



ADMINISTRATIVE LAW

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

Voting rights in America: The Voting Rights Amendment Act of 2014

By Athena T. Taite

So long as I do not firmly and irrevocably possess the right to vote I do not possess myself. I cannot make up my mind—it is made up for me. I cannot live as a democratic citizen, observing the laws I have helped to enact—I can only submit to the edict of others.

—Martin Luther King, Jr.

U.S. Senator Patrick J. Leahy (D-VT) quoted Martin Luther King, Jr., when Sen. Leahy introduced the Voting Rights Amendment Act of 2014.¹ As a follow-up to the last issue of *The Challenge*, this article does not take a position on the Voting Rights Amendment but hopes to inform the debate regarding the aftermath of *Shelby County, Alabama v. Holder* (2013),

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Case summaries

By Edward Schoenbaum, compiled from the ISBA EClip services

Disability Benefits 1st Dist.

Scepurek v. The Board of Trustees of the Northbrook Firefighters' Pension Fund, 2014 IL App (1st) 131066 (March 4, 2014) Cook Co., 2d Div. (SIMON) Reversed.

Lieutenant and firefighter/paramedic sued for wrongful denial of his application for duty disability pension, despite that all medical opinions unanimously agreed that he suffered on-the-job injury, while he was administering CPR, that left him unable to perform his regular duties and permanently disabled. All physicians, including Board's independent medical evaluators, concluded that CPR incident, at least in part, contributed to his permanent disability, and Plaintiff was never medically cleared to return to his duties, and no evidence was conflicting. as to disability. Thus, Board's denial was not supported by manifest weight of evidence. (HARRIS and PIERCE, concurring).

Election Code 1st Dist.

Zurek v. The Cook County Officers Electoral Board, 2014 IL App (1st) 140446 (March 7, 2014) Cook Co., 5th Div. (GORDON) Affirmed.

(Court opinion corrected 3/12/14). Candidate for Democratic township committeeman was in substantial compliance with Election Code, even though he used wrong form for "Statement of Candidacy" and thus failed to state, as Election Code requires, that he was "a qualified primary voter of the Democratic Party." (PALMER and TAYLOR, concurring).

Employment 4th Dist.

Robbins v. The Department of State Police Merit Board, 2014 IL App (4th) 130041 (February 26, 2014) Sangamon Co. (POPE) Judgment vacated in part and reversed in part; Board decision reinstated and affirmed.

Illinois State Police Merit Board's decision to

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Voting rights in America: The Voting Rights Amendment Act of 2014

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in which the U.S. Supreme Court found part of the Voting Rights Act of 1965 to be unconstitutional.

The Voting Rights Amendment Act of 2014 seeks to amend the Voting Rights Act of 1965. The legislation is a bipartisan response to the Supreme Court's concern in *Shelby* that certain provisions of the Voting Rights Act were not based on current voting conditions. Both proponents and opponents of the post-*Shelby* Voting Rights Act have criticized the Voting Rights Amendment Act. Some persons believe that the legislation is unnecessary, and some persons believe that the legislation will not adequately protect voting rights.

Sen. Leahy introduced the Voting Rights Amendment Act to the U.S. Senate on January 16, 2014. The legislation is numbered S.1945. As of January 16, 2014, S.1945 had two cosponsors: Sen. Christopher A. Coons (D-DE) and Sen. Richard J. Durbin (D-IL). Congressman F. James Sensenbrenner (R-WI) introduced an identical bill in the U.S. House of Representatives.² The House bill is numbered H.R.3899. As of January 16, 2014, the House bill had three cosponsors: Rep. Spencer Bachus (R-AL), Rep. Steve Chabot (R-OH) and Rep. John Conyers, Jr., (D-MI). Since then, nineteen members of the House have joined as cosponsors, including two members of the Illinois delegation: Rep. Mike Quigley and Rep. Jan Schakowsky.

S.1945 would amend the Voting Rights Act of 1965 to define the current voting conditions that require a jurisdiction to obtain federal preclearance before implementing changes to voting laws or practices. Pursuant to S.1945, the Voting Rights Act would cover States that had five or more voting rights violations during the previous fifteen calendar years, at least one of which was committed by the State itself. The Act would cover political subdivisions within a state if the political subdivision had three or more voting rights violations during the previous fifteen calendar years. One voting rights violation would be enough to trigger scrutiny of a political subdivision, if the political subdivision had extremely low minority turnout during the previous fifteen years. S.1945 describes how the federal government would determine whether a political subdivision has had a per-

sistent, extremely low minority turnout. The bill also defines "minority" as persons who identify themselves as being of Hispanic or Latino origin, of a race other than white, or of two or more races.

Using the current conditions described in S.1945, it appears that certain states covered under the pre-*Shelby* Voting Rights Act would not be covered under the new legislation, including Alabama, Arizona, Florida, South Carolina and Virginia.³ However, as reported by Sen. Leahy, S.1945 would improve the Voting Rights Act by allowing States or jurisdictions to be "bailed in" for results-based violations, not just intentional voting rights violations as required by the current Voting Rights Act.

Disappointing to some watchdog groups is the legislation's provision on voter identification laws. S.1945 excludes from violations triggering federal oversight any objection by the Attorney General to voting prerequisites that individuals provide photo identification for voting in federal, state or local elections. Voter identification laws have been enacted in various states, and some states will not count a voter's ballot unless the voter produces photo identification. Many voting rights advocates expect the 2014 elections to be a test of the effect of voter identification laws. The Associated Press reported in February 2014 that voters in ten states will be required to produce photo identification before voting.⁴ The states include Alabama, Texas and Virginia. In Texas, some prospective voters will have to travel 200 miles round-trip to obtain proper photo identification for voting, because some Texas counties do not have a satellite office of the government agency that issues the photo identification. The Associated Press also reported that dozens of mail-in ballots for a special election in Arkansas in January 2014 were discarded because voters failed to include a copy of their photo identification. Such reports concern voting rights advocates in Virginia, because the 2013 statewide election for attorney general was decided by 165 votes.⁵ However, S.1945 includes as violations triggering federal oversight voting prerequisites that a court prevents from being enforced. Sen. Leahy also contends that S.1945 amends the preliminary injunction standard for voting

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rights cases to respond to the need for immediate, preliminary relief where a plaintiff can establish that a voting measure is likely to be discriminatory.

The Voting Rights Amendment Act of 2014 also seeks transparency in changes to voting laws or practices. As Sen. Leahy told the Senate, the amendment would provide for public notice of changes affecting federal elections. The amendment would also require states and political subdivisions to release information on polling place resources for federal elections. To improve transparency in federal, state and local elections, S.1945 would require public notice of changes in the constituency participating in an election (e.g., changes due to redistricting). Where the constituency has changed, S.1945 would require public notice of the demographic and electoral data in the geographic area subject to the change, including demographic information for the voting age population and the number of registered voters. Smaller jurisdictions, including municipalities with a population of 10,000 or less residents, would not be required to comply with the transparency provisions in S.1945. Finally, S.1945 clarifies that the Attorney General has authority

to assign observers to enforce various voting rights, including bilingual election requirements.

Sen. Leahy presented the Voting Rights Amendment Act of 2014 as a bipartisan bill, since it is sponsored by Democrats and Republicans in the House. He encouraged Democrats and Republicans in both houses of Congress to come together as they have in the past to ensure protections that voters have under the Voting Rights Act of 1965. As an example of bipartisanship on voting rights, Sen. Leahy specifically highlighted the 2006 bipartisan reauthorization of the Voting Rights Act, when the vote in the Senate was 98 to 0, and the vote in the House was 390 to 33. As Sen. Leahy suggested in his remarks, the voting matters in S.1945, which address discrimination on the basis of race, color or membership in a language minority group, are important for all Americans, in that the right to vote is fundamental to the principle that we should be able to participate in our democracy. The Act, which is more detailed than described above, has supporters and detractors. However, it is a start in an important debate about the future of the Voting Rights Act and deserves our further consid-

eration. ■

1. Information about the Voting Rights Amendment Act of 2014 found at: Leahy, Sen. (VT), "S.1945," Congressional Record ONLINE, Jan. 16, 2014, Thomas, available: <<http://thomas.loc.gov>> (last accessed, Feb. 28, 2014). Also see, U.S. Senate, 113th Congress, 2nd Session, S.1945, Voting Rights Amendment Act of 2014, ONLINE, Thomas, available: <<http://thomas.loc.gov>> (last accessed, Feb. 28, 2014).

2. Information about the House bill found at: U.S. House, 113th Congress, H.R.3899, Voting Rights Amendment Act of 2014, ONLINE, Thomas, available: <<http://thomas.loc.gov>> (last accessed, Feb. 28, 2014).

3. National Journal, "New Voting Rights Act Rewrite Would Revive Federal Oversight for Only 4 States," National Journal Online, available <<http://www.nationaljournal.com/congress/new-voting-rights-act-rewrite-would-revive-federal-oversight-for-only-4-states-20140116>> (last accessed, March 4, 2014).

4. Information about photo identification laws found at: Associated Press, "Primaries Offer 1st Major Test of Voter ID Laws," Chicago Daily Law Bulletin Online, Feb. 28, 2014.

5. Official Results-General Election-November 5, 2013, Virginia State Board of Elections, available: <<http://electionresults.virginia.gov/resultsSW.aspx?eid=7&type=SWR&map=CTY>> (last accessed, March 4, 2014).

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Case summaries

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discharge employee due to misconduct over an eight-month period of time in which she violated several ISP rules, half of which were criminal conduct, was not arbitrary, unreasonable, nor unrelated to needs of service. Board properly considered employee's depression as a mitigating factor, and Board was not required to give this evidence such weight that it overcame its decision. Circuit court overstepped its authority by improperly substituting its judgement for Merit Board's and ordering imposition of sanction other than discharge. (APPLETON and HOLD-ERWHITE, concurring).

Pension 1st Dist.

Swanson v. The Board of Trustees of the Flossmoor Police Pension Fund, 2014 IL App (1st) 130561 (March 3, 2014) Cook Co., 1st Div. (HOFFMAN) Affirmed.

Court confirmed decision of Pension Board denying police officer's application for line-of-duty disability pension or, alternatively, by reason of stroke suffered in performance of his duties as a police officer. Sufficient evidence in record supports Board's finding that Plaintiff failed to prove that his disability is the result of stroke suffered as result of performance of duties as a police officer, as two physicians noted that stroke was of unclear etiology. (CONNORS and CUNNINGHAM, concurring).

Unemployment Insurance 1st Dist.

Baker v. Illinois Department of Employment Security, 2014 IL App (1st) 123669 (March 14, 2014) Cook Co., 5th Div. (GORDON) Affirmed.

(Court opinion corrected 3/25/14). Plaintiff was discharged from employment as electrician for park district, for violating employer's code of conduct barring aggressive or hostile comments threatening injury to others. Plaintiff stated, in presence of three supervisors and directing his comment to each individually, that he didn't want this to turn into an Arizona thing, reference to shooting incident in Arizona of two weeks prior. Conclusion of referee and of IDES Board, that facts constituted misconduct, was not against manifest weight of evidence. Court properly declined to remand case to allow Plaintiff to present new evidence, as

Plaintiff was advised prior to hearing that he could subpoena witnesses for hearing and could request free assistance of counsel. (MCBRIDE and PALMER, concurring).

Unemployment Insurance 1st Dist.

C.R. England, Inc. v. Department of Employment Security, 2014 IL App (1st) 122809 (March 14, 2014) Cook Co., 6th Div. (ROCHFORD) Circuit court reversed; Director and Board of Review affirmed.

(Court opinion corrected 3/25/14). IDES Director found that plaintiff trucking company was the chargeable last employer for former employee's claim for unemployment insurance benefits. In enacting federal transportation law and regulations, Congress did not impliedly intend to preempt state unemployment insurance law. Unemployment Insurance Act's Section 212(B) definition of independent contractor is for purposes of Act only, and does not conflict with federal law and regulations. Finding that driver did not fall within Section 212.1 truck owner-operator exemption was not clearly erroneous. Board's finding that driver was discharged for reasons other than employment-related misconduct and was thus ineligible for unemployment benefits was supported by evidence. (HALL and REYES, concurring).

Unemployment Insurance 4th Dist.

Farris v. The Department of Employment Security, 2014 IL App (4th) 130391 (March 11, 2014) Greene Co. (STEIGMANN) rcuit court reversed; Board confirmed. Ced.

Plaintiff worked as farmhand in breeding barn of pork production facility, and was terminated for violating arm's biosecurity procedures, which required removal of clothing and showering before entering clean area where pigs were located. Although employer stopped employee from re-entering clean area, had it not done so, then employee would have potentially exposed pigs to bacterial contaminants. Employee's violation of rules was misconduct, barring him from unemployment benefits, as it had the potential to harm employer, regardless of whether it actually did cause harm. (KNECHT and TURNER, concurring).

7th Circuit

Aliens

Chen v. Holder, No. 13-2505 (March 10, 2014) Petition for Review, Order of Bd. of Immigration Appeals Petition denied.

Ct. of Appeals lacked jurisdiction to consider alien's appeal of Bd.'s denial of her asylum application based on claim that Chinese govt. subjected her to persecution on account of her political opinion where she registered protest that govt. had taken her business without just compensation, since asylum application was filed more than one year after her entry into U.S. Fact that alien did not speak English, did not understand applicable law and lacked money to hire attorney did not require different result. Moreover, with respect to alien's withholding of removal request, IJ could properly find that govt.'s harm to alien by forcibly removing her from her business and subjecting her to three-day arrest was not based on her expression of political opinion, but rather, was based on her personal dispute with Chinese govt.

N.L.A. v. Holder, No. 11-2706 (March 3, 2014) Petition for Review, Order of Bd. of Immigration Appeals Petition granted.

Record failed to support ALJ's and Bd.'s denial of asylum application by alien (native of Columbia), who asserted that she was persecuted by organization called FARC, where FARC kidnapped her father and killed her uncle due to their status as landowners and their refusal to pay tributes to FARC. FARC's warning to father that alien would be harmed if tributes were not paid was evidence of alien's own persecution by FARC, since threat was backed up by violence to alien's relatives. Fact that alien was not personally contacted by FARC did not render alien's persecution claim "derivative" to any asylum claim made by father. Moreover, ALJ could consider hearsay evidence regarding FARC's activities subsequent to issuance of said threat to support alien's claim of future persecution, and alien could base instant claim on her membership in social group comprising of Columbian landowners. Ct. also noted evidence in record supporting alien's claim that Columbian govt. was not effective in controlling FARC's

torturous activities.

Aljabri v. Holder, No. 12-1229 (March 11, 2014) N.D. Ill., E. Div. Reversed and remanded.

U.S. Citizenship and Immigration Service (USCIS) lacked jurisdiction to act on alien's application for naturalization where, as here, USCIS delayed ruling on said application for nine-year period, and where alien had filed lawsuit in Dist. Ct. under 8 USC section 1447(b) after said nine-year period requesting that Dist. Ct. either naturalize him or declare him U.S. citizen. However, on remand, Dist. Ct. may look to fact that alien had been convicted of aggravated felony during said nine-year period, so as to find that alien lacked good moral character necessary for naturalization. Also, Dist. Ct. erred in holding that it lacked subject matter jurisdiction under 8 USC section 1252(a)(2)(B)(ii) to act on alien's request since, according to Ct. of Appeals, said statute did not apply to naturalization decisions.

L.D.G. v. Holder, No. 13-1011 (March 12, 2014) Petition for Review, Order of Bd. of Immigration Appeals Petition granted.

IJ erred in finding, in context of removal proceeding, that he lacked jurisdiction to consider alien's request for waiver of inadmissibility under 8 USC section 1182(d)(3)(A), where instant alien sought waiver of inadmissibility in order to obtain U Visa. Moreover, IJ and USCIS have concurrent jurisdiction to consider instant waiver request, and Ct. further noted that even if IJ eventually grants said waiver, USCIS retained authority to grant or deny U Visa, which, if granted, would stave off any removal of alien, where said removal was based on alien's uninspected entry into US and her prior drug conviction.

Tian v. Holder, No. 13-2130 (March 13, 2014) Petition for Review, Order of Bd. of Immigration Appeals Petition denied.

Bd. did not err in denying application by alien (native of China) for asylum and withholding of removal, even though alien alleged that he was victim of persecution in 1989, when he aided others in pro-democracy demonstration. Ct. of Appeals lacked jurisdiction to consider alien's asylum application, which had been filed beyond applicable one-year limitation period, and alien did not otherwise assert existence of either change of circumstances in China or exceptional circumstances that would explain instant delay. Moreover, as to instant withholding of removal request, record supported IJ's de-

termination that alien was not credible with respect to his claim of past or future persecution, where alien had remained in China for 10-year period after 1989 demonstration without incident, and where he had received job promotions during said period.

R.R.D. v. Holder, No. 13-2141 (March 19, 2014) Petition for Review, Order of Bd. of Immigration Appeals Petition granted.

Record failed to support IJ's denial of asylum request by alien (native of Mexico), where alien asserted that he suffered from persecution by various drug organizations due to fact that alien had arrested hundreds of suspected drug traffickers in his capacity as police official. IJ and Bd. erroneously concluded that "effective honest police officer" was not protected social group, and remand was required to allow Bd. to consider whether Mexican govt. was willing and able to protect alien from threats made to him by drug organizations.

Collateral Estoppel

Carter v. Commissioner of Internal Revenue, No. 13-2822 (March 25, 2014) Appeal, U.S. Tax Court Affirmed.

Tax Court did not err in finding that plaintiffs were collaterally estopped from proceeding on their claim that change in their defined pension plan, which precluded them from obtaining immediate distribution of benefits violated ERISA, Internal Revenue Code, and/or contractual anti-cutback provisions of said plan. Record showed that plaintiffs had participated in prior action, where Ct. of Appeals had ultimately concluded that immediate payment of pension benefits that plaintiffs sought while still working for defendant was not right protected by ERISA because subject plan had not been terminated. Moreover, in order for plaintiff to prevail in instant action, they must first establish that defendant had terminated subject plan, which would directly contradict holding in prior case.

Labor Law

Heartland Human Services v. N.L.R.B., Nos. 13-1954 & 13-2079 Cons. (March 14, 2014) Application for Enforcement of Order of N.L.R.B. Order enforced.

Record supported NLRB's finding that employer committed unfair labor practice by refusing, in wake of decertification election, to continue to recognize union that represented bargaining unit of employer's employees,

even though employer claimed that result of election proved that union had lost result of election. At time employer refused to recognize union, result of election indicated that union had won 19 to 18, with one disputed vote that was subsequently opened to reveal that vote was tied. However, union prevailed in its claim that employer had committed "objectionable conduct" with respect to said election, such that N.L.R.B. ordered new election. As such, Ct. of Appeals could not review propriety of N.L.R. B. order directing new election until new election took place, and employer could not refuse to recognize union at least until such election took place and until union became decertified.

Social Security

Thomas v. Colvin, No. 13-2602 (March 11, 2014) N.D. Ill., E. Div. Reversed and remanded.

Record failed to support ALJ's denial of claimant's application for Social Security disability benefits, where said application alleged inability to work on account of claimant's sciatica, angina, degenerative disc disorder, fibromyalgia and diabetes. While ALJ found that claimant retained ability to perform light work in spite of her impairments, ALJ ignored medical evidence that supported claimant's complaints of severe pain. Moreover, ALJ failed to consider combined effects of claimant's ailments and made factual error regarding claimant's use of her thumb. ■



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Presented by the ISBA Administrative Law Section

Tuesday, April 29, 2014

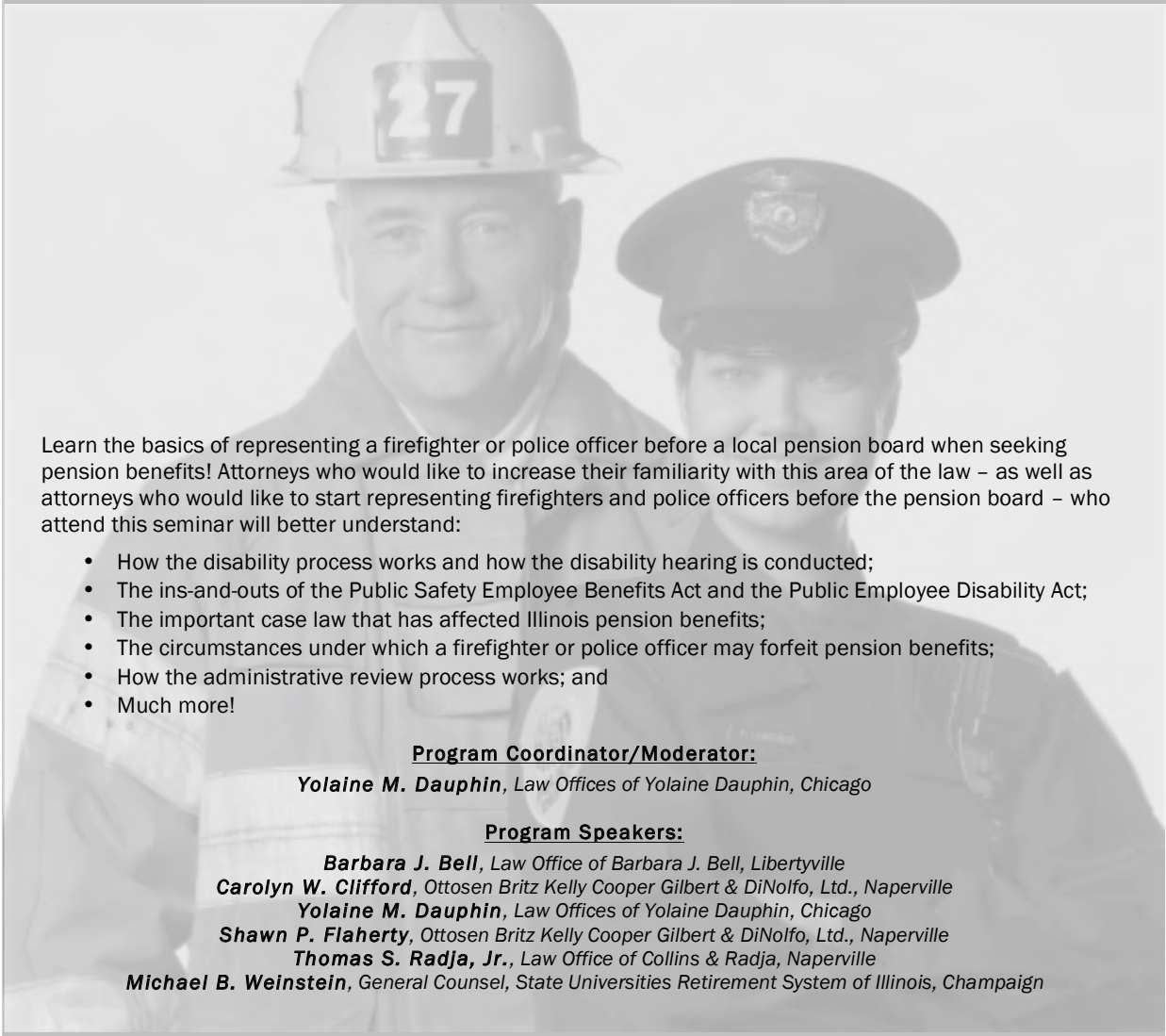
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Thursday, 5/1/14- Teleseminar—Trusts and the New Medicare Tax. Presented by the Illinois State Bar Association. 12-1.

Friday, 5/2/14- Chicago, ISBA Chicago Regional Office—Beyond Bullying and School Violence: Issues and Best Practices. Presented by the ISBA Education Law Section. All Day.

Friday, 5/2/14- Springfield, President Abraham Lincoln Hotel—Civil Practice Update. Presented by the ISBA Civil Practice and Procedure Section. 9:00-4:00.

Friday, 5/2/14- Teleseminar—Attorney Ethics and Elder Abuse (Live Replay from 1/10/14). Presented by the Illinois State Bar Association. 12-1.

Friday, 5/2/14- East Peoria, Embassy Suites—Insurance, Surety Bonds, and Bankruptcy Issues for Construction Projects. Presented by the ISBA Construction Law Section, ISBA Commercial Banking, Collections and Bankruptcy Section, ISBA Insurance Law Section, and ISBA Tort Law Section. 8:25am-4:15pm.

Monday, 5/5/14- Webinar—Advanced Tips to Fastcase Legal Research. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 11:00.

Tuesday, 5/6/14- Teleseminar—Limitations on Closely Held Company Owners-Business Opportunities and Non-competes. Presented by the Illinois State Bar Association. 12-1.

Wednesday, 5/7/14- Teleseminar—Attorney Ethics When Supervising Other Attorneys (Live Replay from 1/24/14). Presented by the Illinois State Bar Association. 12-1.

Wednesday, 5/7/12- Chicago, Standard Club—Tips of the Trade: A Federal Civil Prac-

tice Seminar 2014. Presented by the ISBA Federal Civil Practice Section. 9-4:30.

Friday, 5/9/14- Webinar—Boolean (Keyword) Searches on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 11:00.

Friday, 5/9/14- Teleseminar—Ethics of Beginning and Ending an Attorney-Client Relationship. Presented by the Illinois State Bar Association. 12-1.

Wednesday, 5/14/14- Teleseminar—Ethical Issues for Business Attorneys (Live Replay from 1/7/14). Presented by the Illinois State Bar Association. 12-1.

Thursday, 5/15/14- Teleseminar—Role of “Trust Protectors” in Trust Planning. Presented by the Illinois State Bar Association. 12-1

Thursday, 5/15/14- Chicago, ISBA Chicago Regional Office—It’s Not Just Family Law Anymore. Presented by the ISBA Family Law Section. 8:30-5.

Friday, 5/16/14- Teleseminar—Ethics of Working with Witnesses. Presented by the Illinois State Bar Association. 12-1.

Friday, 5/16/14- Chicago, ISBA Chicago Regional Office Suite 950—2014 SIU Health Care Institute (viewing of live webcast). Presented by SIU and the Illinois State Bar Association and the ISBA Health Care Section. 9-3:30.

Monday, 5/19/14- Teleseminar—Attorney Ethics and Digital Communications (Live Replay from 1/31/14). Presented by the Illinois State Bar Association. 12-1.

Tuesday, 5/20/14- Teleseminar—2014 Sexual Harassment Update. Presented by the Illinois State Bar Association. 12-1.

Wednesday, 5/21/14- Teleseminar—Techniques for Tax Efficiently Withdrawing Capital From a Closely Held Company. Presented by the Illinois State Bar Association. 12-1.

Thursday, 5/22- Friday, 5/23/14- Carbondale, SIU School of Law. Attorney Education in Child Custody and Visitation Matters in 2014 and Beyond. Presented by the ISBA Bench and Bar Section, SIU School of Law and The Dispute Resolution Institute. 12:30-5pm; 9-4:45.

Wednesday, 5/28/14- Teleseminar—UCC Issues in Real Estate Transactions. Presented by the Illinois State Bar Association. 12-1.

Thursday, 5/29/14- Teleseminar—Trust Investments: A Guide to Trustee Duties & Liability under the UPIA. Presented by the Illinois State Bar Association. 12-1.

Friday, 5/30/14- Teleseminar—Attorney Ethics and Social Media. Presented by the Illinois State Bar Association. 12-1.

June

Tuesday, 6/3/14- Teleseminar—Family Feuds in Trusts. Presented by the Illinois State Bar Association. 12-1.

Wednesday, 6/4/14- Teleseminar—2014 Ethics in Litigation Update, Part 1. Presented by the Illinois State Bar Association. 12-1.

Thursday, 6/5/14- Teleseminar—2014 Ethics in Litigations Update, Part 2. Presented by the Illinois State Bar Association. 12-1.

Thursday, 6/5/14- Lombard, Lindner Conference Center—Real Estate Transactions- Beyond the Ordinary and Mundane and Interactive Ethics and Professionalism Panel Discussions. Presented by the ISBA Real Estate Section. 9-4:15.

Friday, 6/6/14- Live Studio Webcast (room C)—The Do’s & Don’ts of the BAID Machine. Presented by the ISBA Traffic Laws and Courts Section. 12-1.

Friday, 6/6/14- Webinar—Introduction to Fastcase Legal Research. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 1:00. ■

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