTY DISPOSITION AGREEMENT:	
12. SAFETY DEPOSIT BOX LOCATION: Persons with access to safety deposit box: 1. 2.	
13. DO YOU WANT TO BENEFIT A CHARITY OR CHARITIES?	
 (A) From a tax viewpoint, it is better to make charitable gifts during lifetime then at death (B) In a Will or Trust, offer language that surviving spouse should consider making charit rather than gifting property to charity by Testamentary Will or Trust. 14. Have you ever filed a Federal Gift Tax Return? Yes □ No □ 	
If so, please state details If so, please state details Have you used any generation skipping tax (GST) exemption? Yes	
If so, please state details.	
15. What is your email address? In a Will, Trust, or Power of Attorney for Property consider adding language that allows y digital property.	
II. WILL AND TRUST INFORMATION 1. HEIRSHIP - FAMILY INFORMATION	
Name of FATHER/CLIENT:	
Names of Father's Living Parents:	
Are any inheritance(s) anticipated? Yes \Box No \Box When?	
Date of this Marriage:/	Any prior marriage(s)? Yes \Box N o \Box
Name of MOTHER/CLIENT:	Maiden
NamesofMother'sLivingParents:	
Names of Mother's Living Brother(s) and Sister(s):	
Are any inheritance(s) anticipated? Yes □ No□ When? Any prior marriage(s)? Yes □ No□ Any outstanding obligation	Approx. Value:\$ ons by either party?
CHILDREN (if married give married names - note any children from multiple marriages)	
1. Name:Spouse's Na	Геlephone #:
Grandchildren:	
2. Name:Spouse's Name:Spouse	
Grandchildren:	
3. Name:Spouse's Name	
Address:	
Grandchildren:	

		Spouse's Name:	
		Telephone #:	
Grandchildren:			
Do any of your children/c Have, for whatever reason PLEASE LIST PERSONS	om a prior marriage? Yes child's spouse have difficulty managing n, you done more for one child than a S OR ORGANIZATIONS THAT YO	g money? Yes □ No□ nother? Yes □ No□ U WISH TO LEAVE PROPERTY TO	: [Other than persons previous
. EXECUTORS AND SUCC	CESSOR EXECUTORS:		
	Name	Address	Bond/Surety
1			
3			
. TRUSTEES AND SUCCE	SSOR TRUSTEES:		
	Name	Address	Bond/Surety
2			
3			
. ADVISORS:			
	Name	Address	Telephone
-			
Investment Advisor:			
. SPECIFIC GIFTS, BEQUE			
Name	Address	Specific/General	Amount/ Asset
. MEMORIAL SERVICE AI	ND BURIAL DIRECTIONS		
Memorial Service: Mybodyshouldbeburieda			
Memorial Service: Mybodyshouldbeburieda Mybodyshouldbecremate	nt:edandtheashes:		
Memorial Service: Mybodyshouldbeburieda Mybodyshouldbecremate Mybodyshouldbedonated	nt: edandtheashes: dto:		
Memorial Service: Mybodyshouldbeburieda Mybodyshouldbecremate Mybodyshouldbedonatec Specific Comments, Wish	nt: edandtheashes: dto: nes and Thoughts Related to Memoria		
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III. ASSET INFORMATION			
(Detail on separate sheet if necessary)		
	Husband's	Wifes	Jointly Owned Property or
	Property	Property	Tenancy by the Entirety
		1	
RESIDENTIAL			
REAL ESTATE IN ILLINOIS:	\$	\$	\$
RESIDENTIAL REAL ESTATE IN			
OTHER STATES/COUNTRIES:	\$	\$	\$
COMMERCIAL REAL ESTATE:	\$	\$	\$
FARM PROPERTY:	\$	\$	\$
CASH/BANK ACCOUNTS	\$	\$	\$
	\$	\$	\$
	\$	\$	\$
STOCKS/BONDS	\$	\$	\$
	\$	\$	\$
	\$	\$	\$
PERSONAL NOTES/RECEIVABLE	\$	\$	\$
	\$	\$	\$
BUSINESS INTERESTS: (Detail on s	eparate sheet; attach balance sheet, i	ncome statement)	
	•		
	Husband's	Wife's	Jointly Owned Property or
			Jointy Owned Hoperty of
	Property		
	Property	Property	Tenancy by the Entirety
Sole Proprietorship			Tenancy by the Entirety
Sole Proprietorship Corporation	\$	Property \$	Tenancy by the Entirety \$
Sole Proprietorship Corporation Partnerships	\$ \$	Property \$ \$	Tenancy by the Entirety \$
Corporation Partnerships	\$	Property \$	Tenancy by the Entirety \$
Corporation Partnerships Collectibles (art works, comic	\$ \$	Property \$ \$	Tenancy by the Entirety \$ \$
Corporation Partnerships Collectibles (art works, comic books, baseball cards, etc.)	\$ \$ \$	Property \$ \$	Tenancy by the Entirety \$ \$
Corporation Partnerships Collectibles (art works, comic books, baseball cards, etc.) Other (i.e. Trust, LLC, etc.)	\$ \$ \$ \$ \$	Property \$ \$ \$ \$ \$ \$	Tenancy by the Entirety \$
Corporation Partnerships Collectibles (art works, comic books, baseball cards, etc.) Other (i.e. Trust, LLC, etc.) Retirement Plans:	\$ \$ \$ \$ \$	Property \$ \$ \$ \$ \$ \$ \$ \$	Tenancy by the Entirety \$
Corporation Partnerships Collectibles (art works, comic books, baseball cards, etc.) Other (i.e. Trust, LLC, etc.) Retirement Plans: 1. IRA Plans	\$ \$ \$ \$ \$ \$ \$	Property \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$	Tenancy by the Entirety \$
Corporation Partnerships Collectibles (art works, comic books, baseball cards, etc.) Other (i.e. Trust, LLC, etc.) Retirement Plans: 1. IRA Plans 2. 401 (k) Plan	\$ \$ \$ \$ \$	Property \$ \$ \$ \$ \$ \$ \$ \$	Tenancy by the Entirety \$
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	Husband's	Wife's	Jointly Owned Property or
	Property	Property	Tenancy by the Entirety
urrent Bills	\$	\$	\$
ncome Taxes Payable	\$		
Other	\$	\$	
OTAL LIABILITIES	\$	\$	\$\$
	<u>.</u>	¢	^
IET WORTH:	\$¢	\$	\$
ISURANCE: (See last page).	\$	\$	\$
roceeds \$		Cash Value \$	
	LIST ANY OT	HER SPECIAL CONCERNS	
/. POWERS OF ATTORNE			
Property Power of Attorney - o Name and Address of Attorne		itts to loved ones and charitable	gifts by power of attorney holder.
Name and Address of Afforne	ey-in-fact		
1			
1			
1. 2.			
1. 2. Health Care Power of Attorney	y/Living Will (Illinois, Missou		
1 2 Health Care Power of Attorney Name and Address of Attorney	y/Living Will (Illinois, Missour ey-in-fact	ri, or another state)	
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Treasury guidelines may be requ1red to avoid Federal tax penalties.

Pre-employment screening in Illinois

CONTINUED FROM PAGE 1

of applicants could lead to direct or indirect discrimination.

Credit Histories

Under both Illinois and Federal law, an employer is restricted as to if, or when, it can inquire into an applicant's credit history. The Illinois Employee Credit Privacy Act, 820 ILCS 70/1, et seq, ("ECPA"), provides that an employer may not order an applicant or employee's credit report, inquire about the applicant's employment history, or otherwise discriminate against an individual on the basis of his or her credit history or credit report unless the position in question meets certain criteria. 820 ILCS 70/10. Exempted from these requirements are employers in the financial and insurance industries and certain governmental employers. Otherwise, in order to inquire into applicant's credit history, a satisfactory credit history must be an "established bona fide occupational requirement" of the position. The statute elaborates on several duties which meet this criteria, including having management responsibilities; custody or unsupervised access to cash or marketable assets valued at \$2,500 or more; or having access to confidential information, financial information or trade secrets. 820 ILCS 70/10(b).

Recently, Illinois courts have demonstrated that they will construe these factors narrowly in order to discourage the use of pre-employment credit checks for positions that do not clearly fall within an exemption. In Ohle v. The Neiman Marcus Group, 2016 IL App (1st) 141994, the plaintiff was denied an entry-level position as a "Dress Collections Sales Associate" on the basis of her credit check. Neiman Marcus claimed that the sales associate fell within one of the listed exemptions to the ECPA because the position would have given the plaintiff "access" to personal and confidential consumer information when she accepted store credit card applications from customers. Id. at ¶11. The court found that the employees were merely acting as

"conduits" for the information and that this does not qualify as "access" under the ECPA. The court cautioned that the purpose of the ECPA is to "help those who have fallen on hard times find employment" and that an employer cannot find an exception under the ECPA for a position that consists of "performing simple tasks at the cash register." Id. at ¶40.

Even if an employer can meet one of the exemptions of the ECPA, it must also meet the disclosure and reporting requirements set by the Fair Credit Reporting Act, (FCRA), 15 U.S.C. Sect. 1681, et seq. The FCRA sets out three stages of disclosure and reporting that must be met by employers who seek to obtain a "consumer report" for a job applicant.

Under the FCRA, the employer must make certain disclosures to applicants prior to obtaining a consumer report. Specifically, the employer must make a clear and conspicuous disclosure in writing, in a separate document that consists only of the disclosure, that a consumer report may be obtained for employment purposes, and the applicant must authorize the procurement of the report in writing. 15 U.S.C. Sect. 1681b(b)(2)(A). If the consumer report forms the basis for an adverse employment decision, either in whole or in part, the employer must provide the applicant with a copy of the report and "A Summary of Your Rights Under the Fair Credit Reporting Act." 15 U.S.C. Sect. 1681b(b)(2)(B). The statute is silent as to how long the employer must wait after providing the applicant with notice before taking the adverse employment decision, or as to whether it has any duty to reconsider this decision if the applicant contacts the employer. If the employer fails to provide the applicant with any of the pre-adverse decision disclosures and information, the applicant may file a private suit15 U.S.C. Sect. 1681n-o. If the employer moves forward with the adverse employment action, it must provide additional written notice to the applicant, which must contain a statement of the applicant's rights to obtain a free copy of

the report and dispute the accuracy or completeness of its information. 15 U.S.C. Sect. 1681m.

"Ban-the-Box" Laws

In addition to restrictions on the use of credit reports in employment screening, there has been a recent rise in "ban-thebox" laws which typically delay when an employer may access information regarding the applicant's criminal history.

The Illinois Job Opportunities for Qualified Applicants Act, 820 ILCS 75/1 et seq., prohibits an employer from considering or inquiring into an applicant's criminal record or history until after the applicant has been notified of an impending interview or, if no interview is to take place, until after a conditional offer of employment has been made. 820 ILCS 75/15.

There are exceptions to this prohibition if (i) the employer is required by federal or state law to exclude applicants with criminal convictions, (ii) a fidelity bond is required for the position and the applicant's criminal history would disqualify the applicant from receiving the bond, or (iii) where the position requires licensing under the Emergency Medical Services Systems Act. 820 ILCS 75/15(b)(1)-(3).

Employers should also keep in mind Federal and state law prohibiting "disparate treatment" and "disparate impact" employment discrimination. For example, disparate treatment discrimination in violation of Title VII occurs where the employer rejects an African American applicant on the basis of his criminal record, but hires a similarly situated white applicant with a comparable criminal record. EEOC Enforcement Guidance: Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII and the Civil Rights Act of 1964, (https://www.eeoc.gov/laws/guidance/ arrest conviction.cfm) (last visited on November 15, 2016). Furthermore, if an employer's policy or practice significantly

disadvantages individuals of a particular race, national origin or other protected characteristic, the employer must be prepared to justify the policy or practice and demonstrate that the exclusion is "job related and consistent with business necessity" for the position. *Id.*

This myriad of laws and regulations should caution employers to carefully develop any pre-employment screening process that considers an applicant's credit or criminal histories so that it is compliant with applicable law and tailored to the duties and requirements of the specific position.

Lauryn E. Parks is an associate attorney with Momkus McCluskey, Roberts, LLC.

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Wednesday, 3-1-27 – Webcast—A New Summary Judgmeent Standard for Discrimination Cases: Ortiz v Werner Enterprises, Inc. Presented by the Labor & Employment Section. 1:00 – 2:00 pm.

Thursday, 3-2-17 – Webinar— Introduction to Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 12:00 – 1:00 pm.

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.

Wednesday, 03-08 – Live Webcast— Life After High School: Post-Secondary Transition Options and Education Protections for Young Adults with Disabilities. Presented by the Standing Committee for Disability Law; Cosponsored by the Education Law Section. 10:00 am – 12:00 pm.

Wednesday, 03-08 – Webinar— Engagement Letters, Timesheets & Billing Tips. Presented by the Committee on Law Office Management and Economics. 12:00 pm – 1:00 pm.

Thursday, 03-09-17 – Webinar— Advanced Tips for Enhanced Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 12:00 – 1:00 pm

Thursday, 03-09 and Friday, 03-10— **New Orleans**—Family Law Update 2017: A French Quarter Festival. 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, 03-15-17- Live Webcast— Economic Development in Your Community: Learn from the Leaders. Presented by Local Government Law Section. 1:00 pm – 3:00 pm.

Thursday, 3-16-17 – Webinar— Fastcase Boolean (Keyword) Search for Lawyers. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 12:00 – 1:00 pm.

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 Committee on Racial and Ethnic Minorities; multiple cosponsors (see agenda). 1:00 – 3:00 p.m.

Thursday, 03-23-17 – Live Webcast— Immigration Hearings: How to Get the Job Done. Presented by the Administrative Law Section; Co-sponsored by the International and Immigration Law Section. 1:00 – 2:00 pm.

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.

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

Wednesday, 03-29-17- Chicago, ISBA Regional Office & Live Webcast— Professional Responsibility and EthicsSpring 2017. Presented by General Practice. 12:50 p.m. – 5:00 p.m.

Friday, 03-31-2016 – iWireless Center, Moline—Solo and Small Firm Practice Institute Series: A Balancing Act: Technology Tips and Maximizing Your Profit. 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, 04-07-17—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.

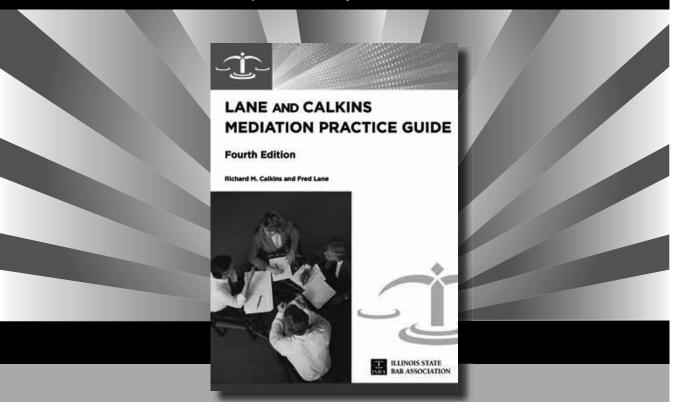
Wednesday, 04-12-17 – Chicago Regional Office—Nuts and Bolts of Illinois Administrative Hearings. Presented by the Administrative Law Section. 12:45 – 4:00 pm.

Wednesday, 04-12-17 – Live Webcast— Nuts and Bolts of Illinois Administrative Hearings. Presented by the Administrative Law Section. 12:45 – 4:00 pm.

Wednesday, 04-12-17 – Chicago Regional Office—Nuts and Bolts of Illinois Administrative Hearings. Presented by the Administrative Law Section. 12:45 – 4:00 pm.

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