



FAMILY LAW

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

Family law practitioner or jack of all trades?

Ross S. Levey; Yavitz & Levey, LLP

While in law school, I took a class titled "Sports Law." On the first day of class, the professor asked which areas of law were important for a "Sports Law" practitioner to know. After the expected answers: contracts, negotiations, financial planning, personal injury, someone blurted out the correct answer "all areas of law."

Family law is the same. Over the past year, besides understanding the IMDMA and the Parentage Act, I have also had to research issues related to bankruptcy, social security, ERISA, guardianship, adoption, tax/financial planning, probate, real estate, immigration, contracts, personal in-

jury, partnership, corporate and criminal law and I could go on.

For example, in one case, during the pendency of a divorce, our client was faced with allegations resulting in questions concerning social security disability benefits, foreclosure issues on the marital home, and the possibility of criminal elder abuse due to the misuse of funds belonging to our client. Although this case may seem unusual, it is indicative of the practice of family law and the implication of other areas of law. Almost every divorce case will involve the transfer

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When does representation end?

By Gary Schlesinger

A major issue in many divorce cases is when does the attorney's representation of a client end. The issue arises in this fashion. A Judgment for Dissolution, Legal Separation, Declaration of Invalidity, or in a Parentage Case, a Judgment of Paternity, is entered. Sometime later, one, two, three or four years later, one of the parties wants to go back to court to increase support, decrease support, modify parenting time, or any of a variety of other reasons. Frequently, notice of this new court proceeding is only given to the previous attorney, not to the previous party. Is that notice good? Does the court then have power over the party who did not get notice but whose previous attorney did, so that the court can enter substantive order?

735 ILCS 5/2-1203 permits the court to entertain post-trial motions filed within 30 days of the entry of the final Judgment. Notice of that need only be given to the attorney of record.

735 ILCS 5/2-1401, deals with Motions to vacate Judgments more than 30 days after they are entered. That section requires notice to both the former attorney of record and the opposing party. Why notice to the opposing party? Is it because notice to the attorney alone is not sufficient?

There is only one Illinois Appellate Court opinion that I could find on this issue. *Cummer v. Cummer*, 283 Ill.App.220 (First District 1935). In that case, five years after the divorce, notice of motion to vacate the decree was served upon the "solicitor who represented husband in the divorce action and who has since had no dealings with him." The appellate court held that was not sufficient notice to the husband. No notice at all had been sent to the husband. "The relationship of attorney and client between the Butler firm

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Family law practitioner or jack of all trades?

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of real property, which would require an understanding of real estate law. Almost every divorce case will involve clients who want to change their wills, trusts and other documents necessitating an understanding of estate planning and probate law. Almost every divorce will involve the compilation of a balance sheet of marital and non-marital assets requiring the family law attorney to be knowledgeable in tax and financial planning issues. Thus, it is important that family law attorneys at least have a basic understanding of many different areas of law in order to effectively advocate for their clients.

Furthermore, because family law attorneys often deal with clients who are in an extremely emotional and life altering period of their life, these clients tend to turn to the family law attorney regarding many different types of issues legal and otherwise.

So what do you do when you are faced with an issue that you have not encountered before? "Winging it" is not an option.

The ISBA is a great resource to help Fam-

ily Law Attorneys address issues and areas of law that may be new to them.

First, research the issues yourself. Read the relevant statutes, case law, treatises and the like to gain a basic understanding. A search of the ISBA Web site will direct you to articles in the ISBA section council newsletters and *Illinois Bar Journal*. FastCase is another great resource (which is free to members) through which you can research Illinois state statutes and case law.

It is also important to attend seminars. Upcoming seminars are listed in the ISBA E-Clips. Check your e-mail and regular mail frequently to learn more about the seminars offered by the ISBA.

Use the ISBA list serve to ask question of your fellow practitioners. There are forums in almost any area of law where you can get a variety of opinions from those who have experience. If you are not a part of the family law list serve, I urge you to sign up and be an active participant.

The ISBA also provides mentoring for

young lawyers. There are lawyers who volunteer their time to assist those that ask for help.

With issues of particular complexity, it may be appropriate to hire an expert, whether medical, financial or otherwise. Finding a knowledgeable and experienced expert does not have to be guesswork. Network with other family law lawyers and ask them about their experiences with various experts. The list serve can also be a useful way to receive recommendations regarding certain experts. You can also call the ISBA directly and ask for a referral.

If an issue arises in an area of law that you are not familiar with, do not attempt to do it alone. Trial and error is not an acceptable learning method and you will do your clients a disservice if you fail to properly educate yourself regarding the relevant areas of law implicated in any particular case. Use the resources available to you through the ISBA and otherwise. You may learn something along the way. ■

When does representation end?

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and the defendant having ceased to exist after the decree of divorce was entered October 25, 2009, the service of plaintiff's notice of motion and petition on that firm was without legal effect." The court held that no notice to the husband meant the court did not have jurisdiction of the matter. Substantive orders entered were void.

Cummer says that the attorney/client relationship ended when the decree of divorce was entered. 2-1203 requires notice only to the lawyer within 30 days after the entry of the Judgment. 2-1401 requires notice to the former attorney of record and the opposing party.

My conclusion is that it appears that under Illinois law, the attorney/client relationship ceases 30 days after the final Order is entered in the matter. Therefore, if more than 30 days after the last substantive Order is entered, notice must be given to the opposing party. Notice is usually given to the former attorney as a courtesy and, frankly, in the hope that the former client will return to the former attorney. ■



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Supreme Court Rule 191

By Hon. Pamela E. Loza

Motions for Summary Judgment and Motions for Involuntary Dismissal are coming into vogue as they can significantly limit the time, emotional stress and money incurred in domestic relations litigation. Supreme Court Rule 191 is a little-known and lesser-used rule that can have a significant impact on a practitioner's case. Rule 191 pertains only to Motions for Summary Judgment (735 ILCS 5/2-1005), Motion for Involuntary dismissal based upon certain defects or defenses (735 ILCS 2-619) and Motions to Objection of Jurisdiction Over the Person (735 ILCS 5/2-301) and defines the requirements for the affidavits which must accompany the responses to the motions addressed above. Failure to properly compose the affidavits could result in the striking of the affidavits in support of the Motion for Summary Judgment, Motion for Involuntary Dismissal and Motion Objecting to Jurisdiction thereby terminating the cause of action.

The affidavit *must* contain:

- The personal knowledge of the affiant. (This means that you cannot plead *upon information and belief*). *Lazar v. A & B Excavating Inc.* 365 Ill. App. 3d 559.
- The affiant must be specific as to the facts upon which the claim, counter-claim or defense is based. There is an inference that the affiant could competently testify to its contents at trial. *Paschen v. Burnham Station LLC*, 372 Ill. App. 3d 89.
- The affiant must attach as Exhibits, sworn or certified copies of all papers upon which the affiant relies. Failure to attach documents relied upon by the expert in forming his opinion to the expert's summary judgment affidavit is a technical violation of Rule 191(a) where it appears that the affiant would be competent to testify at trial (*Andrews v. Northwestern Memorial Hospital*, 184 Ill. App. 3d 486, 132 Ill. Dec. 707, 540 N.E. 2d 447 (1 Dist. 1989)). However it would be the better practice to attach any documents upon which the expert relies.
- The facts of the affidavit must be admissible in evidence. This means no hearsay and no opinions that do not qualify as expert testimony. You should qualify your expert in the affidavit with supporting

documents and not assume that he/she is an expert. *Sarnoff v. De Graf Brothers* 257 Ill. App. 3d 812.

- The affiant shall show that if sworn as a witness, that person could competently testify as to the matters stated in the affidavit. A statement which does not show that the person who made it was under oath is not an affidavit, however an unsigned deposition which recites that the deponent testified after having first been sworn is a sufficient affidavit. *Houser v. State Farm Insurance co.* 193 Ill. App. 3d 125.
- If the facts are not personally known to the affiant then additional affidavits may be used.

If either party is unable to obtain material facts by affidavit then S.C. R. 191 (b) provides for the issuance of interrogatories, notices to produce and/or depositions of those persons having relevant knowledge of the information requested. This S.C.R. specifically contemplates that discovery will be taken where necessary. Therefore it is improper to file an affidavit under information and belief stating that no discovery has been taken so no material answer can be made. If you do this you will only show the judge that you have not bothered to read the 191(b). This aspect of S.C.R. 191 is rarely initiated. Implementing this section will streamline and speed up the discovery process for all parties and help narrow the issues as well as determine the validity of potential witnesses. If you ask for it and it is relevant you will probably get it.

In a Motion for Summary Judgment the Court has the right to review all documents, including depositions, answers to interrogatories and materials produced as the result of a notice to produce to determine whether or not there is an issue of material fact.

Note that a Motion to Strike a Motion for Summary Judgment or its response does not ask to strike the motion itself but rather the supporting affidavits, thereby striking the underlying defenses. (*Anderson v. Dorick* 29 Ill. App. 3d 225, 327 N.E. 2d 541 (3 Dist. 1975)). If enough portions of the affidavits are stricken the Motion or response will fail. It is important for the attorneys dealing with S.C.R. 191 to think of these Motions or responses as

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written testimony.

This does not mean that the court is more concerned with form over substance. Minor technical deficiencies contained in an affidavit do not preclude its consideration *Wisowaty v. Baumgard* 257 Ill. App. 3d 813. In *Wisowaty* the Plaintiff argued that defendant's affidavit improperly contained assertions that lacked basic foundational requirements such as time, date, place and persons present during the conversations referred to by the defendant. The court found that there were several statements in the defendant's affidavit that were improper because they failed to lay a proper foundation and were conclusions. However, the court stated that "where improper material appears in an affidavit, only the tainted portion should be excised as opposed to the entire affidavit." See *Wisowaty* at 820.

The best caveat while preparing the affidavits is to ask one's self, is this admissible at trial? Have I attached all the supporting exhibits? If so, your response or motion will probably stand. ■

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April

Wednesday, 4/21/10- Bloomington, Double Tree Hotel—Construction Law-What's New in 2010? Presented by the ISBA Special Committee on Construction Law; co-sponsored by the ISBA Special Committee on Real Estate Law. 9-4. Cap 80.

Friday, 4/23/10- Champaign, I- Hotel and Conference Center—Practice Tips & Pointers on Child-Related Issues. Presented by the ISBA Child Law Section; co-sponsored by the ISBA Family Law Section. 8:25-4. Cap 70.

Tuesday, 4/27/10- Chicago, ISBA Regional Office—Construction Law- What's New in 2010? Presented by the ISBA Special Committee on Construction Law. 9-4.

Wednesday, 4/28/10- Chicago, ISBA Regional Office—Intellectual Property Counsel from Start-up to IPO. Presented by the ISBA Intellectual Property Section. 8:30-3:30.

Thursday, 4/29/10- Chicago, ISBA Regional Office—Key Issues in Local Government Law: A Look at FOIA, OMA, Elections and Attorney Conflicts. Presented by the ISBA Local Government Law Section & the ISBA Standing Committee on Government Lawyers. 12:30-4:45.

Friday, 4/30/10- Chicago, ISBA Regional Office—Anatomy of a Trial. Presented by the ISBA Tort Law Section. Time TBD.

May

Tuesday, 5/4/10- Chicago, ISBA Regional Office—Boot Camp- Basic Estate Planning. Presented by the ISBA Trust and Estates Section. 9-4.

Wednesday, 5/5/10- Chicago, ISBA Regional Office—Price Discrimination: Dead or Alive? Robinson Patman after Feesers. Presented by the ISBA Antitrust Section. 12-2 p.m.

Wednesday, 5/5/10- Chicago, The Standard Club—Tips of the Trade: A Federal Civil Practice Seminar. Presented by the ISBA Federal Civil Practice Section. 9-4:30.

Thursday, 5/6/10 - Chicago, ISBA Regional Office—Ethical Strategies for Client Development and Service. Master Series Presented by the Illinois State Bar Association. 8:30-12:45.

Thursday, 5/6/10 - Live Webcast—Ethical Strategies for Client Development and Service. Master Series Presented by the Illinois State Bar Association. 8:30-12:45.

Friday, 5/7/10 - Bloomington, Bloomington-Normal Marriott—Ethical Strategies for Client Development and Service. Master Series Presented by the Illinois State Bar Association. 8:30- 12:45. Cap 130.

Friday, 5/7/10- Bloomington, Bloomington-Normal Marriott—DUI, Traffic and Secretary of State Related Issues-2010. Presented by the ISBA Traffic Laws/ Courts Section. Time TBD. Cap 125.

Wednesday, 5/12/10- Chicago, ISBA Regional Office—Mental Health Treatment in Illinois: Time for a Change. Presented by the ISBA Committee on Mental Health Law. Time TBD.

Thursday, 5/13/10- Friday, 5/14/10- Chicago, ISBA Regional Office—2010 Annual Environmental Law Conference. Presented by the ISBA Environmental Law Section. 8:30-5; 8:30-12:15.

Friday, 5/14/10- Chicago, ISBA Regional Office—Legal Ethics in Corporate Law. Presented by the ISBA Corporate Law Department Section. 1-5:15.

Wednesday, 5/19/10- Chicago, ISBA Regional Office—Professional Strategies for Difficult Times. Master Series Presented by the Illinois State Bar Association. Cap 30. 1:00-4:15.

Thursday, 5/20/10- Bloomington, Hawthorn Suites—Resolving Financial Issues in Family Law Cases. Presented by the ISBA Family Law Section. 8:30-4:30.

Friday, 5/21/10- Chicago, ISBA Regional Office—2010 Labor and Employment Litigation Update. Presented by the ISBA Labor and Employment Section. 9-12:30.

Friday, 5/21/10- Chicago, ISBA Regional Office—Roth Conversions in 2010- A Window of Opportunity. Presented by the ISBA Employee Benefits Committee. 2-4 p.m.

Friday, 5/21/10- Moline, Stoney Creek Inn—Civil Practice Update- 2010. Presented by the ISBA Civil Practice Section. 9-4. Cap 100.

June

Wednesday, 6/2/10- Chicago, ISBA Regional Office—Ethical Considerations for Lawyers Practicing in Government Agencies. Presented by the ISBA State and Local Taxation Section. Time TBD.

Thursday, 6/3/10- Saturday, 6/5/10- Chicago, ISBA Regional Office—CLE Fest Classic Chicago- 2010. Presented by the Illinois State Bar Association. 8:00-5:40; 8:00-5:40; 8:00-12:40.

Thursday, 6/10/10- Chicago, ISBA Regional Office—Legal Writing: Improving What You Do Everyday. Presented by the Illinois State Bar Association. Time TBD.

Friday, 6/11/10- Chicago, ISBA Regional Office—Second Annual Animal Law Conference. Presented by the ISBA Animal Law Section. 8-5.

Friday, 6/11/10- Live Webcast—Second Annual Animal Law Conference. Presented by the ISBA Animal Law Section. 8-5.

Wednesday, 6/16- Thursday, 6/17/10- Chicago, Wyndham Hotel—Great Lakes Benefit Conference 2010. Co-Sponsored by the Illinois State Bar Association.

Thursday, 6/24/10- Friday 6/25/10- St. Louis, Hyatt Regency St. Louis at the Arch—CLE Fest Classic St. Louis- 2010. Presented by the Illinois State Bar Association. 11:00-4:40; 8:30-4:10. ■

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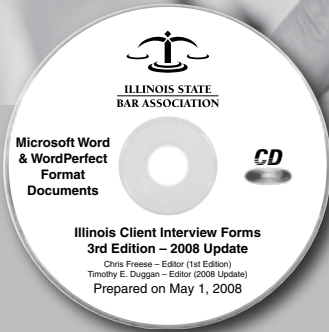
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