



# YLD NEWS

The newsletter of the Illinois State Bar Association's Young Lawyers Division

## Public service and repaying your loans: Once impractical, now a reality

By Matthew S. Dionne

It is not uncommon these days to hear about the dismal legal job market<sup>1</sup> or how law school is a “waste of time”<sup>2</sup> or “a [l]osing [g]ame.”<sup>3</sup> In fact, a recent study estimates there are about twice as many lawyers entering the job market as there are jobs.<sup>4</sup> This study has even spurred six Illinois law school deans to comment on the legal job market.<sup>5</sup> Ultimately, all of this calls into question the value of a law degree. Because while not everyone who goes to law school goes to get rich, no one goes to go broke—a scary, but real reality

considering the high cost of law school and the lack of high-paying jobs available. This is particularly true for many lawyers who desire to pursue public interest careers, an area that two-thirds of law students were precluded from entering less than a decade ago due to their student debt.<sup>6</sup> Due to new legislation enacted by Congress and the Illinois General Assembly, however, many new lawyers who desire to work in the public interest field

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## Tips on practicing with family

By Krysia Ressler

Practicing with family members can be extremely challenging. When it works out it can bring about wonderful relationships and precious time with loved ones. When there are problems it can strain and even ruin family relationships. There are a number of things you can do that will assist in a successful experience.

Having practiced with my dad for six years, I have experienced a few things that can be helpful when working with a family member. The most important thing is setting expectations. A positive interaction needs to be activated. Both people need to be supportive and caring of each other.

Second, leave all work discussions at the office. Being family you will likely see each other often outside of the office. Don’t spend your family dinners or evening talking about work. This point is easier said than done, but it is important to eliminate this temptation of talking about a case or planning what will happen the

next day at the office while at the family dinner. Not only because other family members do not want to hear your office banter, but also you might run the risk of violating attorney client privilege in your discussions. It is important that when you leave work you leave all of the stress of the day behind and to begin enjoying the time with your family and friends without work discussions.

Next, there must be mutual respect. Having mutual respect makes it an easier transition from being family to work partners. Respecting one another is the basis for learning from each other.

Finally, everyone in the office needs to feel a part of the “family.” The office staff should feel comfortable with the arrangement.

If you can follow these tips when working with family, you will find it an incredible experience that brings you even closer together with your family as I have with my dad. ■



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# Chair's column

By Attorney Heather M. Fritsch, Sycamore, Illinois

## Laissez les bons temps rouler.

Spring is in the air! And the Young Lawyers Division has been busier than ever this year. Those of you who are familiar with the YLD Council know that that our unofficial motto is 'work hard, play hard.' As such, we pride ourselves on organizing a number

have been submitted to the YLD for consideration.

We continued the good times this past weekend on March 10, 2012 with our Fifth Annual Bean Bag Tournament at Mahoney's Pub & Grill in Chicago. The event was a success and all who attended seemed to have a great time! Thank you to Bean Bag Tourney Co-Chairs Matt Coleman and Elizabeth McKillip for organizing this event.

Make sure to join us when the good times continue at our Annual Soiree at the Hard Rock Hotel in Chicago. This end-of-the-year, semi-formal celebration will take place on Friday, April 27, 2012 from 7:00 p.m. - 10:00 p.m. All proceeds raised at this event, like the proceeds from all of fundraising events, will support the



of fundraisers and events each year and have regular meetings in which we discuss the planning of these events, our volunteer activities and the Children's Assistance Fund grant requests that we receive throughout the year (i.e., work hard).

We also tend to have a lot of fun in the process of all that hard work (i.e., play hard). For those of you who do not speak French, the phrase above is the Mardi Gras motto, and it means: Let the good times roll. Which is exactly what the Young Lawyers Division council members did at our meeting in St. Louis the weekend of February 17-19, 2012. We had a delicious Creole dinner at the Broadway Oyster Bar on Friday and a great time at the Mardi Gras parade in the Soulard on Saturday. On Sunday morning, we got down to business for a very well-attended meeting where we discussed all of our events and voted on the multiple grant requests that

Children's Assistance Fund and will help enable the Young Lawyers Division to fund all of the grants that we approve at our meetings. Watch our website for more details or to register for the Soiree.

As always, for more information about our



events, our grant process or the Young Lawyers Division in general, please check out our Web site ([www.isba.org/Sections/yld](http://www.isba.org/Sections/yld)) or feel free to contact me directly at [heather@hfritschlaw.com](mailto:heather@hfritschlaw.com). ■

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# Tips for authoring a winning brief on appeal

By Marron Mahoney

## 1. Choose your best issues

As lawyers, the cloud of waiver is always hanging over our heads, and we tend to err on the side of being over-inclusive rather than risk waiving an argument. On appeal, however, the judges and their clerks have limited time to address each case and often have only a few weeks to wrap their brains around facts and issues that the lawyers have been dealing with for several months or even years. By addressing every possible basis for reversal, your best arguments may be lost as the judges and their clerks try to wade through the record and make sense of everything. Instead, fight that temptation and try to keep your appeal as simple and straightforward as possible. Focus on the key, dispositive issues and spend time thoroughly explaining why they support your case.

## 2. Think like a judge

Identify the information the authoring judge is going to need to draft the opinion and make sure you include it in your brief. For example, state the standard of review; explain the procedural posture; summarize the substantive law that applies; and outline the relevant facts. This may seem obvious, but these basics are often overlooked in the rush to dive immediately into the arguments, forcing the judges and their clerks to spend time resolving such preliminary matters before being able to analyze the merits.

## 3. Use an Outline

In preparing your brief, create an outline of all the issues and the supporting arguments. Then, use this outline as a template for your brief to clearly enumerate your various arguments to the court. For example, on appeal of a grant of summary judgment, you might state that "the district court erred in granting summary judgment of no liability for three reasons." You would then list each reason upfront and proceed to address each reason in the body of your argument, providing transitions as you move from one reason to the next.

## 4. Stick to the Facts

Your opponent's position may be beyond the pale and their arguments full of red herrings. Or perhaps they surprisingly (or even shockingly) cited a case that is utterly irrelevant. But using such exaggerated rhetoric has little persuasive effect. Rather than wast-

ing your word count on adverbs and idioms, focus on persuasively telling a story based on the facts rather than subjective attorney opinion.

## 5. Don't Sacrifice Your Credibility

As an attorney, your reputation truly precedes you. Stretching the facts or misrepresenting the relevant legal authority will not only have an impact on the current appeal before the court but on every future appeal that you litigate. Instead, you want to develop a reputation for integrity and honesty by consistently providing the court with accurate representations of the facts and law. If a case is not directly on point but supports your overall theory, acknowledge where it falls short rather than misstating the holding. If the court's guidance on a particular legal

issue has been inconsistent, note any contradictory decisions and argue why this case warrants a resolution in your favor.

## 6. Get an unbiased opinion

Have a lawyer unfamiliar with your case read your brief to identify any holes in your arguments or important information that is missing. As lawyers, we become so familiar with the facts and the legal issues in our cases that we are unable to step back and review the brief through the eyes of an outsider. What may seem perfectly clear to us can be completely incomprehensible to someone who is reading a brief without any background knowledge of the case. ■

Marron Mahoney currently is a law clerk for the Honorable Sharon Prost at the Federal Circuit Court of Appeals.

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# Silence is the new Golden Rule

By Michael D. Wong

One of the best recommendations that I can make to fellow young attorneys is to attend CLEs. When attending CLEs, do not think of it as just an opportunity to simply get your CLE credits out of the way, but rather an opportunity to network, get tips on how to handle cases and keep up-to-date on the law.

The most recent seminar that I attended was the National Employment Lawyers Association Illinois 11<sup>th</sup> Annual 7<sup>th</sup> Circuit Conference. In addition to learning helpful information for my practice in employment law, I learned an invaluable lesson in Illinois' new ethical rules.

Rule 1.6 of the Illinois Rules of Professional Conduct covers the Confidentiality of Information. Rule 1.6 explicitly states that "a lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation," or the disclosure is otherwise permitted or required by Rule 1.6. The change to Rule 1.6 replaced the prior language that the "confidences and secrets" be kept confidential with the language that all "information relating to the representation of a client" is to be kept confidential.

While at first blush, I and almost everyone else at the conference thought that the change in language to Rule 1.6 did not create any major changes in Illinois attorneys' ethical obligations regarding the confidentiality of clients' information. However, upon further review and explanation we recognized just how wrong we were. The language "relating to the representation of a client" is to be interpreted broadly.

Under the new Rule 1.6, without informed consent an attorney may not disclose ANY information regarding a case or representation, even if that information is of public record. Providing a copy of a pleading that is of public record, or even information from that pleading, would be considered a violation of Rule 1.6.

Similarly, posting information on social media, including via a Web site, e-mail, LinkedIn, Facebook, Twitter or the latest and greatest medium, even if you are posting information from a news article, would be considered a violation of Rule 1.6. Although a basic inter-

net search may turn out a pleading or court order, the attorney involved is barred under Rule 1.6 from posting, providing a link or even discussing that pleading, court order or information about his or her client's case without informed consent. What is even more disconcerting is that this includes listing the names of cases which you have been involved in on a firm Web site or curriculum vitae without a client's informed consent.

The reality of the changes to Rule 1.6 is that it is so broad that it can be interpreted such citing a prior case that an attorney was involved in a pleading or brief could require informed consent from the prior client. What's even more troubling to me is that after resolving a particular complex issue, any attorney involved in the matter would not be able to write an article, discuss the issue with other members of the bar or inform others of the issue and what happened without informed consent from the client. As a fellow colleague pointed out, this places solo practitioners and small firms at a great disadvantage to larger firms where there are more attorneys who can discuss cases and solutions to legal is-

sués, as well as share pleadings, briefs, orders and other information. Under Rule 1.6 only with informed consent may solo practitioners or attorneys from small firm discuss issues that come up in the representation of a client or share pleadings, briefs, orders and other information.

What is the solution? Unfortunately, I do not know the answer to that and no clear answer was given at the seminar other than to make sure that before you disclose any information relating to your representation of a client you get informed consent. What I do know is that I learned a lot from that CLE and based on the discussions of Rule 1.6 I will be modifying my attorney-client retainer agreement to include language regarding the disclosure of information so that I can get informed consent at the onset of my representation of clients. ■

Michael D. Wong is an associate attorney with Foote, Meyers, Mielke & Flowers, LLC. in St. Charles, Illinois. Michael focuses his practice in employment discrimination and harassment, civil litigation and class actions.

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## Public service and repaying your loans: Once impractical, now a reality

Continued from page 1

may be able to do so and get extra help at repaying their debt at the same time. This article seeks to call attention to and explain this legislation designed to encourage attorneys to stay or enter the public interest field. After addressing the main points of the legislation, this article will explore some concerns about the legislation and offer suggestions for different career paths that lawyers interested in a career in public interest may pursue.

### The Numbers

According to a recent study by Economic Modeling Specialists Inc. (EMSI), a company that provides employment data and economic analysis through web tools and custom reports, in 2009, America's law schools produced almost twice as many lawyers who passed the bar (let us not forget those who did not pass) as there were job openings.<sup>7</sup> And EMSI is not exactly predicting things will get much better through 2015.<sup>8</sup> EMSI estimates that Illinois will only need 1,394 new lawyers each year from 2010 through 2015, leaving a surplus of 1,679 new lawyers each year without jobs.<sup>9</sup> In other words, each year EMSI is predicting enough jobs for approximately 45% of lawyers who pass the bar exam.<sup>10</sup> Indeed, based upon EMSI's findings, Illinois has the fourth largest oversupply of lawyers in the country, behind only New York, California, and New Jersey.<sup>11</sup> While these numbers may not be entirely accurate given the multitude of unknown factors that play into these figures, it is hard to argue that the current job market is promising and this is a very scary prospect considering that the average amount borrowed for law school for the 2009-2010 academic year was \$68,827 for law students who went to public schools and \$106,249 for those who attended private schools.<sup>12</sup>

Yet as Cynthia Fountaine, Dean of Southern Illinois University School of Law, said in a recent article discussing the legal job market, "The decline of law jobs does not reflect a declining need for legal services. Indeed, there is an increasing need for legal services by low- and middle-income people who often can't afford the high price of legal service."<sup>13</sup> Dean Fountain's conclusion is supported by studies that indicate that less than 20% of poor Americans' legal needs are being met.<sup>14</sup> In the civil arena, this is referred to as the "justice

gap."<sup>15</sup>

Moreover, the State of Illinois' General Assembly has also recently recognized the "justice gap," finding that "[e]qual access to justice is a basic right that is fundamental to democracy in the this State, and the integrity of this State and this State's justice system depends on protecting and enforcing the rights of all people and quality enforcement of the laws of this State."<sup>16</sup> The General Assembly found that "[v]ulnerable and disadvantaged citizens of this State are unable to protect or enforce their right without legal assistance from public interest attorneys," and that "[g]raduating law students and practicing attorneys are increasingly unable to continue in public interest attorney positions because of high student loan debt."<sup>17</sup> Thus, the General Assembly concluded that "[a]ssisting public interest attorneys with loan forgiveness is a major step toward ensuring quality legal representation for this State's most vulnerable citizens and quality enforcement of State law."<sup>18</sup>

Accordingly, both Congress and the Illinois General Assembly have recognized this problem and have enacted legislation to help encourage attorneys to work in the public service sector, while at the same time helping them repay the debt they have incurred becoming attorneys. First, at the federal level, on September 27, 2007, an amendment to Title VI of the Higher Education Act of 1965 was made by § 401 of the College Cost Reduction and Access Act.<sup>19</sup> One of the key components of this legislation was the formation of the Public Service Loan Forgiveness Program (PSLFP), which provides for the cancellation of the remaining balance of interest and principle due on eligible federal student loans after the borrower has made 120 monthly payments or 10 years worth of payments after October 1, 2007, on those loans while employed in certain public service fields.<sup>20</sup> About a year later, on August 14, 2008, Congress enacted legislation "to encourage qualified individuals to enter and continue employment as civil

legal assistance attorneys" and "prosecutors and public defenders."<sup>21</sup> This legislation created the Civil Legal Assistance Attorney Student Loan Repayment Program (CLAASLRP) and the John R. Justice Student Loan Repayment Program (JRJSLRP). The State of Illinois followed suit, enacting the Public Interest Attorney Assistance Fund (PIAAF) that became effective January 1, 2010.<sup>22</sup> The highlights of the legislation are set forth below.

### The Public Service Loan Forgiveness Program

The PSLFP is intended to encourage individuals to enter and remain in public service.<sup>23</sup> Under the PSLFP, a borrower who has a "public serve job" and who makes 120 monthly payments on an "eligible Federal Direct Loan" will have their balance of principal and interest forgiven by the federal government.<sup>24</sup> "[E]ligible Federal Direct Loan" means a Federal Direct Stafford Loan, Federal Direct PLUS Loan, or Federal Direct Unsubsidized Stafford Loan, or a Federal Direct Consolidation Loan.<sup>25</sup> Thus, private loans are not eligible for loan forgiveness.

Under the PSLFP, "public service jobs" for lawyers means, in relevant part, "a full-time job in . . . government (excluding time served as a member of Congress), military service, . . . public education, . . . public interest law services (including prosecution or public defense or legal advocacy on behalf of low-income communities at a nonprofit organization), . . . or at an organization that is described in section 501(1)(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code," among others.<sup>26</sup>

The payments made under the PSLFP do not have to be consecutive, but only payments made while employed as a public service employee count and you must apply for forgiveness while a public service employee.<sup>27</sup> Furthermore, in order for your payment to qualify, your payment must be made under one of four types of repayment plans available under the PSLFP: 1) income-contingent payments; 2) standard repayments based upon a 10-year repayment period; 3) income-based repayment; or 4) any other repayment plan where your monthly payment amount equals or exceeds what you would pay under a 10-year standard repayment plan.<sup>28</sup>

An income-contingent payment plan is

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based on the total amount of the borrower's loan, family size, and the borrower's adjusted gross income (and that of his or her spouse if married).<sup>29</sup> As a borrower's income changes, the borrower's repayment amount may change annually.<sup>30</sup> A borrower's payment under this repayment plan may even exceed the amount the payment would be under the standard repayment plan.<sup>31</sup> Under this repayment plan, even if a borrower does not participate in the PSLFP, the unpaid portion of a borrower's loan is forgiven after 25 years under this repayment plan.<sup>32</sup>

Under the standard repayment plan, fixed monthly payments would be based upon a 10-year repayment plan. Thus, a borrower would not benefit if the borrower only made payments under this plan, but could benefit by making some payments under this plan and the income-contingent or income-based repayment plan. For example, if a borrower started out in a public service position and qualified for a payment amount under the income-contingent or income-based repayment plan that would be less than the borrower's payment amount under a 10-year standard repayment plan, then it would behoove the borrower to make payments under one of those repayment plans until, if ever, the borrower's income amount resulted in the borrower's payment exceeding the repayment amount under a 10-year standard repayment plan. At that point, it would make sense for the borrower to switch to the 10-year repayment plan to finish making the remaining payments. By doing this, the borrower would have benefitted by making lower payments during the time the borrower was earning less income. This is made under the assumption that the borrower intends to comply with making the 120 payments required under the PSLFP.

Payments under the income-based repayment plan did not become available until July 1, 2009, and a borrower must qualify to make payments under the income-based repayment plan.<sup>33</sup> To qualify, a borrower must have a "partial financial hardship."<sup>34</sup> While the definition of a "partial financial hardship" is somewhat complicated, in essence, you have a partial financial hardship if the monthly amount you would be required to pay under a standard repayment plan based upon a 10-year repayment period is higher than the monthly amount you would be required to pay under the income-based repayment plan, which is based upon your annual adjusted gross income (AGI) and family size, not the

amount of debt you have.<sup>35</sup> "Specifically, the maximum amount you are required to repay under [income-based repayment] during any period when you have a 'partial financial hardship' . . . is 15[%] of the difference between your AGI and 150[%] of the U.S. Department of Health and Human Services' (HHS) Poverty Guideline amount for your family size."<sup>36</sup> "This annual repayment amount is then divided by [12] to determine your monthly [income-based repayment] amount."<sup>37</sup> If a borrower's income-based repayment amount increases to the point where it is more than the monthly amount the borrower would be required to pay under a 10-year standard repayment plan, a borrower would no longer have a "partial financial hardship" and the repayment amount would change to the amount the borrower would have been required to pay under a 10-year standard repayment plan based on the amount of the borrower's outstanding loans that were outstanding when the borrower began repaying under this plan.<sup>38</sup> Under the income-based repayment plan, the required monthly payment amount is capped at an amount that is intended to be affordable based on your income and family size.<sup>39</sup>

Repayment under the income-based repayment plan is similar to that under the income-contingent repayment plan in that any remaining balance after 25 years is forgiven.<sup>40</sup> Thus, even if a borrower does not pursue a public interest career or does not do so for the entire 10-year period required for loan forgiveness, the borrower may still benefit if he or she had a remaining loan balance after making payments under the income-contingent or income-based repayment plan, a real reality for borrowers whose payment amounts go mostly, if not all, to interest as opposed to the principle amount of the loan.

### **The Civil Legal Assistance Attorney Student Loan Repayment Program**

The CLAASLRP was enacted "to encourage qualified individuals to enter and continue employment as civil legal assistance attor-

neys."<sup>41</sup> The term "civil legal assistance attorney" means an attorney who is a full-time employee of a nonprofit organization that provides legal assistance with respect to civil matters to low-income individuals without a fee or a protection and advocacy system or client assistance program that provide legal assistance with respect to civil matters and receives funding under one of seven sections of the United States Code.<sup>42</sup> Under the CLAASLRP, a civil legal assistance attorney may receive up to \$6,000 per year in student loan repayments, up to an aggregate total of \$40,000.<sup>43</sup> To be eligible for repayment benefits, the borrower must enter into a written agreement with Department of Education that specifies that "the borrower will remain employed as a civil legal assistance attorney for a required period of service of not less than three years, unless involuntarily separated from that employment."<sup>44</sup> If the borrower is involuntarily separated from employment or voluntarily separates from employment before the end of the period specified in the borrower's agreement, the borrower has to repay the amount paid on the borrower's behalf, although the Department of Education may waive the right of recovery if "it is shown that recovery would be contrary to the public interest."<sup>45</sup> The repayment benefits are distributed on a first-come, first-served basis, and are subject to the availability of appropriations.<sup>46</sup> The statute does contain a provision that provides that "[n]o borrower may, for the same service, receive a reduction of loan obligations under both this section and the PSLFP."<sup>47</sup>

### **The John R. Justice Student Loan Repayment Program**

The JRJSLRP was enacted on the same day as the CLAASLRP and similarly was enacted to encourage qualified individuals to enter and continue employment in public service positions, specifically employment as prosecutors and public defenders.<sup>48</sup> "Prosecutor" is defined under the JRJSLRP as a full-time employee of a State or unit of local government who prosecutes criminal or juvenile delinquency cases at the State or unit of local government (including supervision, education, or training of other persons prosecuting such cases).<sup>49</sup> "Public defender" is defined as an attorney who is "a full-time employee of a State or unit of local government who provides legal representation to indigent persons in criminal or juvenile delinquency cases (including, supervision, education, or training of other persons

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**...Even if a  
borrower does  
not pursue a  
public interest  
career or does  
not do so for the  
entire 10-year  
period..., the  
borrower may  
still benefit...**

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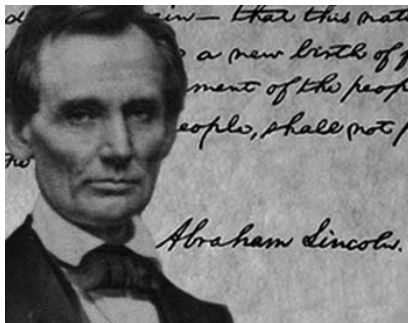


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providing such representation), "a full-time employee of a nonprofit organization operating under a contract with a State or unit of local government, who devotes substantially all of the employee's full-time employment to providing legal representation to indigent persons in criminal or juvenile delinquency cases (including supervision, education, or training of other persons providing such representation)," or an "individual employed as a full-time Federal defender attorney in a defender organization established pursuant to subsection (g) of section 3006A of title 18, United States Code, that provides legal representation to indigent persons in criminal or juvenile delinquency cases."<sup>50</sup> Interestingly, despite the statute not specifically prohibiting the award of funds to elected prosecutors and public defenders, the Bureau of Justice Assistance (BJA), a component of the Office of Justice Programs for the United States Department of Justice, who began administering the program in 2010, has determined that benefits are not available to elected prosecutors and public defenders.<sup>51</sup> Federal prosecutors are also specifically not mentioned as a prosecutor, but certain federal public defenders may be eligible.

Like the CLAASLRP, a borrower must enter a written agreement that specifies that the borrower will remain employed for a period of service of not less than three years and will have to repay any payments made if the agreement is not complied with.<sup>52</sup> Unlike the CLAASLRP's \$6,000 per year and \$40,000 aggregate limit for borrower benefits, the JRJSLRP has a \$10,000 per year and \$60,000 aggregate limit for borrower benefits.<sup>53</sup> Moreover, like the CLAASLRP, the JRJSLRP is subject to funding, but is not paid on a first-come, first-served basis, but rather "priority is given to borrowers who have the least ability to repay their loans."<sup>54</sup> Notably there is no double benefits provision like there is for CLAASLRP benefits.

### The Public Interest Attorney Assistance Act

While the PIAAF does not provide for all-encompassing loan forgiveness like the PSLFP program does, the PIAAF does potentially provide help where the PSLFP does not—in the area of private loans made by government, commercial lending, or educational institutions.<sup>55</sup> The purpose of the PIAAF "is to encourage qualified individuals to enter into and continue in employment in this State as assistant State's Attorneys, assistant Public

Defenders, civil legal aid attorneys, assistant Attorneys General, assistant public guardians, IGAC attorneys, and legislative attorneys in a manner that protects the rights of this State's most vulnerable citizens or promotes the quality enforcement of State law."<sup>56</sup> Under the PIAAF, "[p]ublic interest attorney" means an attorney practicing in Illinois who is an assistant State's Attorney, assistant Public Defender, civil legal aid attorney, assistant Attorney General, assistant public guardian, IGAC attorney, or legislative attorney.<sup>57</sup> "Qualifying employer" means (i) an Illinois State's Attorney or the State's Attorney Appellate Prosecutor, (ii) an Illinois Public Defender or the State Appellate Defender, (iii) an Illinois civil legal aid organization, (iv) the Illinois Attorney General, (v) an Illinois public guardian, (vi) the Illinois Guardianship and Advocacy Commission, (vii) the Illinois Senate, (viii) the Illinois House of Representatives, or (ix) the Illinois Legislative Bureau.<sup>58</sup> "Eligible debt" is defined as "outstanding principal, interest, and related fees from loans obtained for undergraduate, graduate, or law school educational expenses made by government or commercial lending institutions or educational institutions."<sup>59</sup> Loans made by private individuals or family members are specifically excluded from "eligible debt."<sup>60</sup>

Under the program, the Illinois Student Assistance Commission (the Commission) shall create an advisory committee who shall distribute funds to eligible applicants.<sup>61</sup> Subject to the availability of appropriations, the Commission shall, each year consider applications by eligible public interest attorneys for loan repayment assistance under the Program.<sup>62</sup> The applicant must be 1) a citizen or permanent resident of the United States, 2) a licensed member of the Illinois Bar in good standing, 3) have eligible debt in grace or repayment status, and 4) by employed as a "public interest attorney" with a "qualifying employer" in Illinois.<sup>63</sup> The Commission shall

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**...Benefits are not available to elected prosecutors and public defenders. Federal prosecutors are also not mentioned..., but certain federal public defenders may be eligible.**

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develop criteria for prioritization among eligible applicants in the event that there are insufficient funds available to make payments to all eligible applicants under this Act.<sup>64</sup> The prioritization criteria shall include the timeliness of the application, the applicant's salary level, the amount of the applicant's eligible debt, the availability of other loan repayment assistance to the applicant, the applicant's length of service as a public interest attorney, and the applicant's prior participation in the [p]rogram.<sup>65</sup> The maximum amount of loan repayment assistance for each participant shall be \$6,000 per year, up to a maximum of \$30,000 during the participant's career.<sup>66</sup>

### Concerns and Suggestions

While these programs are sure to spike interest in public service jobs, like jobs in the private sector, there has to be jobs available for attorneys to be able to take advantage of these programs. Indeed, the CLAASLRP, JRJSLRP, and the PIAAF specifically define what those positions are and only those attorneys will be able to take advantage of these programs. Thus, although Congress and the Illinois General Assembly recognize a need to help encourage attorneys to enter or stay in public interest positions, the current problem may be the lack of funding for new positions that are needed.

Fortunately, the PSLFP is more encompassing and covers a broader spectrum of potential jobs. If no positions are available, perhaps an attorney could form its own nonprofit public service organization under § 501(1)(c)(3). Working for an organization such as this could perhaps qualify for repayment assistance under the PSLFP or under the CLAASLRP or PIAAF.

Another concern is that unlike the PSLFP, the CLAASLRP, JRJSLRP, and the PIAAF are conditional on funding. In 2009, \$10 million was appropriated by Congress for the CLAASLRP and \$25 million was appropriated for the JRJSLRP.<sup>67</sup> In 2010, the JRJSLRP was allocated \$9,895,860, \$365,309 of which went to State of Illinois public defenders and prosecutors, split evenly between them.<sup>68</sup> This amounted to 75 public defenders and 53 prosecutors out of 400 applications receiving up to a max of \$4,000 each.<sup>69</sup> The CLAASLRP was appropriated \$5 million in 2010.<sup>70</sup> In 2011, \$8,002,182 was appropriated for the JRJSLRP, \$198,510 of which went to Illinois. Unfortunately, the CLAASLRP was not funded in 2011.<sup>71</sup> And despite the PIAAF being enacted by the Illinois General Assembly in 2010, the PIAAF has never been funded by the Illinois General Assem-

bly.<sup>72</sup> Thus, while Congress and the Illinois General Assembly certainly recognized the need to encourage qualified individuals to enter and continue employment in the public service field, particularly as prosecutors, public defenders, and civil legal assistance attorneys, if these programs are not funded it is unlikely the legislation will meet its goal of encouraging qualified to enter and remain in the field, although given the current legal job market and programs like the PSLFP this may not be true considering the competitiveness which currently exists for these positions and the benefits available under the PSLFP.

Moreover, if funding is available under these programs, attorneys should also be cautioned that pursuing benefits under one program may limit the benefits available under another program. In fact, the CLAASLRP statute contains a specific provision prohibiting a borrower from receiving benefits under both the CLASLRP and the PSLFP for the same service period.<sup>73</sup> And while the JRJSLPR does not contain similar language in the statute, the BJA has advised borrowers to consult with the United States Department of Education to learn how receipt of JRJSLPR benefits may affect awards through the PSLFP.<sup>74</sup>

## Conclusion

While in the past many young lawyers may have been steered into a private sector job because of the financial realities law school debt required them to face,<sup>75</sup> lawyers may now be able to take on a public service job and pay off—through payments and service—their debt at the same time. Of course, much of this depends upon appropriate funding from Congress and the Illinois General Assembly. While they seem to recognize this need by the passing of legislation, the lack of funding or reduced funding over the last few years indicates that this cause may be headed in the wrong direction. ■

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19. PL 110-84.

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42. *Id.* (“(I) subtitle C of title I of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15041 *et seq.*); (II) section 112 or 509 of the Rehabilitation Act of 1973 (29 U.S.C. 732, 794e); (III) part A of title I of the Protection and Advocacy for Individuals with Mental Illness Act (42 U.S.C. 10801 *et seq.*); (IV) section 5 of the Assistive Technology Act of 1998 (29 U.S.C. 3004); (V) section 1150 of the Social Security Act (42 U.S.C. 1320b-21);

(VI) section 1253 of the Public Health Service Act (42 U.S.C. 300d-53); or (VII) section 291 of the Help America Vote Act of 2002 (42 U.S.C. 15461).”).

43. *Id.*

44. *Id.*

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46. *Id.*

47. *Id.* at (g).

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