

General Practice, Solo & Small Firm

The newsletter of the Illinois State Bar Association's General Practice, Solo & Small Firm Section

Chair's Column

BY DOMINIC 'NICK' KUJAWA

I'm honored to serve as chair of the General Practice, Solo, and Small Firm Section Council during the 2019-2020 bar year. I became a member of the Illinois State Bar Association while in law school in 2003. Since becoming an admitted attorney in 2007, and a member of this committee in 2008, I have realized the many benefits of being actively involved in the ISBA.

The Advantages of Involvement. Being

actively involved in the ISBA offers a variety of advantages. I've had the opportunity to meet attorneys from all over the state of Illinois and learn from their experiences whether it was a discussion about a different area of practice, or courtroom etiquette and procedure in another county. These relationships are crucial to the small firm/solo practitioner. The ability to call

Continued on next page

Chair's Column
1

Court Supervision May Be a Conviction (and a Horse With a Feathered Saddle May Be a Small Bird)!
1

Burned Out? Overwhelmed? Meet Dr. Diana Uchiyama and the Illinois Lawyers' Assistance Program
3

Court Supervision May Be a Conviction (and a Horse With a Feathered Saddle May Be a Small Bird)!

BY MICHAEL J. MASLANKA

Rafaela wanted to rent an apartment. The lessor used a company to check Rafaela's background. The company reported that she had been **convicted** of a battery charge many years ago. The lessor denied the rental application. Rafaela sued, alleging the company, as a consumer reporting agency, violated the Fair Credit Reporting Act, by telling the lessor that she had been convicted of battery, when,

in fact, she had received an order of **court supervision**, with an eventual dismissal of the charge. The case is *Aldaco v. Rentgrow, Inc.*, No. 16 C 5754, decided by the United States Court of Appeals for the Seventh Circuit on April 16, 2019.

Rafaela wanted the federal court to use Illinois law, which says that a finding of guilt and an order of court supervision is not a conviction and leads to a dismissal of

the charge. The opinion's references to what is and what isn't a conviction in the world of law, reminded me of the case which was the subject of homework that was sent to me and my fellow law students during the summer **before** we began freshman year of law school. We were asked to read the case of *Regina v. Ojibway*, 8 Criminal Law Quarterly 137 (Toronto, 1965). The crux of

Continued on next page

Chair's Column

CONTINUED FROM PAGE 1

another attorney to ask for advice, or to get access to one of our online communities to discuss an issue with other attorneys is so vital to our profession. So as a member of this Section Council and the ISBA, I'm urging you to get actively involved.

The Advantages of Membership. The member benefits of the ISBA are numerous, from the free CLE to the community discussions to networking opportunities. If you are solo or small firm practitioner you will find these resources useful. As a member of the ISBA you receive 15 hours of free CLE every year. And as a committee, we plan to continue with our strong CLE presence. Our committee sponsored "Starting and Running Your Own Law Practice" on February 8, 2019, in O'Fallon, Illinois and it was very well attended. The CLE was geared towards the basics of running your own law practice from insurance and tax issues, to marketing to law firm management. This must-attend CLE is for anyone wanting to start their own practice, and our goal is to host the same program in the Chicagoland area in early 2020.

Court Supervision May Be a Conviction (and a Horse With a Feathered Saddle May Be a Small Bird)!

CONTINUED FROM PAGE 1

that opinion was the strictest interpretation of a Canadian statute prohibiting the injury to small birds. In that case, an Indian was riding his pony and instead of a saddle used a downy pillow with feathers. The pony broke its leg and the Indian owner shot the pony in accordance with Indian custom. The magistrate acquitted the horse owner of the charge of killing a small bird, but the appellate court, in a very interesting opinion, followed the interpretation of the statute which defined a small bird as a two-legged animal covered with feathers. The judge

In addition, with the legalization of recreational marijuana in Illinois on January 1, 2020, the small firm/solo practitioners will be faced with many tantalizing issues from the expungement of prior marijuana convictions to the DUI implications, and the conflict of federal and state law. We hope to answer many of these questions with an upcoming CLE.

As your chair I'm hoping you get involved and take advantage of being an active member of the ISBA. ■

Nick grew up in Belleville, Illinois, where he graduated from Althoff Catholic High School. He then attended the University of Missouri, where he earned a bachelor's degree in history. Nick worked as a union laborer and in his family's auto business before attending law school at Washburn University School of Law in Topeka, Kansas. While in law school Nick clerked at a well-respected personal injury and workers' compensation law firm in Topeka, Kansas. After honing his skills as a clerk Nick started his own law practice in 2007 and has not looked back. Nick is a member of several legal associations, including the American Association for Justice, the Illinois Trial Lawyers Association, the Illinois Bar Association (ISBA Assembly Member 2015-Present), East St. Louis Bar Association and the St. Clair County Bar Association (Board of Directors 2015-2017).

reasoned that for purposes of the statute, the Indian horse owner had killed a small bird. As pre-freshman law students, we were taken aback by the nonsensical interpretation of the statute by the judge in this case. However, when the case was discussed with one of our very first law professors, we came to understand how statutes can be interpreted: strictly, liberally, or somewhere in between, depending on various circumstances.

Getting back to Rafaela's plight, the Seventh Circuit Court of Appeals reviewed Illinois and federal law with regard to the

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definition of conviction. The seventh circuit made a point of stating that under Illinois law, an order of court supervision is **not** considered a conviction for only some purposes and that, therefore, an order of supervision, which includes a finding of guilt and perhaps also a plea of guilt, may be under Illinois law, considered a conviction for certain purposes. The seventh circuit reviewed the FCRA, as well as many other federal laws, and found that state deferred prosecution orders and court supervision orders can indeed be considered convictions

under various federal laws.

The seventh circuit affirmed the district court which granted summary judgment for the defendant consumer reporting agency.

Takeaway: Many practitioners hear the term “court supervision” and tell clients that it is not a conviction on their record. We need to be precise when advising clients, and tell them that it is not a conviction for some purposes, but may very well be a conviction for other purposes, not only under state law but under federal law. ■

Michael J. Maslanka is a partner in the downtown Chicago law firm of Sacks, Goreczny, Maslanka & Costello, P.C. He has been an active member in ISBA for over 25 years, having served as a member and officer, including as chair, of various committees and section councils. He has authored over 100 articles for various bar association groups over the years, and has participated in many CLE seminars. He currently serves as Secretary of the ISBA Human Rights Section Council, and as newsletter editor for the ISBA Real Estate Law Section Council.

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. Petrucci 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.