

# Diversity Matters

The newsletter of the Illinois State Bar Association's Diversity Leadership Council

## Competence plus— Why diversity matters

BY VINCENT F. CORNELIUS

I have often heard some variation of the statement, “Diversity shouldn’t be considered just for the sake of diversity.” Admittedly, in my efforts to interpret what is meant by such statements, I am left to read between the lines. Too often it seems that what is being suggested is that the goal of diversity is merely to satisfy a quota or to

*Continued on next page*



Vincent F. Cornelius

## ‘Diversity and inclusion’ in a dynamic world

BY MOHAMMAD IQBAL, ESQ.

### Introduction

The diversity and inclusion ideology was initiated as a tool towards integration and desegregation. However, its rhetoric has changed over time under political and legal scenarios. The word “diversity” has become so muddled by overuse, imprecision, inertia and self-serving intentions that it has lost much of its meaning. To some, “diversity” has

become an empty signifier.<sup>1</sup> For others, the word feels like medicine.<sup>2</sup> This article briefly summarizes the history of diversity ideology and reviews developments in areas of integration, racial desegregation, color-conscious policies and pursuit of color-blind justice during the last half-century.

### Diversity Ideology

Diversity is an ambiguous term;

*Continued on page 6*

Competence plus - Why diversity matters  
1

‘Diversity and inclusion’ in a dynamic world  
1

Legal Authority and judicial oversight of  
Executive Order 13769  
3

The EEOC Strategic Enforcement Plan for  
2017 to 2021  
9

Americans with Disabilities Act: Is your  
Website Accessible?  
11

Are hiring practices targeting college  
students discrimination under the ADEA?  
13

Inclusion: A Generation of Progress  
14

Diversity Committee updates  
15

Airport attorneys  
19

Chair’s column  
20

Julie Johnson – Selected for CBA, Alliance  
for Women, Alta May Hulett Award  
21

Race, ethnicity affect kids’ access to  
mental health care, study finds  
22

## Competence plus - Why diversity matters

CONTINUED FROM PAGE 1

enhance the optics.

What can also be reasonably interpreted is that the people who say this too often believe that meaningful and substantive contribution likely may not come from a person who represents diversity. I am not surprised to find that the people who wear their biases with pride have such views. I am, however, still surprised when I hear such statements from people I know to be well-intentioned, well-informed, accomplished, and even likable. Perhaps this is what is most troubling.

Many times I have heard that the available board position, committee membership or employment position is too important, or it addresses issues that are too complex, for diversity to be a significant consideration in determining who will occupy critical positions. I have heard this more often than I'd like to admit. I cringe every time I hear it, because I understand that inherent in such statements is the presupposition that diversity and competence are mutually exclusive.

I've come to recognize this conundrum as an opportunity. I see it as an opportunity to confront such views and statements in the moment they are shared, but in a manner that educates, without humiliating the person making the offending remark. Oddly enough, to do so in any other manner would create yet another challenge. My frustration with the insensitive statement might become more of an issue than the actual insensitive statement. Go figure. While the words, "We should not pursue diversity just for the sake of diversity," feel insensitive and unenlightened, the person making the statement is frequently unaware that the words are even offensive. This may itself be the best evidence of the need for diversity.

We are all limited by the nature, depth and breadth of our experiences—and

the nature, depth and breadth of what we are willing to learn. What we learn in life is dependent on what we seek out, and what information rains on us, sometimes by chance. So if a person has not been exposed to the benefits of diversity or has not intentionally sought an understanding of the importance of diversity, he or she may unwittingly embrace a less enlightened perspective. This applies equally to business organizations, social, political, and every other kind of organization.

In all fairness, it is also true that simply legislating token membership or participation can never truly achieve the goal of diversity. Token membership and token participation do not benefit the organization or the diverse member. Token membership and token participation will more likely lead to unanticipated setbacks in the area of diversity, ultimately causing more harm than the good intended.

Most people are not naturally inclined toward seeking out diversity because there is comfort in being around people whose appearance and perspective affirm our own. We are generally drawn to people who seem to be most like the person we see in the mirror. This tendency brings about an unintended consequence of limiting one's perspective and one's depth of understanding, which are the very things that tend to crowd out suspicion and unenlightenment.

It is well established that diversity and competence can, and do, come in the same person. The pursuit of diversity presents an opportunity to acquire a competent contributor, plus the perspective of person who has lived a different life—a life that has formed a different world view, and a world view that could expand the discussion, and more fully inform the deliberations of an organization. That is why diversity matters. ■

## Diversity Matters

Published at least four times per year.

To subscribe, visit [www.isba.org](http://www.isba.org) or call 217-525-1760.

### OFFICE

ILLINOIS BAR CENTER  
424 S. SECOND STREET  
SPRINGFIELD, IL 62701  
PHONES: 217-525-1760 OR 800-252-8908  
[WWW.ISBA.ORG](http://WWW.ISBA.ORG)

### EDITOR

Sandra M. Blake

### MANAGING EDITOR / PRODUCTION

Katie Underwood

✉ [kunderwood@isba.org](mailto:kunderwood@isba.org)

### ISBA DIVERSITY LEADERSHIP COUNCIL

Cory White, Chair  
Kelli M. Childress, Vice-Chair  
Athena T. Taite, Secretary  
John W. Moore, Ex-Officio  
Thomas A. Bruno  
Sharon L. Eiseman  
Hellin Jang  
Julie A. Johnson  
Emily N. Masalski  
Mary L. Milano  
KiKi M. Mosley  
Raymond W. Prather  
Shannon M. Shepherd  
Letitia Spunar-Sheats  
Inez Toledo  
David A. Weder  
Melissa L. Burkholder, Staff Liaison

DISCLAIMER: This newsletter is for subscribers' personal use only; redistribution is prohibited. Copyright Illinois State Bar Association. Statements or expressions of opinion appearing herein are those of the authors and not necessarily those of the Association or Editors, and likewise the publication of any advertisement is not to be construed as an endorsement of the product or service offered unless it is specifically stated in the ad that there is such approval or endorsement.

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

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

Postmaster: Please send address changes to the Illinois State Bar Association, 424 S. 2nd St., Springfield, IL 62701-1779.

# Legal Authority and judicial oversight of Executive Order 13769

BY MATT TIMKO

---

**President Donald Trump's Executive Order 13769** (hereafter EO 13769) immediately led to criticism, confusion, and court action. Using his power to “take Care that the laws be faithfully executed,”<sup>1</sup> President Trump issued EO 13769 “to protect Americans” by ensuring “that those admitted to this country do not bear hostile attitudes toward it and its founding principles.”<sup>2</sup> To achieve this purpose, EO 13769 uses the Immigration and Nationality Act (hereafter INA or the Act),<sup>3</sup> and existing U.S. Department of Homeland Security modifications, to ban nationals from certain “countries or areas of concern”<sup>4</sup>: Iraq and Syria,<sup>5</sup> Iran and Sudan,<sup>6</sup> and Libya, Somalia, and Yemen.<sup>7</sup>

This article will address the legal challenges brought against EO 13769 and clarify how practicing attorneys should respond to similar procedural and legal issues. It will begin by summarizing the legal authority behind EO 13769, how courts have treated the EO, and end with a summary of what attorneys will need to be aware of going forward.

## Legal Authority for EO 13769

According to *Youngstown Sheet and Tube v. Sawyer*, “the President’s power, if any, to issue [an executive] order must stem either from an act of Congress or from the Constitution itself.”<sup>8</sup> Since no clause in the Constitution gives the President power over immigration, the authority for EO 13769 must come from a federal statute: in this instance, said authority comes from the Immigration and Nationality Act.<sup>9</sup> Once statutory law allows the President to act, administrative law presents the President with a great amount of leeway to direct federal agencies.

### A. Immigration and Nationality Act

Under the INA, standards have been established to disqualify certain persons from entering the country. Under the

current version of the INA, section 1182 identifies the criteria by which *individual* immigrants will not be granted visas, including those involved in terrorist activities.<sup>10</sup> Likewise, under another section of the Act, all citizens from any country may be disqualified from obtaining visas; Iraq and Syria are named specifically, but the section gives the Secretaries of Homeland Security and State the authority to designate any other country whose citizens will be banned. The criteria for such a decision is defined as when “the government of [the designated country] has repeatedly provided support of acts of international terrorism.”<sup>11</sup>

Finally, there are two catchall provisions in the statute allowing the Executive Branch to designate other banned countries. The first is when the Secretaries of Homeland Security and State decide “the presence of an alien in the country or area increases the likelihood that the alien is a credible threat to the national security of the United States” or when “a foreign terrorist organization has a significant presence in the country or area.”<sup>12</sup> Secondly, the President may directly limit “the entry of any aliens or of any class of aliens into the United States [who] would be detrimental to the interests of the United States” through “proclamation, and for such period as he shall deem necessary” which will “suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate.”<sup>13</sup> This last clause is the primary authority by which EO 13769 was issued.

### B. EO 13769 and the Bureaucracy

Executive orders are only binding on the agencies specified within the order. EO 13769 directs the Secretary of Homeland Security primarily, the Secretary of State secondarily (which are the relevant departments identified in the INA),<sup>14</sup>

and the Attorney General as consultant.<sup>15</sup> While the EO commences action, it is the administrative agencies which perform the actual implementation of the EO. This was established in the common law executive authority, and as the federal bureaucracy grew, the U.S. Supreme Court recognized the power of the chief executive to direct federal agencies.

In *Myers v. U.S.* the Supreme Court identified part of the President’s Article II powers is that “[in] all such cases, the discretion to be exercised is that of the President in determining the national public interest and in directing the action to be taken by his executive subordinates to protect it.”<sup>16</sup> The Court recognized that the buck stops with the President, but that lower executive officials must be the “boots on the ground.” The court elaborated that “[the] ordinary duties of officers prescribed by statute come under the general administrative control of the President by virtue of the general grant to him of the executive power, and he may properly supervise and guide their construction of the statutes under which they act.”<sup>17</sup> Executive orders are the method by which federal agencies execute federal laws.

Administrative agencies and the civil servants within them take the EO and act to fulfill the President’s desired goal. Rarely, agencies will not comply: in EO 13769 acting Attorney General Sally Q. Yates directed Department of Justice lawyers to “not present arguments in defense of the Executive Order [13769]” since she was “not convinced... that the Executive Order is lawful.”<sup>18</sup> In response, President Trump immediately fired Yates<sup>19</sup> and replaced her with Dana J. Boente, who immediately rescinded the original directive, and directed “the men and women of the Department of Justice to do our sworn duty and to defend the lawful orders of our President.”<sup>20</sup> Likewise, it is rare for courts to accept legal challenges to executive orders,

and the court generally defers. However, courts do have the power to determine whether an EO is a proper construction of the relevant statute.

## Judicial Oversight

Immediately, there were legal challenges to implementation of the EO. Since federal courts have jurisdiction over federal Constitutional issues,<sup>21</sup> all the challenges were brought to federal courts in various districts. It is important to note that none of these challenges is a substantive challenge to the EO itself, but rather they are procedural challenges for injunctive relief or temporary restraint to suspend implementation the EO while substantive litigation goes forward. While there is very little precedent for federal courts ruling against EOs, EO 13769 has met with significant judicial interference.

### A. New York, Massachusetts, and California

After implementation, two Iraqi immigrants were detained and sued the President and Secretaries of State and Homeland Security. The judge in the case ordered an injunction against deportation, citing a likely violation of all similarly situated persons' due process and equal protection rights under the U.S. Constitution.<sup>22</sup> While this limited ruling did not go so far as to rule on the Constitutional issues, or even let any immigrant under the EO into the country, the ruling did recognize that a cause of action based on the constitutional violations would "have a strong likelihood of success."<sup>23</sup> The District of Massachusetts also granted a stay on the Due Process and Equal Protection Claims,<sup>24</sup> and the California case also made a similar ruling, citing the likely success of bringing claims for violation of the establishment clause as well.<sup>25</sup>

### B. Virginia

A federal court in Virginia ordered a seven day restraining order against the Customs and Border Protection Agency to stop forcing incoming immigrants to give up their green cards before redirecting them out of the country, so that any affected individuals could present any legal challenges or defenses to their deportation.<sup>26</sup> In explaining the order, Judge Leonie Brinkema claimed "It's quite clear

not all the thinking went into it that should have gone into it. As a result, there was chaos."<sup>27</sup> While the order was temporary (expired on February 4, 2017) and only applied to "legal permanent residents," the judge's reasoning identified criticism that the order was too hastily implemented; a criticism recognized and addressed by the Secretary of Homeland Security, John Kelly.<sup>28</sup> In light of this recognition by both parties, it is likely that challenges along the same rationale will persist.

### C. Washington, Minnesota and the Ninth Circuit

The most successful challenge so far has been the one made by Washington State in challenging the EO. Washington argued the same Constitutional violations as the states above, and further argued the EO fundamentally hurt the state universities and businesses.<sup>29</sup> Similarly, Washington used both candidate and President Trump's public statements as evidence of his motivation for the travel ban.<sup>30</sup> The federal judge granted the temporary restraining order (TRO) on implementing the EO, on the grounds<sup>31</sup> that Washington is likely to (1) succeed on the merits in a cause of action, (2) suffer irreparable harm without relief, (3) balance of equities favors the state, and (4) relief is in the public's interest,<sup>32</sup> as well as equity being in their favor by establishing "at least serious questions" as to the merits of their claim.<sup>33</sup> He went beyond the courts above in granting the TRO "on a nationwide basis" since "partial implementation of the Executive Order 'would undermine the constitutional imperative of 'a *uniform* Rule of Naturalization' and Congress's instruction that 'the immigration laws of the United States should be enforced vigorously and *uniformly*.'"<sup>34</sup>

The U.S. immediately made an emergency appeal to the Ninth Circuit Court of Appeals, and the court granted; Minnesota joined Washington in this appeal.<sup>35</sup> Arguments were held very quickly and the court ruled (within a week of the original District Court order) to uphold the ban. In the ruling, the court held that Washington was likely to succeed on their claims that EO violates the Due Process and religious rights of states' citizens,<sup>36</sup> that

the government did not meet the burden of proving the restraining order is outside of judicial power to enforce and that the order represents irreparable harm to separation of powers doctrine,<sup>37</sup> and that public policy demands the order remain in effect.<sup>38</sup>

It is almost certain that this case will be taken up by the U.S. Supreme Court, which currently has only eight members. In the result of a 4-4 decision, the holding of the lower court will stand and the injunction will remain in place while the parties litigate the substance of the states' claims.

## What Attorneys Need to Know

While many jurisdictions have ruled on different points of law, and many more cases are yet to come, the Ninth Circuit's ruling as well as the trend of rulings in the various District Courts, presents two important issues that immigration and government attorneys will need to keep in mind, as well as two issues with constitutional implications.

### A. Due Process and Religious Claims have Merit

Every order for relief has been granted on the grounds that the EO creates some due process and religious freedom violation where those affected will succeed on the merits in a cause of action. The ubiquity of this rationale in these orders points to a strong likelihood that all suits against the EO will claim these violations. At the very least, federal courts have said outright that it is likely a due process violation exists when incoming people are immediately deported and their green card is seized. When representing clients affected by the EO, these Constitutional claims are the threshold issue by which any cause of action will have a prayer of success.

### B. Business and Educational Interests have some Merit

Washington's argument that the EO negatively affected the state businesses and universities was accepted by the Eastern District of Washington as the primary reason the court granted the nationwide stay on the EO's implementation.<sup>39</sup> Beyond the Constitutional questions, the success of this argument suggests that economic and educational issues are outside of the INA's grant of power, and therefore would

be outside the EO's authority. Beyond these procedural requirements, these bedrock American principles represent further avenues for attorneys to successfully challenge the EO, as well as U.S. Attorney's seeking to defend any similar EO in the future.

### C. Checks and Balances

In an unusual move, the Eastern District of Washington and the Ninth Circuit ruled against the Executive Order, claiming the EO went beyond the authority granted to the President in the INA. According to the Congressional Research Service, "the limited case law addressing exercises of presidential authority under Section [1182(f)] also supports the view that this provision of the INA confers broad authority to suspend or restrict the entry of aliens."<sup>40</sup> While presidential authority is well established in both administering executive orders and in Section 1182(f) of the INA, it is not unlimited. It is not unprecedented for (1) courts to review the validity of an EO or (2) overrule an EO when it goes beyond the President's sphere of power. However, the completeness with which the courts have acknowledged potential constitutional violations is certainly unusual. Depending on the final disposition of the case, these cases may provide future precedent for challenging an EO or any other executive action.

### D. Political Statements

Something that is without precedent is the Eastern District and Ninth Circuit Courts' acknowledgment of statements made by candidate Trump, before he held any Executive Power at all. In the Ninth Circuit decision, the court recognized the State's "evidence of numerous statements made by the President about his intent to implement a "Muslim Ban"... the Executive Order was intended to be that ban... [and] it is well established that evidence of purpose beyond the face of the challenged law may be considered" when evaluating the Constitutional claims here.<sup>41</sup> This seems at odds with other Circuit Court rulings,<sup>42</sup> including a Ninth Circuit Court,<sup>43</sup> which have specifically rejected the use of political statements as evidence of intent. Whether this precedent goes beyond the Ninth Circuit is unclear, but currently the door

has been open, and may present litigious issues when candidates make statements in the course of running for office.

### Conclusion

Executive Order 13769 has led to many legal results, both expected and unexpected, in the short time frame from when it was passed. Recognizing the uncertainty of the EO in the courts, the DOJ Brief filed in the Ninth Circuit, stating that "rather than continuing this litigation, the President intends in the near future to rescind the Order and replace it with a new, substantially revised Executive Order to eliminate what the panel erroneously thought were constitutional concerns."<sup>44</sup> Even with revisions, it is likely that court challenges, protests, and questions about immigration status will continue. As these issues are raised across the country, attorneys will need to be prepared to litigate them, and the case history provides the requisite background for attorneys to be successful. ■

1. U.S. Const. art. II, § 3, cl. 4.
2. Exec. Order No. 13769, 82 Fed. Reg. 8977 (Feb. 1, 2017).
3. Immigration and Nationality Act, 8 U.S.C. §§ 1101-1537 (2015).
4. 8 U.S.C. § 1187(a)(12)(D).
5. 8 U.S.C. § 1187(a)(12)(A)(i)(I).
6. U.S. Dept. of Homeland Sec., 2016 WL 245644 (D.O.J.), United States Begins Implementation of Changes to the Visa Waiver Program (Jan. 21, 2016).
7. U.S. Dept. of Homeland Sec., 2016 WL 641384 (D.O.J.), DHS Announces Further Travel Restrictions for the Visa Waiver Program (Feb. 18, 2016).
8. *Youngstown Sheet and Tube v. Sawyer*, 343 U.S. 579, 585 (1952).
9. 8 USC § 1182(f).
10. 8 USC § 1182(a)(3)(B).
11. 8 USC § 1187(a)(12)(B).
12. 8 USC § 1187(a)(12)(D).
13. 8 USC § 1182(f).
14. *Id.*
15. Exec. Order No. 13769, 82 Fed. Reg. at 8980-81.
16. *Myers v. United States*, 272 U.S. 52, 134 (1926) (emphasis added).
17. *Myers*, 272 U.S. at 135 (emphasis added).
18. Guidance letter from Sally Q. Yates, acting Attorney General of the United States, to Department of Justice attorneys (Jan. 30, 2017) (held by N.Y. TIMES available at <https://www.nytimes.com/interactive/2017/01/30/us/document-Letter-From-Sally-Yates.html>).
19. Mark Landler, Matt Apuzzo, and Eric Lichtblau, *Trump Fires Justice Chief Who Defied Him, Acting Leader Would Not Defend Order on*

- Immigration*, N.Y. TIMES, Jan. 31, 2017, at A1.
20. U.S. Department of Justice, DOJ 17-131, Acting Attorney General Boente Issues Guidance to Department on Executive Order (Jan. 30, 2017).
  21. 28 U.S.C. § 1331.
  22. *Darweesh v. Trump*, No. 17 Civ. 480 (AMD), 2017 WL 388504 (E.D.N.Y., Jan. 28, 2017).
  23. *Darweesh*, No. 17 Civ. 480 at 1.
  24. *Tootkaboni v. Trump*, No. 17-cv-10154, 2017 WL 386550 (D. Mass., Jan. 29, 2017).
  25. *Vayeghan v. Kelly*, Case 17-00702, 2017 WL 396531 (C.D. Cal. Jan. 29, 2017).
  26. *Aziz v. Trump*, No. 1:17-cv-116, 2017 WL 386549 (E.D. Va. Jan. 28, 2017).
  27. Josh Gerstein, *Federal Judge Lets Virginia Challenge Trump's Vetting Order*, Politico (Feb. 3, 2017, 11:55 AM EST), <http://www.politico.com/story/2017/02/trump-travel-ban-virginia-234609>.
  28. Julia Edward Ainsley, *Homeland Security Chief Regrets Rapid Rollout of Trump Travel Ban*, Reuters (Feb. 7, 2017, 4:06 PM EST), <http://www.reuters.com/article/us-usa-trump-immigration-kelly-idUSKBN15M1UX>.
  29. Complaint for Declarative and Injunctive Relief at 3-4, 8-13, *Washington v. Trump*, No. C17-0141JLR (E.D. Wash. Jan. 30, 2017).
  30. Complaint for Declarative and Injunctive Relief at 6-8, *Trump*, No. C17-0141JLR.
  31. *Washington v. Trump*, No. C17-0141JLR, 2017 WL 591360 at 2 (W.D. Wash. Feb. 3, 2017).
  32. Citing the federal standard set in *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008).
  33. Citing the Ninth Circuit standard in *All for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011).
  34. *Trump*, No. C17-0141JLR at 5 (citing *Texas v. United States*, 809 F.3d 134, 155 (5th Cir. 2015), emphasis in original).
  35. *Washington v. Trump*, --- F.3d ---, No. 17-35105, 2017 WL 526497 (9th Cir. Feb. 9, 2017).
  36. *Trump*, No. 17-35105 at 24, 26.
  37. *Id.* at 18, 27.
  38. *Id.* at 26-29.
  39. *Trump*, No. C17-0141JLR at 4-5.
  40. (Name Redacted), Cong. Research Serv., R44743, Executive Authority to Exclude Aliens: In Brief 3 (2017).
  41. *Trump*, No. 17-35105 at 25.
  42. *Phelps v. Hamilton*, 59 F.3d 1058, 1068 (10th Cir. 1995).
  43. *McGinest v. GTE Serv. Corp.*, 360 F.3d 1103, 1138 (9th Cir. 2004).
  44. Supplemental Brief on *En Banc* Consideration at 4, *Washington v. Trump*, --- F.3d --- (9th Cir. 2017) (No. 17-35105).

This article was originally published in the Kane County Bar Association's *Bar Briefs* April 2017 Diversity issue.

Matt Timko is the Academic Technologies and Outreach Services Librarian, and an Assistant Professor at the Northern Illinois University College of Law. He graduated from Loyola University Chicago School of Law with a J.D. and LL.M. in Child and Family Law, and is an inactive member of the Illinois Bar. He is a member of the Kane County Bar Association, the Chicago Bar Association and the Chicago Association of Law Libraries.



## 'Diversity and inclusion' in a dynamic world

CONTINUED FROM PAGE 1

however, it provokes images of racially-biased history of the United States and the measures taken to overcome the bias. Diversity generally means “embracing differences,” in contrast to racism which is defined as “inability or refusal to accept people who are different from us.”<sup>3</sup>

The “Embrace Diversity” slogan generally means promoting desegregation, integration and inclusion of minorities and women in a group; and opening the job, business and educational opportunities to, and eliminating social and economic disadvantages for, all. The notion of diversity divides Americans into two groups: dominant or default group; and the other or minority group. The default group is presumed to have societal power and considered to have no diversity; the other group provides the level or numerical degree of diversity to the integrated group or entity.<sup>4</sup> The “other” group includes everyone else, presumed to be the victim -- having suffered or is presently suffering at the hand of the dominant group. There is divergence of opinions about “diversity.”

In defining diversity, the native-born white heterosexual males are generally considered as the dominant group.<sup>5</sup> The term “white” generally means a Euro-American. When diversity is considered on racial lines, whiteness is considered as the default, and no race or identity is attached to it. However, all others are given a racial identity, such as African-Americans, Latinos, Asians, Natives, etc.<sup>6</sup> White is a category that evades race, identity or color while others are considered as “colored.” For example, in school curricula, one month is reserved for the study of black history while the rest of the year is for just plain history.<sup>7</sup> By embracing the diversity concept, all minorities are considered equal and the same to each other on one hand, and whites or Euro-Americans as a homogenous mass on the other. Critics question whether the diversity ideology based on group rights superseding individual’s rights is a proper tool to

achieve a color-blind and gender-blind society, free of discrimination.<sup>8</sup> This article summarizes the growth and challenges it has faced.

### Affirmative Action and Equal Opportunity Programs

In the wake of the long history of segregation directed primarily against African Americans, the U.S. Supreme Court in its landmark decision in *Brown v. School Board of Education* prohibited state-mandated segregation in schools.<sup>9</sup> There was considerable resistance to the integration ruling from a segment of the population that considered whiteness as a property interest.<sup>10</sup> Bowing to the resistance, the Court took a step back in *Brown II*, requiring only a “prompt and reasonable start towards full compliance.”<sup>11</sup>

Recognizing the need for a policy to remedy segregation prevalent in the society, President John F. Kennedy signed an executive order in 1961 ordering that federally funded projects “take *affirmative action* to ensure that applicants are employed, and employees are treated during employment, without regard to their race, creed, color, or national origin.”<sup>12</sup> This was the first time the term “affirmative action” was used in an executive order. The 1964 Civil Rights Act made it illegal for an organization to engage in employment discrimination on the basis of race, sex, color, and religion.<sup>13</sup> A year later, President Johnson introduced the term “equal opportunity” in an executive order:

It is the policy of the Government of the United States to provide *equal opportunity* in Federal employment for all qualified persons, to prohibit discrimination in employment because of race, color, religion, sex or national origin, and to promote the full realization of equal employment opportunity through a positive, continuing program in each executive

department and agency. The policy of *equal opportunity* applies to every aspect of Federal employment policy and practice.<sup>14</sup>

Pursuant to the Executive Order, affirmative action was initiated in 1965. It consisted of government-mandated or voluntary programs and activities undertaken specifically to provide equality of opportunity to minorities and white women who had been previously confined to menial jobs.<sup>15</sup> However, the white community perceived the program as preferential treatment, quotas, and minority group rights, and claimed that the program did not help those who were truly “disadvantaged.” Thus, the program became unpopular and gradually morphed into a charged and divisive topic. Several lawsuits were brought in over the constitutionality of racial preferences in the workplace, and against universities over consideration of the students they accepted.<sup>16</sup>

### Color-Blind and Sex-Blind Policy

In 1984, Ronald Reagan was elected on the slogan of smaller government and color-blind justice. The smaller government implied, among other things, curtailment of federal enforcement of civil rights laws.<sup>17</sup>

The Reagan administration was opposed to the affirmative action requirements of Executive Order 11246 and contemplated modifying it to prohibit employers from using “quotas, goals, or other numerical objectives, or any scheme, device, or technique that discriminates against, or grants any preference to, any person on the basis of race, color, religion, sex, or national origin.”<sup>18</sup> President Reagan pursued an ideal of color-blind law in which all individuals are treated equally, regardless of race. Reagan, marking the first national holiday honoring the memory of Dr. Martin Luther King Jr., affirmed his policy to achieve a color-blind society:

We are committed to a society in which all men and women have equal

opportunities to succeed and so we oppose the use of quotas. We want a color-blind society, a society that, in the words of Dr. King, judges people 'not on the color of their skin, but by the content of their character.'<sup>19</sup>

According to President Reagan, the only way to achieve a color-blind society was to follow color-blind, and not color-conscious, policies. Reagan believed in open competition and that the federal civil rights law guaranteed equality of opportunity. But he was opposed to "equal results" which affirmative action sought. Concerning the reverse discrimination, President Reagan wanted the government to "not cast the blame on individuals for the sins of their parents." According to Reagan, the remedy for past injustices was to "stop injustice and not compound it with additional injustice."<sup>20</sup>

While the Reagan Administration tried to revise or reverse Executive Order 11246 towards the ideal of color-blind justice, the Supreme Court affirmed the racial and gender preferences and quotas in employment in several cases. For example, in 1990, the Court ruled in *Metro Broadcasting v. Federal Communications Commission* that the government policies that gave an advantage to minority-race persons and businesses in securing a license to operate a television station were substantially related to the federal interest in promoting diversity.<sup>21</sup> In *Johnson v. Transportation Agency*, the Court ruled that racial and gender quotas can be used to rectify the lingering effects of the past societal discrimination and to overcome underrepresentation by minorities and white women in the workplace.<sup>22</sup> However, in *Adarand Constructors v. Pena*, the Court sharply curtailed its support for affirmative action.<sup>23</sup>

In *Adarand*, Adarand Constructors, Inc. submitted the lowest bid as a subcontractor for a federal project. Under the terms of the federal contract, the prime contractor would receive additional compensation if it hired small businesses controlled by "socially and economically disadvantaged individuals."<sup>24</sup> The clause declared that "the contractor shall presume that socially and economically disadvantaged individuals

include Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, and other minorities."<sup>25</sup> Another subcontractor, certified as a minority-owned business, was awarded the contract; Adarand was not. The prime contractor would have accepted Adarand's bid had it not been for the additional payment for hiring the minority-owned business. Adarand sued, arguing that the presumption of disadvantage based on race alone, and consequent allocation of favored treatment, is a discriminatory practice that violates the equal protection principle of the Due Process Clause of the Fifth Amendment. The Supreme Court ruled that race is not a sufficient condition for presumption of disadvantage and award of favored treatment, and that all race-based classifications must be judged under the strict scrutiny standard. The Court also ruled that the proof of past injury does not in itself establish the suffering of present or future injury.<sup>26</sup>

## Racial Balancing

No federal legislation or guidelines mandated affirmative admission in universities. However, in the 1960s, the black violence in the nation's cities that spurred the affirmative action programs also fostered an interest among the universities to take initiative and reach out to African Americans and other disadvantaged groups in an attempt to integrate them into the mainstream society.<sup>27</sup> In addition, a significant portion of the financial aid was reserved for the four minority groups and the minority students were considered presumptively eligible while white or Euro-American students would have to demonstrate their disadvantage. The universities contended that the affirmative admission policy benefitted the entire student body and their professors by supplying diversity.<sup>28</sup>

While the universities justified their preferential admission policies, some white students who were not let in despite having above average scores, did not agree with the policies. They filed lawsuits. Until the 1970s, race conscious assignment policies and voluntary desegregation initiatives were not considered invidious

discrimination.<sup>29</sup> However, in *Regents of the University of California v. Bakke*, the Supreme Court applied strict scrutiny on preferential admission policies.<sup>30</sup> In *Bakke*, the University of California at Davis (UC Davis) had decided to allow race and ethnicity as factors in admitting students under the policy of "special action" admission, where the standards could be lower. The school had set aside 16 percent of the total seats for the applicants from four disadvantaged groups and lowered the admission criteria for these special admittees.

Allan Bakke, a Euro-American, applied for admission. His application was rejected, despite his having scores and grades higher than both average special and regular admittees. Other well-qualified Euro-American students were also turned away, but it was Bakke who sued. He cited a violation of the Fourteenth Amendment's guarantee of equal protection of the laws and violation of Title VI of the Civil Rights Act of 1964, which prohibited discrimination on the bases of race, national origin and religion by any program or activity receiving federal financial aid.

## Nation of Minorities

The trial court ruled in *Bakke* that while UC Davis's admission plan was unconstitutional, plaintiff Bakke did not show that his race kept him from getting admission into the medical school. Both parties appealed. The Supreme Court of California ruled that the burden is upon the state to show that Bakke's application was rejected for reasons other than his race. The UC Davis appealed to the U.S. Supreme Court. The Court ruled that UC Davis's admission policy was "undeniably a classification based on race and ethnic background."<sup>31</sup> The Court ruled that Bakke should be admitted in the medical school, but that the university may use diversity as one of the plus-factors in admission.<sup>32</sup> Justice Powell writing for the Court stated that:

[The] purpose of helping certain groups . . . perceived as victims of 'societal discrimination' does not justify a classification that imposes

disadvantages upon persons like respondent, who bear no responsibility for whatever harm the beneficiaries of the special admission program are thought to have suffered.<sup>33</sup>

Justice Powell addressed the issue of pitting one race against the other, fostered by racial preferences. Rejecting “two-class theory,” he stated that “the United States had become a nation of minorities. Each had to struggle—and to some extent struggles still—to overcome the prejudices not of a monolithic majority, but a ‘majority’ composed of various minority groups.”<sup>34</sup> He pointed out that after all race- and nationality-based preferences are drawn, the only “majority left would be a new minority of white Anglo Saxon Protestants.”<sup>35</sup>

## Racial Balancing

With *Bakke* as precedent, *Parents Involved in Community Schools v. Seattle School District No. 1* was decided in 2007.<sup>36</sup> In *Parents Involved*, the school district used racial balancing to avoid over-subscription by one race in any of its 10 high schools. The district classified the students as white or non-white. The non-white category included all other races and ethnicities. Race was used as one of the tie-breakers for the race-balancing. Justice Roberts writing for the plurality decision of the Court ruled that the school district’s policy was unconstitutional and that strict scrutiny is the proper standard of review for race-conscious assignment policies which allocate children to public schools on the basis of race, and that the principle of our Constitution is color-blind.<sup>37</sup>

## Summary

This article presents a brief review of the diversity and inclusion ideology and the barriers and challenges it has faced in the last 60 years. In contrast to the affirmative action program, diversity is a passive ideology, since it does not challenge the status quo. To some, “diversity” has become a code word and lacks specific meaning. Some consider it “skin deep” and analogize it to taking medicine. However, the pursuit of diversity and its rhetoric is

ubiquitous in the American workplace. Capitalism is color-blind. In this respect, an entity should use diversity as a tool to get the best workforce available for its business. Regarding the constitutionality of the diversity ideology, race-balancing, presumption of disadvantage based on race alone, and consequent allocation of favored treatment, the Supreme Court, in its most recent decisions, has held that strict scrutiny is the proper standard of review for race-conscious policies. ■

1. Jeff Chang, *Who We Be: The Colorization of America* (St. Martin’s Press.2014).

2. Anna Holmes, *Has ‘Diversity’ Lost Its Meaning?*, N.Y. TIMES MAGAZINE, Oct. 27, 2015, available at [http://www.nytimes.com/2015/11/01/magazine/has-diversity-lost-its-meaning.html?\\_r=0](http://www.nytimes.com/2015/11/01/magazine/has-diversity-lost-its-meaning.html?_r=0)

3. Walter Benn Michaels, *The Trouble with Diversity – How we Learned to love Identity and ignore Inequality*, at 3 (Metropolitan Books 2006).

4. Holmes, *supra* note 2.

5. Holmes, *supra* note 2.

6. Laila Lalami, *The Identity Politics of Whiteness*, N.Y. TIMES MAGAZINE, Nov. 21, 2016, available at [http://www.nytimes.com/2016/11/21/magazine/the-identity-politics-of-whiteness.html?\\_r=0](http://www.nytimes.com/2016/11/21/magazine/the-identity-politics-of-whiteness.html?_r=0)

7. Lalami, *supra* note 6.

8. Nicholas Laham, *The Reagan Presidency and the Politics of Race: In Pursuit of Colorblind Justice and Limited Government* (Praeger 1998).

9. *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954).

10. Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707 (1993).

11. *Brown v. Sch. Bd. of Educ. II*, 349 U.S. 294 (1955).

12. President John F. Kennedy, Exec. Order No. 10925 (1961) (emphasis added).

13. 42 U.S.C. § 2000d *et seq.*

14. President Lyndon B. Johnson issued Executive Order 11375—Amending Executive Order No. 11246 of September 24, 1965, Relating to Equal Employment Opportunity, 1967 (emphasis added).

15. Laham, *supra* note 6, at 31.

16. *Id.*

17. *Id.*

18. Laham, *supra* note 6, at 77, *et seq.*

19. Laham, *supra* note 6, at 75 (quoting President Reagan’s radio address of Jan. 18, 1986).

20. Laham, *supra* note 6, at 89 (quoting President Reagan, *Public Papers of the Presidents of the United States*, 1986).

21. *Metro Broad., Inc. v. Fed. Comm’n Comm’n*, 497 U.S. 547, 564–65 (1990), *overruled by Adarand Constructors v. Pena*, 115 S. Ct. 2097 (1995).

22. *Johnson v. Transp. Agency*, 480 U.S. 616 (1987).

23. *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200 (1995).

24. *Id.* at 205.

25. *Id.*

26. *Id.* at 210.

27. John D. Skrentny, *The Minority Rights Revolution*, at 166 (2004).

28. Skrentny, *supra* note 27, at 171.

29. For example, a federal court allowed the universities’ preferential treatment of the minorities if the state could show substantial interest in preferences and that no less objectionable alternative existed. *Alevy v. Downstate Med. Ctr.*, 348 N.E. 2d 537 (N.Y. 1976)

30. *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265 (1978).

31. *Id.* at 289.

32. *Id.*

33. *Id.* at 310.

34. *Id.* at 292.

35. *Id.* at 296.

36. *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 127 S. Ct. 2738 (2007)

37. *Id.*

This article was originally published in the Kane County Bar Association’s *Bar Briefs* April 2017 Diversity issue.

Mohammad “Mo” Iqbal, Esq. received his J. D. from Northern Illinois University, College of law, L.L.M. from John Marshall Law School, MBA from the University of Chicago and Doctor of Science degree in Civil Engineering from Washington University at St. Louis. Previously, he has served as General Counsel of Walker Parking Consultants/Engineers, Inc. He may be reached at [mi@iqbalgroup.us](mailto:mi@iqbalgroup.us).



**ILLINOIS STATE  
BAR ASSOCIATION**

**Now Every Article Is  
the Start of a Discussion**

If you’re an ISBA section member, you can comment on articles in the online version of this newsletter

Visit  
**WWW.ISBA.ORG**  
to access the archives.



# The EEOC Strategic Enforcement Plan for 2017 to 2021

BY NOAH A. FRANK, ESQ.

---

**A month before the Presidential election**, the U.S. Equal Employment Opportunity Commission (EEOC) quietly released its updated Strategic Enforcement Plan (SEP) for 2017-2021.<sup>1</sup> The SEP highlights enforcement priorities and alerts employers to areas most likely to attract the EEOC's investigative eye, including the types of charges that the EEOC is most likely to litigate on a complainant's behalf.

## The Dynamic 2017-2021 SEP

The EEOC recognizes that employment law is continuously developing and that related practices are continuously evolving. As a result, this SEP is intended to reflect current issues. This new five-year SEP (which remains in effect until superseded, modified or withdrawn by vote of a majority of members of the Commission) emphasizes:

- 1. Eliminating Barriers in Recruitment and Hiring.** As with the prior SEP, this priority includes exclusionary policies and practices such as “channeling or steering” persons into particular positions due to a protected trait (e.g., race, religion, gender, restrictive application processes, and screening tools for employment).
- 2. Protecting Vulnerable Workers – Including Immigrant or Migrant Workers, and Underserved Communities from Discrimination.** The SEP focuses on discriminatory policies including job segregation, unequal pay, and harassment. The updated SEP emphasizes underserved communities – areas where there may be a lack of legal resources or workers are unaware of their rights due to work status, language issues, financial circumstances, and/or work experience.
- 3. Addressing Emerging and Developing Issues.** Despite courts' attempts to rein

in the EEOC, the agency recognizes the following developing issues worthy of particular scrutiny: age and religious discrimination; coverage of LGBT persons under Title VII; disability discrimination, including qualification standards, inflexible leave policies, and temporary workers; accommodating pregnancy-related limitations; issues related to workers engaged on-demand and in the gig economy, including through staffing agencies, and independent contractor relationships; and “backlash discrimination” against Muslim/Sikh/Arab/Middle Eastern/South Asian communities.

- 4. Enforcing Equal Pay Laws.** Previously focused on gender-based discrimination, the EEOC expanded this priority to all protected classes. In light of this, employers may also see claims of willful protected-class discrimination added to wage and hour disputes.
- 5. Preserving the Exercise of Rights under the Law.** The EEOC targets policies and practices that discourage or prohibit individuals from exercising their rights or disrupt the EEOC's investigative or enforcement efforts. This includes vague and overbroad waivers and provisions in settlement agreements that prohibit filing EEOC charges or assisting in the investigation or prosecution of claims. Unlike the prior SEP, this SEP removes “retaliatory actions” due to the EEOC's inconsistent application, shifting the focus to “Significant Retaliatory Practices” that effectively dissuade others from exercising rights (e.g., terminating the HR manager for investigating a complaint to send a message to other employees to not complain in the first place).

## 6. Preventing Systemic Harassment.

The EEOC's focus includes prevention programs (training and outreach) to deter future violations.

The third priority is of particular significance as it may lead to a circuit split. On July 28, 2016, a three-member panel of the Seventh Circuit Court of Appeals in *Hively v. Ivy Tech Community College* held that sexual orientation claims were not cognizable under Title VII.<sup>2</sup> This case originated in Indiana when Vice President Pence was governor and passed a law which allowed businesses, based on religious beliefs, to refuse to provide services to LGBT persons (such as a restaurant refusing to cater a same-sex wedding).<sup>3</sup> Subsequently, the Seventh Circuit vacated the July 28, 2016 decision, and agreed to a rehearing *en banc*, which was heard on November 30, 2016.<sup>4</sup> Until the Seventh Circuit's *en banc* opinion issues, the EEOC's enforcement of LGBT rights under Title VII remains tenuous.

## The \$482 Million Question

Understanding the SEP is important. In fiscal year 2016, the final year of the 2012-2016 SEP, the EEOC secured more than \$482 million for those who alleged discrimination in the workplace – both private and federal – resolving 97,443 open charges.<sup>5</sup> Of these, 1,650 charges were resolved with \$4.4 million recovered for individuals with LGBT sex discrimination charges. For 2013 through 2016, there were 4,000 such charges and \$10.8 million recovered. The EEOC also resolved 139 lawsuits, and filed 86 new lawsuits in 2016 (55 individual suits and 31 with multiple plaintiffs). At the end of 2016, the EEOC had 168 cases on its active docket. And while the EEOC is proud of its work, it is not resting. Indeed, the EEOC needs to justify its work to receive its appropriations

funding – there are no filing fees or other costs to support the EEOC.<sup>6</sup>

## Where Is This Going?

The fate of the EEOC and its SEP remains to be seen. On January 20, 2017, when Republican Donald J. Trump was inaugurated with a Republican Congress, several labor and employment-related politically-appointed seats were vacant, including: U.S. Supreme Court (1 seat); U.S. Department of Labor Secretary; U.S. EEOC (1 of 5 Commissioners & the General Counsel); and National Labor Relations Board (2 of 5 Members, with the General Counsel's term set to expire in November 2017).<sup>7</sup>

On January 25, 2017, President Trump appointed Commissioner Victoria Lipnic to serve as the EEOC Acting Chair, bumping Jenny Yang (serving since 2014) out of that spot.<sup>8</sup> President Barack Obama appointed Commissioner Lipnic for two terms, with the current ending on July 1, 2020. Prior to the EEOC, Commissioner Lipnic was a management-side attorney, and from 2002-2009 served as the U.S. Assistant Secretary of Labor for Employment Standards overseeing Wage & Hour Division, OFCCP, and Office of Workers' Compensation Programs, and OLMS.

As both Commissioners Lipnic and Yang were current Commissioners, a vacancy remains, and it is unlikely that the SEP will be superseded, modified, or withdrawn in the near future based on Commissioner Lipnic's appointment. However, as the General Counsel is responsible for identifying charges that the EEOC should pursue on behalf of the complainants and which cases should be filed in federal district court, this vacancy may result in the EEOC pushing fewer cases beyond the investigation and conciliation framework.

Moreover, it would seem that some of the points of emphasis can be interpreted to conflict or not be in line with President Trump's stated positions on topics such as undocumented workers and transgender rights under Title IX. At this point though, the EEOC continues to operate as usual and has not had any significant changes in how it operates or its Strategic Enforcement

Plan for 2017-2021. ■

1. U.S. EEOC, *Press Release: EEOC Updates Strategic Enforcement Plan* (Oct. 17, 2016), available at <https://www.eeoc.gov/eeoc/newsroom/release/10-17-16.cfm> (last accessed Feb. 7, 2017); U.S. EEOC, *Strategic Enforcement Plan, Fiscal Years 2017 – 2021*, available at <https://www.eeoc.gov/eeoc/plan/sep-2017.cfm> (last accessed Feb. 7, 2017).

2. *Hively v. Ivy Tech Community Coll.*, No. 15-1720, 830 F. 3d 698 (7th Cir. 2016) (as amended Aug. 3, 2016).

3. Ind. Religious Freedom Restoration Act, Ind. Gen. Assembly 2015 Session, Pub. L. 3 (Mar. 26, 2015), available at <https://iga.in.gov/legislative/2015/bills/senate/101#document-92bab197> (last accessed Feb. 7, 2017).

4. *Hively*, No. 15-1720, 2016 WL 6768628 (7th Cir. Oct. 11, 2016); 7th Cir. Ct. of Ap., Public Access to Oral Arg. Recordings, available at <http://media.ca7.uscourts.gov/oralArguments/oar.jsp?caseyear=15&casenumber=1720&listCase=List+case%28s%29> (last accessed Feb. 7, 2017).

5. U.S. EEOC, *Press Release: EEOC Releases Fiscal Year 2016 Enforcement and Litigation Data* (Jan. 18, 2017) available at <https://www.eeoc.gov/eeoc/newsroom/release/1-18-17a.cfm> (last accessed Feb. 7, 2017).

6. U.S. EEOC, *Congressional Oversight*, available at <https://www.eeoc.gov/eeoc/legislative/oversight.cfm> (last accessed Feb. 7, 2017).

7. U.S. Sup. Ct., *Biographies of Current Justices of the Supreme Court*, available at <https://www.supremecourt.gov/about/biographies.aspx> (last accessed Feb. 7, 2017); U.S. DOL, *Office of the Secretary*, available at <https://www.dol.gov/agencies/osec> (last accessed Feb. 7, 2017) (Deputy Assistant Secretary for Operations in the Office of the Assistant Secretary for Administration and Management Edward Hugler began serving as the Acting Secretary of Labor since Jan. 20, 2017); U.S. EEOC, *The Commission and the General Counsel*, available at <https://www.eeoc.gov/eeoc/commission.cfm> (last accessed Feb. 7, 2017); NLRB, *The Board*, available at <https://www.nlr.gov/who-we-are/board> (last accessed Feb. 7, 2017). The author recognizes that these positions may be nominated and confirmed prior to publication.

8. U.S. EEOC, *Victoria A. Lipnic Acting Chair*, available at <https://www.eeoc.gov/eeoc/lipnic.cfm> (last accessed Feb. 7, 2017); U.S. EEOC, *Jenny R. Yang, Commissioner*, available at <https://www.eeoc.gov/eeoc/yang.cfm> (last accessed Feb. 7, 2017).

This article was originally published in the Kane County Bar Association's *Bar Briefs* April 2017 Diversity issue.

Noah A. Frank is an attorney in SmithAmundsen LLC's Labor & Employment Group. He may be reached at [nfrank@salawus.com](mailto:nfrank@salawus.com) or 312-455-3905.



## ILLINOIS BAR FOUNDATION

*At the heart of the ISBA*

### SUPPORT THE ILLINOIS BAR FOUNDATION

Contributions from ISBA members are vital to the success of the IBF's programs.

**Access to Justice Grants**

**Warren Lupel Lawyers Care Fund**

**Post- Graduate Fellowship Program**

More than \$400,000 has been given to support these important programs, this year. Every dollar you contribute makes an impact in the lives of those in need.

*Please consider making a donation to the IBF to improve statewide access to justice.*

# Americans with Disabilities Act: Is your Website Accessible?

BY MICHAEL D. WONG

---

## **In 1990 Congress passed the Americans with Disabilities Act (ADA).<sup>1</sup>**

The ADA was the result of bipartisan action and signed into law by President George Bush. The purpose of the ADA is to provide equal opportunities and prohibit discrimination of individuals with disabilities in employment, transportation and access to public and private services, programs, goods and facilities.<sup>2</sup> Specifically, under Title II and Title III, public agencies and private companies are required to provide equal access to goods, services, facilities, and programs – including but not limited to lodging, recreation, transportation, education, dining and services.<sup>3</sup> In 2008 the ADA was amended to refine and expand the definition of what constitutes a covered “disability.”

Since its inception, the ADA has served to force changes by public entities and private businesses to make their services, goods, facilities and programs more accessible to employees and the public. It has also served to provide more opportunities for those who are disabled and provide protections to those that become disabled. The ADA has been criticized at times for being too stringent in the requirements that must be met regarding public accommodations, but also being too vague. Indeed, this has resulted in a category of lawsuits called “drive-by lawsuits,” in which stores, restaurants and businesses are sued for violations of the ADA, including violations such as a sign being in the wrong spot or height, incorrect door hardware, bathroom dispensers or mirrors being off by a few inches, or a ramp that is off by a few inches or degrees.<sup>4</sup>

Within the past five plus years, ADA public accommodation lawsuits have started alleging accessibility issues with regard to new technology and the internet. Specifically, lawsuits are alleging that public and private entities are violating the

ADA by not having accessible websites. The initial reaction by many public and private entities, which often comes up in pleadings, is that there are no regulations stating what level of accessibility must be provided when using new technology and the internet.<sup>5</sup> Despite this, the United States Department of Justice (“DOJ”) has taken the position that even though it has not issued regulations on the accessibility standard, the ADA should be interpreted to apply to new and developing technologies, including websites.<sup>6</sup> In doing so, the DOJ has expressly recognized that further regulations regarding website related obligations and different technical standards for determining web accessibility are warranted and further guidance will be provided at some point in the future.<sup>7</sup> However, in recognizing that guidance and standards are warranted and needed, the DOJ has taken the position that these types of lawsuits should not be stayed pending the DOJ issuing regulations – in part based on the uncertainty of when such regulation would be issued.

For example, it was highly anticipated that the DOJ was going to issue proposed regulations setting the accessibility standard for state and local government websites under Title II of the ADA in 2016. After taking public comments, instead of issuing the rule, the DOJ issued a Supplemental Advanced Notice of Proposed Rulemaking (SANPRM), seeking further public input on over 100 positions that it was considering taking in the proposed regulations, including input on the costs and benefits of such a proposed rule. The SANPRM imposed an August 8, 2016, deadline for submission of public comments, which was subsequently extended to October 7, 2016. After the comment period closed, the DOJ stated in the federal government’s Unified Agenda that it anticipated issuing a proposed

rule for state and local government websites in July 2017.<sup>8</sup> However, with the new administration’s January 30, 2017, Executive Order on Reducing Regulation and Controlling Regulatory Costs, there is increased doubts over whether the DOJ will issue a proposed rule on website accessibility standards for public entities under Title II.<sup>9</sup> Although no regulations have been issued, all indications are that the standard the DOJ will propose for website accessibility is compliance with Version 2.0 AA of the Web Content Accessibility Guidelines (“WCAG 2.0 AA”) published by the World Wide Web Consortium (“W3C”). The reason for this is that the DOJ currently requires compliance with WCAG 2.0 AA in settlements and the U.S. Architectural and Transportation Barriers Compliance Board (“Access Board”) issued a final rule on January 18, 2017, requiring the websites and electronic content of federal agencies to conform to WCAG 2.0 AA, instead of what was previously recognized as Section 508 website accessibility standard.<sup>10</sup> The Access Board’s final rule became effective March 20, 2017, and compliance will not be required until January 18, 2018.<sup>11</sup>

Compliance with WCAG 2.0 AA requires addressing issues that impact how a website is perceived, operable, understandable and robust. This includes providing text alternatives for non-text content such as pictures, providing captions of audio in videos, presenting content in a meaningful and consistent order across all pages of a website, ensuring contrast ratio between text and background meets a certain standard to make it more visible, images of text are not used (as that inhibits screen readers), and clear headings and labels must be used.

One of the issues that both public entities and private companies are dealing with is that many times their current



websites are not set up to be compliant with WCAG 2.0 AA. Moreover, the cost to “fix” an existing website to be compliant with WCAG 2.0 AA can be more than the cost to design and implement a new website. Indeed, oftentimes public entities and private companies do not know that their website is not accessible, has accessibility issues or is not compliant with WCAG 2.0 AA, until a demand letter is received, they are audited by the DOJ or they are sued. Moreover, some website designers do not take accessibility issues into consideration when designing a website or in discussing website design with a client. Indeed, when faced with this issue or questioned about accessibility, some website designers state that there is no accessibility standard currently required by law, which while technically correct does not mean that the website does not have to be accessible.

As more industries and public entities are targeted by the DOJ and “drive-by” lawsuits for website accessibility compliance, the more it is recognized that websites must meet at least some sort of accessibility standard. Moreover, settling with one adverse party does not protect you from claims by another third-party for the same website accessibility issue. As a result, many public and private entities are moving to “fix” the problem by making their websites accessible, rather than fighting these lawsuits. This in turn, increases the expectations of website designers to include accessibility features from the start. While this is beneficial to disabled individuals, one of the frustrations for disability advocates and attorneys is that these lawsuits are being brought for the proper purposes. For example, the motives of plaintiff firms pursuing these types of claims have been questioned by disabled individuals and the entities that they are suing.<sup>12</sup> Indeed, at least one of the law firms that holds itself out as specializing in pursuing ADA website accessibility claims had a defendant counter-sue it for failing to have a website compliant with WCAG 2.0 AA.<sup>13</sup> Additionally, recently the Independent Bankers Association of Texas, Texas Bankers Association and North Carolina Bar Association have alleged violations of state law, including claims against them

for unauthorized practice of law in a state they are not licensed in and for potentially violating ethics rules regarding soliciting new clients.<sup>14</sup> Thus, while many public and private entities are not opposed to bringing their websites into compliance, they would like to see regulations that would provide a grace period for compliance, during which they would not face the threat of litigation. Until regulations are issued the only way for public and private entities to limit their exposure is to bring their websites into compliance with the currently recognized standard (WCAG 2.0 AA), with the understanding that it could always change...as technology often does. ■

1. 42 U.S.C. § 12101 et seq.
2. 42 U.S.C.A. § 12101.
3. 42 U.S.C.A. § 12132 and 42 U.S.C.A. § 12182.
4. CBS News, What’s a “drive-by lawsuit”?, (Dec. 4, 2016), available at <http://www.cbsnews.com/news/60-minutes-americans-with-disabilities-act-lawsuits-anderson-cooper/>
5. *Nat’l Ass’n of the Deaf v. Mass. Inst. of Tech.*, CV 15-30024-MGM, 2016 WL 6652471 (D. Mass. Nov. 4, 2016); and *Nat’l Ass’n of the Deaf v. Harvard Univ.*, 3:15-CV-30023-MGM, 2016 WL 3561622, at \*12 (D. Mass. Feb. 9, 2016), report and recommendation adopted, CV 15-30023-MGM, 2016 WL 6540446 (D. Mass. Nov. 3, 2016).
6. See 75 Fed. Reg. 43,460, 43,464 (July 26, 2010); *Statement of Interest of the United States of America in the Nat’l Ass’n of the Deaf, et al. v. Mass. Inst. of Tech.* (June 25, 2015), [https://www.ada.gov/briefs/mit\\_soi.pdf](https://www.ada.gov/briefs/mit_soi.pdf); *Statement of Interest of the United States of America in the Nat’l Ass’n of the Deaf, et al. v. Harvard Univ.* (June 25, 2015), available at [https://www.ada.gov/briefs/harvard\\_soi.pdf](https://www.ada.gov/briefs/harvard_soi.pdf)

ada.gov/briefs/mit\_soi.pdf; *Statement of Interest of the United States of America in the Nat’l Ass’n of the Deaf, et al. v. Harvard Univ.* (June 25, 2015), available at [https://www.ada.gov/briefs/harvard\\_soi.pdf](https://www.ada.gov/briefs/harvard_soi.pdf)

7. *Id.*
8. <<https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201610&RIN=1190-AA65>>
9. Presidential Executive Order on Reducing Regulation and Controlling Regulatory Costs (January 30, 2017), available at <https://www.whitehouse.gov/the-press-office/2017/01/30/presidential-executive-order-reducing-regulation-and-controlling>
10. 82 FR 5790 (2017).
11. *Id.*
12. CBS News, What’s a “drive-by lawsuit”?, (Dec. 4, 2016), available at <<http://www.cbsnews.com/news/60-minutes-americans-with-disabilities-act-lawsuits-anderson-cooper/>>
13. *Harbor Freight Tools USA v. Carlson, Lynch, Sweet and Kilpela LLP, et al.*, No. 16-CV1438, (C.D. Cal), Dkt. No. 27 (May 10, 2016).
14. *Texas Bankers Ass’n and Indep. Bankers Ass’n of Tex v. Carlson Lynch Sweet Kilpela, & Carpenter, LLP et al.*, No. 096-290154-17 (Tarrant County, TX).

This article was originally published in the Kane County Bar Association’s *Bar Briefs* April 2017 Diversity issue.

Michael Wong is an attorney with SmithAmundsen LLC in its St. Charles office. He is a member of the firm’s Labor & Employment Practice Group and focuses his practice on advising and representing employers in labor and employment law matters. He can be reached at (630) 587-7972 or by email at [mwong@SALawUS.com](mailto:mwong@SALawUS.com).

**YOU'VE GOT ONE SHOT.**

**Make it count.**

Call Nancy to find out how an ad in an ISBA newsletter can make the difference in your business.

**800-252-8908**  
**217-747-1437**

 ILLINOIS STATE BAR ASSOCIATION



# Are hiring practices targeting college students discrimination under the ADEA?

BY ALLISON P. SUES

**While it is established law that the Age Discrimination in Employment Act (“ADEA”) allows employees to bring both disparate treatment and disparate impact claims,** it has been less clear when it comes to non-employees. In fact, in 2016 the Eleventh Circuit ruled in *Villarreal v. R.J. Reynolds Tobacco Co.* that the ADEA does not authorize disparate impact claims by non-employees.<sup>1</sup>

However, on February 17, 2017, in *Rabin v. Pricewaterhouse Coopers LLP* the United States District Court for the Eastern District of California held that non-employee, job applicants could proceed with their disparate impact claims brought under the ADEA.<sup>2</sup> The Plaintiffs in *Rabin* allege that a global accounting and auditing firm used hiring practices and policies for entry-level positions that gave preference to younger applicants and resulted in the disproportionate employment of younger employees.<sup>3</sup> The Complaint further alleges that these hiring practices include recruiting through universities and maintaining a mandatory retirement policy that requires partners of the firm to retire by age 60.<sup>4</sup> Plaintiffs assert that the firm’s hiring practices focused on attracting younger workers through their promotional materials, which featured only pictures of younger employees, stated that the majority of their workforce is made up of millennials, and described perks geared towards younger employees, such as student loan repayment assistance.<sup>5</sup> The Complaint also alleges that as a result of these hiring practices and policies, the

firm had a disproportionately younger workforce, with the average age of the firm’s employees being 27 years old.<sup>6</sup>

The Eastern District of California in *Rabin* declined to follow the Eleventh Circuit precedent and instead held that job applicants may bring disparate impact claims under the ADEA.<sup>7</sup> In a thorough opinion, the Court reasoned that the ADEA’s statutory language and legislative history, as well as Supreme Court precedent, supported the holding that non-employees, including job applicants, may bring disparate impact claims.<sup>8</sup> The Court also deferred to the Equal Employment Opportunity Commission’s (“EEOC”) current age discrimination regulations, which state that “[a]ny employment practice that adversely affects *individuals* within the protected age group on the basis of older age is discriminatory unless the practice is justified by a reasonable factor other than age.”<sup>9</sup>

This ruling creates a legal divide in federal courts, as in certain jurisdictions, non-employees and applicants may bring ADEA disparate impact claims against an employer and will not be required to allege that the employer intentionally discriminated against them or denied them a position because of their age. This is a tough decision for businesses, as it raises questions as to whether a company is exposing itself to an ADEA disparate impact case by using phrases such as “Recent Graduates Wanted” or “Looking for High School Graduates” in job postings; advertising a youthful workforce in recruiting materials; exclusively recruiting

through university programs; making any reference to “Millennials” in any recruiting or job posting documents; or promoting employee perks geared only to attract younger employees, such as student loan repayment assistance or daycare options for young children.

Regardless, due to the division between federal courts in different circuits, this issue may be addressed more definitively in the not so distant future, as a petition for writ of certiorari was recently filed with the United States Supreme Court in the Eleventh Circuit’s *Villarreal v. R.J. Reynolds Tobacco Co.* case. ■

1. *Villarreal v. R.J. Reynolds Tobacco Co.*, 839 F.3d 958 (11th Cir. 2016)

2. *Rabin v. PricewaterhouseCoopers LLP*, 16-CV-02276-JST, 2017 WL 661354 (N.D. Cal. Feb. 17, 2017)

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Rabin*, 2017 WL 661354 at \*3.

8. *Id.*

9. *Id.*; 29 C.F.R. § 1625.7(c) (emphasis added).

This article was originally published in the Kane County Bar Association’s *Bar Briefs* April 2017 Diversity issue.

Allison Sues is an attorney in SmithAmundsen’s Labor and Employment Law Practice Group. She advises employers on a wide variety of issues, ranging from wage and hour compliance, employee leave issues, accommodation requests, and discrimination charges. She also represents employers in state and federal court litigation to defend against claims arising under Title VII, ADA, ADEA, FMLA, FLSA, and state anti-discrimination laws. She can be reached at [asues@salawus.com](mailto:asues@salawus.com) or (312) 455-3951.

# Inclusion: A generation of progress

BY HON. MARK J. LOPEZ

---

**Reasonable people disagree on how much progress the Illinois State Bar Association has achieved** in its efforts to see the Illinois' legal profession reflect the diverse communities we serve. Perhaps one's perspective is based on their own personal experiences in assessing the state of affairs in 2017. From this writer's perspective, we have made substantial progress from even a generation ago, yet our efforts remain a work in progress.

I had the good fortune of being born to two parents who were the children of Mexican immigrants. My mother earned her college degree in the late 1940s at a time when it was rare for any Mexican-American to attend college, much less a female. My father, Honoratus Lopez, was one of the first Latinos to earn a law degree in Illinois, having graduated from DePaul University College of Law in 1954. He also attended DePaul University and earned undergraduate credits, but never completed a Bachelor's degree. He was admitted to DePaul's law school after he was encouraged to do so by school administrators.

He shared with me his own experiences and experiences of his fellow minorities new to the legal profession. They were subjected to overt racism, which thankfully, is not as commonplace today. For example, my late father worked for a major insurance company as a claims adjuster post law school. After being admitted to the Illinois bar, he applied for a position as a staff attorney. Management told him bluntly that "we don't hire Mexicans as attorneys in this company."

Another example of the racist atmosphere that existed at the time occurred with the City of Chicago. My father was a product of Chicago's Bridgeport neighborhood and grew up as a neighbor of Richard J. Daley. When he advised Mayor Daley of his admission to the bar, the Mayor congratulated him and instructed him to contact his hiring

chief. The Mayor's hiring chief promptly referred him, not to the City's Corporation Counsel Office as the Mayor had intended, but instead to the Department of Streets and Sanitation for a position as a garbage man. The hiring staff could not imagine that the Mayor would send someone of Mexican ancestry to them for an attorney position. Having too much pride to return and tell the Mayor what happened, my father concluded that the only way to make it in the legal profession was to hang out a shingle and do it himself. After a couple of more years as a claims adjuster, he began his first associate attorney position with the firm of Magoni & Cascio on Chicago's west side. In 1961, he opened his own law office on 18<sup>th</sup> Street in Chicago's Pilsen neighborhood, where he practiced law until his death in 2002.

I was privileged to have met many of his contemporaries who shared similar stories with me of their arduous journeys to begin their legal practice. I was also mentored by many of them and able to witness the building of their practices and their search to find their place in the legal profession.

When my father received his law degree in 1954, it was still 20 years prior to the organization of the first Latino bar association in Illinois. At that time, few ethnic bar associations existed to assist their own in finding their way into the legal profession but there were a few. The Bohemian Law Society of Chicago was founded in 1911 and the Cook County Bar Association incorporated a few years later in 1914 by and for Black attorneys. The Italian legal community founded the Justinian Society of Lawyers in 1921, the Jewish community the Decalogue Society of Lawyers in 1934, and the Polish legal community the Advocates Society of Lawyers in 1940. Sullivan's Law Directory lists the Nordic Law Club of Chicago and the Lithuanian American Lawyers Association as early as 1933. My father was a founding member of the Mexican-

American Lawyers Association in 1974 which was immediately followed by the formation of the Latin American Bar Association later that year. These two Latino bar associations merged in 1995 to form the Hispanic Lawyers Association of Illinois.

My father had one Latino classmate in law school: the future Illinois Appellate Court Justice David Cerda, who has been my lifelong mentor. This is in stark contrast to the makeup of today's law school classes, which more closely reflects the racial, ethnic, and cultural diversity of the population in the Chicago area. I would say that this is progress. My father often told me that when he graduated from law school, he literally did not know where the courthouse was located. Today, the Chicago area schools utilize the Daley Center in downtown Chicago for trial advocacy classes, moot court practices, and mock trials, which provide the students with opportunities to learn and hone trial and advocacy skills, and to teach them to navigate the courthouse long before they graduate.

In 2017, there is a bar association for virtually every ethnic identity represented in the legal community. The Illinois State Bar Association, Chicago Bar Association, American Bar Association, and Women's Bar Association have all developed programs and committees to promote diversity within the legal profession. Every law student and lawyer can take advantage of opportunities such as mentor/mentee relationships, judicial externships, and law clerk positions at law firms, both large and small. These institutions also provide their membership the opportunity to learn more about any area of practice in which they may have an interest and provide all members the ability to write legal articles of interest to them, the opportunity to teach CLEs, and to share their knowledge and advice with general membership. Some bar associations even have outreach of

their membership to areas colleges, and even high schools, to encourage students to consider a career in law. Large law firms and corporate America routinely have designated employees responsible for identifying candidates, with diversity in mind, to groom for their future hires.

My father instilled in me and other young attorneys, the privilege being a

member of the legal profession and as lawyers we have a responsibility through our practice and public service activities to improve the profession. I was fortunate I was when I graduated from law school in 1983 that the atmosphere was much improved for ethnic minorities beginning their legal careers. When I reflect on the progress that has been made in 2017

compared to my late father's experiences, I see continued forward progress toward a richly diverse legal community welcoming to all. ■

---

Hon. Mark J. Lopez is an Associate Judge in the Circuit Court of Cook County.

Judge Lopez extends special thanks to Holly Sanchez Perry (DePaul 2017) for her technical assistance.

# Diversity Committee updates

---

## Women & the Law

BY JULIE A. JOHNSON

**The 2016-17 bar year has been tremendous** for the Standing Committee on Women & the Law. From our first gathering at the Annual Meeting in Rosemont, we have been hard at work. The first half of the year was devoted to educating the ISBA and garnering support for Illinois' future adoption of paid family leave legislation. This culminated in December with Committee Chair Julie A. Johnson joining ISBA Board of Governors member, Bridget Duignan, in an address to the Assembly at the Midyear Meeting in support of pending legislation in the Illinois Senate. While efforts in the state legislature have fizzled, WATL remains dedicated to catalyzing legislative solutions that help all of us balance the demands of both work and family in a way that employers of all sizes can embrace.

On March 8, 2017, WATL hosted our first ever International Women's Day High Tea at Russian Tea Time in the Loop. With over 50 attendees, it proved to be a successful networking event that will likely become a tradition for years to come.

On the Committee's nomination, our very own Lori Levin, who currently serves as Secretary, was selected as a 2017 ISBA Laureate. WATL showed up strong to support her, filling a table at the Laureate Luncheon on March 30, 2017. We are so proud of you, Lori!

The very next day the Committee came together again at the beautiful Acquaviva

Winery out west in Maple Park, Illinois, for our only out-of-Cook County meeting. There is little better than a gathering of good friends and colleagues conducting business over wine and a scrumptious lunch!

We rounded out the year on May 11, 2017, by hosting attorney and filmmaker, Sharon Rowen, for a private screening of her new documentary on the history and experience of women in the practice of law, *Balancing the Scales*, followed by a fascinating discussion moderated by Julie A. Johnson. Over lunch in the gorgeous ceremonial courtroom at the Loyola University Chicago School of Law, women attorneys from all over Illinois gathered for this exclusive CLE credited program. Everyone left feeling empowered and inspired by those who have come before us in this profession.

Thank to everyone who gave of their time and energy to this wonderful Committee!

## Human Rights

BY SHANNON M. SHEPHERD

The Human Rights Section Council continued pursuing its objectives of educating our fellow lawyers and the public about human rights issues on the local level, as well as from a global perspective. At our last Section Council meeting, we learned how the Loyola University Center for the Human Rights of Children is working to promote awareness of the unique ways in which children are affected by decisions beyond

their control. Katherine Kaufka Walts, the center's director, explained that the center is working on three key initiatives to promote children's rights. First, they are looking at the impact of environmental toxins on children's health as a human right. The center argues that clean water and clean air have a direct impact on not only health, but also happiness and long term development of children. Second, the center continues its work to bring awareness of child trafficking for both labor and sex in the United States. Finally, the center advocates for children forced to navigate complex systems such as the immigration system in the U.S. alone. Our Section Council looks forward to assisting the center in any way that we can to pursue these important programs.

This year, our Section sponsored or co-sponsored several great CLE programs, produced eight informative newsletters, and reviewed legislation impacting human rights in Illinois. We look forward to another year of championing human rights causes during these chaotic political times.

## Standing Committee on Racial and Ethnic Minorities and the Law

BY SHARON EISEMAN

The CLE Planning Committee of REM developed and presented a four-part CLE Program Series on Housing Justice v. Housing Injustice. The four parts were presented monthly as two-hour webinars beginning in January of 2017 and concluding in April, which was Fair Housing Month.

The Diversity Leadership Council graciously served as a program co-sponsor along with the Standing Committees on Women and the Law and Disability Law and the Human Rights Section Council.

Please see the following syllabus as a means for understanding the current relevance of the program to our legal community and to the residents of the communities who face barriers in their quest for safe, affordable housing. The four segments also addressed important social justice issues. This syllabus identifies the topics and issues covered and includes the list of the program's impressive, knowledgeable speakers and moderators whom we thank for sharing their wisdom and insights concerning the challenges faced by minorities in many communities.

This effort shed light on the varied problems and the laws that offer useful tools to address the problems. From these discussions, we might collectively explore and figure out how to implement solutions and interventions. We also hoped to generate interest among lawyers for serving as advocates for the people and their communities that are in desperate need of support and access to legal remedies, economic support and social justice resources.

All segments are or soon will be available to view through the ISBA's archives of previously recorded webinars. They are well worth two hours of your time—even eight hours for all four webinars. Please search for the program series on-line or call Jeanne Heaton or the knowledgeable CLE Staff at the ISBA Springfield Office for information about viewing these informative panel presentations.

## HOUSING JUSTICE vs. HOUSING INJUSTICE HOW UNFAIR HOUSING PRACTICES KEEP SEGREGATION INTACT

**A CLE PROGRAM SERIES EXAMINING THE IMPACT ON MINORITY INDIVIDUALS AND COMMUNITIES\* OF HOUSING DISCRIMINATION, MORTGAGE FRAUD, THE FORECLOSURE CRISIS and the HOUSING VOUCHER SYSTEM**

### PART ONE: SCOTUS Opinion, Fair Housing Policies and Housing Voucher Programs

- In *Texas Department of Housing and Community Affairs v. The Inclusive Communities Project* (Doc. No. 13-1371), decided by a 5-4 vote in June of 2015, the U. S. Supreme Court recognized the validity of the disparate impact theory for claims brought under the federal Fair Housing Act against owner/operators of government rental housing developments. However, the court also held that in a discrimination claim seeking liability under that Act, a plaintiff must show not only compelling data of disparate impact but that the data resulted from a particular policy enforced by the housing entity. How will this case impact the cause of access to affordable, quality housing by low-income minority residents?

- **Related issues to be addressed:** Impact of housing voucher programs and other affordable housing initiatives on individuals and communities: which ones work and which ones do not but instead maintain and even promote racial, ethnic and socio-economic class segregation. How can we measure whether government-funded programs “affirmatively further fair housing” as promised in policy statements? What should we make of HUD’s 2015 guidance which states that “adverse housing decisions may constitute racial discrimination”? How can we factor in the often profound impact on children’s education—or lack thereof—as a result of constant residence changes and schools’ residency requirements?

- **Speakers:** Kimberly Nevels, HUD, Director of Region 5; Marisa Novara, Vice-President of the Metropolitan Planning Council; Ngozi Okorafor, IDHR General Counsel; and Attorney Kate Walz, Sargent Shriver National Center on Poverty Law.

- **Moderator:** Sharon Eiseman
- **Synopsis:** In this segment, we learned about the laws and regulations pertaining to eligibility for affordable housing and enforcement of the anti-discrimination provisions (covering all the protected groups) by HUD at the federal level and by the Department of Human Rights at our State level. We also learned from our speaker from the Shriver Center on Poverty Law about ways to overcome the potential obstacles to filing a discrimination claim under the Fair Housing Act against owners or operators of affordable housing developments after the Texas Dept. of Housing SCOTUS Opinion holding that proof of a policy of discrimination is a necessary element of proof. In this session, the Vice-President of the Metropolitan Planning Council shared her agency’s research on how inadequate housing opportunities can reinforce segregation and all the societal ills that can befall communities without supportive resources for individuals, families and businesses.

\*As used in the program title, “Minority Individuals and Communities” is intended to be inclusive of the broad range of minority or ‘diversity’ groups.

### PART TWO: Landlord Privileges/ Defenses; Tenant Rights/Remedies

- Housing rights for victims of domestic and sexual violence under VAWA (Violence Against Women Reauthorization Act of 2013) and Illinois’ Safe Homes Act of 2007, both of which are intended to protect residents of rental housing.
- Barriers created for persons with arrest records or convictions for minor offenses; ‘Ban the Box’ laws across the country that help improve access to employment opportunities—and thus to housing—for the population with criminal records who are generally racial and ethnic minorities; use



by landlords of background checks to screen out undesirable tenants; how abuse of due process rights by landlords leads to rejection of applicants and eviction of tenants; the disparate impact of such practices on minorities; and efforts to educate the public about the legal remedies of expungement and sealing of criminal history records. HUD's April 4, 2016 guidance to "providers of housing and real estate-related transactions" on the "Application of Fair Housing Act Standards to the Use of Criminal Records" for screening rental applicants as well as in the sale and financing of various forms of real estate.

- When can landlords legally exercise their right to evict tenants? What remedies can wrongfully evicted tenants pursue? How does the displacement of families from their housing—and often from the children's neighborhood schools and their friendship circles—affect the quality of life in the communities where this phenomenon is prevalent?
- **Speakers:** Matthew Hulstein, Supervisor of Chancery Court Access to Justice and Mediation Programs for CVLS; Co-Director Danielle McCain, JMLS Fair Housing Legal Support Center; Kate Walz, Sargent Shriver National Center on Poverty Law.
- **Moderator:** Masah S. Renwick, Renwick Firm, Inc.
- **Synopsis:** Registrants heard about challenges faced by tenants, including when the landlord as owner is facing foreclosure of the property where the tenant resides; other tenant rights; and what landlords must do to legally evict a non-complying tenant. The audience also learned where tenants can find help, including at the JMLS Housing Clinic where one of the panelists serves as a co-director. Another topic vetted was the recent enactments by cities and villages of 'crime-free'

ordinances that facilitate evictions of tenants deemed as nuisances or as creating a nuisance for other tenants through no fault of their own (such as when a victim of domestic violence calls 911 for emergency help and police cars arrive with lights flashing) and how those ordinances are being challenged with some success. In Chicago and Cook County there may be more resources for tenants in such circumstances.

**PART THREE: Mortgage Fraud, Subprime Lenders & the Foreclosure Crisis: Abandoned Residences, Deteriorating Neighborhoods, Decrease in Housing Options and Increased Violence**

- How discriminatory practices of sub-prime lenders in minority neighborhoods have contributed to destruction of communities, especially of minority populations, and also occasioned gentrification to the detriment of those populations; how city and county resources and advocacy can help restore these areas.
- How does the foreclosure process work and how can the process be abused and by what entities? What kind of relief is available to the homeowner during the foreclosure process? What is likely to happen to the property that is the subject of the proceeding? If a community or neighborhood is experiencing a high volume of foreclosures, and thus many abandoned homes that will deteriorate over time, how might that affect the value of the homes (and possibly even small condo developments) and ultimately the community at large, including commercial uses in the area and the availability of home ownership for a low and moderate income population?
- Is anyone holding the lenders accountable? Weighing the impact of predatory and sub-prime lenders on the integrity of neighborhoods; analyzing the lawsuits filed against lenders by the Illinois Attorney

General that, through settlements, have brought consumer relief and effected industry change; actions that municipalities, small and large, might take to assist foreclosure victims and help to heal devastated neighborhoods; what new, legitimate opportunities for financial incentives/ assistance might be available for first-time low to moderate income homebuyers. Are particular populations, such as minorities, the disabled, women and single mothers, more vulnerable to abusive or predatory lender practices in the home-buyers' market?

- Municipal ordinances providing for percentage set-asides for subsidized housing units in new multi-residential developments and the rationale for developer exemptions from such requirements through the payment of a set fee; what are benefits and drawbacks from the "gentrification" that might result from such developments?
- **Speakers:** Chicago's Fifth Ward Alderwoman Leslie Hairston; Joel L. Chupak of Heinrich & Kramer PC; Assistant Attorney General Andrew Dougherty; Carina Segalini, Case Manager for the Cook County Circuit Court's Mortgage Foreclosure Mediation Program
- **Moderator:** Yolaine Dauphin, Adm. Law Judge and REM Vice-Chair
- **Synopsis:** The audience for this segment was given a primer in how litigants can navigate the foreclosure process and what rights are afforded and what obligations are imposed upon both sides in the court proceedings. Also reviewed were the potential outcomes and the resulting consequences, and what impacts are seen in communities where foreclosures are commonplace. It was uplifting to hear about the major—and very successful—litigation brought by the Illinois Attorney General and Attorneys General in other states against numerous 'predatory' lenders for the

harm they caused to many persons and families in Illinois and other states. The complaints identified the intentionally unlawful lending practices that led families to default on their payments for mortgages they could not afford and then into foreclosure. This process resulted in a surplus of abandoned homes that in turn led to vandalism and the deterioration of large areas of many urban communities. The success of the lawsuit in Illinois, reported on by the Assistant Attorney General who was part of the litigation team, was a huge monetary settlement of benefit to the victims who were able to experience some recovery through access to some of the funds and to counselling resources for ‘rebuilding’ their lives. The audience also learned about the Foreclosure Mediation Program created by the Cook County Circuit Court and overseen by one of the panelists, a program that gives defendant owners in foreclosure proceedings the chance to find a way to refinance their mortgages and maintain their homes. In addition, a well-known Chicago Alderwoman gave the attendees an overview of some City programs benefitting communities that found themselves devastated by the 2008 recession and all it wrought, including funding and other resources for selling ‘zombie’ properties and providing financial support to new owners for rehabbing or rebuilding so the affected communities can recover. However, we were reminded that such work takes time and continued support.

**PART FOUR: Resources for Rebuilding Communities:**

- One response to the foreclosure crisis caused by predatory lending is a movement called The Anti-Eviction Campaign. Its leader and adherents promote taking over, fixing up, and “moving homeless people into the people-less homes” left in the wake of the housing crash. However, that approach does not end with the occupants having a legal right to occupy the premises—although such advocacy has brought attention to bear on the

dual problem of abandoned housing units and people in need of housing.

- Issues/interventions to be addressed in this final segment include: plans for reviving and rescuing decimated areas from neglect through financial investment, reinvestment, and new construction projects in partnership with small developers; improving availability of resources necessary for daily life such as accessible public transportation services to help connect residents with their places of employment and families to their children’s schools, and open space and grocery and other retail stores; assuring sufficiency of law enforcement for protection and other community services; and programs to provide financial assistance for residential access for low and middle-income families, especially women and single mothers, persons with disabilities who are more vulnerable to abuse, fraud and employment challenges and a population that, due to ‘brushes’ with the law, have difficulty finding a job so they can find housing.
- **Speakers:** Steven Quaintance McKenzie, Senior Assistant Corporation Counsel with the Building and License Enforcement Division of Chicago’s Law Dept.; Staff Attorney Ryann Moran from Cabrini Green Legal Aid; Britt Shawver, CEO and Exec. Dir. Of Housing Opportunities for Women (H.O.W.); and Geoff Smith, Exec. Dir. Of the DePaul Institute of Housing Studies
- **Synopsis:** It is tempting to say: “just check out the webinar” because you will feel disheartened yet intrigued by the astounding research data from the DePaul Institute of Housing Studies about age and racial distributions in housing and home ownership across Chicago’s neighborhoods and where certain populations are concentrated, but also hopeful for those people who are disconnected from what we consider the normal activities and

supportive services and resources we all take for granted. You will feel hopeful because you will hear four impressive speakers from equally impressive legal and NFP social service agencies explain in helpful detail what programs are available to assist individuals who are traumatized and communities that must rebuild—and there are many despite the terrible budget crisis Springfield has been unable to resolve. Such programs support residents who are in need of safe and affordable housing, in need of clearing their records of inconsequential criminal postings so they can find employment, and in need of finding other connections in their communities to sustain them. You’d also hear about families eagerly trying to re-establish their family stability through home ownership that is reachable for them because of some visionary government programs and public-private partnerships. One special program is the Cook County Land Bank which was explained in this segment. Its benefits will surprise and delight you because who doesn’t benefit when one’s neighbors are healthy and happy and where they want to be. IF ONLY WE STILL DIDN’T HAVE TO WRESTLE WITH THE PROBLEM OF SEGREGATED AND UNDERSERVED COMMUNITIES AND WITH AREAS WHERE LONG-TIME RESIDENTS ARE BEING DISPLACED BY GENTRIFICATION! STILL—WE NEED TO CELEBRATE EVERY STEP OF PROGRESS WE TAKE IN THE RIGHT DIRECTION.

\*As used in the program title, “Minority Individuals and Communities” is intended to be inclusive of the broad range of minority or ‘diversity’ groups. ■

---

Sharon Eiseman, soon-to-be Ex-Officio of the Standing Committee on Racial and Ethnic Minorities and the Law, was so honored to serve as Chair for the 2016-17bar year. She notes it has been a very supportive, engaged and respectful group of lawyers whose contributions to the ISBA’s diversity initiatives are of continual and continuing value.

# Airport attorneys

BY FIONA MCENTEE

**On Saturday morning, January 28, 2017, I received an e-mail I will never forget.** I, like most practicing attorneys, receive hundreds of emails per week. But this email was different. In my almost 10 years of practicing immigration law, I had never seen anything like it.

\*\*\*\*\*

From: International Refugee Assistance Project

Subject: Emergency Airport Response for Detained Refugees — REPLY NEEDED

Message: We've received word that it is now DHS' policy to detain with intent to deport all arriving refugees... If you are available to go to your designated airport NOW, fill out this survey indicating your location and I will follow up with an email connecting you to others who will be joining you.

\*\*\*\*\*

Earlier that week, the immigration bar had received credible reports that the current Administration may be placing a hold on refugee resettlement. As a proactive measure, the International Refugee Assistance Project (IRAP) and our bar association, the American Immigration Lawyers Association (AILA), had compiled a standby list of first responder airport attorney volunteers. When I joined the airport attorney list, little did I know that our boutique practice area of law, and the lives of so many people, would be forever changed. Those of us who signed up agreed that we would be available to go to our local airport at a moment's notice if and when the time came. And that time did indeed come on the morning of Saturday, January 28. As we now know, the night before, President Donald J. Trump signed Executive Order 13769, infamously known

as the "travel ban."

On receipt of the emergency email from IRAP, the message was clear and unequivocal; we needed to get to O'Hare Airport immediately. En route, my brother/colleague and I picked up two other airport attorneys, strangers to us prior to that morning. On the way, we fueled up on coffee, read the materials sent by IRAP and speculated about what we would encounter in Terminal 5. By all accounts, we were preparing to assist newly arriving refugees and we were hoping we could help in any credible fear interviews for those who might have a claim to asylum. IRAP informed us that "this is a grassroots effort, the likes of which may be unprecedented." That statement turned out to be the most accurate description of the "Airport Attorney" movement, and on the short drive out to O'Hare, we braced to expect the unexpected.

We were one of the first groups to arrive at Terminal 5 and walking in, to the untrained eye, it seemed like any other Saturday in the international arrivals hall at O'Hare. However, to the airport attorneys, something was different. We began to notice the look of fear and worry on the faces of some people as they paced back and forth waiting for family members to come through the gates.

Within a few moments, we were approached by our first client - Mohammad. He had been waiting for hours for his U.S. citizen sister, his 6-month-old U.S. citizen nephew and his brother-in-law, an Iranian citizen with lawful permanent residence ("green card") in the States. The family was returning "home" after a brief trip abroad to introduce their baby to their relatives abroad. They were all mid-air when the "travel ban" was signed. Unfortunately, their situation was not unique, as we had 18 clients similarly situated at O'Hare and this was mirrored in airports all throughout the United States.

The airport attorneys knew that, politics aside, we were experiencing nothing less than a humanitarian and legal crisis. We sprang into action and quickly established a makeshift legal triage center. As the hours passed by, the numbers of attorneys grew, as did the media presence and the chants of the thousands of outraged supporters. Looking back, it was incredible to witness how each attorney played to their own strengths: completing client intake, interacting directly with impacted family members, organizing the logistics of the legal center, liaising with U.S. Customs and Border Protection (CBP), drafting Writs of Habeas Corpus and Complaints for Injunctive Relief, coordinating with attorneys in other airports, and conducting any and all media interviews.

It became readily apparent that the scope of our work as airport attorneys was remarkably different than initially thought. If you recall, we were under the impression that would be assisting newly arrived refugees and asylum seekers. I can confidentially state that none of us anticipated that we would be advocating for upwards of eight hours to get U.S. citizen babies released from the unlawful custody of CBP.

I'm also sure that not one of us anticipated that two and a half months later, we would still have pro-bono airport attorneys at O'Hare on a daily basis. Since January, we have gone from an ad-hoc group of attorneys working to protect civil liberties at the airport to, with the assistance of CAIR-Chicago, the first ever organized and systemized Traveler Assistance Project in the nation. We have used technology to streamline this process and have created an online portal for worried travelers, an electronic exit interview process and most importantly, a taskforce to mount official complaints with the Office of Civil Rights and Civil Liberties of the Department of Homeland Security, where necessary.

The O'Hare airport attorneys can

proudly state that amongst our 1,400 members we have an extremely diverse group in every sense of the word: race, ethnicity, gender, sexual orientation, age, physical abilities, religious and political beliefs. We have big law partners and solo practitioners. Some are newly qualified, some are 30-year veteran attorneys. We have attorneys from almost every practice group including employment, criminal defense, corporate and civil litigation, real

estate, IP, environmental, family, trusts and estates and of course, immigration attorneys.

At the time of writing, while there remains much work to be done, I have never been prouder to be a member of the legal profession. Personally, I am part of a litigation team directly challenging Travel Ban 2.0 in the Northern District of Illinois. While the airport attorneys are as diverse as they come, we share one common goal

and belief. We believe that diversity makes America great and we have vowed to use our legal training and experience to ensure that this diversity remains. ■

---

Fiona McEntee is the Managing Attorney at McEntee Law Group, an immigration practice that represents worldwide corporations, technology start-ups, top musicians and artists, professional athletes, entrepreneurs and investors. She can be reached at [info@mcenteelaw.com](mailto:info@mcenteelaw.com).

## Chair's column

BY CORY WHITE

Hello All,

As we are set to close another bar year I want to take this time to reflect on the past two years as Chair of the Diversity Leadership Council. During those two years we have shared in some adversity, but also in great success. As we move into the new bar year, I'm confident that the ISBA, along with the help of its diversity-related committees and bodies, will continue to put its best foot forward with respect to diversity and inclusion within the Association and the greater legal profession.

The DLC champions the twin virtues of diversity and inclusion. Diversity represents an invitation to participate, while inclusion represents activate participation. When I stepped into the Chair's seat, one of our most challenging tasks was the evaluation of how the ISBA structures its diversity-oriented committees and programs in pursuit of these goals. Under this re-structure initiative, as requested by the ISBA Board of Governors (BoG), the DLC was tasked with considering certain changes to the constituent committees of the DLC and the DLC itself. After over a year of work and negotiation among the members of the DLC and the BoG, the DLC was able to pass a resolution authorizing certain changes to be put in place. The changes will become effective at the beginning of the next bar year and will ensure that the ISBA continues its

tradition of including attorneys of all backgrounds, races, ethnicities, genders, sexual orientations, and opinions as a vital part of the Association.

In addition, the DLC has continued to actively engage with ISBA membership and the Illinois legal community. Through our efforts, the Association hosted the Fourth Annual Minority Bar CLE Conference in the summer of 2016. We partnered with the Filipino American Lawyers Association, Chinese American Bar Association, Asian American Bar Association, Hispanic Lawyers Association of Illinois, South Asian Bar Association, Black Women Lawyers' Association of Greater Chicago, the Lesbian and Gay Bar Association of Chicago, and the Korean American Bar Association. Following the success of the conference we have made it an annual ISBA event, with the Fifth Annual Conference being hosted at the ISBA's offices on June 22 and 23.

In closing, I would like to remind the ISBA community that diversity and inclusion are good things--things that we as a community and a profession should strive for. The DLC needs to continue pushing the diversity and inclusion agenda of the Association through thoughtful programing and partnerships, while working with current Association leadership to assure the message is heard and that action is taken. Thank you so much to all the people at the ISBA that

provided a helping hand in seeing the DLC's mission through. We still have a long way to go, so I'm asking you to stay with us.

Sincerely,

Cory White  
2015-17 Chair ■

**Did you know?**

**Every article published by the ISBA in the last 15 years is available on the ISBA's Web site!**

**Want to order a copy of any article?\*** Just call or e-mail Jean Fenski at 217-525-1760 or [jfenski@isba.org](mailto:jfenski@isba.org)

\*Sorry, if you're a licensed Illinois lawyer you must be an ISBA member to order.



# Julie Johnson – Selected for CBA, Alliance for Women, Alta May Hulett Award

BY KELLY THAMES BENNETT

**The ISBA Women & the Law Committee celebrates extraordinary women** in the practice of law. We nominate committee members and non-committee members for various awards given by the ISBA and other organizations. We were honored and excited to have our nominee, Julie A. Johnson, our committee's Chair, recognized by the Chicago Bar Association's Alliance for Women, Alta May Hulett Award. Julie is a true bar leader and we have come to greatly admire Julie as an individual and colleague who exemplifies the best of our profession.

Julie reflects the highest standards of professional ethics and excellence. Julie is a Member of the Illinois Bar in good standing since 2007. She was named as a Rising Star in the Illinois Super Lawyers from 2008-2013 and again in 2016. And she was named as an Emerging Lawyer in Leading Lawyers in 2016.

Julie's visions of advancing and empowering women began before Julie entered law school, when she worked as a Domestic Violence Medical Advocate/Counselor/Outreach Coordinator for Working Against Violent Environments (WAVE). Julie's work with the domestic violence program exposed her to the challenges that battered women face when using the legal system to seek protection and escape their abuser. As a result of her work with WAVE, Julie decided to go to law school in order to better serve that community through the legal profession.

Julie's leadership and vision developed significantly when she attended Northern Illinois University College of Law and served as President of the NIU College of Law Women's Law Caucus for the 2005-06 term. During her term as President, Julie directed and produced *The Vagina Monologues* as a fundraiser for a local domestic violence program and coordinated networking opportunities to connect women law



students with female attorneys in private practice. Julie also served as a Law Student Liaison on the American Bar Association's Commission Domestic Violence. Her first job in the legal profession was as a 711 licensed student at the NIU College of law, Zeke Giorgi Domestic Violence Legal Clinic, protecting battered women. Julie represented battered women in orders of protection and other family court matters.

In the ISBA Women and the Law Committee and Diversity Leadership Council, Julie has worked very hard to promote communication, collegiality, and support for positive change among women. Specifically, Julie coordinated a

2014 ISBA survey at large, studying the status of women in the legal profession. In May 2015, using the results of the survey, Julie served as the Program Coordinator for ISBA Law Ed Series CLE, "Because You're Worth It! Achieving Advancement & Fair Compensation in the Legal Profession."

Julie is always open to share her knowledge and passion with others and is a vocal and passionate contributor to the committees on which she serves. She was the co-drafter of a pending proposal to restructure and improve organization-wide ISBA diversity initiatives. Her enthusiasm for the initiative revealed her commitment and dedication to positive changes within the ISBA.

Julie is a new mother and she is a content contributor to the new Chicago Bar Association Blog, "Balancing Act, A Guide for Working Parents." As the 2016-17 Chair of the Women and the Law Committee, Julie committed her focus to understanding the state of paid new parent leave in Illinois law firms and working to improve it.

Congratulations, Julie! We are so proud! ■

---

This article was originally published in the May 2017 issue of the ISBA's *The Catalyst* newsletter.



# Race, ethnicity affect kids' access To mental health care, study finds

BY SHEFALI LUTHRA, KAISER HEALTH NEWS

**One in five Americans is estimated to have a mental health condition** at any given time. But getting treatment remains difficult — and it's worse for children, especially those who identify as black or Hispanic.

That's the major finding in research published Friday in the *International Journal of Health Services*. The study examines how often young adults and children were able to get needed mental health services, based on whether they were black, Hispanic or white. Using a nationally representative sample of federally collected survey data compiled between 2006 and 2012, researchers sought to determine how often people reported poor mental health and either saw a specialist or had a general practitioner bill for mental health services.

"No one is necessarily bigoted — and yet we have a system that creates the kind of discrimination we see in the paper," said Steffie Woolhandler, a professor at City University of New York School of Public Health, and one of the study's authors. "Kids are getting half as much mental health treatment — and they have the same level of mental health problems."

Young people in general aren't likely to see mental health specialists. But the numbers fell further when racial and ethnic backgrounds were factored in. About 5.7 percent of white children and young adults were likely to see a mental health specialist in a given year, compared with about 2.3 percent for black or Hispanic young people.

Put another way: Even when controlling for someone's mental health status, insurance and income, black and Hispanic children saw someone for treatment far less often than did their white counterparts — about 130 fewer visits per thousand subjects. Black young adults visited a mental health specialist about 280 fewer visits per thousand; Hispanics had 244 fewer visits per thousand.

But the data indicate that mental illness

incidence rates are generally consistent across racial groups, according to the study. Of adults between the ages of 18 and 34, between 4 and 5 percent indicated having fair or poor mental health, regardless of racial background. For children, white and black subjects were reported to need care at about the same rate — between 11 percent and 12 percent — compared with about 7 percent of Hispanic children.

The paper outlines a few possible reasons for this disconnect. Different communities may attach greater stigma about mental health care, or they may place less trust in the doctors available. Plus, there is a shortage of child psychiatrists across the country, and black and Hispanic families often live in the most underserved areas.

"There are problems of access all around," said Harold Pincus, vice chair of psychiatry at Columbia University's College of Physicians and Surgeons. "We have to change the way we do things."

The findings suggest that lawmakers have focused on trying to improve access to mental health care, but "we can't rest on our laurels," said Pincus, who wasn't affiliated with the study. He also noted that treating white children's level of access as the golden standard is probably unwise, since research suggests they also receive inadequate care.

One of the study's clear messages, argued Woolhandler, is that racial minorities received markedly less care — regardless of socioeconomic or health status. The gap suggests a targeted intervention is needed.

The study highlights a need to ensure doctors know how to counsel patients of different racial backgrounds and will do so, said Benjamin Le Cook, an assistant professor of psychiatry at Harvard Medical School, who was also not affiliated with the study. Ending racial and cultural disparities in access to care is a more pressing concern than erasing the stigmas about mental illness in minority communities, he said.

That's especially relevant given minorities are less likely to be treated by doctors of their ethnicity. In addition, research suggests that mental health specialists sometimes discriminate based on race when seeing patients.

"It has to do with experiences people in the community have had that haven't matched their expectations or aligned with problems they're having," LeCook said. "Cultural stigma is a factor, but not the main one."

Beyond better training, more funds are needed for resources like community health centers, which often serve black and Hispanic patients, Woolhandler said.

"I see these great people trying to work in community mental health, but they need more resources to do their job," she said.

But, the research doesn't account for other areas where minorities may access mental health services, Pincus noted. Churches and social service agencies, for instance, may be filling some of the void and wouldn't be accounted for by the survey data.

Researchers and policymakers should explore those sectors, he said, to see if they could be better leveraged to help people get connected to care they'll actually trust. As experts try to bolster the mental health system—both to improve access across the board and also to close race-based gaps—they need to use a multipronged approach, pulling in different kinds of caregivers than those who might normally treat mental illness.

"There's all kinds of ways by which the mental health system doesn't play a role in helping people," he said. "Family and community supports, social services — they're all part of the picture." ■

---

This article was originally published August 12, 2016 in Kaiser Health News, a national health policy news service that is part of the nonpartisan Henry J. Kaiser Family Foundation.

# ISBA's *New Website* for **NEW LAWYERS**

With Content & Video Curated for Lawyers in Their First 5 Years of Practice



- ✓ Articles distilled into 5 quick takeaways
- ✓ Job listings from across the state
- ✓ YLD news, photos and events
- ✓ Tool to determine MCLE compliance deadlines
- ✓ Short videos covering tech tips and practice points
- ✓ And more!

# Upcoming CLE programs

TO REGISTER, GO TO [WWW.ISBA.ORG/CLE](http://WWW.ISBA.ORG/CLE) OR CALL THE ISBA REGISTRAR AT 800-252-8908 OR 217-525-1760.

## July

**Thursday, 07-06-17 - Webinar—**  
Introduction to Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm.

**Tuesday, 07-11-17 Webinar—**Word for Mac. Practice Toolbox Series. 12:00 -1:00 p.m.

**Thursday, 07-13-17 - Webinar—**  
Advanced Tips for Enhances Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm.

**Thursday, 07-20-17 - Webinar—**  
Fastcase Boolean (Keyword) Searches for Lawyers. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm.

**Tuesday, 07-25-17 Webinar—**Illinois E-filing and PDF. Practice Toolbox Series. 12:00 -1:00 p.m.

## August

**Thursday, 08-03-17 - 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, 08-10-17 - Webinar—**  
Advanced Tips for Enhances Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm.

**Thursday, 08-17-17 - Webinar—**  
Fastcase Boolean (Keyword) Searches for Lawyers. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm.

## September

**Thursday, 09-07-17 - 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 and Friday 09-7 & 8, 2017 – Chicago, ISBA Regional Office—**  
ISBA Guardian Ad Litem and Child Representative Training. Presented by Family Law.

**Friday, 09-08-17 – Lincoln Heritage Museum, Lincoln, IL—**1st Annual Lawyer Lincoln's Legacy: Lessons for Today. 9 a.m.-4:30 p.m.

**Wednesday, 09-13-17 – LIVE Webcast—**Sexual Orientation Protected as Sex Discrimination Under Title VII: Hively V. Ivy Tech Community College 15-1720 7th Cir. April 4, 2017. 12-2 pm.

**Thursday, 09-14-17 – LIVE Webcast—**  
Environmental Due Diligence in the Era of President Trump: Revisiting Caveat Emptor, the Role of Government, Tort Liability and Statutory Environmental Cleanup Liability under State and Federal Law. Presented by Real Estate. 12-1 p.m.

**Thursday, 09-14-17 - Webinar—**  
Advanced Tips for Enhances Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm.

**Friday, 09-15-17 – Fairview Heights, Four Points by Sheraton—**Solo and Small Firm Practice Institute. All Day.

**Wednesday, 09-20-17 – LIVE Webcast—** Construction Escrow, Lien Waivers and Sworn Statements: Best Practices. Presented by Construction Law. 12-1 p.m.

## Thursday, 09-21-17 - Webinar—

Fastcase Boolean (Keyword) Searches for Lawyers. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm

**Wednesday, 09-27-17 – LIVE Webcast Webinar—**HIPAA and How It Applies To YOU. Presented by Employee Benefits. 12-1 p.m.

**Thursday, 09-28-17 – LIVE Webcast—**  
How Secure Are you? Cyber for the Illinois Practitioner. Presented by Insurance Law. 12-2:15 p.m.

## October

**Wednesday, 10-04-17 LIVE Webcast—**  
Issues to Recognize and Resolve When Dealing With Clients of Diminished Capacity. Presented by Business Advice and Financial Planning. 12-2 pm.

**Thursday, 10-05-17 - Webinar—**  
Introduction to Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm.

**Friday, 10-06-17 – Holiday Inn and Suites, East Peoria—**Fall 2017 Beginner & Advanced DUI and Traffic Program. Presented by Traffic Law. Time: 8:55 am – 4:30 pm.

**Friday, 10-06-17 – Chicago, ISBA Regional Office—**Pathways to Becoming Corporate General Counsel and the Issues You Will Face. Presented by Corporate Law. Time: 9:00 am – 12:30 pm

**Monday, 10-09-17 – Chicago, ISBA Regional Office—**Workers' Compensation Update – Fall 2017. Presented by Workers' Compensation. Time: 9:00 am – 4:00 pm.

**Monday, 10-09-17 –Fairview Heights—**Workers' Compensation Update – Fall 2017. Presented by Workers' Compensation. Time: 9:00 am – 4:00 pm. ■