

Child Law

The newsletter of the Illinois State Bar Association's Section on Child Law

Special Immigrant Juvenile Status: Protecting abused, abandoned, or neglected immigrant children

BY HILLARY RICHARDSON

In light of recent increased immigration raids and enforcement, it is more important than ever for immigrant families to have competent legal screenings to assess for relief from deportation. This article will address one such form of relief, known as

Special Immigrant Juvenile Status, or SIJS.

Carlos' father abandoned his family when Carlos was only six years old. When Carlos was eight, his mother came to the United States to work, leaving Carlos with

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VAPs and you

BY JARED GIUFFRE

What Is a VAP?

A voluntary acknowledgment of paternity ("VAP") is an acknowledgment that a person is the biological parent of a child. Section 750 ILCS 46/302(a) requires that a VAP must:

- (1) be in a record;
- (2) be signed, or otherwise authenticated, under penalty of perjury by the mother and by the man seeking to establish his parentage;
- (3) state that the child whose parentage is being acknowledged:

- (A) does not have a presumed parent, or has a presumed parent whose full name is stated; and
- (B) does not have another acknowledged or adjudicated parent;
- (4) be witnessed; and
- (5) state that the signatories understand that the voluntary acknowledgment is the equivalent of a judicial adjudication of parentage of the child; and that:
 - (i) a challenge by a signatory to the voluntary acknowledgment may be permitted only upon a showing of

- fraud, duress, or material mistake of fact; and
- (ii) a challenge to the voluntary acknowledgment is barred after years unless that period is tolled pursuant to the law.

An important point to consider is that the VAP itself requires that each signatory make a statement that the child does not have a presumed parent or other acknowledged or adjudicated parent. A presumed parent is "an individual who, by

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his grandmother in Honduras. Carlos' mother sent him money every week for food and school supplies, but Carlos's grandmother treated him badly. She hit him with sticks and cables and often forced him to stay home from school and work, keeping the money for herself. She threatened to hurt him even more if he told his mother what was happening. Without his father around to intervene, Carlos had no one in Honduras to protect him from his grandmother's abuse. By the time Carlos turned 13, he decided he could no longer take the abuse and he fled Honduras to join his mother in the United States.

Carlos' story is unfortunately not unusual for children fleeing the area known as the Northern Triangle of Central America – composed of Honduras, El Salvador, and Guatemala. In addition to poverty and brutal gang violence, factors causing children to flee their countries include child abuse, gender-based violence, and sexual assault. When these children come to the United States alone or with an adult who is not their parent, they are classified as “unaccompanied minors”. In 2016, over 59,000 fleeing children were apprehended at the southern border and classified as unaccompanied. These children are detained in centers run by the Office of Refugee Resettlement (“ORR”) and placed into deportation proceedings. If they have a parent or relative living in the United States, ORR will try to arrange the child's release to that person's custody while their immigration court case is pending. If no appropriate guardian is available, the child will have to remain detained until an immigration judge decides whether or not he/she will be deported. Although many of these children are eligible for forms of legal relief from deportation, they are not entitled to court-appointed counsel, meaning that if their families cannot afford a private attorney or find free legal help, the children are left to navigate their deportation hearings on their own.

Immigration law has been compared to the tax code in its complexity and

proceedings are adversarial, meaning the children are facing an experienced immigration prosecutor in court. For a child with few resources and limited to no English, this can be an insurmountable barrier to legal protection. In this area, competent representation is crucial - although only about a third of unaccompanied minors are represented in immigration court, of those represented, 73 percent were ultimately allowed to remain in the United States, versus only 15 percent of unrepresented children.

One unique form of immigration relief available to children like Carlos is Special Immigrant Juvenile Status, or “SIJS”. SIJS is meant to protect immigrant children who have been abused, abandoned, or neglected by one or both parents – and if granted can lead to permanent residency and eventual U.S. citizenship. The SIJS statute [found at 8 USC § 1101(a)(27)(J)] first requires that a child be under 21, unmarried, and present in the United States. Additionally, a “juvenile court” must have 1) declared the child dependent on the court, or placed them under the custody of an individual or state agency; 2) determined that the child's reunification with one or both parents is not viable due to abuse, neglect, abandonment, or similar basis under state law; and 3) determined that it would not be in the child's best interest to return to their home country.

As detailed above the federal statute creates a two-step process: First the child must obtain an order with the aforementioned required findings from a state court, and only then can the child apply for relief from the immigration authorities. Although the statute refers to “juvenile court,” the regulations clarify that this term includes any U.S. court with jurisdiction to make determinations about the custody and care of juveniles. Common courts in which these special orders are obtained have included divorce, parentage, guardianship, and adoption courts—in addition to child welfare and juvenile delinquency

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This is the newsletter of the ISBA's Section on Child Law. Section newsletters are free to section members and published at least four times per year. Section membership dues are \$30 per year.

To subscribe, visit www.isba.org/sections or call 217-525-1760.

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proceedings.

Due to the complexity and intricacies of immigration law, it is critical that an experienced immigration law practitioner screen the child for SIJS before the family pursues the state court order (and then provide representation on the immigration side of the SIJS process). There is, however, a glaring need for attorneys with family law experience to represent the family in state court. Family law practitioners typically work with minor children and their parent or guardian to obtain the necessary predicate order, although practitioners in a variety of backgrounds may learn to handle these cases.

These predicate orders are obtained as a result of similar types of cases typically handled in guardianship, adoption or domestic relations courts. Although the final order must contain the aforementioned three essential findings under 8 U.S.C. § 1101(a)(27)(J), said findings cannot be the sole basis for filing the case. As such, it is essential that practitioners carefully interview clients and discuss various options with the child's immigration attorney in order to select the most appropriate route. Practitioners must provide clients with realistic expectations as there is no guarantee that the predicate order will be granted or that the desired immigration outcome will be successful.

These cases may also give rise to complications with jurisdiction or service of process. In the most optimal circumstances, service can be efficiently effectuated by publication or consent and waiver. The parent who abandoned the child may not be located and can be served by publication or, if their whereabouts are known, they may consent to service. But the sad fact is that many cases are much more complex service-wise—for example, children may not know the address of the parent that abandoned, abused or neglected them, or that parent may not be willing to consent to service or admit to their prior actions. This may necessitate service on a party that resides out of state or (more realistically) out of the country. Depending on the home country of the child, this may involve service of process through The Hague Convention or the Inter-American Convention on Letters

Rogatory & Additional Protocol (IACAP).

Each of these processes can be lengthy and expensive, so complications of service and time constraints related to the age of the child must be considered before filing. These cases are often initiated when a child is 16 or 17, so service issues alone may disqualify a child from this relief if the predicate order cannot be obtained in a timely manner.

As an added complication, given the recent increase in enforcement against all undocumented people living in the U.S., many parents and family members are afraid to come forward to seek relief on behalf of their children. For example, previously an undocumented mother filing a custody case (or an uncle seeking guardianship over his nephew) would simply access the state courts and face minimal risk of immigration enforcement. Now, however, some family members may be forced to make a heartbreaking choice—risk exposing themselves or watch their child be deported due to a lack of a state court order for SIJS.

It is important to note that immigration enforcement against a parent or guardian is simply a risk, not a guarantee, and a majority of family members who choose to pursue SIJS on behalf of their children are able to navigate the state court system without immigration consequences to themselves. However, the extremely harsh rhetoric adopted by this administration has had its intended effect of preventing immigrant families from seeking the legal protections for which they are eligible. Particularly in light of the recent rescission of the Deferred Action for Childhood Arrivals (DACA) program (which eliminated a form of protection and stability for hundreds of thousands of immigrant youth), it is more important than ever for families to receive accurate legal advice and pro bono representation wherever possible. ■

The National Immigrant Justice Center (NIJC) screens children for eligibility for SIJS, along with other immigration remedies, and works with experienced family law attorneys to obtain SIJS predicate orders in state courts. NIJC also provides regular trainings and technical support for family law attorneys and attorneys from other areas of law who are willing to bring these cases in state court to benefit immigrant minors.

For more information about unaccompanied immigrant children generally, visit <http://www.immigrantjustice.org/resources/resources-attorneys-representing-unaccompanied-immigrant-children>. For details about the SIJS and the predicate order process, contact NIJC attorney Hillary Richardson at hrichardson@heartlandalliance.org, and attorney Meredith Turner-Woolley of Hughes Socol Piers Resnick & Dym at mturner-woolley@hsplegal.com.

1. <https://www.acf.hhs.gov/orr/about/ucs/facts-and-data#Incoming%20Referrals>.
2. <http://trac.syr.edu/immigration/reports/359/>.
3. 8 C.F.R. § 204.11(a).

VAPs and you

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operation of law under Section 204 of this Act, is recognized as the parent of a child until that status is rebutted or confirmed in a judicial or administrative proceeding.”

Regarding the aforementioned “presumed parent” language, 750 ILCS 46/204(a)(1-4) provides that a presumption arises if one of the following factors exists:

- The person and the mother of the child are married, in a civil union or similar legal relationship and the child is born during same;
- The person and the mother of the child were in a marriage or civil union or similar legal relationship and the child is born within 300 days after same is terminated;
- The person and the mother of the child were in a marriage, civil union or similar legal relationship that was in apparent compliance with the law and the child is born within 300 days after same is terminated; and
- The person and the mother of the child marry, enter a civil union or similar legal relationship, after the child is born and the person is named, with the person’s written consent, as the child’s parent on the child’s birth certificate (a)(4).

Any conflicting presumptions are resolved by “the presumption, which, on the facts, is founded on the weightier considerations of policy and logic, especially the policy of promoting the child’s best interests, controls.”

However, as you may or may not know, there is no requirement that the VAP be supported by a DNA test or other confirmation of paternity. If there is a presumed parent, then a VAP can only be executed with an appropriate denial in place – or a statement that there is no presumed parent or acknowledged parent. Should a denial not be in place, or if the child has a presumed or acknowledged parent, then the VAP is considered void.

What Is the Effect of a VAP?

A VAP is effective upon the filing of the

document with HFS (Illinois Healthcare and Family Services). However, pursuant to 750 ILCS 46/304(a), if a denial of paternity is required then neither the denial nor the VAP are valid until both are filed. And under 750 ILCS 46/305(b), it is effective as a judgment and there is no need to formally establish parentage. Submitting a VAP will establish obligations and rights for the individuals that sign it, in addition to initiating the running of various statutes of limitations. Finally, the child will now have an “acknowledged” father pursuant 750 ILCS 46/103(a).

How Do You Get a VAP?

A parent (or his/her counsel) may request a VAP by submitting a form to HFS (which is available online and is fillable). HFS must receive an original and notarized form and must contain the following information:

- Child’s Name:
- Child’s Date of Birth:
- Requestor’s name:
- Requestor’s Last 4 of Social Security Number:
- Requestor’s address:
- Phone number.

How Do You Challenge or Contest a VAP?

The answer to this question varies depending on who the individual is in relation to the VAP:

Signatory to the VAP: A signatory to a VAP has 60 days from the effective date of the VAP to file a recession. Said recession must be signed, witnessed and sent to HFS. After sixty (60) days, the signatory to a VAP may only challenge the VAP based on “basis of fraud, duress, or material mistake of fact” and may only do so within two (2) years from the effective date of the VAP. Furthermore, any time during which the challenger of the VAP is under a legal disability or duress or the ground for relief is fraudulently concealed shall be excluded.

By nature, this tolling period would start running from when the fraud is revealed. After this period runs, a signatory to the VAP will generally not be able to file a

petition to declare the non-existence of the parent-child relationship.

The mother, child or presumed person: An action to declare the non-existence of a parent child relationship may be brought by the child, the birth mother, or a person presumed to be a parent under Section 204. Another important timeline under this section is as follows: “An action to declare the non-existence of the parent-child relationship brought under subsection (a) of this Section [205] shall be barred if brought later than two years after the petitioner knew or should have known of the relevant facts.”

When a child has an acknowledged parent, other potential fathers are limited to a two (2) year period from the effective date of the VAP to file a petition to declare the existence of a parent-child relationship. There is no exception for fraud, duress, or material mistake of fact, and a signatory to the acknowledgement is limited by the aforementioned time limits in section 309.

Moreover, any petition to declare the non-existence of a parent-child relationship could be barred by estoppel principles—the standards and factors are detailed in 750 ILCS 46/610.

Children over 18: Pursuant to 750 ILCS 46/205(b), the two-year period for bringing an action to declare the non-existence of the parent-child relationship shall not extend beyond the date on which the child reaches the age of 18 years.

Guardian ad litem: A Guardian Ad Litem may file a petition to declare the non-existence of a parent child relationship on behalf of a minor child. Case law has held that the two-year time limit applies to children that either had a guardian *ad litem*, or children who had their interests adequately represented in a prior proceeding per *res judicata*. In the event that a child is not represented in a proceeding, the two-year time limit will not run. ■

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1. <https://www.illinois.gov/hfs/SiteCollectionDocuments/hfs3416h.pdf>.
2. 750 ILCS 46/301.
3. 750 ILCS 46/103(p).
4. Unless there is a valid arrangement made under the Gestational Surrogacy Act, 750 ILCS 47 *et al.*
5. 750 ILCS 46/204(b).
6. 750 ILCS 46/302(b).
7. 750 ILCS 46/304(c).
8. <https://www.illinois.gov/hfs/ChildSupport/Documents/>

- hfs3416h.pdf.
9. 750 ILCS 46/307(a).
10. <https://www.illinois.gov/hfs/SiteCollectionDocuments/hfs3416e.pdf>.
11. 750 ILCS 46/309(a).
12. *Id.*
13. 750 ILCS 46/205(b).
14. Section 607 and 608 both contain different standards for when a child has no presumed, acknowledged, or adjudicated parent or the child has only a presumed

- parent, this article assumes that there is an acknowledged parent.
15. 750 ILCS 46/609(b).
16. *In re M.M.*, 401 Ill.App.3d 416 (2010) and *In re A.A.* 2015 IL 118605.
17. *In re Rodgers*, 279 Ill.App.3d 648 (1996).
18. *Id.*

Burned out? Overwhelmed? Meet Dr. Diana Uchiyama and the Illinois Lawyers' Assistance Program

BY MARY F. PETRUCHIUS

The Illinois Lawyers' Assistance Program, or LAP, was founded in 1980. It is a not-for-profit organization that offers free, confidential help to Illinois attorneys, law students, judges, and their families whose lives are affected by substance abuse, addiction, and/or mental health issues. In late 2018, LAP opened an office in Geneva. I recently interviewed Dr. Diana Uchiyama, LAP's executive director, about LAP and her role in the Geneva office.

Mary: Diana, before we discuss LAP and what you do, I'd like our readers to get to know you. Where did you grow up? What's your educational history?

Diana: I grew up on the north side of Chicago after my parents immigrated here from Germany with my two older siblings. I attended public grammar school until the eighth grade and graduated from St. Scholastica Academy, an all girls' college preparatory high school in Chicago. I received my undergraduate degree from the University of Illinois in Champaign and my Juris Doctorate from Pepperdine University School of Law. I attended Benedictine University for my MS in Clinical Psychology and Midwestern University for my PsyD in Clinical Psychology.

Mary: Who were your role models

growing up? The influences in your personal and professional life?

Diana: I would say my parents and younger brother were the greatest role models in my life. My parents immigrated to the United States with two small children because my parents wanted to provide their children with a better quality of life than they had in Germany. My father was Assyrian from a Catholic family in Iraq, and they were a minority group that was persecuted because of their religion. He moved to England to attend college and met my mother, who was from Germany, and they eventually got married in Germany. They had two children but neither of my siblings were German citizens, due to my father being a foreigner. My parents decided to move to the United States so that their children would have a national identity and more opportunities than in Germany.

My younger brother and I were born in Chicago and he was born with Down Syndrome. My parents always pushed all of us to become educated, to work hard, to speak up against injustice, and to give back through acts of public service and charity, which has been my biggest motivation in life. And because I have a brother with a disability, I was motivated to provide him

with all of the opportunities that I had and to push him to rise above his disabilities, to be an independent human being with a purpose in life.

I think that growing up with parents who were from other countries and who gave so much of their lives to better their own children's lives, made me want to pay it forward in my own career and my own sense of identity. I understand what it means to be poor, to work hard to get ahead, to have a sense of purpose, and to work for the greater good. My parents instilled in me a desire to be motivated not just by money and title, but to better the lives of as many people as you can, regardless of who they are and where they are born.

Mary: Why did you decide to become lawyer?

I think that the circumstances of my childhood, including growing up with parents who were from other countries and often being judged by the fact that my parents had accents, influenced me greatly because I often felt different and like an outsider.

In my family what was really valued was education and hard work, instead of superficial things. Then, having a brother with a significant disability and watching my

family fight to get him equal treatment in school and in life, made me passionate about being a voice for the voiceless or for those treated as “less than.”

I felt passionate about making sure that people were treated fairly and with a sense of justice and equality, regardless of where they were born. I had a strong desire to pursue a degree in law, specifically in criminal law as an Assistant Public Defender. I wanted to make sure that everyone’s rights were honored regardless of education, economic status, or nationality or race.

Mary: Diana, take us down through your career path and where it has led you.

Diana: After graduating from law school, I first practiced in international health care law, due to the fact that I speak fluent German, while I was waiting to find out if the Cook County Public Defender’s Office was hiring. I then applied for a position there and happily was hired. I worked as an Assistant Public Defender for about 12 years assigned to various felony courtrooms, mostly at 26th and California.

I then decided to get my master’s degree in clinical psychology and, after that, my doctorate. I have blended my work as an attorney and clinical and forensic psychologist. I previously worked at the Kane County Diagnostic Center doing forensic evaluations for the Court and as the Kane County Juvenile Drug Court Coordinator. I have also worked for the Cook County Juvenile Detention Center with adolescents who were charged criminally as adults. I was the Administrator of Psychological Services for DuPage County, working with a court-mandated population of clients who had substance use, mental health and/or domestic violence and anger management problems. I am now the Assistant Deputy Director of LAP.

Mary: What brought you to LAP?

Diana: There were a number of reasons that I came to LAP. I had several former legal friends and trial partners who were struggling with mental health and/or substance use issues and, when a few of them or their family members began reaching out to me regarding the problems they were facing, I thought initially that it was an

isolated problem. After doing a presentation with a member of the ARDC, however, I found out that the substance use and mental health problems in the legal community were pretty common and very complicated.

Additionally, we had quite a few attorneys seeking mental health, domestic violence, and/or substance use assistance when I worked at DuPage County. Sometimes those attorneys had a difficult time in group settings with other group members. They often felt a great sense of shame at needing mental health or substance use services. That made me feel tremendous empathy for them.

And finally, I have personally known attorneys with whom I was acquainted or worked with, who committed suicide. I felt great distress and sadness that this was happening to my legal community. As a result, I felt that all my education and training was well suited to understanding the specific needs of the legal community and appreciating how hard it is to reach out and access services to get the help needed.

I owe a lot of gratitude to people in the legal community who shared their passion, knowledge, and patience with me as I was learning to become a lawyer. I felt this great desire to give back to the legal community in general because that community had been so good to me when I was a practicing attorney.

Mary: What does LAP do?

Diana: LAP is a not-for-profit organization that helps Illinois lawyers, judges, law students, and their families concerned about alcohol or substance use or dependency, mental health issues including depression, anxiety, and suicidal thinking, or stress-related issues such as compassion fatigue and burnout.

LAP’s services include individual and group therapy, assessments, education, peer support, and interventions. Our mission is threefold: To help lawyers, judges, and law students obtain assistance with substance abuse, addiction, and mental health problems; To protect clients from impaired lawyers and judges; To educate the community about addiction and mental health issues.

Everything at LAP is free and confidential

and many of the staff are attorneys/clinicians or specialize in substance abuse issues. We have offices in Chicago, Park Ridge, Geneva, and satellite offices throughout the State of Illinois. LAP has a board of directors, an advisory committee, and an associate board comprised of lawyers and judges from all over the state.

Mary: Have you seen the wellness issues faced by attorneys change since you became an attorney in 1989?

Diana: In some ways, yes.

Mary: In what ways have those issues changed?

Diana: Honestly, looking back I think that the problems in the legal profession with substance use and mental health problems were significant even when I practiced law. I believe, however, that I normalized it as a professional hazard. I felt that it was not unusual for members of my profession to drink heavily or to struggle with relationship issues, burnout, and compassion fatigue. I was surrounded by it on the bench, with my colleagues, and at legal functions I attended.

Until I stepped out of the field and entered into a different working arena, I never recognized that the work attorneys do--the tragedies and traumas we see on a daily basis, the win/lose attitude we all encounter, and the high case volumes we endure would cause a wear and tear and erosion of our physical and mental health. It was not until I began hearing stories about disastrous outcomes of people I worked with or knew, or was asked for treatment assistance or help, that I recognized that something was wrong and unhealthy with our profession.

I also knew that I had the educational ability and expertise to go back and help people with whom I strongly identify, relating to the personal qualities I share with them. Those qualities include perfectionism, competitiveness, being a problem solver, and possessing an inability to ask for help due to shame and fear. I feel very blessed to be able to do this work and help people realize that asking for help is a strength and not a weakness.

Mary: What issues do we as a profession face today that we may not have faced 20 years ago?

Diana: The level of stress and anxiety is dramatically increasing. We cannot turn off our brains. We are having higher levels of mental health issues in general, including depression. This is most likely due to poor sleep habits, the presence of social media, and the inability to separate work from home, due to the accessibility of people via email or text. The suicide rate for attorneys is very high and that means that people are suffering alone and in isolation. We need to do a better job of helping people, collectively and individually, in the legal profession, so that no one feels that suicide is the only option to escape the hopelessness and sadness they may be experiencing.

Mary: Do the younger lawyers take advantage of LAP?

Diana: Younger people in general access LAP services more readily and this may be due to the lower levels of stigma associated with seeking help for mental health and substance use issues in this age group. It is also related to LAP's incredible outreach in the law schools, including staffing every law school in Illinois with monthly office hours using staff or volunteers to identify individuals who may be struggling, and offering them help before they enter the legal field. Forty percent of our clients are now coming from the law student population and over fifty percent of LAP clients are under age 40.

Mary: What issues do younger lawyers have that differ from the issues of more seasoned lawyers?

Diana: Young lawyers have significant financial issues related to educational debt. They are also just starting their careers, transitioning from being students to being adults with full-time work responsibilities, forming permanent relationships, having children, purchasing houses, and trying to establish themselves in their legal community. They often feel as though they lack the knowledge or expertise, despite their educational training. They face significant stressors that may increase mental health and substance use issues.

Mary: How did the Geneva LAP office come to be?

Diana: The Geneva office came to be

due to increased demands for services in the western suburbs, including DuPage and Kane Counties. LAP recognized that the legal community there and in the far west, including Rockford and DeKalb, would not be able to easily access services in the downtown Chicago or Park Ridge areas due to distance. We received increased requests for services and felt we needed to meet the demand for an area that was underserved and needing significant assistance.

Mary: What services does LAP offer?

Diana: We offer assessments, evaluations, and individual therapy in Geneva. I staff that office one or two days a week by appointment. We also provide peer support mentors and refer people to outside agencies as needed, including psychiatrists, therapists, and substance use providers.

Mary: What are your goals for the Geneva LAP office?

Diana: We hope to provide group therapy in the future as the demand increases and the desire for these types of services is requested. We also want to increase the involvement of the judiciary and the training of people in DuPage, Kane, and surrounding areas who want to volunteer with LAP. Individuals will be able to go to those volunteers and ask them questions about what LAP can do for them.

Mary: How do you envision your future?

Diana: I love my job and feel passionate about what I do, so I hope to be a part of LAP for a long time. I hope to increase LAP's ability to assist more people in the legal profession by expanding services statewide, creating more volunteer outreach, involving members of the judiciary and local legal communities with LAP, and increasing financial support for LAP through fundraising and donations.

I want to help people struggling with mental health and/or substance use issues to recognize LAP as a safe place to seek assistance and access services. We are in the business of aiding legal professionals in need, providing hope for people who are hopeless, and helping people become healthy and optimistic about their work and their futures. I am honored to be serving in this capacity.

Mary: Diana, it has been a pleasure and

a privilege to interview you and learn about the great work you and LAP are doing for our legal community. How can our readers contact LAP?

Diana: They can call LAP's main telephone line at: 312.726.6607 or 1.800.LAP.1233. They may also email me directly at duchiyama@illinoislap.org. ■

Mary F. Petruchius serves on ISBA President James McCluskey's Special Committee on Health & Wellness. She is the PAI (Private Attorney Involvement) Plan Coordinator for Prairie State Legal Services' St. Charles Office. Mary came to Prairie State in July, 2018, after 26 years practicing criminal defense, juvenile, and real estate law.