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Application of discovery rules to requests to admit

By Kevin Lovellette

Requests to Admit[1] have been a hot topic in the law in the past few years, and the case law is still evolving. One issue that has recently seen increased litigation is whether Requests to Admit are discovery devices subject to the requirements of discovery rules and orders of court, such as the requirement to meet and confer regarding discovery disputes and the requirement that all discovery be completed before the discovery closure date. If these discovery rules apply to Requests to Admit, then the parties must meet the requirements or risk the possibility of having an adverse order entered against them.

Illinois Supreme Court Rule 216 provides that "a party may serve on any other party a written request for the admission by the latter of the truth of any specified relevant fact set forth in the request," or the genuineness of a document.[2] Similarly, the federal rules provide that "a party may serve on any other party a written request to admit, for purposes of the pending action only, the truth of any" relevant fact, opinion or genuineness of a document.[3] When courts have addressed whether Requests to Admit are subject to the discovery rules, there are sometimes differing conclusions.

In Illinois, the Supreme Court has unequivocally held that Requests to Admit are part of the discovery process.[4] Based in part upon the Supreme Court's holding, the Appellate Court has ruled that Requests to Admit are subject to an order staying all discovery pending the determination of a motion to dismiss.[5] In another case, the

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Someone you should know: John Kamis, Senior Advisor to Governor Pat Quinn

By Tiffany Elking

When roaming the halls of the Illinois State Capitol, there is a certain gentleman who seems to be everywhere at the same time. As Senior Advisor to Governor Pat Quinn, he knows the interplay between the lobbyists and community interest groups, and understands the inner-workings of both chambers.

His name is John Kamis and he is one of the most dedicated and down-to-earth people I have met. He has a surprisingly calm temperament considering his aggressive policy advancement and forward organizational development. John is a pragmatist- he is always available to offer real-time solutions to any problem.

He is definitely someone you should know.

John grew up in Palatine, Illinois, a northwest suburb of Chicago. Interestingly enough, his father immigrated to the United States from the former Czechoslovakia with only a suitcase and $20.

During high school, his best friend's mother was running for State Representative and he helped coordinate volunteers for her campaign. That campaign, combined with an excellent

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Application of discovery rules to requests to admit

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Appellate Court ruled that Requests to Admit are "a proper discovery device" in determining that sanctions were not warranted under Rule 218 and 219(d) for issuing Requests to Admit in that case.[6]

Thus, in Illinois courts Requests to Admit are subject to at least some discovery orders and rules. Presumably, Requests to Admit are subject to the "meet and confer" requirement for discovery disputes under Supreme Court Rule 201(k). This logically flows from the stated purpose of Rule 201(k), which is to encourage cooperation among opposing counsel to resolve issues before court intervention.[7] There is no reason that counsel should not attempt to resolve disputes involving Requests to Admit in the same manner as disputes involving conventional discovery devices.

It is less clear whether Requests to Admit are subjected to the discovery closure date in a case because of the inherent differences between Requests to Admit and other discovery devices. The purpose of Requests to Admit is to narrow the issues that will be presented to the trier of fact.[8] A party may not know until the end of discovery what issues can be narrowed. Waiting until after discovery closes gives both the requesting party and the responding party the advantage of knowing all the facts before attempting to narrow the issues. But if Requests to Admit are subjected to the general discovery closure order, the parties cannot wait until all the facts of the case are fleshed out before drafting and answering Requests to Admit. Current Illinois case law does not provide a resolution to this issue.

The federal courts continue to wrestle with the issue of whether a Request for Admission is a discovery device. Some courts have held that Requests for Admission are discovery devices subject to discovery rules and orders.[9] Other courts have held that Requests are not discovery devices.[10] The comments to Rule 36 make clear that the Rule is subject to the limitations of Rule 26(d), which bars formal discovery until after the parties have a "discovery conference," but the Rule and the commentators are silent as to other discovery limitations.[11]

The Northern District of Illinois recently addressed the implicit differences between Requests for Admission and other discovery devices.[12] The District Court found that Requests for Admission are not truly discovery devices, citing with approval the authors of *Moore's Federal Practice* who argue that Requests for Admission "are distinguishable from other discovery devices," mainly because they are meant to streamline issues for trial.[13] The Court went on to note that there are two different "flavors" of Requests for Admission: (1) those sent as a tactic to establish a fact before it is developed in conventional discovery; and (2) those sent to obtain admission of facts already learned through the discovery process or to admit the genuineness of documents.[14]

For the first type of Requests, it may be proper to require them to be propounded before the close of discovery to allow the responding party to flesh out any issues raised in the Requests during the remainder of discovery and to avoid attempts to ambush the opposing party.[15] In the second type, it seems proper to allow such requests to be served after the close of discovery, but before the eve of trial, in order to serve the goal of narrowing the issues for trial.[16] The District Court did not espouse a blanket analysis for this issue; rather, as the specific circumstances facing the Court involved the second type of Requests, the Requests were allowed to be propounded after the close of discovery.[17] The District Court then specifically stated that it expected the parties to meet and confer regarding any disputes arising from the Requests as prescribed by Northern District Local Rule 37.2.[18]

After reviewing the case law in both Illinois and federal courts, it appears that parties are likely to be required to follow some discovery rules for Requests to Admit, such as the "meet and confer" requirement, but not all of them, such as the discovery closure date. In order to alleviate any potential confusion, counsel could ask the court to impose a separate deadline to issue Requests to Admit after the close of regular discovery. For example, the parties could ask the court to close discovery on July 1, set August 1 as the deadline to propound Requests to Admit, and schedule the trial to commence after October 1. This would give the parties the freedom to serve Requests during or after discovery, depending on strategy, while not interfering with the court's trial schedule.[19]

However, a wrinkle develops in Illinois if Requests to Admit are subject to the requirement that all discovery must be completed no later than 60 days before trial.[20] Depending on the trial date, there may not be time to set a deadline to issue Requests to Admit without closing fact discovery at least 90 days before trial. That is not always an option, but in any case the parties can agree upon a deadline that would allow the Requests to be completed before trial.[21] As of now, there is no case law to give counsel guidance on these issues.

As in most cases, the final determination on the issues presented in this article is up to the sound discretion of the trial judge. Until the appellate courts take up these issues again, wise counsel should remain vigilant and timely bring issues involving Requests to Admit to the trial court's attention. ■

Kevin Lovellette is an Assistant Illinois Attorney General and currently supervises the Prisoner Litigation Unit in the General Law Bureau. All opinions in this article are his and are not necessarily the opinions of the Office of the Attorney General. All mistakes are exclusively his.

1. Illinois law calls these devices "Requests to Admit." Ill. Sup. Ct. Rule 216. Federal law calls them "Requests for Admission." F.R.C.P. 36. This article will refer to "Requests to Admit" when discussing the devices generally, but will call them by their particular name when referring to the specific Illinois or federal rule.

2. Ill. Sup. Ct. Rule 216.

3. F.R.C.P. 36(a).

4. *Vision Point of Sale, Inc. v. Haas*, 226 Ill. 2d 334, 347 (2007).

5. *DOD Technologies v. Mesirow Ins. Services, Inc.*, 381 Ill. App. 3d 1042, 1055 (1st Dist. 2008)("In light of this clear statement by the supreme court, the requests to admit clearly fall within the court's order pertaining to stays of 'discovery'").

6. *Brookbank v. Olson*, 389 Ill. App. 3d 683, 688 (1st Dist. 2009).

7. *Williams v. A.E. Staley Mfg. Co.*, 83 Ill. 2d 559, 564 (1981).

8. *Bright v. Dicke*, 260 Ill. App. 3d 768, 772 (1st Dist. 1994).

9. *See Federal Maritime Com'n v. South Carolina State Ports Authority*, 535 U.S. 743, 758 (2002)(suggesting without holding that Requests for Admission are used to discover facts); *Laborer's Pension Fund v. Blackmore Sewer Constr., Inc.*, 298 F.3d 600, 606, n.2 (7th Cir. 2002)(reserving the issue but pointing out that the Rules seem to contemplate that Requests for Admission are a discovery device); *U.S. ex rel. Fry v. Guidant Corp.*, slip copy, 2010 WL 2838539 (M.D. Tenn. 2010)(recognizing split in

authority and following line of cases holding Requests for Admission are discovery devices).

10. *See T. Rowe Price Small-Cap Fund, Inc. v. Oppenheimer & Co., Inc.*, 174 F.R.D. 38, 42 (S.D.N.Y. 1997)("Rule 36 is not a discovery device."); *Lakehead Pipe Line Co. v. American Home Assur. Co.*, 177 F.R.D. 454, 458 (D. Minn. 1997)("Requests for Admission are not a discovery device"); *Morris v. Electrical Systems*, 1990 WL 258387, *4 (N.D. Ind. 1990) (finding that Requests for Admission were "technically" not governed by the court's discovery order).

11. F.R.C.P. 36, comments to 1993 Amendments (amendment will prevent "a party from seeking formal discovery until after the meeting of the parties required by Rule 26(f)").

12. *Kelly v. McGraw-Hill Companies, Inc.*, F.R.D ___ , 2012 WL 386324 (N.D. Ill. 2012)(Shadur J.).

13. *Id*., at *2.

14. *Id*.

15. *Id.*

16. *Id*., at *3.

17. *Id*., at *4.

18. *Id*., at *4, n.2.

19. *See* Ill. Sup. Ct. Rule 218; F.R.C.P. 26(a).

20. Ill. Sup. Ct. Rule 218(c).

21. *Id*.

Someone you should know

Continued from page 1

AP Government teacher, is what ultimately piqued John's interested in government. This would not end up being his only campaign in his governmental career. Besides working on Al Gore's presidential campaign, Judge Thomas Lipscomb's judicial race, and Richard Daley's mayoral race, John was the campaign manager for Pat Quinn's gubernatorial primary campaign. His success and well-known credibility from this role propelled him into the position he has with the Governor today.

As Senior Advisor to the Governor, John splits his time between the Illinois State Capitol in Springfield and the Thompson Center in Chicago. His three primary areas of focus are economic development, legislative affairs, and performance management. He is responsible for overseeing the Governor's "jobs agenda" in Springfield, negotiating legislation, and developing legislative strategy. He also oversees the Governor's budget reform and performance management initiative, "Budgeting for Results." Additionally, he was the lead staffer for the Governor's Economic Recovery Commission.

John supervises and coordinates the legislative liaisons for the State's economic development agencies. He is also responsible for supervising and coordinating economic development agency staff on particular projects, which include the Department of Transportation, Department of Commerce and Economic Opportunity, Department of Revenue, and Illinois Toll Highway Authority.

You will also often see John mentoring the Governor's Dunn Fellows, college graduates spending a year on the Governor's staff learning the operations of State government. It is John's personal mission to teach and help guide other people interested in government work. He has said, "I'm very grateful for the terrific mentors I've had, especially at the beginning of my career in government. I try my best to provide guidance and support to new attorneys because I remember how difficult the legislative process was to grasp when I first started. I like to bring staff with me to interesting meetings or negotiations, and then spend some time with them afterwards walking them through what took place."

His advice for other government lawyers is to never let a person's negative opinions of government influence you. John believes that the work government lawyers do is important and the opportunities for making an impact can be much greater than in the private sector.

When asked about the positives about his job, John will tell you that the great thing about working in the Governor's Office is that each day you know that you will work on something interesting and impactful. He said, "The wide array of issues that come your way can be daunting, but it is probably the one thing about my work that I enjoy most. I can't imagine another job where you get to work on so many issues that have a direct effect on people's lives." His long term goals are to continue to work on issues that improve that the economic climate in Illinois and address unequal opportunity. ■

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A quick guide to the DNA database law in Illinois and the 2012 updates

By Paul R. Vella

Pursuant to 730 ILCS 5/5-4-3, a person convicted of, found guilty of, or who received a disposition of court supervision for, a qualifying offense or attempt of a qualifying offense shall be required to submit a specimen of blood, saliva, or tissue to the Illinois Department of State Police. Qualifying offenses are outlined in the statute, but are too numerous to list here. The genetic marker groupings are maintained by the Illinois Department of State Police, Division of Forensic Services.

Additionally, a person seeking transfer to Illinois who is subject to the Interstate Compact for Adult Offender Supervision, or the Interstate Agreements on Sexually Dangerous Persons Act is required to provide a specimen of blood, saliva, or tissue within 45 days after transfer to Illinois.

A person subject to the above must provide a blood, saliva, or tissue specimen and any deliberate act by that person intended to impede, delay, or stop the collection is a Class 4 felony. Prior to 2012, it was a class A misdemeanor.

If a person who is required to submit a sample does not, law enforcement may "employ reasonable force" in cases where an individual refuses to comply.

The State Police can require the submission of fingerprints from anyone who is required to comply with this law. The fingerprint provision is new for 2012.

A person required to submit a specimen must now pay an analysis fee of $250. This is an increase from $200. The inability to pay the fee is not a basis to incarcerate a person.

As of January 1, 2012, a new provision of law has been enacted. Now, any person arrested for any of the following offenses after an indictment, or following a hearing where a judge finds there is probable cause to believe the arrestee has committed the offense, or has waived a preliminary hearing is required to provide a specimen of blood, saliva, or tissue within 14 days. The following is a list of eligible charges: first degree murder; home invasion; predatory criminal sexual assault of a child; aggravated criminal sexual assault; or criminal sexual assault. The new provision mirrors the procedure that happens in Federal Court.

The Illinois Department of State Police provides or contracts out all equipment and instructions necessary for the collection of blood, tissue, and saliva specimens. Blood can only be drawn by a physician authorized to practice medicine, a registered nurse or other qualified person trained in venipuncture. Only a person trained in the instructions promulgated by the Illinois State Police on collecting saliva and tissue may collect saliva and tissue.

The genetic marker grouping analysis information obtained is confidential and is only released to authorized persons. The information obtained shall be used only for (I) valid law enforcement identification purposes and as required by the Federal Bureau of Investigation for participation in the National DNA database, (ii) technology validation purposes, (iii) a population statistics database, (iv) quality assurance purposes if personally identifying information is removed, (v) assisting in the defense of the criminally accused, or (vi) identifying and assisting in the prosecution of a person who is suspected of committing a qualified act. All information obtained is maintained in a single State data base, which may be uploaded into a national database, and which information may be subject to expungement.

All samples in the database can be used to check against unsolved crimes. The detention, arrest, or conviction of a person based upon a database match or database information is not invalidated if it is determined that the specimen was obtained or placed in the database by mistake.

A person who intentionally uses genetic marker grouping analysis information, or any other information derived from a DNA specimen, beyond the authorized use, or any other Illinois law, is guilty of a Class 4 felony, and is subject to a minimum fine of $5,000. Attorneys will want to verify that a DNA match in their cases was obtained by authorized means.

The Department of State Police, the Division of Forensic Services, may not contract out forensic testing for the purpose of an active investigation or a matter pending before a court without the written consent of the prosecuting agency. This includes the use of forensic databases and databanks, including DNA, firearm, fingerprint databases, and expert testimony. If the testing or conclusions are not done by the above listed agencies, you should request a copy of the written consent.

There are ways to remove the DNA from the database. If there is a reversal of conviction based on actual innocence, or of the granting of a pardon and that pardon specifically states that the reason for the pardon is the actual innocence, the DNA record shall be expunged from the DNA identification index, destroyed, and a letter is to be sent to the court verifying that the expungement is completed. For specimens required to be collected prior to conviction, unless the individual has other charges or convictions that require submission of a specimen, the DNA record for an individual shall be expunged from the DNA identification databases and the specimen destroyed upon receipt of a certified copy of a final court order for each charge against an individual in which the charge has been dismissed, resulted in acquittal, or that the charge was not filed within the applicable time period, and a letter is to be sent to the court verifying that the expungement is completed. Attorneys will want to follow up after a case has been resolved to make sure this procedure has been followed. ■

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Public service and repaying your loans: Once impractical, now a reality

By Matthew S. Dionne

It is not uncommon these days to hear about the dismal legal job market[1] or how law school is a "waste of time"[2] or "a [l]osing [g]ame."[3] In fact, a recent study estimates there are about twice as many lawyers entering the job market as there are jobs.[4] This study has even spurred six Illinois law school deans to comment on the legal job market.[5] Ultimately, all of this calls into question the value of a law degree. Because while not everyone who goes to law school goes to get rich, no one goes to go broke—a scary, but real reality considering the high cost of law school and the lack of high-paying jobs available. This is particularly true for many lawyers who desire to pursue public interest careers, an area that two-thirds of law students were precluded from entering less than a decade ago due to their student debt.[6] Due to new legislation enacted by Congress and the Illinois General Assembly, however, many new lawyers who desire to work in the public interest field may be able to do so and get extra help at repaying their debt at the same time. This article seeks to call attention to and explain this legislation designed to encourage attorneys to stay or enter the public interest field. After addressing the main points of the legislation, this article will explore some concerns about the legislation and offer suggestions for different career paths that lawyers interested in a career in public interest may pursue.

The Numbers

According to a recent study by Economic Modeling Specialists Inc. (EMSI), a company that provides employment data and economic analysis through web tools and custom reports, in 2009, America's law schools produced almost twice as many lawyers who passed the bar (let us not forget those who did not pass) as there were job openings.[7] And EMSI is not exactly predicting things will get much better through 2015.[8] EMSI estimates that Illinois will only need 1,394 new lawyers each year from 2010 through 2015, leaving a surplus of 1,679 new lawyers each year without jobs.[9] In other words, each year EMSI is predicting enough jobs for approximately 45% of lawyers who pass the bar exam.[10] Indeed, based upon EMSI's findings, Illinois has the fourth largest oversupply of lawyers in the country, behind only New York, California, and New Jersey.[11] While these numbers may not be entirely accurate given the multitude of unknown factors that play into these figures, it is hard to argue that the current job market is promising and this is a very scary prospect considering that the average amount borrowed for law school for the 2009-2010 academic year was $68,827 for law students who went to public schools and $106,249 for those who attended private schools.[12]

Yet as Cynthia Fountaine, Dean of Southern Illinois University School of Law, said in a recent article discussing the legal job market, "The decline of law jobs does not reflect a declining need for legal services. Indeed, there is an increasing need for legal services by low- and middle-income people who often can't afford the high price of legal service."[13] Dean Fountain's conclusion is supported by studies that indicate that less than 20% of poor Americans' legal needs are being met.[14] In the civil arena, this is referred to as the "justice gap."[15]

Moreover, the State of Illinois' General Assembly has also recently recognized the "justice gap," finding that "[e]qual access to justice is a basic right that is fundamental to democracy in the this State, and the integrity of this State and this State's justice system depends on protecting and enforcing the rights of all people and quality enforcement of the laws of this State."[16] The General Assembly found that "[v]ulnerable and disadvantaged citizens of this State are unable to protect or enforce their right without legal assistance from public interest attorneys," and that "[g]raduating law students and practicing attorneys are increasingly unable to continue in public interest attorney positions because of high student loan debt."[17] Thus, the General Assembly concluded that "[a]ssisting public interest attorneys with loan forgiveness is a major step toward ensuring quality legal representation for this State's most vulnerable citizens and quality enforcement of State law."[18]

Accordingly, both Congress and the Illinois General Assembly have recognized this problem and have enacted legislation to help encourage attorneys to work in the public service sector, while at the same time helping them repay the debt they have incurred becoming attorneys. First, at the federal level, on September 27, 2007, an amendment to Title VI of the Higher Education Act of 1965 was made by § 401 of the College Cost Reduction and Access Act.[19] One of the key components of this legislation was the formation of the Public Service Loan Forgiveness Program (PSLFP), which provides for the cancellation of the remaining balance of interest and principle due on eligible federal student loans after the borrower has made 120 monthly payments or 10 years worth of payments after October 1, 2007, on those loans while employed in certain public service fields.[20] About a year later, on August 14, 2008, Congress enacted legislation "to encourage qualified individuals to enter and continue employment as civil legal assistance attorneys" and "prosecutors and public defenders."[21] This legislation created the Civil Legal Assistance Attorney Student Loan Repayment Program (CLAASLRP) and the John R. Justice Student Loan Repayment Program (JRJSLRP). The State of Illinois followed suit, enacting the Public Interest Attorney Assistance Fund (PIAAF) that became effective January 1, 2010.[22] The highlights of the legislation are set forth below.

The Public Service Loan Forgiveness Program

The PSLFP is intended to encourage individuals to enter and remain in public service.[23] Under the PSLGP, a borrower who has a "public serve job" and who makes 120 monthly payments on an "eligible Federal Direct Loan" will have their balance of principal and interest forgiven by the federal government.[24] "'[E]ligible Federal Direct Loan' means a Federal Direct Stafford Loan, Federal Direct PLUS Loan, or Federal Direct Unsubsidized Stafford Loan, or a Federal Direct Consolidation Loan."[25] Thus, private loans are not eligible for loan forgiveness.

Under the PSLFP, "public service jobs" for lawyers means, in relevant part, "a full-time job in . . . government (excluding time served as a member of Congress), military service, . . . public education, . . . public interest law services (including prosecution or public defense or legal advocacy on behalf of low-income communities at a nonprofit organization), . . . or at an organization that is described in section 501(1)(c)(3) of the Internal Revenue Code of 1986 and exempt from

taxation under section 501(a) of such Code," among others.[26]

The payments made under the PSLFP do not have to be consecutive, but only payments made while employed as a public service employee count and you must apply for forgiveness while a public service employee.[27] Furthermore, in order for your payment to qualify, your payment must be made under one of four types of repayment plans available under the PSLFP: 1) income-contingent payments; 2) standard repayments based upon a 10-year repayment period; 3) income-based repayment; or 4) any other repayment plan where your monthly payment amount equals or exceeds what you would pay under a 10-year standard repayment plan.[28]

An income-contingent payment plan is based on the total amount of the borrower's loan, family size, and the borrower's adjusted gross income (and that of his or her spouse if married).[29] As a borrower's income changes, the borrower's repayment amount may change annually.[30] A borrower's payment under this repayment plan may even exceed the amount the payment would be under the standard repayment plan.[31] Under this repayment plan, even if a borrower does not participate in the PSLFP, the unpaid portion of a borrower's loan is forgiven after 25years under this repayment plan.[32]

Under the standard repayment plan, fixed monthly payments would be based upon a 10-year repayment plan. Thus, a borrower would not benefit if the borrower only made payments under this plan, but could benefit by making some payments under this plan and the income-contingent or income-based repayment plan. For example, if a borrower started out in a public service position and qualified for a payment amount under the income-contingent or income-based repayment plan that would be less than the borrower's payment amount under a 10-year standard repayment plan, then it would behoove the borrower to make payments under one of those repayment plans until, if ever, the borrower's income amount resulted in the borrower's payment exceeding the repayment amount under a 10-year standard repayment plan. At that point, it would make sense for the borrower to switch to the 10-year repayment plan to finish making the remaining payments. By doing this, the borrower would have benefitted by making lower payments during the time the borrower was earning less income. This is made under the assumption that the borrower intends to comply with making the 120 payments required under the PSLFP.

Payments under the income-based repayment plan did not become available until July 1, 2009, and a borrower must qualify to make payments under the income-based repayment plan.[33] To qualify, a borrower must have a "partial financial hardship."[34] While the definition of a "partial financial hardship" is somewhat complicated, in essence, you have a partial financial hardship if the monthly amount you would be required to pay under a standard repayment plan based upon a 10-year repayment period is higher than the monthly amount you would be required to pay under the income-based repayment plan, which is based upon your annual adjusted gross income (AGI) and family size, not the amount of debt you have.[35] "Specifically, the maximum amount you are required to repay under [income-based repayment] during any period when you have a 'partial financial hardship' . . . is 15[%] of the difference between your AGI and 150[%] of the U.S. Department of Health and Human Services' (HHS) Poverty Guideline amount for your family size."[36] "This annual repayment amount is then divided by [12] to determine your monthly [income-based repayment] amount."[37] If a borrower's income-based repayment amount increases to the point where it is more than the monthly amount the borrower would be required to pay under a 10-year standard repayment plan, a borrower would no longer have a "partial financial hardship" and the repayment amount would change to the amount the borrower would have been required to pay under a 10-year standard repayment plan based on the amount of the borrower's outstanding loans that were outstanding when the borrower began repaying under this plan.[38] Under the income-based repayment plan, the required monthly payment amount is capped at an amount that is intended to be affordable based on your income and family size.[39] Repayment under the income-based repayment plan is similar to that under the income-contingent repayment plan in that any remaining balance after 25 years is forgiven.[40] Thus, even if a borrower does not pursue a public interest career or does not do so for the entire 10-year period required for loan forgiveness, the borrower may still benefit if he or she had a remaining loan balance after making payments under the income-contingent or income-based repayment plan, a real reality for borrowers whose payment amounts go mostly, if not all, to interest as opposed to the principle amount of the loan.

The Civil Legal Assistance Attorney Student Loan Repayment Program

The CLAASLRP was enacted "to encourage qualified individuals to enter and continue employment as civil legal assistance attorneys."[41] The term "civil legal assistance attorney" means an attorney who is a full-time employee of a nonprofit organization that provides legal assistance with respect to civil matters to low-income individuals without a fee or a protection and advocacy system or client assistance program that provide legal assistance with respect to civil matters and receives funding under one of seven sections of the United States Code.[42] Under the CLAASLRP, a civil legal assistance attorney may receive up to $6,000 per year in student loan repayments, up to an aggregate total of $40,000.[43] To be eligible for repayment benefits, the borrower must enter into a written agreement with Department of Education that specifies that "the borrower will remain employed as a civil legal assistance attorney for a required period of service of not less than three years, unless involuntarily separated from that employment."[44] If the borrower is involuntarily separated from employment or voluntarily separates from employment before the end of the period specified in the borrower's agreement, the borrower has to repay the amount paid on the borrower's behalf, although the Department of Education may waive the right of recovery if "it is shown that recovery would be contrary to the public interest."[45] The repayment benefits are distributed on a first-come, first-served basis, and are subject to the availability of appropriations.[46] The statute does contain a provision that provides that "[n]o borrower may, for the same service, receive a reduction of loan obligations under both this section and the PSLFP."[47]

The John R. Justice Student Loan Repayment Program

The JRJSLRP was enacted on the same day as the CLAASLRP and similarly was enacted to encourage qualified individuals to enter and continue employment in public service positions, specifically employment as prosecutors and public defenders.[48] "Prosecutor" is defined under the JRJSLRP as a full-time employee of a State or unit of local government who prosecutes criminal or juvenile delinquency cases at the State or unit of local government (including supervision, education, or training of other persons prosecuting

such cases).[49] "Public defender" is defined as an attorney who is "a full-time employee of a State or unit of local government who provides legal representation to indigent persons in criminal or juvenile delinquency cases (including, supervision, education, or training of other persons providing such representation)", "a full-time employee of a nonprofit organization operating under a contract with a State or unit of local government, who devotes substantially all of the employee's full-time employment to providing legal representation to indigent persons in criminal or juvenile delinquency cases (including supervision, education, or training of other persons providing such representation)," or an "individual employed as a full-time Federal defender attorney in a defender organization established pursuant to subsection (g) of section 3006A of tile 18, United States Code, that provides legal representation to indigent persons in criminal or juvenile delinquency cases."[50] Interestingly, despite the statute not specifically prohibiting the award of funds to elected prosecutors and public defenders, the Bureau of Justice Assistance (BJA), a component of the Office of Justice Programs for the United States Department of Justice, who began administering the program in 2010, has determined that benefits are not available to elected prosecutors and public defenders.[51] Federal prosecutors are also specifically not mentioned as a prosecutor, but certain federal public defenders may be eligible.

Like the CLAASLRP, a borrower must enter a written agreement that specifies that the borrower will remain employed for a period of service of not less than three years and will have to repay any payments made if the agreement is not complied with.[52] Unlike the CLAASLRP's $6,000 per year and $40,000 aggregate limit for borrower benefits, the JRJSLRP has a $10,000 per year and $60,000 aggregate limit for borrower benefits.[53] Moreover, like the CLAASLRP, the JRJSLRP is subject to funding, but is not paid on a first-come, first-served basis, but rather "priority is given to borrowers who have the least ability to repay their loans."[54] Notably there is no double benefits provision like there is for CLAASLRP benefits.

The Public Interest Attorney Assistance Act

While the PIAAF does not provide for all-encompassing loan forgiveness like the PSLFP program does, the PIAAF does potentially provide help where the PSLFP does not—in the area of private loans made by government, commercial lending, or educational institutions.[55] The purpose of the PIAAF "is to encourage qualified individuals to enter into and continue in employment in this State as assistant State's Attorneys, assistant Public Defenders, civil legal aid attorneys, assistant Attorneys General, assistant public guardians, IGAC attorneys, and legislative attorneys in a manner that protects the rights of this State's most vulnerable citizens or promotes the quality enforcement of State law."[56] Under the PIAAF, "'[p]ublic interest attorney' means an attorney practicing in Illinois who is an assistant State's Attorney, assistant Public Defender, civil legal aid attorney, assistant Attorney General, assistant public guardian, IGAC attorney, or legislative attorney."[57] "'Qualifying employer' means (i) an Illinois State's Attorney or the State's Attorney Appellate Prosecutor, (ii) an Illinois Public Defender or the State Appellate Defender, (iii) an Illinois civil legal aid organization, (iv) the Illinois Attorney General, (v) an Illinois public guardian, (vi) the Illinois Guardianship and Advocacy Commission, (vii) the Illinois Senate, (viii) the Illinois House of Representatives, or (ix) the Illinois Legislative Bureau."[58] "Eligible debt" is defined as "outstanding principal, interest, and related fees from loans obtained for undergraduate, graduate, or law school educational expenses made by government or commercial lending institutions or educational institutions."[59] Loans made by private individuals or family members are specifically excluded from "eligible debt."[60]

Under the program, the Illinois Student Assistance Commission (the Commission) shall create an advisory committee who shall distribute funds to eligible applicants.[61] "Subject to the availability of appropriations, the Commission shall, each year consider applications by eligible public interest attorneys for loan repayment assistance under the Program."[62] The applicant must be 1) a citizen or permanent resident of the United States, 2) a licensed member of the Illinois Bar in good standing, 3) have eligible debt in grace or repayment status, and 4) by employed as a "public interest attorney" with a "qualifying employer" in Illinois.[63] "The Commission shall develop criteria for prioritization among eligible applicants in the event that there are insufficient funds available to make payments to all eligible applicants under this Act."[64] "The prioritization criteria shall include the timeliness of the application, the applicant's salary level, the amount of the applicant's eligible debt, the availability of other loan repayment assistance to the applicant, the applicant's length of service as a public interest attorney, and the applicant's prior participation in the [p]rogram."[65] The maximum amount of loan repayment assistance for each participant shall be $6,000 per year, up to a maximum of $30,000 during the participant's career.[66]

Concerns and Suggestions

While these programs are sure to spike interest in public service jobs, like jobs in the private sector, there has to be jobs available for attorneys to be able to take advantage of these programs. Indeed, the CLAASLRP, JRJSLRP, and the PIAAF specifically define what those positions are and only those attorneys will be able to take advantage of these programs. Thus, although Congress and the Illinois General Assembly recognize a need to help encourage attorneys to enter or stay in public interest positions, the current problem may be the lack of funding for new positions that are needed.

Fortunately, the PSLFP is more encompassing and covers a broader spectrum of potential jobs. If no positions are available, perhaps an attorney could form its own nonprofit public service organization under § 501(1)(c)(3). Working for an organization such as this could perhaps qualify for repayment assistance under the PSLFP or under the CLAASLRP or PIAAF.

Another concern is that unlike the PSLFP, the CLAASLRP, JRJSLRP, and the PIAAF are conditional on funding. In 2009, $10 million was appropriated by Congress for the CLAASLRP and $25 million was appropriated for the JRJSLRP.[67] In 2010, the JRJSLRP was allocated $9,895,860, $365,309 of which went to State of Illinois public defenders and prosecutors, split evenly between them.[68] This amounted to 75 public defenders and 53 prosecutors out of 400 applications receiving up to a max of $4,000 each.[69] The CLAASLRP was appropriated $5 million in 2010.[70] In 2011, $8,002,182 was appropriated for the JRJSLRP, $198,510 of which went to Illinois. Unfortunately, the CLAASLRP was not funded in 2011.[71] And despite the PIAAF being enacted by the Illinois General Assembly in 2010, the PIAAF has never been funded by the Illinois General Assembly.[72] Thus, while Congress and the Illinois General Assembly certainly recognized the need to encourage qualified individuals to enter and continue employment in the public service

field, particularly as prosecutors, public defenders, and civil legal assistance attorneys, if these programs are not funded it is unlikely the legislation will meet its goal of encouraging qualified to enter and remain in the field, although given the current legal job market and programs like the PSLFP this may not be true considering the competitiveness which currently exists for these positions and the benefits available under the PSLFP.

Moreover, if funding is available under these programs, attorneys should also be cautioned that pursuing benefits under one program may limit the benefits available under another program. In fact, the CLAASLRP statute contains a specific provision prohibiting a borrower from receiving benefits under both the CLASLRP and the PSLFP for the same service period.[73] And while the JRJSLPR does not contain similar language in the statute, the BJA has advised borrowers to consult with the United States Department of Education to learn how receipt of JRJSLPR benefits may affect awards through the PSLFP.[74]

Conclusion

While in the past many young lawyers may have been steered into a private sector job because of the financial realties law school debt required them to face,[75] lawyers may now be able to take on a public service job and pay off—through payments and service—their debt at the same time. Of course, much of this depends upon appropriate funding from Congress and the Illinois General Assembly. While they seem to recognize this need by the passing of legislation, the lack of funding or reduced funding over the last few years indicates that this cause may be headed in the wrong direction. ■

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1. Catherine Rampell, *The Lawyer Surplus, State by State*, NY Times Blogs (Economix) (June 27, 2011); Debra Cassens Weiss, *US News Warns of Tough Times for Law Grads; Experts Say 'It's Just Like the Lottery'*, ABA Journal (April 15, 2010).
2. Penelope Trunk, *Trunk: Law school is a waste of time*, CNN.com, (Sept 26, 2011).
3. David Segal, *Is Law School a Losing Game?*, NY Times, (Jan 8, 2011).
4. Catherine Rampell, *The Lawyer Surplus, State by State*, NY Times Blogs (Economix) (June 27, 2011).
5. Jerry Crimmins, *Deans discuss legal job market*, Chicago Daily Law Bulletin, Vol. 156, No. 129 (July 1, 2011).
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8. *Id.*
9. *Id.*
10. *Id.* (calculated by dividing 1,394 estimated jobs by 3073, i.e., total number of lawyers passing the bar per year, to get 45.36%).
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12. America Bar Association, "Average Amount Borrowed for Law School 2001-2010," <www.americanbar.org>.
13. Jerry Crimmins, *Deans discuss legal job market*, Chicago Daily Law Bulletin, Vol. 156, No. 129 (July 1, 2011).
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15. Alan Houseman, *The Justice Gap*, Center for American Progress (June 22, 2011), <http://www.americanprogress.org/issues/2011/06/justice.html>.
16. § 110 ILCS 916/5(1).
17. *Id.* at 916/5(3)(4).
18. *Id.* at 916/5(5).
19. PL 110-84.
20. 20 U.S.C. § 1087e.
21. See 20 U.S.C. § 1078-12; 42 U.S.C. § 3797cc-21.
22. 110 ILCS 916/5 *et seq.*
23. Federal Student Aid U.S. Department of Education, *Income Based Repayment Questions and Answers* (Jan 5, 2010).
24. 20 USC § 1087e(m).
25. *Id.* at (m)(3)(A).
26. *Id.* at (m)(3)(B)(1).
27. *Id.*
28. *Id.* at (m)(1).
29. Federal Student Aid U.S. Department of Education, *Income Based Repayment Questions and Answers* (Jan 5, 2010).
30. *Id.*
31. *Id.*
32. *Id.*
33. *Id.*
34. *Id.*
35. *Id.*
36. *Id.*
37. *Id.*
38. *Id.*
39. *Id.*
40. *Id.*
41. 20 U.S.C. § 1078-12.
42. *Id.* ("(I) subtitle C of title I of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15041 et seq.); (II) section 112 or 509 of the Rehabilitation Act of 1973 (29 U.S.C. 732, 794e); (III) part A of title I of the Protection and Advocacy for Individuals with Mental Illness Act (42 U.S.C. 10801 et seq.); (IV) section 5 of the Assistive Technology Act of 1998 (29 U.S.C. 3004); (V) section 1150 of the Social Security Act (42 U.S.C. 1320b-21); (VI) section 1253 of the Public Health Service Act (42 U.S.C. 300d-53); or (VII) section 291 of the Help America Vote Act of 2002 (42 U.S.C. 15461).").
43. *Id.*
44. *Id.*
45. *Id.*
46. *Id.*
47. *Id.* at (g).
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51. Bureau of Justice Assistance, John R. Justice Grant Program, FY 2010 State Solicitation, Frequently Asked Questions, available at <http://www.ojp.usdoj.gov/BJA/grant/10JRJFAQ.pdf>.
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54. *Id.* at (d)(1)(E), (f).
55. *Id.* at 916/15.
56. 110 ILCS § 916/10.
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58. *Id.*
59. 110 ILCS § 916/15.
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61. 110 ILCS § 916/20.
62. *Id.*
63. *Id.*
64. *Id.*
65. *Id.*
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74. Bureau of Justice Assistance, John R. Justice Grant Program, FY 2010 State Solicitation, Frequently Asked Questions, available at <http://www.ojp.usdoj.gov/BJA/grant/10JRJFAQ.pdf>.
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Upcoming CLE programs

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

July

Tuesday, 7/3/12- Teleseminar—Planning for your Client's Biggest Assets: Personal Residences and Vacation Homes. Presented by the Illinois State Bar Association. 12-1.

Monday, 7/9/12- Webinar—Introduction to Legal Research on FastCase. Presented by the Illinois State Bar Association- Complimentary to ISBA Members. 9-10.

Tuesday, 7/10/12- Teleseminar—Fiduciary Standards in Business Transactions: Understanding Sources of Liability in Transaction Negotiations and Drafting. 12-1.

Wednesday, 7/11/12- Webinar—Advanced Tips for Enhanced Legal Research on FastCase. Presented by the Illinois State Bar Association- Complimentary to ISBA Members. 9-10.

Thursday, 7/12/12- Teleseminar—Ethics and Dishonest Clients. Presented by the Illinois State Bar Association. 12-1.

Tuesday, 7/17/12- Teleseminar—Practical Issues in Trust Administration. Presented by the Illinois State Bar Association. 12-1.

Tuesday, 7/17/12- Live Studio Webcast—Admitting Facebook Pages Into Evidence. Presented by the ISBA Committee on Legal Technology. 12-1.

Thursday, 7/19/12- Teleseminar—Employee Separation Agreements: Reducing Risk and Liability When Employees are Discharged or Leave. Presented by the Illinois State Bar Association. 12-1.

Tuesday, 7/24/12- Teleseminar—Commercial Real Estate Workouts: Making Broken Deals Work Again, Part 1. Presented by the Illinois State Bar Association. 12-1.

Wednesday, 7/25/12- Teleseminar—Commercial Real Estate Workouts: Making Broken Deals Work Again, Part 2. Presented by the Illinois State Bar Association. 12-1.

Monday, 7/30/12- Webinar—Boolean (Keyword) Search for Lawyers. Presented by the Illinois State Bar Association- Complimentary to ISBA Members. 9-10.

Tuesday, 7/31/12- Teleseminar—Special Needs Trusts. Presented by the Illinois State Bar Association. 12-1.

August

Thursday, 8/2/12- Teleseminar—Estate Planning for Pets. Presented by the Illinois State Bar Association. 12-1.

Monday, 8/6/12- Webinar—Introduction to Legal Research on FastCase. Presented by the Illinois State Bar Association- Complimentary to ISBA Members. 12-1.

Tuesday, 8/7/12- Teleseminar—Ethics in Employment Law and Practice. Presented by the Illinois State Bar Association. 12-1.

Wednesday, 8/8/12- Webinar—Advanced Tips for Enhanced Legal Research on FastCase. Presented by the Illinois State Bar Association- Complimentary to ISBA Members. 12-1.

Thursday, 8/9/12- Teleseminar—Structuring Tax Free Mergers and Acquistitions. Presented by the Illinois State Bar Association. 12-1.

Tuesday, 8/14/12- Teleseminar—Understanding Fiduciary Income Taxation for Estate Planners, Part 1. Presented by the Illinois State Bar Association. 12-1.

Wednesday, 8/15/12- Teleseminar—Understanding Fiduciary Income Taxation for Estate Planners, Part 2. Presented by the Illinois State Bar Association. 12-1.

Tuesday, 8/21/12- Teleseminar—Innocent Spouse Defense. Presented by the Illinois State Bar Association. 12-1.

Monday, 8/27/12- Webinar—Boolean (Keyword) Search for Lawyers. Presented by the Illinois State Bar Association- Complimentary to ISBA Members. 12-1.

Tuesday, 8/28/12- Teleseminar—Essential Due Diligence in Business Transactions. Presented by the Illinois State Bar Association. 12-1.

September

Friday, 9/7/12- Chicago, ISBA Chicago Regional Office—Child Custody and the Military Family. Presented by the ISBA Family Law Section and the ISBA Military Affairs Committee. All day, exact time TBD (lunch and reception included).

Friday, 9/7/12- Teleseminar—Valuing Closing Held Interests and Effective Planning without Discounts. Presented by the Illinois State Bar Association. 12-1.

Monday, 9/10/12- Webinar—Introduction to Legal Research on FastCase. Presented by the Illinois State Bar Association- Complimentary to ISBA Members. 2:30-3:30.

Wednesday, 9/12/12- Webinar—Advanced Tips for Enhanced Legal Research on FastCase. Presented by the Illinois State Bar Association- Complimentary to ISBA Members. 2:30-3:30.

Thursday, 9/13/12-Saturday, 9/15/12- Itasca, Westin Hotel—8th Annual Solo and Small Firm Conference. Presented by the Illinois State Bar Association. Time TBD.

Tuesday, 9/18/12- Teleseminar—Ethics in Pre-Trial Investigations. Presented by the Illinois State Bar Association. 12-1.

Thursday, 9/20/12- Teleseminar—Tax Planning for the Entrepreneur. Presented by the Illinois State Bar Association. 12-1.

Thursday, 9/20/12- Chicago, ISBA Chicago Regional Office (DNP)—Introduction to Improvisation for Lawyers: Basic Communication Skills for Public Speaking, Teaching and Presenting. Complimentary for ISBA Law Ed Faculty. 9-11; 12-2; 2:30-4:30.

Thursday, 9/20/12- Chicago, ISBA Chicago Regional Office—Introduction to Improvisation for Lawyers: Basic Communication Skills for Attorneys. Presented by the Illinois State Bar Association. 9-11; 12-2; 2:30-4:30. ■