



ILLINOIS STATE BAR ASSOCIATION

THE PUBLIC SERVANT

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

From the Chair

By Mary Milano

Abundance in a Time of Scarcity

Most government agencies are experiencing or anticipating the beginning of new fiscal years. It is probably safe to say that this experience is not bringing good news for most and is pushing some agencies toward critical shortfalls in personnel and resources. For many agencies the experience reminds management that public budgets appear to be among the few real zero-sum games, and this can certainly make for a competitiveness that can cripple what should be a cooperative effort directed toward the singular goal of public service. Whose program will win? Whose entity will survive? Whose new initiative will be timed to catch the

tide of public opinion or administrative priorities? Who gets to hire? Who gets the raise? Who gets cut? Who will be the scapegoat—management, labor, retirees? Or more critically, what of the recipients of services that government provides and are now told they should no longer expect?

Government lawyers are as much or more than anyone on all sides of the game. We know that in our case it really is true that staff—people—are the most important resource. And we also know that in our collective case it is equally true that as both lawyers and public employees we may be the least understood resource. Further, because we are in many cases split between

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Governor signs Freedom of Information Act and Open Meetings Act changes

The 97th General Assembly passed a number of amendments to the Freedom of Information Act and the Open Meetings Act. Many of those amendments were signed by the Governor. A summary of the new Freedom of Information Act and Open Meetings Act amendments follows.

Freedom of Information Act

Public Act 97-579, effective August 26, 2011. Amends the Freedom of Information Act to define "recurrent requester" (a person that: (i) in the 12 months immediately preceding the request, has submitted to the same public body a minimum of 50 requests for records; (ii) submits a minimum of 15 requests for records within a 30-day period; or (iii) files a minimum of seven requests for records within a seven-day period)

and to establish longer periods of time within which public bodies may respond to requests from recurrent requesters. Authorizes a public body to charge a fee for each hour spent by personnel in searching for and retrieving requested records pursuant to a commercial request. Specifies that a person whose records request is made for a commercial purpose may not file a request for review with the Attorney General's Public Access Counselor, except for the limited purpose of determining whether the public body accurately characterized the request as a commercial request. Eliminates the requirement that public bodies seek preauthorization from the Public Access Counselor prior to withholding records under sections 7(1)(c) or 7(1)(f) of FOIA.

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From the Chair

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labor and management, policy making and front line, bargaining unit and non, high profile and at the barricades, it is hard for us to see ourselves (or for the public we serve to understand us) as having the same ultimate goals and interests.

But despite many apparent differences, we do share goals and interests. Government lawyers at every level share a professional commitment and identity that crosses every boundary. The real zero sum for us is the loss of the ability to effectively perform our mission and serve our constituencies, whom we generally believe ought to expect the services we provide because it is their right as citizens and as human persons in the kind of society to which we are committed by our

oaths, our service, and the values that underlie them. Across every kind of boundary, shortage, and other exigency, government lawyers as public servants put their gifts at the service of the public in unique and critical ways and in doing so provide a key element of the abundance which enables all of us among the public to continue to believe in the possibility of that society.

The ISBA both generally and in the specific instance of the Committee on Government Lawyers provides a space where we as public lawyers can come together without boundaries and through mutual dialogue, service, education, and challenge, to strengthen the gifts we share and better articulate the components of our visions of public service. It is

my hope that this year will bring a broadening of the constituencies with which we associate and which associate with us, an expansion of the ways in which we inculcate values and skills in younger members of the profession and a deepening of our ability to contribute to breaking down the barriers that are between us by the voices and situations that claim that scarcity is the new reality under which we need to live and work. I believe what we know to be the common good, and its centrality in all decision making, will be significantly strengthened and will help reclaim and restate what we further know to share the abundance. The process should never be reduced to winners or losers—unless we allow it to be. ■

Governor signs Freedom of Information Act and Open Meetings Act changes

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Public Act 97-452, effective August 19, 2011. Amends the Freedom of Information Act to exempt correspondence and records that may not be disclosed under section 11-9 of the Public Aid Code or that pertain to appeals conducted under section 11-8 of the Public Aid Code from the Act's inspection and copying requirements.

Public Act 97-342, effective August 12, 2011. Amends the Freedom of Information Act to exempt from disclosure "personally identifiable information" collected by the Toll Highway Authority. Defines "personally identifiable information."

Public Act 97-385, effective August 15, 2011. Amends the Freedom of Information Act to exempt from copying and inspection under the Act: (I) the names, addresses, and other personal information of persons who are minors and are participants and registrants in programs of park districts, forest preserve districts, conservation districts, recreation areas, and special recreation areas and (ii) the names, addresses, and other per-

sonal information of persons who are participants and registrants in programs of park districts, forest preserve districts, conservation districts, recreation areas, and special recreation areas where such programs are targeted primarily to minors.

Public Act 97-080, effective July 5, 2011. Amends the Freedom of Information Act to provide that the names and information of people who have applied for or received Firearm Owner's Identification Cards under the Firearm Owners Identification Card Act are exempt from inspection and copying, except in criminal investigations as otherwise provided for in that Act.

Open Meetings Act

Public Act 97-609, effective January 1, 2012. Requires employers participating in the Illinois Municipal Retirement fund to post on their Web sites, within six business days of approving their budget, the "total compensation package" for each employee making over \$75,000 per year. If the employer does not maintain a Web site, then the employer must post a physical copy of the information

at its principal office. Further, at least 6 days before an employer participating in the Illinois Municipal Retirement Fund approves an employee's total compensation package that is equal to or in excess of \$150,000, the employer must post the employee's total compensation on the Web site. Defines the term "total compensation package."

Public Act 97-504, effective January 1, 2012. Amends the Open Meetings Act to require each sitting elected or appointed member of a public body subject to the Act to successfully complete the electronic training curriculum developed and administered by the Attorney General's Public Access Counselor within one year of the effective date of the amendatory Act. Requires each elected or appointed member of a public body who becomes a member of a public body after the effective date of the amendatory Act to successfully complete the electronic training curriculum developed and administered by the Public Access Counselor not later than the 90th day after the date the member either: (I) takes the oath of office, if the member is required to take an oath of office to

assume the person's duties as a member of the public body; or (ii) otherwise assumes responsibilities as a member of the public body, if the member is not required to take an oath of office to assume the person's duties as a member of the governmental body. Requires each member who successfully completes the curriculum to file a copy of the certificate of completion with the public body. Provides that the failure of one or more members of a public body to complete the training required by this amendment does not affect the validity of an action taken by the public body. Provides that an elected or appointed member of a public body subject to OMA who has successfully completed the required training and filed a copy of the certificate of completion with the public body is not required to subsequently complete that training. Permits school board members to satisfy the training requirements by successful completion of a course of training provid-

ed by a qualifying school board association.

Public Act 97-452, effective August 19, 2011. Amends the Open Meetings Act to authorize a public body to hold a closed meeting to discuss correspondence and records (i) that may not be disclosed under a section 11-9 of the Public Aid Code or (ii) that pertain to appeals conducted under section 11-8 of the Public Aid Code.

Public Act 97-318, effective January 1, 2012. Authorizes the closure of meetings between internal or external auditors and governmental audit committees, finance committees, and their equivalents, when the discussion involves internal control weaknesses, identification of potential fraud risk areas, known or suspected frauds, and fraud interviews conducted in accordance with generally accepted auditing standards of the United States of America. ■

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Someone you should know: Lisle A. Stalter, Assistant State's Attorney, Lake County

By Pablo Eves

One of our recurring columns, *Someone You Should Know*, gives us a chance to introduce you to a government attorney. In this issue of the newsletter, we are proud to highlight one of our own—past chair Lisle Stalter.

Lisle was admitted to the Illinois bar in November 1997. She is a graduate of the University of Iowa with a degree in political science and a minor in economics. Stalter is also a graduate of the Northern Illinois University Law School in DeKalb, Illinois. She first worked as a staff attorney court side for the 19th Judicial Circuit in Lake County. For the past 11 years, she has served as a Civil Assistant State's Attorney in the Lake County State's Attorney's Office in Waukegan, Illinois.

Stalter handles a variety of civil matters for the Civil Division of the State's Attorney's Office. One of her primary responsibilities is civil environmental enforcement. Under an agreement with the Illinois Environmental Protection Agency, Lake County enforces the solid waste provisions of the Environmental Protection Act (this involves landfills and other permitted facilities in Lake County, as well as open dumping issues). Those cases are referred directly to Stalter for enforcement. Additionally, she is involved in cases that the Illinois Environmental Protection Agency refers to the Illinois Attorney General's Office. The Attorney General's Office will often ask the State's Attorney's Office if they wish to be involved in an enforcement action. At that point, Stalter works closely with the Attorney General's office in the filing of injunctive actions and seeking civil penalties in the Circuit Court of Lake County. She enjoys working in cooperation with the Illinois Attorney General's Office and Illinois Environmental Protection Agency inspectors to resolve environmental violations.

Stalter also handles general land use zoning matters, defends Lake County officials against civil lawsuits filed under 42 U.S.C. § 1983, represents Lake County in labor arbitration and grievance hearings, and advises the Lake County Board in the public hearing process with respect to amendments or special use applications under the zoning ordinances. Lake County recently considered amending its zoning ordinance to address wind farms;

Stalter was instrumental in that process. Since 2007, she has served as the State's Attorney's Office representative and Board Member on the Lake County Childcare Coalition.

Stalter has been highly involved in the ISBA for several years. She is an eight-year member of the Environmental Law Section Council. She was chair of the section council in 2008-2009, completed her ex officio year in 2009-2010, and agreed to stay on to coordinate the ISBA's 2011 Annual Environmental Law Conference, held in May of each year. Stalter has coordinated and moderated the annual conference for several years running, helping to establish the conference as one of the ISBA's best. Although geared toward environmental lawyers and those in related industries, it is a conference not to be missed by other interested ISBA members. The most recent conference was headlined by keynote speakers from the U.S. Environmental Protection Agency, the Illinois Environmental Protection Agency, and the Illinois Attorney General's Office. She is now taking a well-deserved rest from her Environmental Law Section Council duties, although she is still involved with the CLE committee and the annual conference.

Stalter was honored with the ISBA's Board of Governors Award at the 2011 Annual Awards Luncheon by President Mark D. Hassakis and incoming President John G. Locallo. The award was presented for her distinguished service to the ISBA through the years. Specifically, the award recognized her work coordinating and planning the annual law conference for the Environmental Law Section Council, although Stalter quickly notes that the conference was a group effort and that many people contributed more than their fair share to the planning efforts, and success, of the conference through the years.

Lisle currently serves on the ISBA's Local Government Law Section Council, and is in her first year in the Federal Civil Practice Section. Before that, Stalter was a member of our group, the Standing Committee on Government Lawyers, having served as chair in 2009-2010 and completing her year as ex officio in 2010-2011. She has also served and chaired the Standing Committee on Legal Education, Admission and Competence.

In and around Lake County, Stalter serves

as a member (and a former board member) of the Association of Women Attorneys of Lake County (AWALC), which consists of lawyers, judges, and other legal professionals throughout Lake County and neighboring counties. AWALC holds monthly lunch meetings at a reduced cost, CLE attendance at a reduced cost, and provides networking and social opportunities to its members. As such, AWALC is very supportive of newer attorneys coming into the Lake County area, whether new to the practice of law or moving their practice to Lake County.

Stalter has lived in unincorporated Russell, Illinois for almost 11 years, with her husband, Nathan, who is a cardiac sonographer at Northwestern Lake Forest Hospital, her eight-year-old son Nathan, and six-year-old daughter Rebecca. She is an active member of Christ Community Church in Zion, Illinois. She is one of a team of teachers for two-year-old Sunday School and this past year served as a camp counselor for Primary Camp (kids entering 2nd and 3rd grade) at Camp Zion in Door County, Wisconsin. In addition to spending time with her children, Stalter tends the family garden and often cans food for the winter. Her favorite thing to make is Tomato Soup and she fills her freezer with it. Lisle has graciously agreed to share her tomato soup recipe:

1 T olive oil
1 small onion, chopped
1 T of minced garlic (or 3 cloves)
3 pounds of ripe tomatoes (from the garden)
2 C chicken broth
1 can tomato paste
1 teaspoon sugar
1/2 teaspoon salt
1/4 teaspoon of pepper
2 T fresh basil (or 2 teaspoons dry basil)

Sauté onion and garlic in olive oil until tender but not brown. Add rest of ingredients except basil. Bring to a boil, reduce heat and boil until tomatoes are very soft (20 minutes or so). Add basil and cook an additional five minutes. Let cool slightly, use a stick blender (or a food processor) to puree. ENJOY!

We are proud to count Lisle as one of our alumni, and she really is someone you should know. ■

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In-sites

Let the sun shine

Sunshine, the Illinois Accountability Project, under the Governor's Office and with the support of the General Assembly by way of Public Act 96-225, effective January 1, 2010, is intended to bring State government "into the light." Sunshine touts the slogan "Bringing Your Government Into the Light." Found at <<http://www2.illinois.gov/sunshine/>>, Sunshine is organized into several categories that are to expand in time. These include State Government, Education, Health & Safety, Elections, Transportation, and Consumer.

The link to State Government includes the subcategory of Transparency & Accountability Portal, where you may research Expenditures, Financial Disclosures, Contracts and Payroll. Under Payroll, you may also search by State employee name or title to determine salary. <<http://www2.illinois.gov/sunshine/Pages/Payroll.html>>.

The State Government link is full of a variety of financial information, such as DCEO

Grant Tracking, Federal Stimulus Spending, Lobbyist Registrations, Statements of Economic Interest, Audit Reports, Comptroller's Open Book, and FY11 Budget Process.

Under Education, you may obtain information about subjects from School Bus Inspections to Teacher Certifications. The Consumer category provides information regarding consumer complaints against businesses, as well as disciplinary actions against attorneys.

The site simplifies the process of finding information directly, without having to navigate different State agency sites or dig down many layers into the State's main Web site. Moreover, the site even asks for feedback to improve ease of use.

Along the same lines, the State has also recently launched <<http://data.illinois.gov/>>. "The Illinois Data Portal is the first phase of a much larger effort. The Data Portal will continue to grow in Agency participation and soon will be a great foundation of data sets that can be used for more productive purposes." Its stated intent is "born from trans-

parency and the hope that we can induce for the first time ever an opportunity for citizen involvement in deriving solutions to some of the problems in government." Data sets include such diverse information as retail sales, daily traffic counts, lottery sales by zip code, public and private beaches, and weigh stations. What seems novel is that this information, probably accessible by agency inquiry, is readily available for the public's use.

Another site of interest is the revamped Illinois Comptroller's Web site at <<http://www.ioc.state.il.us/>>. The site contains a Financial Inquiries link, where you may access information about State Vendor Payments, Expenditures, Cash Balances, and Prevailing Wage Inquiries. These links are detailed and very explanatory. The link to Fiscal Condition similarly provides detailed information regarding topics such as Unemployment Rates, Bond Rating and State Budget Report. Finally, the Resource Library hosts an impressive array of resources including bulletins and manuals.

It seems a new day has dawned for the idea of transparency and efficiency. ■

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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 numbers 11-001 through 11-003 and informal opinion numbers I-11-001 through I-11-005 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. 11-001, Issued January 25, 2011

Affect of the Senate's Sine Die Adjournment on Pending Gubernatorial Nominations

Based on the language of article V, subsection 9(a), of the Constitution, as well as the history of the provision, the term "session days" as used in subsection 9(a) extends beyond the biennial session. Accordingly, a nomination pending prior to the expiration of 60 session days when the Senate adjourns a session sine die does not expire with the adjournment. Rather, the nomination carries over into the new biennial session. Ill. Const. 1970, art. V, §9(a).

Opinion No. 11-002, Issued May 18, 2011

Authority of Commission on Government Forecasting and Accountability over Certain State Employees' Group Health Benefits Contracts

The phrase "with the advice and consent of the Commission" in section 6.2 of the State Employees Group Insurance Act of 1971 confers upon the Commission on Government Forecasting and Accountability the power to approve or disapprove self-insured health plans based upon its determination of whether it would be in the best interests of the State and its employees to self-insure in whole or in part. It does not authorize the Commission to approve individual health benefit provider or administrator contracts. 5 ILCS 375/5, 6.2 (West 2008).

Informal Opinion No. I-11-001, Issued January 13, 2011

County Board Control Over County Health Department Budget

A county board's authority over the county's finances and budget includes the discretion to approve or disapprove the budget submitted by the county's board of health, including any specific item set out in the proposed budget. 55 ILCS 5/5-25010 (West 2008).

Informal Opinion No. I-11-002, Issued March 25, 2011

Private Use of Grain Elevator for Agricultural Purpose

A grain elevator that is used to store and dry grain, whether operated for private use or as a commercial business, is used as part of the "growing of farm crops" or the "processing [and] conditioning" of other farm seeds and grain. As a result, a private grain elevator serves an "agricultural purpose" within the meaning of section 5-12001 of the Counties Code. Consequently, a county may not prohibit the private use of a grain elevator on property zoned for business use as an exercise of its zoning authority under section 5-12001 of the Code. 55 ILCS 5/5-12001 (West 2008).

Informal Opinion No. I-11-003, Issued March 31, 2011

Compatibility of Offices – Elementary School Board Member and High School Board Member

Because of the potential conflicting duties, a person who serves on a high school board and an elementary school board simultaneously would be unable, in every instance, to represent the interests of both school districts fully and faithfully. Therefore, the offices of high school board member and elementary school board member are incompatible, and one person may not hold both positions simultaneously. Further, the acceptance of a second, incompatible office by the incumbent of another office constitutes an ipso facto resignation of the first office held. 105 ILCS 5/10-20 through 10-23.12 (West 2008).

Informal Opinion No. I-11-004, Issued June 16, 2011

Felony Forfeiture of Pension Benefits

The felony conviction of John Urbas, an employee of the State of Illinois, for the offense of theft, related to or arose out of or in connection with his employment as an Agency Vehicle Coordinator for the Illinois Department of Corrections, thereby requiring the forfeiture of his pension benefits. 40 ILCS 5/14-149 (West 2008).

Informal Opinion No. I-11-005, Issued July 1, 2011

Compatibility of Offices – County Sheriff and Fire Protection District Trustee

Because there is no conflict in duties, the office of county sheriff is compatible with the office of fire protection district trustee, and one person may hold both offices simultaneously. ■

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November

Tuesday, 11/1/11- Teleseminar—Middle Market M&A, Part 1. Presented by the Illinois State Bar Association. 12-1.

Wednesday, 11/2/11- Teleseminar—Middle Market M&A, Part 2. Presented by the Illinois State Bar Association. 12-1.

Thursday, 11/3/11- Lombard, Lindner Learning Center—Real Estate Law Update-2011. Presented by the ISBA Real Estate Section. 9-4:45.

Friday, 11/4/11- Chicago, ISBA Chicago Regional Office—2011 Federal Tax Conference. Presented by the ISBA Federal Taxation Section. 8:30-4:30.

Tuesday, 11/8/11- Teleseminar—Title Insurance in Real Estate. Presented by the Illinois State Bar Association. 12-1.

Thursday, 11/10/11- Teleseminar—Ethics of Working with Witnesses. Presented by the Illinois State Bar Association. 12-1.

Thursday, 11/10/11- Chicago, ISBA Chicago Regional Office—Family Law Nuts and Bolts Chicago 2011. Presented by the ISBA Family Law Section. 8-5.

Tuesday, 11/15/11- Webcast—Environmental Law for Non-Environmental Lawyers—Session 1: Permitting and Due Diligence Issues. Presented by the ISBA Environmental Law Section. 10-12.

Tuesday, 11/15/11- Teleseminar—UCC Article 9/Foreclosure of Personal Property Part 1. Presented by the Illinois State Bar Association. 12-1.

Wednesday, 11/16/11- Teleseminar—UCC Article 9/Foreclosure of Personal Property Part 2. Presented by the Illinois State Bar Association. 12-1.

Friday, 11/18/11- Chicago, John Marshall Law School—Economic Ramifications of Health Care Reform. Presented by the Illinois State Bar Association Health Care Section. 1:00-4:15.

Friday, 11/18/11- Chicago, ISBA Chicago Regional Office—Master Series- Forensics: Using Evidence to Build Your Case. Presented by the ISBA Criminal Justice Section Council. 8:50-5:00.

Tuesday, 11/22/11- Teleseminar—Estate Planning for Farms and Ranchland. Presented by the Illinois State Bar Association. 12-1.

Tuesday, 11/29/11- Teleseminar—Trust Alternatives. Presented by the Illinois State Bar Association. 12-1.

Wednesday, 11/30/11- Teleseminar—Employment Tax Planning Across Entities. Presented by the Illinois State Bar Association. 12-1.

December

Thursday, 12/1/11- Chicago, ISBA Chicago Regional Office—Recent Developments in State and Local Tax- 2011. Presented by the ISBA State and Local Tax Committee. 9-12.

Thursday, 12/1/11- Teleseminar—Business Planning with S Corps, Part 1. Presented by the Illinois State Bar Association. 12-1.

Friday, 12/2/11- Teleseminar—Business Planning with S Corps, Part 2. Presented by the Illinois State Bar Association. 12-1.

Friday, 12/2/11- Chicago, ISBA Chicago Regional Office—Motion Practice- From Pleadings through Post-Trial. Presented by the ISBA Civil Practice & Procedure Section. 8:50-2:15.

Thursday, 12/6/11- Teleseminar—Estate Planning for Retirement Benefits. Presented by the Illinois State Bar Association. 12-1.

Tuesday, 12/13/11- Teleseminar—Individual Liability for Corporate Obligations: Piercing the Corporate Veil. Presented by the Illinois State Bar Association. 12-1.

Thursday, 12/15/11- Teleseminar—UCC Issues in Real Estate Transactions. Presented by the Illinois State Bar Association. 12-1.

Tuesday, 12/20/11- Teleseminar—Asset Protection Strategies for Real Estate. Presented by the Illinois State Bar Association. 12-1.

Wednesday, 12/21/11- Teleseminar—Tax Efficient Methods of Getting Money out of a Business. Presented by the Illinois State Bar Association. 12-1. ■

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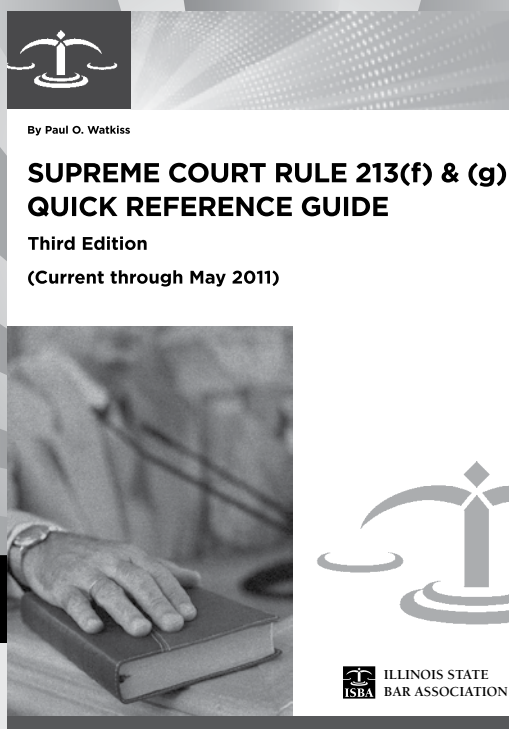
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As every litigator knows, the heart and soul of every case is presented through the witnesses who testify. Accordingly, being able to raise and respond to Rule 213(f) & (g) objections is an essential trial skill. The *Guide* is designed to help the litigator do just that! Written by Paul O. Watkiss, the *Guide* is published in a uniquely useful format and makes clear the pitfalls of ignoring its nuances.

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