



THE CATALYST

The newsletter of the Illinois State Bar Association's Standing Committee on Women and the Law

Chair's column

By E. Nicole Carrion

Greetings from the Standing Committee on Women and the Law! As we embark upon a new year, I am honored and grateful for the opportunity to serve as Chair this year. This Committee has held a special place in my heart since I became a member of it in 2006. I have grown so much professionally and personally as a direct result of my participation in this Committee and I look forward to leading the Committee whose members will undoubtedly carry on the important work of advancing the interests of women attorneys this year. I would also like to recognize the excellent leadership of last year's chair, Sandra Crawford, and all of the past chairs that came before me. I hope that my tenure as Chair this will be as successful and meaningful as years past.



Committee Chair
E. Nicole Carrion

This year the Committee plans to undertake several exciting programs for women in the profession. Currently, we are in the process of planning and developing new CLE programs on critical issues to women lawyers and the legal profession in general. Additionally, we will take every opportunity to support and encourage women lawyer's professional development and leadership in their firms, the judiciary, the Bar, and the community. Indeed, my decision to go Solo and start my own firm

as of September 1, 2011, was due in large part to the programs and resources on professional development, support, and mentoring that I received by my participation on this Commit-

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Gender and the Judiciary—A view from the newest justice on the Illinois Supreme Court

By Ellen Ogden

With the Honorable Mary Jane Theis' elevation to the Illinois Supreme Court during the past year, the state marked another significant milestone for women in the legal profession. Although Justice Theis is the fourth female to serve on the Illinois Supreme Court, this is the first time the Court has had three women on the bench at the same time.

Justice Theis was sworn in on Tuesday, October 26, 2010, filling the vacancy left by Retired Chief Justice Thomas R. Fitzgerald. The court is

now comprised of four men and three women, with Justice Theis joining Justices Rita B. Garman and Anne M. Burke, the second and third females to serve on the court. Retired Chief Justice Mary Ann G. McMorrow was the first woman on the court, winning election to the post in 1992 and serving as the chief justice from 2002 to 2005. Justices McMorrow and Garman served together from 2001 until 2006, when Justice McMorrow

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Chair's column

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tee. This year the Committee will continue to serve and support women lawyers in the ISBA and the Illinois legal profession overall in developing and pursuing their own goals and dreams. Likewise, our Committee will continue to vigilantly review and comment on proposed Illinois legislation that significantly impacts women. Our Committee is made up of a group of women and men attorneys with diverse interests and professional backgrounds. We celebrate this diversity as a Committee and desire to contribute to the dialogue on a wide variety of legal is-

sues affecting women.

Finally, the Committee and the ISBA hope to partner with the Illinois Judges Association in the Spring of 2012 and hold an event at the 5th District Appellate Court in Mt. Vernon (REAL DOWNSTATE to all of you Chicagoans ☺). I am a southern Illinois girl, having grown up in Mt. Vernon and now practicing in Edwardsville, and I am thrilled that the ISBA is going to sponsor a top-notch program about "Women in the Illinois Judiciary" in the South that will provide downstate women lawyers a very-much-needed networking opportu-

nity and a top-notch program and reception open to all ISBA members—north and south alike! I hope to see many of my dear northern and central Illinois friends in the Bar Association come down for an excellent program and some southern hospitality!

I am very excited about all of the upcoming events and opportunities that we are planning for this year. I look forward to serving as Chair and to continue the work and commitment to advancing the interests of women attorneys in the ISBA and the Illinois legal profession overall. ■

Gender and the Judiciary—A view from the newest justice on the Illinois Supreme Court

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retired and Justice Burke was appointed to fill her vacancy.

Justice Theis has been on the path to success since she graduated from Loyola University Chicago in 1971 with a Bachelor of Arts in History and went on to pursue a law degree from the University of San Francisco School of Law, graduating in 1974. Her legal career began as an assistant Cook County public defender, a post she held until 1983, when she became an Associate Judge for the Circuit Court of Cook County. In 1988, she was elected Circuit Judge of Cook County. Thereafter, Justice Theis was assigned to the First District Appellate Court in 1993, elected to that position in 1994 and served there until her appointment to the Supreme Court. As part of her service to the profession, she has been a member of the Women's Bar Association of Illinois (WBAI) since 1974 and received the Mary Heftel Hooten Award from the organization in 1998. The award recognizes women in the legal community who support the WBAI's "commitment to ensuring the success of women attorneys and advocacy for women's interests." Although Justice Theis is a role model and leader among women in the legal profession today, she speaks with humility about her accomplishments. In a statement to the Illinois State Bar Association after appointment to the Court, Justice Theis said, "I am humbled by the confidence the Illinois Supreme Court has placed in me. The fact is I

love being a judge very much. I love the intellectual part of it. But most importantly, I have an opportunity to shape the law that affects the lives of the People of Illinois."

Not only has Justice Theis reached one of the major goals of women in the legal profession, but she has also managed to balance a family life in the midst of her career. She is married to Chicago attorney John T. Theis; they have two children and four grandchildren.

Recently, I had the opportunity to speak with Justice Theis about her status as an Illinois Supreme Court Justice, and discuss her perspective on how gender plays a role in the legal system—a topic that has gained greater prominence nationally with the expansion of the number of women on the United States Supreme Court, as well as some state supreme courts.¹

Ogden: What influenced you to pursue a legal career?

Justice Theis: Everyone's story is different. My dad was judge. As a very young person, back when I was in grade school and high school, I would go to his courtroom whenever I had an opportunity and watch the proceedings. It was a time when the law was changing very rapidly. He heard a lot of narcotics cases, and it was a time when issues about the Fourth Amendment were not only on the front pages of the newspapers,

but also were huge cases in the United States Supreme Court, and it seemed so compelling and exciting. I could see how all these big ideas related to real human beings who were standing in the courtroom—people who were suffering terribly from addiction—and it just seemed to me the courtroom was the place where the most important dynamics in our whole society were happening. I knew that I wanted to be a part of that.

Ogden: You spent most of your career with the public defender's office. Is that because you saw so many of the individuals come into your father's courtroom? Is that what sparked your passion for the defense side?

Justice Theis: Maybe yes, although I think there are certainly many prosecutors who are motivated by very strong concerns for the people they represent as well. Most importantly, I knew I wanted to be a trial lawyer. I wanted to be in court, and I wanted to be asking questions. There are many different ways to practice law. Certainly that style is what we see in movies and on television, but the fact is too, that I had the chance to see that. Also when I was in law school at the University of San Francisco, I participated in a clinical program in which the public defender's office allowed third year law students to handle all the misdemeanor cases in Marin County. So in my last semester, I didn't go to school, I

practiced law as a public defender. A very key piece in my career was my law school experience. So it seemed very natural to move on and do that when I returned to Chicago.

Let me say this, though: when I read stories about how today's job market is the worst job market for new lawyers in 35 years, I identify very keenly with that, because if you do the math, that time frame is when I graduated from law school. It was very difficult to get work as a new lawyer back then, as it is today, so I was very, very fortunate to get that position as a public defender in Cook County, and I think it really helped that I had done that clinical program in law school. My message to young law students is: these things are cyclical; you are going to be ok; you're going to find a job; you're in a good career. I had a hard time finding a job when I got out of law school, and now I am on the Supreme Court.

Ogden: Could you describe your law school experience. Do you feel like you had a different experience than the men in your class? Did you have many female classmates?

Justice Theis: My law school experience, as well as most of my career, really tracks the same pace in that I am not a pioneer. There were great women heroines in the law who were a little ahead of me. By the time I started law school, there was a huge increase in the number of women. Not the way it is today, with many law schools 50-50, men and women. I think there were seven women in the class ahead of me and thirty-five in mine. Thirty-five is not that many, but you can see there was a very significant change in just one year.

So, while certainly myself and the other women were a minority in the class, during the time when I was in law school, when I became a lawyer, and later when I became a judge, the decision makers recognized there was this huge increase in the number of women, and in fact encouraged women. For example, the program I just described in the Marin County Public Defender's Office was very competitive to get into, and there were a number of women who were able to participate in the program. In many ways, I was very fortunate that the timing in my career was such that the number of women was changing dramatically. I believe I was helped very much by that.

Of course, mine was a very different experience than the men in my class because, still at that point, while the number of women was increasing, it was historically something

that was new. Men didn't have to think about those things. They were just going to law school. So that difference was there. But I know I did not face the challenges that the women ahead of me did.

Ogden: Something on the minds of many young attorneys, both male and female, is the idea of balancing your family and your career. You are married with two children and you have two grandchildren as well. How were you able to balance your family life with your career? Do you have any tips or suggestions that really helped?

Justice Theis: I think this is the most difficult challenge in my professional career, and I think you will find that is true with most other people, especially women. There was a time when men accepted that they would miss out on their family life because they chose to be lawyers and that is just how it's going to be. I agree with you that younger lawyers, including male lawyers, don't want that either. They want to have a life with their families, and figure out how to balance work and family life. So I think it is a question for most young men and women.

I wish I had an easy answer. I cannot tell you how many times I will get a call from a young woman lawyer, who will ask to have lunch with me, and I know work-life balance will be a central part of the discussion. They ask, "Judge, please help me, I don't know how to do this." And I just keep saying I don't have a simple answer. The only advice I have is something we all know, the expression "it takes a village." I had wonderful support from my husband of course, but beyond that I have great friends, who were staying at home with their children, who would help me. My husband drove the carpool every day with our kids and a bunch of other families. That meant all those other moms came and picked up my kids after school and signed them up for swimming lessons and skating lessons. That helped me because they were able to take care of them until I got home.

It is very difficult because the practice of law is extremely demanding. It is not only demanding in office time, but lawyers are also leaders in the community. Participating in bar associations and all those other kinds of things that lawyers do beyond just being in their offices are incredibly time consuming. You can look at that as part of our obligation of being lawyers, but also as a piece of networking that is important in terms of client and career development. Somehow you

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have to find ways to balance all those things with your family.

I don't have an answer, except to know that the most important thing in your life is your family, and keeping your priorities straight and working towards the goal of balance is the key. You have to find a way to say no when you have to say no—to say my daughter's ballet recital is more important than the next bar association meeting.

Ogden: Running for office must be a major source of stress for your family and your career. What were the circumstances surrounding your decision to run for office?

Justice Theis: First, I have been extremely fortunate to have been in every level of the court system in Illinois. In Illinois there is the Supreme Court, the Appellate Court, and the Circuit Court. There are two types of trial judges as you may know. There are associate judges, who are chosen or appointed by the elected circuit judges, and then there are circuit judges who are elected by the people. I was first an associate judge, and that is a different way of running for office. If one wants to become an associate judge, of course you have to develop a career where you have been able to demonstrate your ability to handle the job, and also to meet people, and let them know your qualifications. That is the kind of thing that is important to do through the bar association work to get to know other lawyers and judges.

So I was first appointed an associate judge, where I heard traffic, misdemeanor, and smaller civil cases, those kinds of things. After doing that for five years, I was encouraged by others to take the incredibly tough jump to run for office, and as you may know, I was recently appointed to the Supreme Court. But to keep this position, I have to win the election in 2012. So I am currently a candidate. I am aware of how difficult it is to balance not only family life, but balance doing the incredible amount of work, important work for the court, and also being aware that I have to be a candidate and all that entails. So that is another thing I have to balance and you deal with a great deal of stress.

Ogden: From the perspective of a law student, you have accomplished what many of us aspire to become, a Supreme Court Justice. Do you have any further career goals or have you achieved everything you had hoped to be?

Justice Theis: If I win the election in 2012,

that will be a 10-year term. If you have looked at my biography, which I know you have, you might be able to discern my age. I continue to think about so many people my age who are retiring, and here I am looking forward to a new job for 10 years. I am very, very fortunate to be in a position to be looking towards the future. I am very energized by it. I am very excited by it. That is about as far as I can see right now.

Ogden: There have been multiple studies that have shown a difference between the way male and female judges, of similar ideology, vote in certain cases, and that the presence of a female on the panel can influence the way her male colleagues vote. How do these findings match your experience?

Justice Theis: First, I have to say I am always very concerned about stereotypes, and that includes male stereotypes. I am very hesitant to say all men do this, even as hesitant to say all women do something else. So I am a little concerned about painting with a wide brush. Maybe at a different level your question is something about judging. There has been a lot of discussion about when Justice Sotomayor was criticized for talking about her judicial view of being a "wise Latina." It seems to me when you think about judging, it is more than a computer problem where you plug in facts and you plug in law and the computer answers the question. Judges analyze facts, they interpret law, they apply the law to the facts, but each one of those verbs contains an element of judgment of choices.

I think that my own judicial philosophy is that we are human beings who have been chosen to take on these positions. We each choose, and decide, and interpret all those ideas and they come from our experience, world view, and training. And of course that includes who we are, our gender and our life experience. I think there have been similar studies suggesting that if you had broken groups up in political philosophies, you might find similar things. Also, I wouldn't be surprised that if you did geographic grouping, you may see groups of people decide one way or the other.

In terms of my own experience, I do believe that women come from a different experience when it comes to cases dealing with children. I am not saying that men don't love their children, but women have a different experience with having children. So their life experiences will change the way they view issues in these cases. That is one idea about

the difference in the way men and women judges decide a case. I think it's just a difference and our life experiences factor into our decision-making process.

In terms of the presence of a woman on the panel, I do think there is something very interesting about that. I have also seen it when there is a different minority, an African-American, who is part of the panel. The dynamic of group decision making is interesting; I have learned a lot about it. On the Appellate Court, I have worked seventeen years where there were three decision makers, and now I am working with seven decision makers. When you change the mix of people and their life experiences, the dynamics of the entity change, and having a woman will change things.

I truly believe there has been a change in dynamics on the Illinois Supreme Court in Illinois. I have experienced that coming on as the third woman. I think a woman alone, the first woman, is being just that—the first woman, and what is the woman's vote, and woman's point of view. The second woman probably has to deal with it as well. At this point we may have heard the expression "critical mass." It tilts things. No one is noticing, the focus on what are the women doing on the court, and are they voting together and all those things. Things change when you have a larger percentage of the group being in that minority. I truly believe there has been a change in our court, and that is not just who I am necessarily, but because there are now three women out of seven.

Ogden: You think that changes the dynamics of the courts as well? Not just influencing the public perception of having three women, but you think dynamics are changing on the court?

Justice Theis: Absolutely!

Ogden: In litigation or even in just discussing a particular issue, do you think women have to learn to influence people or form their arguments differently than men?

Justice Theis: I think any good lawyer needs to present oneself as authentically as possible. In other words, a woman should be a woman, and a man should be a man. At some point in your career you realize the best voice you have is your own voice. So for a woman to try to argue a case as a senior male partner would argue, she might learn some things from him, but ultimately, she should argue it as herself. I have heard

people say that there are so many of these woman lawyers who are too tough and too aggressive. Again, I believe that is a stereotype that is probably not statistically based, or evidence based. It is probably just something easy to say. There are woman who are very soft spoken, and gentle, and lyrical, and feminine, who are very persuasive, because they are who they are. Having said that, lawyers use the tools of the law, and the law is very much based on logic, and good argumentation, good writing. Good analysis is based on logic. There are those who would say that logic is something in the world of men, not in the world of women, and I think they are wrong. I think we can use the same tools. We just bring a different voice to them.

Ogden: Do you think if there were more women on the court the dynamics of the court would change? If so, how many women would you like to see on the court, or is that important?

Justice Theis: There are many courts which have a majority of women on the court. Of course the dynamic would change, just as it would if we had more than one Afri-

can American on the court. One of the things I have learned in my short time on the court is the real brilliance of having a breadth of different types of experiences of different people coming together to make decisions.

Justice Karneier, for example, is such a lovely gentleman. He is from the teeny, tiny town of Nashville, Illinois, which is very rural. His experience is very different from mine, living in the city my whole life. But when he speaks, I listen very carefully, just because of who he is. His gentleness, his thoughtfulness, and his experience are so different from mine. He really influences me. I listen very carefully to everything he says, because, I know he brings such a different, and important, view and I have a lot to learn from him. I think that is true, as we would add more women to the court that we would be able to hear different voices. It would be great to hear from a downstate woman with a background that is different from my city view. She would bring something else to the court. That would be wonderful.

Ogden: Is there anything else that you would like to share with readers?

Justice Theis: I assume that most law students, at some level, made the choice to go to law school because they wanted to participate in the work of doing justice. I think at some point, most law students and many young lawyers feel very disillusioned with their work because they can't see what doing discovery and background review has to do with doing justice. It's a real challenge to find that. My advice to law students is to keep looking for justice. Keep looking and searching for your role in doing justice. I think that if you keep searching, that you will find meaning in your work.

Ogden: That is very encouraging. I want to thank you for your time. ■

Ellen Ogden will graduate in December from Southern Illinois University School of Law in the Class of 2011. She can be reached directly at hrr.ellen@gmail.com. She plans to practice in the area of criminal prosecution.

1. See http://www.abajournal.com/magazine/article/tipping_the_scales/, an ABA article on the women chief justices in the South.

Getting your first legal job: The necessity of networking

By Jessica C. Natkin, Esq.

"No one wants to train you." The words rang in my head over and over again. It was my first time meeting my new mentor in the student alumni mentor program I had enrolled in during my first year of law school. Did I hear that correctly? No one wants to train me? So, as a 1L, in the midst of the hardest academic year of my entire life, this woman is openly and honestly telling me that no attorneys will want to train me? On top of being told that I need to be in the top five percent of my class to get a decent job, and an economy that is in shambles, I'm now supposed to magically learn how to do the technical and procedural portions of being an attorney on my own, because no one wants to train me. And if no one wants to train me, yet I still need to magically learn where to file motions, how to file them, what a proof of service is, how to issue subpoena, and all of the other practical tasks that I'll need to do as a practicing attorney, how on earth am I supposed to learn? How

will I ever find an opportunity where I can develop these skills?

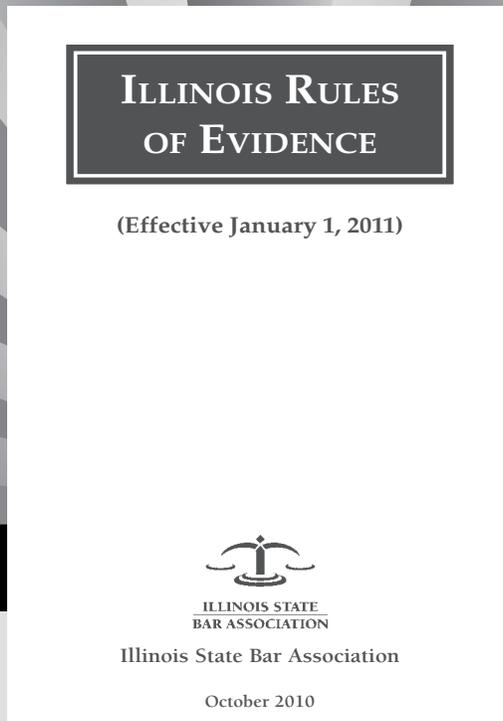
After seeing my first semester grades a few weeks later, I thought it was safe to say I wouldn't be in the top five percent of my class. Feeling as if I'd never find my dream job, I decided maybe law school wasn't for me after all. If I didn't fall in the top five percent of my class, I wouldn't be able to find a job. Even if I was able to find a job, I would have to know how to do everything, because no one wants to train me. How would I ever get out of this rut?

Finally, it occurred to me. People have always said, it isn't what you know, it's who you know. Maybe they had a point. Maybe my law professors were busy emphasizing that grades were everything, while in reality, it was actually networking that would help me. I decided it would be my mission to make myself known in the legal community. I had always been interested in family law and I made it my own personal goal to meet as

many people as I could that practiced that area of law. Judges? Of course. Attorneys? Obviously. I'd even introduce myself to every law clerk as I came across them. I went on Web sites and found family law firms. I'd find out who the hiring partner was and send them my résumé and a brief letter of introduction. I did this for my entire first semester of law school. Not one bite.

Finally, in an elevator, I randomly met a professor that indicated she could help me with a domestic relations externship for a Judge. Bingo! It was my in. But, I would need help to ascertain that I'd be the chosen candidate. These externships were competitive, and I had to give myself some sort of edge. So, I contacted my friend's mother who practiced family law and she agreed to let me meet with her at her office. Upon arrival, we discussed the judicial externship that I had wanted to obtain. She mentioned that another young woman in her office had externed for the same Judge, and promptly

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called her in to meet me. We chatted for a few minutes, and the young woman mentioned that she had court in front of said Judge that Friday, and offered to let me shadow her. Recognizing that missing one class for such an opportunity would be worth it in the long run, I graciously accepted her invitation.

I attended court with her that Friday, nervous, but excited. She promised to try and introduce me to the Judge at the end of her hearing if the opportunity arose. After she made her case and court concluded, we noticed there were two other students observing in the court room. The Judge called us all up to the bench to say hello. The other two students mentioned they were also applying for the externship. My heart sunk. How would I compete for this position with such little family law experience?

A few weeks later I received a phone call from the Judge, inviting me to join him as his extern. I was so grateful that I had met his former extern, that she had given me the wonderful opportunity to attend court with her, and that she took the time to introduce me

to the Judge. Without that opportunity, undoubtedly one of the many students that sat in and observed the courtroom would have received the internship. I had learned that a very valuable lesson spoke the truth: it isn't what you know, it is who you know.

Unfortunately, with the pressures and time commitment that being a law student brings, the necessity of networking is under-emphasized in law schools today. Students that are very bright and intelligent individuals spend so much time writing law review articles and doing moot court teams, because that is what we are taught is important in law school. Don't misunderstand what I am saying, those are very honorable achievements. However, in my experience, I have found that the practical externships and internships that we accomplish are the key to success after law school. Ten years out of law school, no one cares what your grades were. No one cares if you were on law review, and no one cares if you were on moot court. The most important thing that employers want to know about you is what practical experience

you have had. This article is for all of those students who have ever doubted themselves in law school because their grades "weren't good enough" or they "wouldn't make moot court" or would never "write on law review." The reality is, your practical experience will get you a lot further than any of those things will. Take the unpaid positions. Go to networking events. Take every opportunity to meet and connect with as many attorneys as you can in the area of law that you wish to practice. I finished my externships, which led to my meeting a lot of family law attorneys. I obtained a job in a family law firm as an unpaid extern for almost a year, where I received invaluable experience. And, as for that law school mentor that told me "no one wants to train me"? I now work for her. And, she only very minimally had to "train" me. ■

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Managing expectations—Ours (The lawyers) and theirs (The clients)

By Sandra Crawford, J.D.

Over the 21 years I have been practicing, I have come to the realization and conclusion that the two most common questions new clients want answered are: (1) how much? and (2) how fast? Over the years as a small firm and solo practitioner in areas as diverse as Mechanic Lien Foreclosures and Family Law, I have actively encouraged clients to address these types of questions in open, frank, and transparent ways from our very first telephone contact. After having the "how much and how fast" conversation with clients over and over again throughout my legal career, I have come to believe it is essential to providing good representation to actively help clients set appropriate expectations and goals around what the law can and cannot do and about the costs of any proceeding (not only the financial costs, but the emotional and relationship costs). Helping clients frame expectations in terms of what they might hope to "win" or "be entitled to" is one of the most important tasks we as lawyers perform for clients no matter what their dispute, conflict, or issue.

A 95 percent civil settlement rate and the increasing use of negotiation, mediation, and collaboration in resolving lawsuits have dramatically altered the role of the lawyer. The traditional conception of the lawyers as "rights warrior" no longer satisfies client expectations, which centre on value for money and particle problem solving rather than on expensive legal arguments and arcane procedures.

Thus opens the preface of the book titled, *The New Lawyer, How Settlement is Transforming the Practice of Law*, (UBS Press 2008) by Julie MacFarlane, professor in the Faculty of Law at the University of Windsor, British Columbia. MacFarlane's book is based on ten years of empirical research with lawyers and clients and explores the changes that are taking place in the practice of law in North America (Canada and the U.S.). MacFarlane's work bears out my own practice experience, and I am sure the experience of many Catalyst readers, that clients generally expect and

prefer more pragmatic cost-conscious and time efficient approaches to problem solving than the traditional litigation and court systems can offer. Her book is recommended reading for any professional who struggles with the issues of how to better manage their clients and their own expectations around effective legal problem solving on all levels.

One of the premises MacFarlane explores is the growing mismatch between traditional adversarial advocacy and the pressures to participate in early settlement processes. A professional tension which has also been described as "akin to riding two horses at the same time"¹ MacFarlane describes the emergence of the "new lawyer" and the "new advocacy," and along with some great quotes² from practicing lawyers, she makes a powerful argument about how lawyers must retool to become more effective service providers in the 21st century. Professor MacFarlane identifies what she calls the "core dimensions of new lawyering" (page 23) which distinguishes the "new lawyer" from the "old lawyer," who is the traditional adversarial lawyer.

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These three core dimensions are:

- (1) The elevation of negotiation skills that are no longer based on a “positional bargaining”³ model but on problem solving strategies or “interest-based” negotiation skills;⁴
- (2) Communication skills, such as listening, explaining, questioning and establishing rapport and trust. MacFarlane observes that *“in the hierarchy of effective communication skills, the pinnacle has traditionally been courtroom eloquence—the persuasive making of substantive legal arguments”* and not interpersonal communications skills such as empathy, self-awareness, optimism, and impulse control.⁵
- (3) Partnering with the client. The traditional model put the lawyer in a “father/mother-knows-best” parental role and the system is one in which the clients deposit their problems on the lawyers’ desks to be fixed and made to disappear. Whereas the “new lawyer” considers his/her client as a partner in problem solving to the extent that it is feasible and desirable for the client. *“The client will participate more actively in planning and decision making and perhaps in the conduct of negotiations with the other side. The new lawyer offers a participatory model of compassionate, client-centered, professional service instead of the traditional “trust me” detachment of the old lawyer.”* (Page 24).

Professor MacFarlane’s work maps out the differences between the “new lawyer” and the “old lawyer” models of representation by looking at the history of legal education and the evolution of lawyer stereotypes. She examines how attorneys form belief systems about themselves and the roles they come to believe they play in the conflict resolution continuum. In Chapter 4, she explores the norms of settlement negotiation in the litigation systems (referred to as “litigotiation”) and contrasts those with the emerging norms of negotiation in client-driven, non-litigation models, such as Collaborative Practice.⁶ She challenges her reader to question the proposition that “all conflicts are rights based.” She points out that:

[T]he key to effective lawyering lies in discriminating between different types of conflicts and what are the appropriate means of addressing and resolving them in ways that meet both the needs

of the disputants and society’s interest of fairness. Lawyers should be able to apply their professional judgment to this question rather than adopting without question the nomenclature of every client who describes their conflict as “a matter of principle.

(Page 93).

Professor MacFarlane argues that the claim of “principle” is often attached to disputes which in their origins are about shared resources and the parties’ ability, or rather inability, to share and the determination of who is “right” in the context of a continued need to function in the relationship. The examples of relationships where there is a continued need to function after the particular legal dispute is resolved are family and small business relationship. Accordingly, *“an exclusive or overwhelming focus on a rights-based model is an inadequate, inappropriate, and simply impractical means of resolving every type of dispute”* (Page 94). Further, “rights based” case management encourages the collection and concealment of as much information as possible while discouraging early exchange, which most often then leads to costly and time-consuming “discovery wars.” This type of “rights based” thinking encourages a philosophy of “my loss is automatically the other side’s gain.” As MacFarlane puts it, in the traditional conflict resolution model *“information is for winning, not for sharing, and certainly not for enhancing the possible options that are available to the parties”* (Page 80).

When answering the “how much and how fast” questions for clients during the initial consultation, I often drawn from what I learned in MacFarlane’s work and confidently answer—“It depends.” The resolution depend on many factors: my own experience, education, and expertise; the client’s goal for the outcome; the client’s “budget” for the proceedings; the client’s and lawyer’s mutual participation in problem solving; and the client’s and attorney’s mutual understanding of expectation and realistic outcomes of each of the dispute resolution models now available. I also explore with the client his / her concrete goals, needs and interests. I question if the client wants settlement or merely wants to take positions and make demands for “rights” or “entitlements.” I explore the client’s capacity to partner in finding his /her own outcome, and I explain, as is pointed out clearly by Professor MacFarlane

in the Preface cited above, that the research reveals 95 percent of all civil matters end up being negotiated and settled and not decided by a judge or jury. It is then a matter of what negotiation model can be most effectively employed for this client—the “litigotiation” model or other models such as mediation, Collaborative Practice, and Cooperative Law.⁷ To empower clients and help them better understand and appreciate the legal system, clients need to be educated about the choice of dispute resolution process and understand that the choice is theirs to make. Most especially because that choice impacts their bank account and their time and can ultimately can impact the outcome reached and how that outcome will play out into the future.

MacFarlane’s book is a “must read.” It can serve as a starting place for any lawyer wishing to examine deeply where she fits into the conflict resolution continuum and how to bring greater meaning to her relationship with clients and the part played by her in helping those clients achieve more respectful, peaceful and sustainable outcomes to their conflicts. ■

1. Collaborative Practice: Deepening the Dialogue, Nancy Cameron, The CLE Society of British Columbia (2004).

2. Quote by an attorney on being a litigator: “I mean we’re trained pit bulls and pit bulls just don’t naturally sit down and have a chat with a fellow pit bull, the instinct is to fight and you just get it from the first phone call. I’m bigger and tougher and strong and better than you are” (page 12).

3. Positional Bargaining is described as “a ritual bluff and bluster represented by a terse exchange of offers” which is not aimed to encourage consensus building (page 23).

4. Made famous about 20 years ago in the “Getting to Yes” book by Roger Fisher, William Ury, Bruce Patton, Getting to Yes: Negotiating Agreement Without Giving In Penguin (1991).

5. The negotiation skills referred to in mediation circles as the “L.O.V.E.” skills – listening, observing, verifying and empathizing.

6. See prior Catalyst Newsletter articles specifically on the topic of Collaborative Practice. These can be found at www.isba.org, under Member Groups/Committees/Women and the Law/Past Newsletter Issues. See specifically Catalyst Newsletter, June 2011, “What Every Lawyer Should Know About Collaborative Practice” by Sandra Crawford. Sandra is a Mediator and Collaborative Professional and can be reached at lawcrawford@att.net or (312) 726-8766.

7. Specific discussion of these alternative models are beyond the scope of this article but details about each can be found in “Lawyers as Peacemakers: Holistic, Problem-Solving Law” by J. Kim Wright ABA (2010).

Practice tips: Watch out for anything old, dead, or unlicensed

By Angela Evans

1. Check Any Old Appellate Court Case to Make Sure it is Binding

1935 was a good year for Stare Decisis in Illinois Appellate Courts. Illinois Appellate Court cases decided prior to 1935 were, by statute, not binding precedent. As a result, cases decided by Illinois Appellate Courts prior to 1935 are not binding authority and have no precedential value. These decisions are viewed as persuasive authority. *People v. Glisson*, 202 Ill. 2d 499, (2002); 14 Ill. Law and Prac. Courts § 85.

2. Check to Make Sure the Mortgagor is Not Dead

Until just last year, foreclosures were considered proceedings taken directly against property. Foreclosures are no longer considered in rem actions rather they are quasi in rem. A proceeding quasi in rem is an in rem action which affects only the interests of particular persons in certain property. When in rem status changed to quasi in rem, it also changed the requirements for jurisdiction. Now, the mortgagee must name a personal representative for a deceased mortgagor in a mortgage foreclosure proceeding in order for the circuit court to acquire subject matter jurisdiction. See *ABN AMRO Mortg. Group, Inc. v. McGahan*, 237 Ill. 2d 526 (2010).

When an attorney forecloses on a defaulted mortgage, a search of the public records is necessary to make sure the mortgagor is living. If deceased, then the attorney can search the files of the probate court in the county where the deceased mortgagor lived to learn the identity of any personal representative appointed. The foreclosure can be commenced against that personal representative or a motion filed to appoint a special representative.

The Code of Civil Procedure provision governing the appointment of personal representatives, 735 ILCS 5/13-209, is also applicable to the appointment of personal representatives in this circumstance. As such, see if the probate estate is open to determine if you need to move for the appointment of a special representative. If the estate is open, the personal representative from the Probate Court may be named. Where the estate has not been opened, the court may

appoint a special administrator to represent the deceased party in the action. The special administrator is not equivalent to an administrator appointed for probate and is not empowered to distribute assets. *Hannah v. Gilbert*, 565 N.E.2d 295, 298 (4th. Dist. 1990).

In sum, you really need to know if your mortgagor is dead or not, so call the circuit clerk's office and find out. Some require you to send a letter on your letterhead to the county clerk requesting a search and death certificate and charge a nominal fee.

3. Check that Privileged Corporate Communication is with Licensed Attorneys

It is not always clear whether particular communications qualify for the attorney-client privilege's protection when a corporate client communicates with in-house or outside counsel. Yet another addition to the distinction of corporate communications within control group members, whether the employee or employer intended confidentiality and others is whether the in-house counsel is licensed and/or a member of the local bar association. If the other elements of the privilege have been satisfied, courts have generally but not always allowed corporations to assert the attorney-client privilege for cor-

respondence to and from in-house counsel despite the fact that he was not a member of the bar of the state in which he was located or where advice was given.

Some courts have stated that lack of local bar membership on the part of corporate in-house counsel was indicative that counsel were not acting as attorneys, and therefore that the communications in question were not privileged. See *United States v. United Shoe Mach. Corp.*, 89 F. Supp. 357, 360 (D. Mass. 1950); *Fin. Technologies Int'l, Inc. v. Smith*, 49 Fed. R. Serv. 3d 961 (S.D.N.Y. 2000). Others courts have held that house counsel for a corporation is protected by the privilege to the same extent that the relationship between private counsel and a non-corporate client is privileged even if the attorney is admitted to practice law in a jurisdiction other than the state of his or her employment. *Panduit Corp. v. Burndy Corp.*, 1971 WL 17100 (N.D. Ill. Nov. 1, 1971). Many factors are determinative of whether the attorney-client privilege applies to corporate communication. Whether the "attorney" is actually licensed is yet another factor to put on your radar. ■

Angela is an associate attorney at Westervelt, Johnson, Nicoll & Keller, LLC. Angela practices in the areas of litigation and construction law. She can be reached at aevans@wjnkllaw.com.

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Grace behind the gates

By Julie A. Neubauer

Ladies stroll freely, some walking dogs, around the pretty, green, 100-acre grounds. Ivy climbs the stone buildings that could easily pass for dormitories or classroom studios. If you don't think about the pat down, the four sets of mechanically locked doors you have to endure to get here and the razor wire around the perimeter, you might just think you were on an ivy league women's college campus when you step out into the courtyard. But this is not a college campus; this is prison.

Last March, members from both the Standing Committee on Women and the Law and the Committee on Ethnic and Racial Minorities, took a side trip before their respective out-of-Chicago business meetings in Peru, Illinois to tour the Dwight Women's Correctional Center. Dwight, which first opened on November 24, 1930 as the Oakdale Reformatory for Women, emerges out of the surrounding sea farmland like a fortress. It almost resembles a grand manor house, with an auburn brick façade with a clay roof. It is the iron bars over the leaded glass windows that give you the first hint of where you really are.

Dwight, while beautiful in its own way on the surface, is a prison, through and through. Prior to the moratorium and eventual abolition, Dwight housed the only death row for women prisoners. While there are all levels of security at Dwight, the population share one thing above all else in common; everyone there is a convicted felon. At the time, the population was more than at capacity. Blocks that were meant to be introductory quarters for new prisoners often hold prisoners for their first six to twelve months there. There is no keeping up with the latest trends in fashion and beauty at Dwight, except for maybe in the approved, but outdated magazines in the library. A uniform packet of industrial grade soap, shampoo, and other basic needs for cleanliness are passed out to new inmates with their slip-on shoes and uniforms after they are given their introductory strip search and cold shower. It is those things we take for granted, things that probably are not on the mind of any woman while she committed her crime that make punishment really hit home. Some of us on the tour were most flabbergasted when we learned about the little

things that you lose if you end up in prison. Freedom includes the right to lotion, warm showers, skin care, make up, the right to read what you want to read, the right to eat when and what you want to eat, and sleep when you want to sleep. When the doors lock behind you, you are no longer free.

While, the first year of a sentence at Dwight likely consists of mostly time in one concrete block and steel hallway, it is not just a place to sit and rot while time passes. If inmates are there long enough, opportunities open up for them to do something productive. You can get your GED or take college courses or dog grooming classes. Inmates can earn income, albeit meager income, at the on sight textile plant sewing uniforms for other state facilities. Of all the programs and opportunities to strive for, the Helping Paws Training Program is the most sought after. Helping Paws trains service dogs for Support Dogs, Inc, so that they can assist people with disabilities or serve a therapy dogs. Inmates who earn participation in this program live and raise service dogs from the time they are pups, and in that time, they never leave their

side.

Companionship with dogs is not the only way inmates cope with life at Dwight. We were told by our guide that the women inmates there have created a unique social dynamic, different from the social dynamic seen in men's prisons. The women at Dwight do not segregate themselves by age, race, religion, crime or gang affiliation. Instead, they form families and nurture those familial roles during their time behind bars. With all that is taken from these women, they maintain both their sense of individual identity and sense of community in these familial roles. Maybe it is not just the pretty buildings and grounds that make this place seems somewhat bearable. Maybe it is because beneath the razor wire and behind the heavy locks on all the doors a humanity and dignity still resonates within these walls. ■

Julie is an associate attorney at Aronberg Goldgehn Davis & Garmisa and practices in the areas of Family & Matrimonial Law and Domestic Violence Law. She can be reached at jneubauer@agdlaw.com.

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Chicago Metropolitan Battered Women's Network: Women of Influence Luncheon

By Sandra Blake

The Chicago Metropolitan Battered Women's Network will honor history-maker and workplace rights advocate Lilly Ledbetter at the Women of Influence luncheon, Wednesday, September 14, at the Renaissance Blackstone Hotel, Chicago. Anita Alvarez, Cook County State's Attorney and Julie Hamos, Illinois Department of Health Care & Human Services Director are honorary hosts.

Ledbetter worked for the Goodyear Tire and Rubber Company. She was the only female supervisor at the Alabama Goodyear plant at which she worked for nearly 20 years. Shortly before her retirement, she learned that although her starting pay was the same as her male counterparts, over time she earned less than men performing the same work. She filed formal charges against Goodyear with the Equal Employment Opportunity Commission and sued on the grounds of pay discrimination under Title VII

of the Civil Rights Act of 1964 and the Equal Pay Act of 1963.

She was successful in the federal district court, where a jury awarded her back pay and damages. The Court of Appeals for the Eleventh Circuit reversed, finding Ledbetter's claim untimely under Title VII. In a 5-4 decision, the U.S. Supreme Court upheld the decision of the Eleventh Circuit, finding Ledbetter's case was filed outside the statute of limitations. The Court did not address the merits of the case.

While a loss in the U.S. Supreme Court generally signals an end to a matter, Ledbetter focused her efforts on ensuring that no other women would find themselves similarly situated. The very first piece of legislation President Barack Obama signed into law in January 2009 was the Lilly Ledbetter Fair Pay Act. The law provides new 180-day statutes of limitations for each paycheck for those discriminated against on the basis of gender or

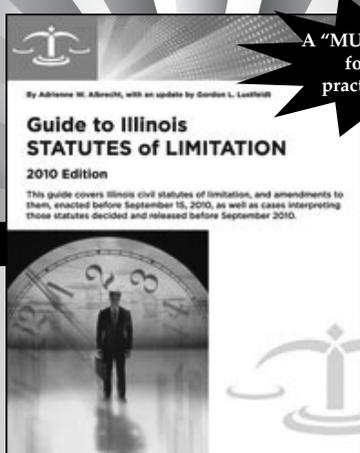
race.

Ledbetter will be inducted into the National Women's Hall of Fame in September, as she is recognized for her valuable and enduring contributions to America.

The Women of Influence luncheon is a fundraiser for the Chicago Metropolitan Battered Women's Network, a collaborative membership organization dedicated to improving the lives of those impacted by domestic violence through education, public policy and advocacy, and the connection of community members to direct service providers. Luncheon tickets are \$70. Trailblazer tickets are \$90 and include a pre-event Trailblazer reception with the honoree. A number of sponsorship opportunities are also available. Contact the Chicago Metropolitan Battered Women's Network at (312) 527-0730 for more information. ■

Sandra is a staff attorney at Life Span and can be contacted at sblake@life-span.org.

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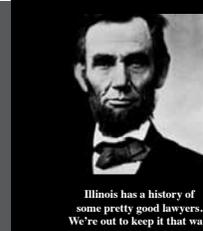
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Getting to know our very own Young Lawyer of the Year: An interview with Emily Masalski

By Mary F. Petruchius

Mary: Emily, it's such a great pleasure to interview you! You've had a big year, haven't you? You were selected as the ISBA's Young Lawyer of the Year for Cook County. Just how does one become the lawyer of the year? What is the process?

Emily: Each spring, the ISBA Young Lawyers Division solicits nominations for the two awards (Cook County and outside Cook County). Young lawyers can self-nominate or other attorneys may nominate individuals for consideration by the YLD selection committee. The ISBA Women and the Law Committee nominated me at one of our meetings. Thereafter, two committee members, Julie Neubauer and Nicole Carrion, submitted a nomination package which included a statement of merit, my résumé, copies of articles that I have published, and two letters of recommendation.

Mary: Obviously you're very active in the ISBA. How did you first become involved in the bar association? What are your areas of interest in the ISBA?

Emily: I became involved in the ISBA when I moved back to Illinois after spending a few years in New York City. I thought it would be a great way to meet fellow Illinois attorneys and in 2008, I was appointed as a member of the Women & the Law Committee. I am also involved as an Assembly member and serve on the Environmental Law Section Council's sustainability committee.

Mary: Are you a homegrown Chicagoan or are you a transplant?

Emily: I am a homegrown Chicagoan!

Mary: What schools did you attend, up to and including law school and what were your areas of study?

Emily: I attended Resurrection High School and graduated from the University of Illinois at Urbana-Champaign with a B.S. in Agricultural and Environmental Communications & Education. After college, I moved to New York to study at Pace University School of Law in White Plains, New York and obtained my J.D. and Environmental Law Cer-

tificate.

Mary: Who would you say were and are the biggest influences on your life and why?

Emily: My family has been the biggest influence on my life because they have helped guide me through all sorts of things.

Mary: Whom do you consider the most influential woman in your life and why?

Emily: Wow. That is a really tough question. My mom usually has the right answers or points me in the right direction.

Mary: When did you decide to become an attorney? Was there a specific event or individual who made an impact on you to reach that decision?

Emily: When I was growing up, my dad would constantly tell me that the "law is a part of everything." I bet that advice shaped my career path a bit! I also was interested in journalism and environmental issues. During college, I had the opportunity to take an environmental law class with Professor Margaret Grossman and decided to look into law schools with environmental law programs.

Mary: Tell me about your first job out of law school and how you got hired. Any tips for our new law school graduates?

Emily: During my third year of law school, I found an online posting for an "agency attorney intern" position at the New York City Department of Environmental Protection. The day after my law school graduation, I received a phone call to set up an interview. It was a long process, but well worth the wait! My tip for new law graduates would be to check out government agency or company web sites for job postings because sometimes the larger job boards do not have everything that is out there. Also, be patient and don't give up!

Mary: How long were you in New York and what brought you back to Chicago?

Emily: I was in New York for close to five years and I am admitted to practice in New

York and Connecticut. In 2006, I decided to sit for the Illinois bar exam. After I passed the Illinois bar, I moved back to be closer to my family and spend time with my grandmother (while she was still alive).

Mary: With what firm do you currently practice and what types of cases do you have?

Emily: I am currently a litigation associate at Deutsch, Levy & Engel, Chtd. in Chicago practicing in the areas of commercial litigation, environmental law, and banking and creditor's rights. I have had the opportunity to work on a wide variety of cases involving breach of contract, title claims, all aspects of mortgage foreclosure actions, consumer fraud claims, leaking underground storage tanks, trespass, nuisance, and compliance and/or permitting issues under various environmental statutes.

Mary: If you had to say you have a passion for some area of the law, what would it be?

Emily: Environmental law.

Mary: Tell us about your own family life. What do you and your husband enjoy doing in your leisure time?

Emily: We have been trying to get outside more and run on the lakefront path. We also like to try new restaurants.

Mary: Emily, our "very own" young lawyer of 2011, what does the future hold for you? Your dreams and goals?

Emily: My short term goal is to finish the Nike Women's half marathon in San Francisco in October. I am training for the race with my younger sister and best friend. My other dreams and goals are still in the works! ■

Mary F. Petruchius is a solo general practitioner in Sycamore, IL. She is the 2011-2012 Secretary for the Standing Committee on Women & the Law and is its CLE Subcommittee Chair. Mary is an incumbent on the ISBA Assembly for the 16th Judicial Circuit. She can be reached at marypet@petruchiuslaw.com and her Web site is <www.petruchiuslaw.com>.

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October

Tuesday, 10/4/11- Teleseminar—Fixing Broken Trusts. Presented by the Illinois State Bar Association. 12-1.

Wednesday, 10/5/11- Webinar—Conducting Legal Research on FastCase. Presented by the Illinois State Bar Association. 12-1.

Thursday, 10/6/11- Teleseminar—Environmental Liability in Real Estate Transactions. Presented by the Illinois State Bar Association. 12-1.

Monday, 10/10/11- Chicago, UBS Towers—Advanced Workers' Compensation- Fall 2011. Presented by the ISBA Workers' Compensation Law Section. 9-5.

Monday, 10/10/11- Fairview Heights, Four Points Sheraton—Advanced Workers' Compensation- Fall 2011. Presented by the ISBA Workers' Compensation Law Section. 9-5.

Tuesday, 10/11/11- Teleseminar—Drafting LLC Operating Agreements, Part 1. Presented by the Illinois State Bar Association. 12-1.

Wednesday, 10/12/11- Teleseminar—Drafting LLC Operating Agreements, Part 2. Presented by the Illinois State Bar Association. 12-1.

Thursday, 10/13/11- Chicago, USB Towers—Collaborative Law: The Nuts and Bolts. Presented by the ISBA General Practice, Solo and Small Firm Section; co-sponsored by the ISBA Alternative Dispute Resolution and the ISBA Young Lawyers Division. 8-12.

Friday, 10/14/11- Springfield, INB Conference Center—Divorce Basics for Pro Bono Attorneys- 2011. Presented by the ISBA Delivery of Legal Services Council. 1:00-4:45.

Friday, 10/14/11- Chicago, ISBA Chicago Regional Office—Family Law Nuts and Bolts Chicago 2011. Presented by the ISBA Family Law Section. 8-5

Monday, 10/17/11- Chicago, ISBA Chicago Regional Office—Hot Topics in Consumer Collection. Presented by the ISBA

Commercial Banking, Collections and Bankruptcy Section; co-sponsored by the ISBA Young Lawyers Division. 8:45-4:30.

Tuesday, 10/18/11- Teleseminar—2011 Americans With Disabilities Act Update. Presented by the Illinois State Bar Association. 12-1.

Tuesday, 10/18/11- Chicago, ISBA Chicago Regional Office—What You Need to Know About LLCs. Presented by the ISBA Corporation Securities and Business Law Section. 12:30-4:45.

Wednesday, 10/19/11- Webinar—Advanced Legal Research on FastCase. Presented by the Illinois State Bar Association. 12-1.

Thursday, 10/20/11- Chicago, ISBA Chicago Regional Office—The IMDMA and the Welfare of Pets. Presented by the ISBA Animal Law Section; co-sponsored by the ISBA Family Law Section and the ISBA Human Rights Section. 1:00-4:30pm.

Thursday, 10/20/11- Live Webcast—The IMDMA and the Welfare of Pets. Presented by the ISBA Animal Law Section; co-sponsored by the ISBA Family Law Section and the ISBA Human Rights Section. 1:00-4:30pm.

Friday, 10/21/11- Chicago, ISBA Chicago Regional Office—Preparing Your Case: Pre-Trial Considerations. Presented by the ISBA Tort Law Section. 8:30 – 4:00.

Friday, 10/21/11- Bloomington-Normal, Marriott—Real Estate Law Update-2011. Presented by the ISBA Real Estate Section. 9-4:45.

Friday, 10/21/11- Chicago, John Marshall Law School—Impact and Opportunities of the Affordable Care Act. Presented by the ISBA Health Care Section. 1-2:15.

Monday, 10/24/11-Friday, 10/28/11- Chicago, ISBA Chicago Regional Office—40 Hour Mediation/Arbitration Training. Presented by the Illinois State Bar Association. 8-5 daily.

Tuesday, 10/25/11- Teleseminar—Cor-

porate Governance for Nonprofit Organization. Presented by the Illinois State Bar Association. 12-1.

Thursday, 10/27- Saturday, 10/29/11- Springfield, Hilton Hotel—7th Annual Solo & Small Firm Conference. Presented by the Illinois State Bar Association. TBD.

Monday, 10/31/11- Chicago, ISBA Chicago Regional Office—Environmental Law for Non-Environmental Lawyers—Session 1: Permitting and Due Diligence Issues (STUDIO TAPING- DNP). Presented by the ISBA Environmental Law Section. 9:30-11:30.

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 Fed Tax Conference. Presented by the ISBA Federal Taxation Section. 8:30-4:30.

Monday, 11/7/11- Webcast—Environmental Law for Non-Environmental Lawyers—Session 1: Permitting and Due Diligence Issues. Presented by the ISBA Environmental Law Section. 12-2.

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. ■