



ILLINOIS STATE BAR ASSOCIATION

THE PUBLIC SERVANT

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

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Under section 3.5(b) of the Freedom of Information Act (FOIA) (5 ILCS 140/3.5(b)), all Freedom of Information officers are required to annually complete the Attorney General's Public Access Counselor's electronic train-

ing curriculum. The 2012 FOIA training is now available for completion and may be accessed through the Attorney General's Web site: <<http://foia.ilattorneygeneral.net/Default.aspx>>. ■

Someone you should know: Pat Driscoll, Cook County State's Attorney's Office

By Karen Dimond

If you ask you Pat Driscoll about his legal career, he will say, "It's really not that interesting." But he may acknowledge that one day in 1970 was fairly exciting when, while serving as a Felony Trial Assistant State's Attorney, he was taken hostage at 26th and California by convicted murderer Gene Lewis, who was armed with a revolver his girlfriend had sneaked into the courtroom, inside a hollowed-out law book. Lewis tried to escape from the courthouse, and he seized Driscoll and his partner as hostages on the way out of their courtroom. Lewis was shot dead in the hallway outside of the courtroom. Driscoll escaped unharmed and has continued practicing law for another interesting, although not quite as exciting, 40 years.

Driscoll was born in Chicago, went to Loyola Academy and then to Regis College in Denver, Colorado. Driscoll realized that he was "not good at math or science, but could write well." So, after Driscoll graduated from Regis College in 1964, he followed in his father's footsteps and went to law school.

At DePaul Law School, his classmates included a future alderman, congressman, state sena-

tor and mayor: Ed Burke, Marty Russo, Howard Carroll and Richard M. Daley. Driscoll himself became involved in politics in the 49th Ward in Rogers Park, but by his own admission, he was the "world's worst precinct captain."

Despite the lack of a political sponsor, Driscoll was hired by the Cook County State's Attorney's Office at a time when Assistant State's Attorneys were generally required to produce annual letters of sponsorship. Driscoll credits State's Attorney Bernie Carey with ending that practice in 1972.

When Driscoll joined the office in 1968 there were only about 200 Assistant State's Attorneys, though the staff would eventually swell to include over 900 Assistant State's Attorneys before recent budget cuts shrank it back to a smaller size. Driscoll acknowledges that when he joined the office that almost all Assistant State's Attorneys were white men. There were so few women (exactly two) that Driscoll remembered both of them: Blanche Manning and Barb Davis.

Over the ensuing years, Driscoll worked in

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Criminal Appeals, the First Municipal District, and the Felony Trial Division. In 1973, he became Chief of the Criminal Appeals Division. Driscoll watched the volume and type of cases expand, the Criminal Code change, and the State's Attorney's Office grow to include a felony review unit, a child support enforcement unit, and a public interest bureau. Future judges Tom Fitzgerald, Paul Biebel, James Zagel, and Joel Flaum, along with future State Senate President Phil Rock, were among the members of the State's Attorney's Office at that time.

However, by 1975, Driscoll decided it was time to leave the fifth floor of the Daley Center and struck out across the Daley Plaza to 77 W. Washington Street to work with Joe Roddy, also a former Assistant State's Attorney. Their work included criminal defense, civil litigation and insurance defense. Driscoll represented the Confederation of Police and individual police officers who were subject to possible discipline. In 1977, Driscoll opened his own office, and in 1995 he helped found the five-member firm, Hickey, Driscoll, Kurfurst, Patterson and Melia.

But throughout these years of private practice, Driscoll continued to serve the public through his service on the Federal Defender Program and through his many appointments as a Special State's Attorney and as a Special Assistant State's Attorney. For example, in the case of *O'Grady v. Merit Board*, a contempt matter heard in the circuit and appellate courts, Driscoll was appointed a Special State's Attorney to represent the Merit Board and its members Bob Novelle and Arthur Waddy. Driscoll also represented Justice Pat Quinn in a civil rights suit. In a significant real estate tax case, Driscoll served as one of Ford Motor Company's lawyers in the trial court, appellate court and Illinois Supreme Court. Ultimately, the Supreme Court held that in the absence of fraud, the courts had no power to review the value of property set by the tax assessor.

Some of the criminal defendants Driscoll represented include Ferris Walker, whose conviction and death sentence Driscoll managed to get reversed and remanded, although Walker did get a 75-year sentence after the remand. Driscoll also represented Andy Kokorealis on Cook County charges, where the jury spared his life. However, Koko-

realis received the death sentence in 1999 in DuPage County, where the Public Defender represented him. Kokorealis became the last man executed in Illinois before the George Ryan moratorium.

While Driscoll had some interesting clients in private practice, he does not miss some aspects of private practice such as traveling, administrative headaches, trying to collect fees from clients, and worrying about paying staff and overhead costs. Driscoll observed that criminal defense work did not usually bring repeat business.

So, in 1999, when Driscoll's high school friend, State's Attorney Dick Devine, called to ask Driscoll to come back to the State's Attorney's Office as Bureau Chief of the Civil Actions Bureau, Driscoll accepted. Driscoll has held that position ever since.

Driscoll often tells new Assistant State's Attorneys that their job is the best job they will ever have—as long as they can afford it. He explains that the experience is priceless. Driscoll himself has argued 25 cases in the Illinois Supreme Court plus many more in the appellate court. In the trial courts, he has had an opportunity to handle some of the most interesting cases arising in the public sector. He works closely with the Cook County Board and county officials, who depend upon his advice. Perhaps, what gives Driscoll his unique perspective is that he has spent twenty years in public service and over 20 years in private practice.

Driscoll says that he likes what he does, the people he works with, the camaraderie of his staff, and the shared goals and mission of the State's Attorney's Office. He finds his work challenging and professionally rewarding.

In addition to holding a demanding and time-consuming position, Driscoll is active in many bar associations and not-for-profit organizations. Driscoll has chaired the ISBA's Unauthorized Practice of Law Section Council, the Criminal Justice Section Council, the Standing Committee of Government Lawyers, and the Federal Civil Practice Section Council. He also served on the Special ISBA Committee on the Death Penalty, and other committees. He has served eight terms in the Assembly of the ISBA.

Driscoll has also served on many CBA Committees including Membership, Crimi-

nal Law, Defense of Prisoners, Tort Law, and the Judicial Evaluation Committee. He is a former Appellate Lawyers Association Board member and is a Federal Bar Association board member. He has served on and chaired an ARDC Hearing Board, and he has worked on many other committees too numerous to mention.

Outside of the legal field, Driscoll has also served on the Board of Trustees of the Norwegian American Hospital and spent three years as its chairman. Driscoll lives in Glenview with his wife, who teaches Irish step-dancing and who is a former school teacher. Driscoll has four children and nine grandchildren. He enjoys vacationing at his second home in Puerto Vallarta, Mexico.

The Standing Committee on Government Lawyers is proud to call Pat one of our own and truly someone you should know. ■



ILLINOIS STATE
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Whatcha gonna do, whatcha gonna do when they come for you?

By Thomas L. Ciecko

Bad boys, bad boys
Whatcha gonna do
whatcha gonna do?
When they come for you?*

An Executive Inspector General, created by the State Officials and Employees Ethics Act (5 ILCS 430/20-10), investigates violations of that Act, which may include prohibited political activities, gift ban restrictions, and whistle blower protected activities. See 5 ILCS 430/20-20.

There are rights and responsibilities relative to both the Executive Inspector General and those officers and employees who are interviewed or to whom requests for documents are made.

An Executive Inspector General may request information relating to an investigation. That information must be necessary to conducting the investigation. The request must be in writing and must inform the person from whom documents or physical objects are requested that if there is a belief that the release of the field of inquiry might violate existing rights or protections under state or federal law, the recipient of the request may seek a determination from the Executive Ethics Commission as to such rights or protections. See 5 ILCS 430/20-20(2); 2 Ill. Admin. Code §1620.300 (c) (5). There is no statutory time frame by which compliance with such a request must be made. There is a dubious requirement that the recipient of a request maintain confidentiality about the request, which seems completely unenforceable and likely may compromise a fair consideration of a potential violation of rights or protections under state or federal law. Pending such determination, an Executive Inspector General could take action to insure the integrity of any requested documents or physical objects. The reasonableness of such action could, of course, be challenged.

An Executive Inspector General may issue a subpoena for the production of documents or to compel the attendance of witnesses to secure testimony. See 5 ILCS 430/20-35. This is clearly an administrative subpoena which, if ignored, would require the Executive In-

spector General to secure a court order of compliance. Such a subpoena could be the subject of a motion to quash on grounds it is ambiguous or overbroad (as a subpoena for documents must be relevant to a subject matter) or that compliance presents an undue burden on the recipient. The subpoena could also be the subject of a motion for protective order.

You chuck it on that one,
You chuck it on that one,
You chuck it on ya mother,
and you chuck it on ya brother
and you chuck it on ya sister
and you chuck it to me!

The State Officials and Employees Ethics Act states that it is the duty of every officer and employee under the jurisdiction of an Executive Inspector General to cooperate in an investigation pursuant to that Act. See 5 ILCS 430/20-70. What would constitute cooperation? The Act gives only two examples of what constitutes a failure to cooperate: intentional omissions and giving knowing false statements. There is no duty to give information or produce documents not specifically requested. There is no duty to comply with an unreasonable or unnecessary request. It would likely be unreasonable to interview someone on matters outside the scope of their employment duties. The duty to cooperate is not unlimited. An officer and employee has every right under the Fifth Amendment to the United States Constitution to refuse to answer an investigator's questions when he or she believes responses could be used in a criminal prosecution. See 5 ILCS 430/20-70. The employee also has every right protected by the United States Constitution and federal and Illinois law. 2 Ill. Admin. Code §1620.300 (c) (8) (c). Public employees have the same rights as any other citizen. An employee could not be fired merely for exercising his or her Fifth Amendment right.

The Act states that a failure to cooperate with an investigation by an Executive Inspector General is grounds for disciplinary action, including dismissal. But that is not the

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OFFICE

Illinois Bar Center
424 S. Second Street
Springfield, IL 62701
Phones: 217-525-1760 OR 800-252-8908
www.isba.org

CO-EDITORS

Kathryn A. Kelly
219 S. Dearborn, Ste. 500
Chicago, IL 60604

Lynn E. Patton
500 S. Second Street
Springfield, IL 62706

MANAGING EDITOR/

PRODUCTION

Katie Underwood
kunderwood@isba.org

STANDING COMMITTEE ON GOVERNMENT LAWYERS

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

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decision of the Executive Inspector General, who has no authority to discipline an officer or employee. That would be the decision of the employer of the officer or employee. A person who intentionally obstructs or interferes with an investigation conducted under the State Officials and Employees Ethics Act by an Executive Inspector General is subject to an administrative fine of up to \$5,000 that may be levied by the Executive Ethics Commission. See 5 ILCS 430/50-5 (e).

You're too bad,
You're too rude,
You're too bad,
You're too rude,

The request for information relating to an investigation by an Executive Inspector General may be done by an interview of an officer or employee. If the officer or employee is the subject of that investigation and faces discipline, that Executive Inspector General must notify the person to be interviewed whether the investigation is criminal or administrative in nature. If it is criminal in nature, the person has the right to the presence of an attorney, union representative, or coworker not involved in the investigation. The wisest course for such a person is to exercise the right to the presence of an experienced criminal defense attorney. If the investigation is administrative in nature, the person has the right to the presence of a union representative or coworker not involved in the investigation. Requesting the presence of any of these individuals suspends the interview to a new date and time. 2 Ill. Admin. Code §1620.300(c) (6). No person notified that the investigation is criminal or administrative should ever forego their right to the presence of one of these individuals. The stakes are simply too high.

Every officer or employee involved in an investigation has an absolute right to seek advice from that person's ethics officer on the interpretation and implementation of the State Officials and Employees Ethics Act, and an absolute right to seek advice from private legal counsel. No Executive Inspector General can encroach on that right. 2 Ill. Admin. Code §1620.300 (c) (7). A person so involved should seek every opportunity to secure such advice.

Any interview conducted by an Executive Inspector General is required to be conducted in a "businesslike manner." Presumably that would mean in a place with adequate space, a reasonable level of privacy with

sufficient seating and adequate light and ventilation. The Executive Inspector General conducting the interview is cautioned to avoid personality clashes, acts of undue familiarity, the use of profanity, and is required to treat persons with respect and not to unduly embarrass, inconvenience, intimidate or degrade a person being interviewed. 2 Ill. Admin. Code §1620.300 (c) (8) (A). This would seem to require the interview be done in appropriate business attire, with a professional demeanor, in simple clear language, without extraneous comments or remarks of a personal nature. Unless physically threatened, armed investigators cannot use firearms in a manner that may intimidate a person.

An important right of persons who are the subject of an investigation and who face discipline is the right to refuse to allow the interview to be recorded. The person also has the right to have the interview recorded. Other persons interviewed can refuse to allow the interview to be recorded, as all parties to the hearing or recording of a conversation in Illinois must consent to such hearing or recording. See 720 ILCS 5/14-2 (a) (1). Violation of the offense of eavesdropping may result in civil remedies against the eavesdropper. See 720 ILCS 5/14-6 (1).

If, during the interview, a person believes the Executive Inspector General has acted in violation of 2 Ill. Admin. Code §1620.300 (c) (8) (A)-(D), by: conducting the interview in less than a businesslike manner; abusing the person by using profanity; acting with undue familiarity, not treating the person with respect, unduly embarrassing the person; using a firearm to intimidate the person; or restricting the rights protected by the Constitution of the United States and federal and State law, that person may file a written objection with the Executive Ethics commission specifying the nature of the violation. The Commission will either sustain or overrule the objections.

When they come for you, know your rights. ■

*The lyrics in this article are some of those of "Bad Boys" sung by Bob Marley.

Thomas L. Ciecko is currently General Counsel for the Suburban Bus Division of the Regional Transportation Authority. He is a former Assistant Illinois Attorney General, former Chief of the Organized Crime Division of the Will County State's Attorney's Office, and former Special Assistant United States Attorney. The opinions expressed in this article are his alone and do not necessarily reflect the opinions of the Suburban Bus Division of the Regional Transportation Authority.

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gave me free access
to ALL of Fastcase...*

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Attorney General issues opinions

By Lynn Patton

Under section 4 of the Attorney General Act (15 ILCS 205/4 (West 2010)), the Attorney General is authorized, upon request, to furnish written legal opinions to State officers and State's Attorneys on matters relating to their official duties. The following is a summary of official opinion Nos. 11-003 through 11-006 and informal opinion No. I-11-006 that may be of interest to the government bar.

Copies of an opinion may be requested by contacting the Opinions Bureau in the Attorney General's Springfield office at (217)782-9070. Copies of official opinions may also be found on the internet at <<http://www.illinoisattorneygeneral.gov/opinions/index.html>>.

Opinion No. 11-003—Issued December 8, 2011

Felony Forfeiture of Pension Benefits

The felony convictions of Rod Blagojevich, former Governor of Illinois, for the offenses of wire fraud, conspiracy and attempt to commit extortion, bribery concerning programs receiving Federal funds, conspiracy to commit an offense against the United States, and making false statements or representations, related to or arose out of or in connection with his service as the Governor of Illinois, thereby requiring a forfeiture of his pension benefits. Under section 2-156 of the Pension Code, however, Blagojevich is entitled to a full refund of his contributions made to the General Assembly Retirement System. 40 ILCS 5/2-156 (West 2010).

Opinion No. 11-005—Issued December 23, 2011

Applicability of Municipal and County Zoning Ordinances to School Districts

Statutory construction of the county and municipal zoning statutes in conjunction with the School Code reveals that school districts should comply with local zoning ordinances, except in the limited instances in which such compliance would frustrate the school districts' statutory objectives. This interpretation coincides with the Illinois case law trend favoring compliance by public entities with local land use regulations where possible, to effectuate the objectives of land

use regulations as well as the statutory objectives of the public entities. 55 ILCS 5/5-12001 (West 2010); 65 ILCS 5/11-13-1 (West 2010), as amended by Public Act 97-496, effective August 22, 2011; 105 ILCS 5/10-20, 10-22.13a (West 2010).

Opinion No. 11-006—Issued December 30, 2011

Beverage Vending and Pouring Rights Contract

Subsection 1.5550(a) of the State's Standard Procurement Rules (the Rules) generally authorizes a prospective bidder that is aggrieved with a procurement action to file a protest provided that the bidder has evidence of a violation of the Illinois Procurement Code or any associated rules. Under the plain and unambiguous language of subsection 1.5550(d) of the Rules, when a protest has been timely filed before an award of a contract has been made, a procurement officer shall make no award of the contract until the protest has been resolved. Based on the information provided, the Illinois Department of Revenue did not resolve a filed protest until after the contract had been awarded. Accordingly, assuming that the protest was properly filed, the contract was improperly awarded under section 1.5550

of the Rules. 30 ILCS 500/20-50, 20-75 (West 2006); 44 Ill. Adm. Code §1.5550, as amended by 30 Ill. Reg. 17305, 17381 (effective October 20, 2006).

Informal Opinion No. I-11-006—Issued August 4, 2011

Compensating County Board Members on a Per Meeting Basis

Under the plain and unambiguous language of section 2-3008 of the Counties Code, at the time of decennial reapportionment, the county board shall determine whether to compute the salary of county board members on a per diem basis, on an annual basis, or on a combined per diem and annual basis. The term "per diem" refers to compensation for expenses which is intended to cover the entire 24 hours in a day. Giving the term "per diem" its commonly understood meaning, therefore, it is clear that a proposed method for calculating the salaries of county board members based on the number of meetings attended does not constitute a per diem method. Consequently, section 2-3008 does not authorize a county board to compute the salary of its members on a "per meeting" basis. 55 ILCS 5/2-3008 (West 2010). ■

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April

Tuesday, 4/3/12- Teleseminar—Portability of the Estate and Gift Tax Exemptions-Planning in 2012. Presented by the Illinois State Bar Association. 12-1.

Wednesday, 4/4/12- Webinar—Advanced Tips for Enhanced Legal Research on FastCase. Presented by the Illinois State Bar Association- Complimentary to ISBA Members. 9-10am.

Friday, 4/6/12- STUDIO TAPING—Economic Development Tools: What are the Options for Local Government. Presented by the Local Government Law Section. 9:30-11:30.

Monday, 4/9/12- Webinar—Introduction to Legal Research on FastCase. Presented by the Illinois State Bar Association- Complimentary to ISBA Members. 9-10.

Tuesday, 4/10/12- Teleseminar—Employee Discipline and Discharge: Policies and Procedures to Limit Liability. Presented by the Illinois State Bar Association. 12-1

Tuesday, 4/10/12- DeKalb, Northern Illinois University—Issues in Illinois Public Construction Contracting (Repeat from June 24, 2011). Presented by the ISBA Construction Law Section. 8:55-4:30.

Tuesday, 4/10/12- Chicago, ISBA Chicago Regional Office—Master Series: Ethics and Professionalism through the Lens of Literature- Part 1. Presented by the Illinois State Bar Association. 9-12.

Tuesday, 4/10/12- Chicago, ISBA Chicago Regional Office—Master Series: Ethics and Professionalism through the Lens of Literature- Part 2. Presented by the Illinois State Bar Association. 1-4.

Wednesday, 4/11/12- Chicago, ISBA Chicago Regional Office—Master Series: Ethics and Professionalism through the Lens of Literature- Part 1. Presented by the Illinois State Bar Association. 9-12.

Wednesday, 4/11/12- Chicago, ISBA Chicago Regional Office—Master Series:

Ethics and Professionalism through the Lens of Literature- Part 2. Presented by the Illinois State Bar Association. 1-4.

Thursday, 4/12/12- Teleseminar—Drafting Life Insurance Trusts. Presented by the Illinois State Bar Association. 12-1.

Monday, 4/16/12- Bloomington, Holiday Inn and Suites—The Construction Project from Womb to Tomb (and Then Back to Life). Presented by the ISBA Commercial Banking, Collections and Bankruptcy Section; co-sponsored by the ISBA Real Estate Law Section and the ISBA Construction Law Section. 8:50-4:30.

Monday, 4/16/12- Chicago, Chicago Bar Association—Ethics and the Allure of Social Media. Presented by the Chicago Bar Association and the ISBA Energy, Utilities, Telecommunication and Transportation Section. Time TBD.

Tuesday, 4/17/12- Teleseminar—Real Estate Joint Ventures, Part 1. Presented by the Illinois State Bar Association. 12-1.

Wednesday, 4/18/12- Teleseminar—Real Estate Joint Ventures, Part 2. Presented by the Illinois State Bar Association. 12-1.

Thursday, 4/19/12- Chicago, ISBA Chicago Regional Office—Civil Practice and Procedure Update 2012. Presented by the ISBA Civil Practice and Procedure Section. 8:50-4:00.

Friday, 4/20/12- Chicago, ISBA Chicago Regional Office—Legal Ethics in Corporate Law- 2012. Presented by the ISBA Corporate Law Department Section. 8-12.

Friday, 4/20/12- Chicago, ISBA Chicago Regional Office—ZPICs, Recovering from 3rd Party Payors, and the Status of Tax Exemption for Not-for-Profit Health Care Providers in Illinois. Presented by the ISBA Health Care Law Section. 1-4:15.

Tuesday, 4/24/12- Teleseminar—Franchise Red Flags and Traps- What You Should Know Before Your Client Buys. Presented by

the Illinois State Bar Association. 12-1.

Wednesday, 4/25/12- Chicago, ISBA Chicago Regional Office—Master Series: Ethical Strategies for Client Service and Business Development. Presented by the Illinois State Bar Association. 8:30-12:45.

Wednesday, 4/25/12- Live Webcast—Master Series: Ethical Strategies for Client Service and Business Development. Presented by the Illinois State Bar Association. 8:30-12:45.

Thursday, 4/26/12- Teleseminar—Construction Contracts: Anticipating the Unanticipated, Ensuring Performance and Limiting Downside Risk. Presented by the Illinois State Bar Association. 12-1.

Thursday, 4/26/12- Chicago, ISBA Chicago Regional Office—Employment Law for the General Practitioner. Presented by the ISBA Labor and Employment Law Section. 8:55-12:30.

Thursday, 4/26/12- Mt. Vernon, Illinois 5th District Appellate Courthouse and Cedarhurst Center for the Arts—Women in the Illinois Judiciary. Presented by the ISBA Standing Committee on Women and the Law and Racial & Ethnic Minorities and the Law. 3-7:30.

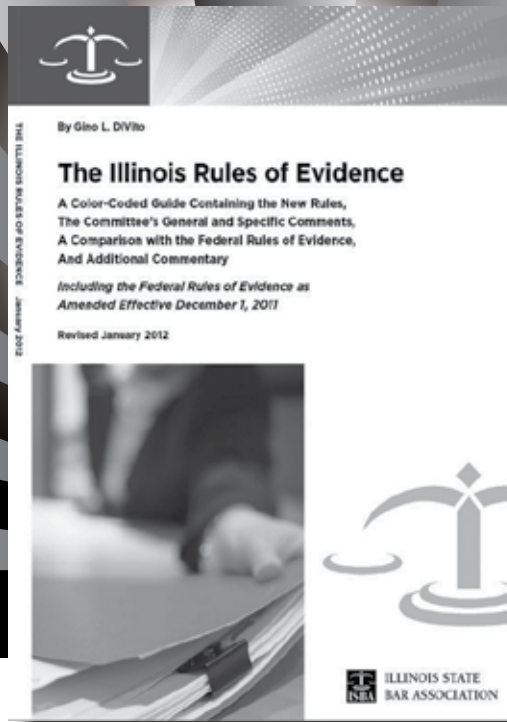
Friday, 4/27/12- Chicago, ISBA Chicago Regional Office—The Construction Project from Womb to Tomb (and Then Back to Life). Presented by the ISBA Commercial Banking, Collections and Bankruptcy Section; co-sponsored by the ISBA Real Estate Law Section and the ISBA Construction Law Section. 8:50-4:30.

Monday, 4/30/12- Webinar—Fast Case Boolean (Keyword) Search for Lawyers. Presented by the Illinois State Bar Association- Complimentary to ISBA Members. 9-10.

May

Tuesday, 5/1/12- Chicago, Standard Club—Tips of the Trade 2012: A Federal Civil Practice Seminar Chicago. Presented by the ISBA Federal Civil Practice Section. 9-4:30. ■

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