ILLINOIS STATE BAR ASSOCIATION

APRIL 2025 VOL 1 NO. 3

Rural Practice

The newsletter of the Illinois State Bar Association's Section on Rural Practice

An Update from the Chair

BY ANGEL WAWRZYNEK

HAPPY SPRING! As I mentioned in the first issue of the Rural Practice Section Newsletter, the goal and purpose of the Section Council is to leverage ISBA resources to benefit rural and small-town practitioners across the state. Here is the update!

First and foremost, our Section Council has continued to oversee the Rural Practice Fellows program. This year, as part of that process, we held our first ever "career fair" to assist in connecting the participating firms and potential fellows with each other. Given the positive feedback we received, I intend to organize a more general "career fair" for rural firms, which will not be limited to participation within the fellows placement program. In the meantime, rural firms are also encouraged to contact the ISBA for the discount code for posting jobs on the ISBA job board.

Also, the Rural Practice Section Council is co-sponsoring four upcoming CLE programs with the Trusts & Estates Section Council. As such, members of this Section

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Thirteen Red Flags for Spotting Problem Clients

BY MATTHEW BENSON

EVERY ATTORNEY WHO HAS practiced for any meaningful amount of time has taken on a client they subsequently did not want. Those regrettable clients can come in a number of forms: a client who would never be happy, a client who wasted their time, a client who filed an ARDC complaint, a malpractice complaint, or a negative Google review.

The purpose of this article is to provide a list of "red flags:" the phrases that problematic or regrettable clients say or make reference to in initial consultations, so that they can be spotted early and encouraged to find counsel more suited to their disposition. If a client exhibits any of the following, it might be wise to question the wisdom of allowing them to hire you:

1) The client informs you that they have fired or been discharged by more than one prior counsel.

If a prospective client has had more than one attorney, and both attorneys and the prospective client parted ways for some reason other than those attorney's death, disbarment, or retirement, then it is highly likely that prospective client either didn't pay those prior attorneys, didn't communicate with those prior attorneys, or didn't have realistic expectations for

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An Update from the Chair

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will receive a discount on the cost. Please consider registering:

- 4/17/25 – Planning with Medicaid Asset Protection Trusts
- 4/24/25 – An Introduction to Pooled Special Needs Trusts
- 5/1/25 – Understanding the ABLE Program

As part of our goal to revamp the ISBA Affiliated Bar Program, our section council, along with ISBA staff, hosted a Rural Bar Leaders Focus Group discussion via Zoom on February 13. Leaders of rural bar associations and representatives from counties without current bar associations participated, sharing ideas, needs, and concerns. We are currently working with ISBA staff to address as much of the feedback as possible and will report back to those bar leaders at a follow-up Zoom meeting in early May. Stay tuned for these updates! If you would like information regarding the May follow-up discussion, please contact me.

Big picture, my goal is to help the ISBA connect with, and work with, rural bar associations across the state. We have already begun connecting with some local bar associations, co-sponsoring CLE, co-sponsoring panel discussions for schools, and so on. That said, the section council only knows about the events that we hear about. So, if your bar association has an upcoming event or CLE that would benefit from ISBA involvement, please contact me or one of the other section council members. We would love to help if we can! The more we work together, the better!

Please stay tuned as the Rural Practice Section Council works with ISBA staff to create and roll out additional resources and benefits. Thank you again for joining me on this adventure! ■

Angel Wawrzynek,
Chair

Thirteen Red Flags

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those prior attorneys. It probably wasn't those lawyers who were the problem, it was probably the client. You will not magically fix these issues.

Further, if the client has already parted ways with two prior attorneys, they already do not trust lawyers. They will question every decision you make, and generally make your experience with them a miserable one.

2) The client complains about prior counsel, makes references to the ARDC, or references malpractice liability.

Prospective Clients who complain about their prior counsel should also be avoided. If the Client complains about their prior counsel, it is I to think that the client will not complain about you. Further, much like the client with multiple prior attorneys, this client is predisposed not to trust their attorney. This is doubly the case if the client has explored referring prior counsel to the ARDC or filing a malpractice claim. Thinking you would be immune to such treatment is I.

This red flag does not apply if the attorney the clients are complaining about is known to be either unethical, incompetent, or dilatory. If the prospective client is complaining about an attorney dragging their feet, and your experience is that the attorney in question drags their feet, then maybe that's an issue you can address.

3) The client says, "I need to ask a lawyer a question."

The important thing to recognize here is that a person who says this is not actually a prospective client. This is someone who wants to waste a few minutes of your time,

Rural Practice

Published at least four times per year. Annual subscription rates for ISBA members: $35.

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create a potential conflict of interest, and act annoyed when you fail to provide cogent legal analysis that is precisely tailored to the labyrinthian legal maze that likely exists only in their imagination. They also will not hesitate to debate with you if you do not give them the answer they have already looked up on the internet. These people will not hire you, today or likely ever. Do not waste your time on them.

4 The client says, "I'm looking for a second opinion."

This person has heard advice that they didn't like, and they are going to try to reshape their narrative so that they can get the answer they want this time. They may have admitted to lying to the Court, they may have admitted to engaging in fraud; you don't know, and you probably don't want to know.

A client who wants a second opinion is generally not a client you want. The only exception to this is a client who received their previous advice from someone whose legal opinion you do not respect.

5) The client tells you "This is an emergency./The hearing is tomorrow."

The client who shows up in your office with an 'emergency' should be treated with suspicion, particularly when the emergency is foreseeable. A client who tells you that 'the hearing is tomorrow' is really telling you that they waited until the day before the hearing to come and speak to you. Court hearings are typically scheduled some time in advance, which means the client had ample time to secure counsel and chose not to. This is not a client who values your time or your services.

6) The client says, "I want a lawyer who will fight for me."

The client who says "I want you to fight for me" generally isn't asking for zealous advocacy; they are more often asking you to be unprofessional and obnoxious. Being unprofessional and obnoxious is seldom in your interest or that of your client.

7) The client says, "They don't even want the kids; they're just trying to hurt me."

A client who says things like this either lacks empathy or possesses narcissism; it may well be both. While it is possible that the opposing party actually feels this way, it is more likely that the prospective client has formed a cartoonish avatar of the opposing party, who often exists only in their mind. Because of this delusion, they will only accept total victory. Total victories are seldom available in family proceedings.

8) The client claims "I represented myself and did just fine."

This person thinks they are smarter than you, can do your job better than you, or simply do not value the services you provide. Their interactions with you will reflect that, particularly when the bill shows up. Also, they are unlikely to have done just fine; they simply do not realize the litany of mistakes they made.

9) The client tells you "They're all working against me."

It is possible that there is a vast conspiracy of judges, GALs, lawyers, DCFS workers, police officers, and court staff who are all risking their professional integrity to collectively do a number on your prospective client. It is also possible that your client is petulant, self-defeating, and views the world through a wholly unrealistic lens. The latter is significantly more likely than the former.

10) The client says, "I want 50/50 parenting time."

We will begin by acknowledging that this statement is so vague and nebulous as to be almost meaningless: 50/50 parenting time could mean handing over the kids every other day, every other week, or every other month. It could mean an alternating 2-2-3 schedule; it could mean any number of things. However, a client typically doesn't want anything this specific. They're telling you they don't want to pay child support.

11) The client says, "I don't care how much it costs."

First off, this is usually a lie. It is possible that somebody else is paying the bill or that they have a gargantuan pile of funds that they do not mind sharing with you. More often, it is either that they don't actually mean this or that they have no intention of paying for your services.

Second, this phrase indicates a client who will be satisfied with nothing less than total victory. It suggests a client who has unrealistic expectations. You are an attorney; you are not a magician. No amount of attorney's fees will cause you to create a controversy where none exists. If the prospective client expects this of you, move on.

12) The client tells you "It's the principle of the thing."

Usually, when a client says something like this, they really just want to punish the other side. The "principle" they are referring to is that their previously beloved deserves the wrath of the universe because they violated the client's moral code, and the client now expects their attorney to embody said wrath. When punishing the other side does not heal the hurt they feel, they will find someone else to blame. That person is often their lawyer.

13) The client says, "The judge doesn't like me."

There's probably a reason for that. Proceed accordingly.

Conclusion

I don't think any one of these factors is, in itself, a disqualifier for a client—I will not go so far as to say that a client who utters any one of these phrases should cause you to refuse to engage with them (other than those people who just want to ask a lawyer a question; avoid them like the plague). What these red flags should do is cause you to consider whether the way you practice law is compatible with the expectations of your prospective client. The client is unlikely to modify their expectations, and you are unlikely to change the manner in which you practice. If the two are contradictory, end the relationship before it begins. ■

Thanks to those who were kind enough to edit this list: Kristina Benson, Aaron Emery, Christine Madden, and Casey Williams.

This article was originally published in Family Law (January 2025, Vol. 68, No. 6), the newsletter of ISBA's Section on Family Law.

Child Support in Illinois—Multiple Answers to a Single Question

BY NANCY CHAUSOW SHAFER

WHY ARE MY SUPPORT CALCULATION results different from my opposing counsel's?

I hear this question all the time, both in my work with Family Law Software and in my practice. Now that Illinois uses the income shares method, we have all been faced with situations where each side comes up with a different amount of guideline child support based on what seem to be the same facts.

The explanation of the differences almost always lies in the tax consequences of choices made in the data entry.

In Illinois we base child support on **net** income. Since federal taxes are a deduction in arriving at net income, the calculation always requires taking tax consequences into account.

There are two tax-related choices which are often misunderstood and used incorrectly:

- The dependent exemption
- Designation of majority-time parent

This article will discuss each of these choices.

Allocation of the Dependent Tax Exemption

If there is no agreement or court order, the parent with a majority of parenting time would be entitled to the allocation of the dependent tax exemption.

However, this is a tax benefit which the parties can allocate by agreement. Currently (at least until the end of 2025) the value of the tax dependent exemption is ZERO.

Under the Tax Cut and Jobs Act of 2017 (TCJA) the standard deduction was substantially increased, and many previously existing personal deductions were eliminated by reducing them during the life of the TCJA provisions (which by their terms expire at the end of 2025).

But while the dependent tax exemption was reduced to zero, the dependent tax exemption still controls the award of the Child Tax Credit and Additional Child Tax Credit (CTC). (If the minority-time parent is claiming the exemption, the majority-time parent must complete Form 8332 and give it to the minority-time parent, who files it with the minority-time parent's tax return.)

Designation of Majority-Time Parent

The second set of tax consequences is more complex and nuanced. The designation of a Majority Time Parent is a status based on facts of actual overnights and cannot simply be allocated by agreement. There are several tax benefits available to the Majority Time Parent separate and distinct from the CTC. These tax benefits primarily include the availability of Head of Household filing status (HOH) and the Earned Income Tax Credit (EITC).

Both credits are phased out at higher earnings levels. So, the designation of Majority Time Parent is more important for lower- and middle-income levels.

When the majority of parenting time in a family is clearly allocated between the parents, the designation of a Majority Time Parent is not in question. But when the parenting time is purportedly 50/50, who is designated Majority Time Parent? And why is there such a big difference in the support calculation from this one tiny selection?

Let's start by acknowledging that in real life there is no true 50/50 parenting time. Add to that the fact that, in most years, there is an odd number of overnights (365). Since it is unlikely the parents are rousing their child/ren in the middle of the night to change homes, one parent will have at least one additional overnight each year.

The IRS deals with the situation of 'equal parenting time' with a tie-breaker rule that designates the higher earning parent as the Majority Time Parent when parenting time is established at 50/50.

This puts the IRS in position to potentially receive more tax revenue, as the higher earning parent is more likely to be phased out of these tax benefits. Conversely, it provides worse monetary results for the family.

The designation of Majority Time parent affects the standardized net income calculation, as the official Gross-to-Net Income Table has two results for net income: the columns for Majority Time Parent and the Non-Majority Time parent. Therefore, it matters which parent is which. If you are doing actual tax calculations, and not using the Gross-to-Net Income table, then only the Majority Time Parent can utilize the tax-advantaged Head of Household filing status and claim the generous Earned Income Tax Credit.

Some professionals have tried to ameliorate this problem and the discrepancy in calculation results with the change of Majority Time Parent in families with more than one child by designating each parent as Majority Time Parent for at least one of the children.

Unfortunately, this will give different results than seen with a 50/50 designation, because this is considered Spilt Physical Care in our statute, and the support amount is currently calculated for each household separately, using the number of children in each household and then offset. The results from netting two 1-child sole-custody calculations are different than the results from a 2-child shared-custody calculation.

Now, depending on the choices being made for Majority Time Parent, the professional can be looking at three

or more different results. In an "equal" parenting time situation, which one is correct? Truly, in Illinois there may be more than one mathematically correct result depending on how the many variables that go into our child support calculation are entered.

The bottom line is that, in a 50-50 parenting situation, there will be a human element in arriving at the child support result. There is no straight calculation that will do it.

In Family Law Software we have a page that allows for side-by-side comparison of the computation options. The remainder of this article explains how this works, so you can arrive at a reasonable and fair child support amount in the case of 50-50 parenting.

Let's start by understanding that, in Family Law Software, there are two separate and distinct checkboxes: one for Majority Time Parent and the other for Dependent Exemption. As explained above, these are both important choices. They do not have to both go to the same parent.

Next, go to our What If page for child support side-by-side options, found in the Analysis Section on the page called Support What If (Basic users of FLS will not have access to this function).

On this page, you can explore all the different permutations of Majority Time Parent, Dependent Exemption allocation, number of overnights, and filing status and see the resulting support amounts calculated for each scenario.

Often, choices that change net income will also change guideline maintenance as well. The key for the knowledgeable attorney is to not only look at the support and maintenance numbers themselves, but also look at the Support Impact report for each scenario to see the resulting impact on the financial situation for the entire family.

To accomplish this, swap each scenario in turn for the Actual column, and then flip to the Support Impact report and print (PDF or Print) each one to be able to compare them.

Looking at the child support results that you get in all possible scenarios may help to suggest some kind of average value among all of them, or clarify which option is best for that family.

Future blogs/articles will address other tax choices which impact child support calculations in Illinois. Stay tuned. ■

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This article was originally published in Family Law (February 2025, Vol. 68, No. 7), the newsletter of ISBA's Section on Family Law.

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The Use of a Police Report at Trial to Refresh the Recollection of an Investigating Officer and the Application of the Hearsay Rule and the Exceptions: *Capsel v. Burwel*

BY RICHARD L. TURNER, JR.

THE USE OF A POLICE REPORT TO refresh the recollection of a police officer at trial is considered the use of a hearsay document and subject to establishing a proper foundation and proper invocation of some appropriate exception to allow the introduction of the hearsay document. When the officer cannot specifically identify who he/she talked to in getting a version of events to reconstruct on paper a collision in preparing the report, and when the officer did not personally witness the collision (as is usually the case), a hearsay on hearsay situation arises and the report may therefore not be used to refresh the officer's recollection nor be used substantively as a past recollection recorded.

Trooper Thomas Vodicka was called as a witness in a rear-end motor vehicle collision by the plaintiff. Plaintiff was a passenger in a vehicle being operated on Interstate 80 by his grandmother, Beverly Rodriguez. The defendant slammed into the Rodriguez vehicle from behind, and the defendant was issued a citation by Vodicka, which she subsequently pled guilty to. The trooper had prepared a police report shortly after the collision in which he attributed in his narrative portion of the report a statement by one of several occupants in the plaintiff's vehicle to the effect that a truck was driving recklessly and cut off the Rodriguez vehicle, causing Rodriguez to brake. The trooper's report did not contain any indication that the defendant mentioned the truck to him, but he acknowledged that it was possible that the statement regarding the truck was misattributed to one of the occupants of the Rodriguez vehicle and possibly made by the defendant. At trial, none of the six family members involved in the collision nor the plaintiff, all in the Rodriguez vehicle, recalled a truck cutting them off and forcing the grandmother to slam on the brakes before being struck from behind.

On cross-examination of Trooper Vodicka, the defense used the police report. The trial court allowed the defendant to use the report by reading from the narrative, based on the theory that the defendant was using the report to refresh the recollection of the trooper. The trooper had testified that he had prepared the report shortly after the collision and had firsthand knowledge of the statements in the report, though he could not independently recall the collision, nor could he specifically identify any of the individuals who allegedly provided him with the statements concerning the truck cutting off the Rodriguez vehicle.

Plaintiff had filed a *motion in limine* prior to trial, which was granted by the trial court, finding that the statements in the trooper's report were barred with the past recollection recorded exception to the hearsay rule not applying, unless Vodicka's testimony changed at trial. However, the trial court had reserved ruling on the portion of the motion pertaining to the admissibility of the statements on other grounds. At trial, when defense counsel began reading from the police report, the trial court held a sidebar on plaintiff's objection to this use of the report. Plaintiff's counsel argued the statements in the report were still inadmissible because Vodicka had not testified specifically as to which individual in plaintiff's vehicle provided the statements to the trooper as to being cut off by another vehicle. Despite this, the court found that defense counsel had refreshed Vodicka's recollection and there was adequate foundation to allow the statements to be admitted.

The appellate court found that the statements at issue constitute hearsay on hearsay, or double hearsay, in that the report itself is hearsay, and the subject portion of the narrative was based on hearsay statements regarding an unidentified truck that was not present at the scene of the collision, allegedly made by a single unattributed source at the scene. Vodicka's memory was not sufficiently refreshed as to any relevant facts in that he testified at trial that he did not remember who provided him with the statements regarding the unidentified truck. The report therefore could not be used to refresh his recollection as it could not be used to substantiate any relevant facts. Vodicka did not witness the collision, and he could not identify who, if anyone, provided the statements in his report.

The past recollection recorded exception to the hearsay rule also did not apply to allow the statements in the report in. Citing *Loughnane v. City of Chicago*, 188 Ill.App.3d 1078, 1082 (1989), the appellate court set out the four prerequisites to admission of a police report as a past recollection recorded: 1) the witness must have no independent recollection of the occurrence/event recorded; 2) the report must fail to refresh the recollection of the witness; 3) the facts in the report must have been recorded at the time of the occurrence or shortly thereafter; and 4) the truth and accuracy of the report when made must be established. While arguably the first three requirements were met, in that Vodicka testified that he wrote the report within hours of the report, he clearly remembered his investigation but could not recall whom he spoke to even after the attempt to refresh his recollection with the report. The last requirement regarding the truth and accuracy of the report could not be established in that he did not witness the collision and could not identify who provided the statements to him. His testimony as to the unidentified truck lacked the necessary foundation

and was inadmissible under the past recollection recorded exception, or any other exception, to the hearsay rule and the trial court erred by allowing in the statements in evidence. Simply put, he could not identify who allegedly made the statements that he included in his report, and for that reason, the truth and accuracy of the report could not be established.

The next step in the analysis by the reviewing court was to determine whether the lower court's errant ruling was harmless or warranted reversal, determined by whether the verdict would have been different if the evidence had not been admitted. The appellate court found it likely that absent the trial court's admission of Vodicka's testimony regarding the unidentified truck, the outcome of the trial would have been different. Vodicka's testimony as to the statements in the report provided additional support for the jury to believe the testimony of the defendant as to the unidentified truck cutting off the Rodriguez vehicle, as opposed to the testimony of the plaintiff and other witnesses in the vehicle who did not recall a truck cutting them off. Therefore, the lower court's act of admitting the statements in the report into evidence constituted reversible error meriting a new trial.

It is important to understand the distinction between refreshing an officer's recollection with his/her report and the entry of the contents of the report as a recorded recollection. The Illinois Rules of Evidence and Justice Gino DiVito's annotated commentary on the Rules are helpful. Rule 803(5) provides as an exception to the hearsay rule the following:

> A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness's memory and to reflect that knowledge.
> Ill. R. Evid. 803(5)

Justice DiVito, in his Commentary to the Rule, indicates that this hearsay exception admits what is contained in the memorandum or record, thus allowing the trier of fact to determine the weight to be given the document. However, when using a document to refresh the memory of a witness, there is no created exception for admission of the document used to refresh memory. In that situation, the testimony of the witness based on refreshed memory is admitted under normal rules of evidence, and the refreshing document itself is not admitted into evidence. Gino L. DiVito, *The Illinois Rules of Evidence: A Color-Coded Guide*, p.269 (ISBA, 2024).

It makes sense in considering the reliability of the statements that were at issue in *Capsel* that the appellate court would not find that a recorded statement by the trooper was reliable when he was unable to attribute the statements to any particular witness and the statement concerned a material matter in the case: whether a truck had veered into the lane of travel such as to cause the vehicle in which the plaintiff was a passenger to come to a sudden stop resulting in a collision from the rear when defendant hit them from behind. There is not the necessary threshold of reliability here such as to allow in the hearsay-on-hearsay document. Police reports are specifically excluded from the subparagraph that allows admission of "public records and reports" as hearsay exceptions. Ill. R. Evid. 803(8). To allow in an officer's report as a past recollection recorded will require more than what Trooper Vodicka was able to provide in terms of indicia of reliability.

Capsel v. Burwell, 2024 IL App (3d) 230170. ■

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This article was originally published in Trial Briefs (January 2025, Vol. 71, No. 3), the newsletter of ISBA's Section on Civil Practice & Procedure.