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ILLINOIS STATE BAR ASSOCIATION

BENCH & BAR

The newsletter of the Illinois State Bar Association's Bench & Bar Section

Chair's column

By Thomas Bruno

Robert C. Byrd died June 28, 2010. He was, of course, the U.S. Senator from West Virginia and the longest serving senator and the longest serving member in the history of Congress.

But he was much more than that. As President pro tempore, he was third in the line of presidential succession at the time of his death behind Joe Biden and Nancy Pelosi. But before you worry that I'm going to convert this month's chair's column into a political piece, allow me to explain why I think Senator Byrd is relevant to the work of the Bench and Bar Section.

Audi Alteram Partem. "Hear the other side." One can only imagine that over his career in public service Senator Byrd kept an open mind and heard the other side. He went from being a member of the Ku Klux Klan to renouncing his membership and has been quoted as saying "I now know I was wrong. Intolerance had no place in America. I apologized a thousand times…and I don't mind apologizing over and over again."

After his election to the House of Representatives in 1952 he began night classes in law school in 1953 but did not receive his law degree until a decade later, when he was already a United States Senator.

While the motivations and challenges that each of us had with respect to law school must certainly vary from person to person, it seems striking to me that a sitting U.S. Senator would attend night classes to obtain his law degree.

Robert Byrd was known to carry a copy of the United States Constitution in his pocket at all times. What better reminder could a lawyer and legislator keep close to his heart than his own personal copy of the Constitution?

Lastly, all lawyers can take a lesson on civility and collegiality as well as the rules of decorum from Robert Byrd. There is a great short video on YouTube titled "Robert Byrd lectures his colleagues on Timbuktu." It's footage of him on the Senate floor chastising his fellow senators to always address each other in the third person. Our courtroom battles should never become personal and we all need to speak up when our colleagues need to be reminded of the ground rules on civility by which we ought to operate. ■

An impartial Judiciary, if we are willing to keep it

By Judge Michael B. Hyman, Circuit Court of Cook County and member of the Bench & Bar Section Council

What separates true justice from mock justice is an impartial judiciary. Courts must operate in an objective, honest, and transparent manner or they offer nothing more than a sham, a fiction, a cruel delusion.

Retired Justice Sandra Day O'Connor fears that the public is apathetic about "the flood of money" into state judicial campaigns, the effect of politics on judicial selection, and the influence of special interests, all of which, she says, undermine the notion of judicial independence. Too many people, according to the Justice, fail to grasp the differences between judges and other elective officials, and view judges as politicians in robes.

At a luncheon hosted by the CBA in June, Justice O'Connor repeated her signature appeal and asked the Chicago Bar to strengthen the

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***(Notice to librarians:** The following issues were published in Volume 40 of this newsletter during the fiscal year ending June 30, 2009: July, No. 1; September, No. 2; October, No. 3; December, No. 4; February, No. 5; April, No. 6; May, No. 7; June, No. 8).*

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An impartial Judiciary, if we are willing to keep it

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public's trust in the judiciary. (See description of O'Connor's speech by Bench & Bar editor Alfred M. Swanson in the June 2010 issue). As she has often said, "Judicial independence does not happen by itself. It is hard to create, and it is easier than most people imagine to damage or destroy."

I have always suspected that the catch phrase "judicial independence" projects a distorted image. Unless the public fully comprehends what we are communicating by "judicial independence," our message gets garbled. Some people might think we are saying that judges are immune from public debate, criticism, or scrutiny, or that judges should decide cases according to personal agendas and preferences. Or that "judicial independence" means judicial isolation or a shield for judicial misbehavior or incompetence. The term we should use, which I believe best conveys the meaning and values at issue, is "an impartial judiciary." It better expresses the essential attributes of judging—objectivity with reason, fairness with integrity, independence with accountability, and neutrality with deference only to the law.

Classes on civics have all but vanished. And shrinking news coverage of the courts has the potential to undermine the very institution that is central to our democratic society. Increasingly, America is becoming a nation ignorant about its world-revered justice system.

Four years ago, a Joint Task Force of the CBA and the Illinois State Bar Association, co-chaired by Professor Ann Lousin and James J. Ayres, suggested ways to strengthen the judiciary's impartiality in the eyes of the people of Illinois. One of the recommendations, which would directly counter the present situation, is that the bar associations take the lead in informing the public, particularly young people, on the function of judges and the significance of an impartial judiciary.

This threat to the public's faith and trust in the judiciary is no trivial concern. And reaction to it is no trivial undertaking. In the words of another Supreme Court Justice, Thurgood Marshall, "We must never forget that the only real source of power that we as judges can tap is the respect of the people." At risk, if the public distrusts the judiciary, is the rending of the very fiber that weaves justice through the soul of our democratic system.

How do we wake up the people of Illinois to the imperative of an impartial judiciary? Justice O'Connor asked lawyers to promote <www.icivics.org>, an interactive Web site offering lesson plans, educational games, and reading materials for middle school students and teachers. She also urged lawyers to advocate for the return of civics on the "required courses" list for high schools. And she encouraged the profession to work harder to implement merit selection, not election, of Illinois judges, something the CBA and ISBA have long advocated. Add to the Justice's list a commitment by each of us to tell every client, every litigant, every juror, every family member and friend about why an impartial judiciary matters.

It is the people's courthouse but not if the people lose sight of the urgency of preserving an impartial judiciary. Let's get to it. ■

This article originally appeared in the Chicago Bar Association's CBA Record, June/July 2010.

A refresher course on continuances—Stumbling blocks and issues for practitioners and judges to consider

By Honorable E. Kenneth Wright, Jr., Presiding Judge, First Municipal District, Circuit Court of Cook County

Our best efforts to efficiently complete tasks are inevitably thwarted by the unexpected. For attorneys, these unwelcome interruptions often result in emergency court appearances requesting continuance. A common misconception is that courts grant continuances at will. However, bases for continuances exist in statutes and court rules. This article reviews proper procedures for motioning and obtaining a continuance. It also discusses common issues raised on appeal and steps courts can take to ensure their decisions are upheld on review.

Governing Law

Civil continuance practice in Illinois is governed by Illinois Supreme Court Rule 231 (Rule 231), Section 2-1007 of the Code of Civil Procedure (735 ILCS 5/2-1007) and in Cook County by Local Rule 5.2 (Rule 5.2).

Rule 231 provides guidelines for situations in which a continuance will be permissible, the first of which is the absence of material evidence. *Id.* In such cases the motion "shall be supported by the affidavit of the party," which shall show:

> (1) that due diligence has been used to obtain the evidence, or the want of time to obtain it; (2) of what particular fact or facts the evidence contains; (3) if the evidence consists of the testimony of a witness, his place of residence, or if his place of residence is not known, that due diligence has been used to ascertain it; and (4) that if further time is given the evidence can be procured.

Rule 231(a).

Rule 231(c) provides two additional bases for continuance. The first focuses on times of war; a necessary party that is in the military service "of the United States or of this State" in times "of war or insurrection" has sufficient cause for a continuance, so long as "his military service materially impairs his ability to prosecute or defend the action." Rule 231(c)(1). The second ground for continuance centers on membership in the General Assembly

during the time that the Assembly is in session: in the case of a party, his presence must be "necessary for the full and fair trial of the action," and in the case of an attorney, he must have been "retained by the party prior to the time the cause was set for trial." Rule 231(c) (2). Continuances based on amendments are provided for in Rule 231(d); in such cases the party, his agent or his attorney must "make affidavit that, in consequence [of the amendment], he is unprepared to proceed to or with the trial." Rule 231(d).

The Code of Civil Procedure provides further guidelines for continuances. 735 ILCS 5/2-1007 (2007). If a party's attorney is a "bona fide member" of a religion that requires he refrain from work or attend religious services and he requests a continuance to observe such practices, it is "sufficient cause for the continuance of any action." *Id.* Sufficient cause for a continuance also exists when a party or his attorney "is a delegate to a State Constitutional Convention during the time" it is in session. *Id.* As in Rule 231, parties described here must be "necessary for the full and fair trial of the action" and attorneys must have been retained "prior to the time the cause was set for trial." *Id*. In general, the statute provides that continuances may be granted "[o]n good cause shown, in the discretion of the court and on just terms." *Id.*

Lastly, the Circuit Court of Cook County imposes additional situational based guidelines. Rule 5.2 states that attorneys may seek a continuance for the duration or period they are actually engaged in another trial or hearing. Rule 5.2. However, Rule 5.2(a) only applies to the attorney who filed his trial appearance at the pretrial conference. Also, this rule precludes the same party from motioning for another continuance on the grounds of prior engagements. *Id.* Next, continuances cannot be granted on the basis of substitution or addition of attorneys. Rule 5.2(b). Finally, the rule addresses procedural circumstances unique to the Circuit Court; once a central assignment judge denies a motion for a continuance that same motion cannot be renewed before the trial judge. Rule 5.2(c).

Refresher course on how to obtain a continuance

Movants for a continuance should keep three key practice points in mind at all times. First, always consult the rules and regulations mentioned above. Rule 5.2 is a variation on general Illinois continuance rules; therefore, all practitioners should thoroughly examine it, especially those who typically practice outside Cook County. Second, follow the rules. For example, if the rules or statute request that an affidavit accompany a motion, then make sure to include it. Third, and most importantly, motions for continuance should be in writing, though only specifically required in cases involving building code violations or violations of municipal ordinances (as noted in Sec. 5/2-1007). As discussed further below, written motions for continuance afford a party the most protection when it comes to appellate review.

Commonly raised issues on appeal

On appeal, courts hear issues that may be broadly categorized into the following groups: preference for written motions, absence of material evidence, due diligence and motions based on amendment. Despite strict requirements for continuances in statutes and rules, as seen above, courts have largely relied on their own discretion when ruling on such motions, espousing the opening sentence of the statute itself. Sec. 2-1007. The general principle in continuance cases is that the courts' discretion reigns supreme. See, *In re Hannah E.*, 376 Ill.App.3d 648, 655, 877 N.E.2d 63, 70 (2007); *Le Febvre v. The Indus. Comm'n*, 276 Ill.App.3d 791, 794-5, 659 N.E.2d 1, 3 (1995); *Farrar v. Jacobizzi*, 245 Ill. App.3d 26, 29, 614 N.E.2d 259, 261 (1993). Therefore, when reviewing cases on appeal, appellate courts focus on the possible abuse of discretion by trial courts in allowing or denying the continuance. See *Meyerson v. Software Club of America*, 142 Ill.App.3d 87, 92, 491 N.E.2d 150, 153 (1986); *Gallagher v. Swiatek*, 106 Ill.App.3d 417, 421, 435 N.E.2d 1287, 1290 (1982).

Though only required in specific cases outlined in Sec. 5/2-1007, written motions for continuance provide the most protection to movants. This is because successful motions for continuance are largely presented in written form. In practice it has proven to be difficult to obtain a continuance on oral motion alone. See, *Debolt v. Wallace*, 56 Ill. App.2d 380, 206 N.E.2d 469 (1965). In *Debolt*, defense counsel orally moved for continuance in hopes of a securing testimony of a witness but did not file a written motion or affidavit. See *id.* The motion was denied and on appeal the ruling was upheld, the court being unwilling to overturn the decision of a trial court in cases where there was "no written motion accompanied by affidavit." 56 Ill. App.2d at 384, 206 N.E.2d at 472. In effect,

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Office
Illinois Bar Center
424 S. Second Street
Springfield, IL 62701
Phones: 217-525-1760 OR 800-252-8908
www.isba.org

Editor
Alfred M. Swanson

Co-Editor
Michele M. Jochner

Assistant Editor
Barbara O. Slanker

Managing Editor/ Production
Katie Underwood
kunderwood@isba.org

Postmaster: Please send address changes to the Illinois State Bar Association, 424 S. 2nd St., Springfield, IL 62701-1779.

then, it is very difficult to obtain a reversal on a denial of oral continuance at the appellate level.

Absence of material evidence, including absence of witnesses, is one of the more common bases for a continuance; accordingly, much of the litigation on continuances focuses on this topic. First, the lack of an affidavit warrants the denial of a continuance. See, *Wine v. Bauerfreund*, 155 Ill.App.3d 19, 24, 507 N.E.2d 155, 157-58 (1987). In *Wine*, the motion for continuance was presented in written form only after an oral motion was made, and the written motion did not include an affidavit as to the specific reasons defendant could not return for trial. 155 Ill. App.3d at 23-4, 507 N.E.2d at 157-58. The court reasoned that "[t]he failure to file such an affidavit, standing alone, warrants the exercise of the court's discretion in denying the requested continuance." 155 Ill.App.3d at 24, 507 N.E.2d at 157.

Even though the First District in *Wine* upheld the denial of a continuance, the Second District has found the granting of a continuance to be proper in some cases even without the presence of an affidavit. See *id*. But see *Rutzen v. Pertile*, 172 Ill.App.3d 968, 527 N.E.2d 603, 607 (1988). In *Rutzen*, the court distinguishes *Wine*, noting that the continuance requested at hand was merely to allow parties, who were on their way to the courthouse, enough time to arrive given a delay in travel. 172 Ill.App.3d at 975, 527 N.E.2d at 608. Since the witnesses were available but running late, the court found that it would be "exalting form over substance" to "refuse to give a short continuance where the witnesses are available and the proceedings have not yet concluded." *Id*. The court strived to ensure that "substantial justice is being done between the litigants and . . . it is reasonable." 172 Ill.App.3d at 974, 527 N.E.2d at 607 (citation omitted).

The requirement of due diligence is another area ripe with litigation. Courts analyze specific facts to determine whether a party exercised due diligence; here, the Rule again defers to the discretion of the court. See *Curtin v. Ogborn*, 75 Ill.App.3d 549, 554, 394 N.E.2d 593, 597-98 (1979); *Duran v. Chicago* & N.W. Ry. Co., 26 Ill.App.3d 645, 646-7, 325 N.E.2d 368, 369-70 (1975) (citation omitted).

In *Duran*, plaintiff filed his cause of action, answered interrogatories, completed depositions, and took part in a pretrial conference. See *Duran*, 26 Ill.App.3d at 647, 325 N.E.2d at 369-70. The court found that this showed an exercise of due diligence, and upheld the lower court's ruling granting the continuance requested by plaintiff. *Id.* Similarly, the court in *Curtin* found the denial of a continuance to be proper and not an abuse of discretion when plaintiff "ignored the advice of their attorney and failed to appear for trial." *Curtin*, 75 Ill.App.3d at 553, 394 N.E.2d at 597. Though the record did "not indicate" any lack of due diligence on the part of plaintiffs, the court reasoned that plaintiff's neglect of their attorney's advice was enough for the trial court to deny the motion. *Id.*

Courts have generally denied motions for continuance based on amendment as provided by Rule 231(d). The First District found that the denial of a continuance was not an abuse of discretion even though it allowed an amended complaint on the date of trial, noting that "we find ourselves yet again surprised that counsel for [defendant] did not foresee that it might be necessary on the date set for trial to litigate the merits of the claim." *Henderson-Smith & Assocs., Inc. v. Nahamani Family ServsCtr., Inc.*, 323 Ill.App.3d 15, 27-8, 752 N.E.2d 33, 44 (2001). That court has been rather consistent with this view, previously upholding the denial of a continuance when a party was "amply aware of the issues put in dispute" even though no answer to a newly amended complaint had been filed. *McDermott v. Metro Sanitary Dist*., 240 Ill.App.3d 1, 41, 607 N.E.2d 1271, 1295 (1992).

The issue of when a party seeks a continuance assumes particular importance when determining the manner in which appellate review is conducted. Though the standard of review is the same—abuse of discretion—"especially grave reasons must be given to justify a continuance once the case has reached the trial stage." *Meyerson*, 142 Ill. App.3d at 92, 491 N.E.2d at 153. It seems that appellate courts accord more deference to the trial judge's discretion in reviewing cases where continuances were sought during the trial stage. 142 Ill.App.3d at 92-3, 491 N.E.2d at 153-54.

In *Meyerson*, the appellate court found no abuse of discretion when reviewing a continuance denied at the trial stage. 142 Ill. App.3d 89-93, 491 N.E.2d at 152-54. Relying on precedent from *Gallagher,* in which a continuance was denied even though counsel attended the funeral of the wife of a circuit judge, the court noted that defendant had not cited any case in which the court was found to have abused its of discretion in denying a continuance where counsel would have had to interrupt vacation plans. 142 Ill. App.3d at 92, 491 N.E.2d at 153.

Unlike *Gallagher*, the *Meyerson* case involved several continuances both by agreement and over plaintiff's objection. 142 Ill. App.3d at 92, 491 N.E.2d at 153. A fact intensive case, the motion for continuance brought on appeal stemmed from defense counsel's argument that he had previously scheduled vacation plans on the court's suggested trial date. In declining to disturb the finding of the trial judge, the court iterated an important factor to consider when determining the propriety of a continuance due to counsel's actions—"the degree of diligence exercised by the party seeking the continuance." 142 Ill.App.3d at 92, 491 N.E.2d at 153. In this case, defendant discharged his attorney one day before the scheduled trial date, stated he expected the court to rule in plaintiff's favor, and the court already granted numerous continuances over plaintiff's objection. Therefore, the court ultimately affirmed the denial of continuance. 142 Ill.App.3d at 92, 491 N.E.2d at 154.

Refresher course on items to keep in mind when determining whether to grant a continuance

Based on the analysis above, it would behoove judges to keep the following three points in mind when determining whether to grant a continuance. First, the court must look for the presence of an affidavit. As mentioned above, appellate courts have held that the lack of an affidavit warrants the denial of a continuance. See *Wine*, 155 Ill.App.3d at 24, 507 N.E.2d at 157. In cases where an affidavit has not been filed, the judge still possesses the discretion to grant the continuance; however, it is possible that on appeal the decision will be overturned. Under those circumstances, the trial court's decision (and subsequent appellate review) hinges on a fact intensive review of each case. See *Rutzen*, 172 Ill.App.3d at 974, 527 N.E.2d at 607.

Next, judges should remember that movants bear the duty of due diligence: if a party moves for continuance having not adequately performed his duties in his case, the appropriate decision is likely to deny the decision. *Contra*, *Duran*, 26 Ill.App.3d at 647, 325 N.E.2d at 369-70. Finally, judges should base their decisions partly on when, in the course of proceedings, the continuance is requested. Though the court has broad discretion to grant a continuance before the trial stage, after that point the reasons given

must be "especially grave." *Meyerson*, 142 Ill. App.3d at 92, 491 N.E.2d at 153. For the trial court judge, this means that continuances granted at the trial stage are more likely to be challenged on appeal, so judges must be especially aware of the first two suggestions mentioned above.

Overall continuance practice is simple and straightforward. Unfortunately, courts see, with increasing frequency, movants who presume their requests should and will be granted. On any given day, it is not uncommon to see them argue with the court and each other regarding why a continuance is proper. In addition to the above referenced rules, statues, case law and practice pointers, parties should never overestimate the power of basic civility in the courtroom. ■

Recent amendment to Supreme Court Rule 304(b) and its impact on family law cases

Part One: A Trial Judge's perspective

By Judge Edward R. Jordan

On February 10, 2006, the Illinois Supreme Court adopted the "900" series of rules which included Rule 922 concerning time limitations for custody cases under the Illinois Marriage and Dissolution of Marriage Act. Rule 922 which became effective on July 1, 2006, provides:

> Rule 922. Time Limitations. *All child custody proceedings under this rule in the trial court shall be resolved within 18 months from the date of service of the petition or complaint to final order.* In the event this time limit is not met, the trial court shall make written findings as to the reason(s) for the delay. The 18-month time limit shall not apply if the parties, including the attorney presenting the child, the guardian *ad litem* or the child representative, agree in writing and the trial court makes a written finding that the extension of time is for good cause shown. In the event the parties do not agree, the court may consider whether an extension of time should be allowed for good cause shown.

(Emphasis provided).

Efforts by the trial courts to enforce Rule 922 have been quite difficult. In at least one case, after the 18-month term had passed, the issue of custody was severed in accord with section 2-1006 of the Code of Civil Procedure [735 ILCS 5/2-1006] and sent off for trial while discovery on the financial issues in the case continued. The judge who heard the custody portion made a determination and entered a "Custody Judgment." The disappointed parent filed a Notice of Appeal within 30 days, but the appeal was dismissed following *In re Marriage of Leopando*, 96 Ill. 2d 114 (1983), and the "Custody Judgment" became nothing more than a temporary order. When the financial issues finally went to trial, the trial judge refused to rehear the issue of custody and adopted the earlier custody judgment as part of a final Judgment for Dissolution of Marriage. The entire judgment then became final and appealable. This case illustrates the problem of how to meaningfully enforce Rule 922 without creating just another temporary custody order which can be modified under 750 ILCS 5/501 with only a minimal showing.

In order to address this problem and provide a means to enforce Rule 922, and get the children out of the litigation, application was made to the Illinois Supreme Court Rules Committee suggesting that making a Custody Judgment arising from the severed issue of custody final in nature and immediately appealable would put teeth into Rule 922 and give trial judges all over the State the ability to strenuously comply with the 18-month limitation. The Supreme court acted on that application on February 26, 2010, and now the children have won.

On February 26th, the Supreme Court added subsection (6) to Rule 304(b). The relevant portion of Rule 304 now reads as follows:

> Rule 304. Appeals from Final Judgments That Do Not Dispose of an Entire Proceeding *(a) Judgments As To Fewer Than All Parties or Claims -- Necessity for Special Finding.* If multiple parties or multiple claims for relief are involved in an action, an appeal may be taken from a final judgment as to one or more but fewer than all of the parties or claims only if the trial court has made an express written finding that there is no just reason for delaying either enforcement or appeal or both. Such a finding may be made at the time of the entry of the judgment or thereafter on the court's own motion or on motion of any party. The time for filing a notice of appeal shall be as provided in Rule 303. In computing the time provided in Rule 303 for filing the notice of appeal, the entry of the required finding shall be treated as the date of the entry of final judgment. In the absence of such a finding, any judgment that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties is not enforceable or appealable and is subject to revision at any time before the entry of a judgment adjudicating all the claims, rights, and liabilities of all the parties.*(b) Judgments and Orders Appealable Without Special Finding. The following judgments and orders are appealable without the finding required for appeals under paragraph (a) of this rule:*
>
> * * *(6) A custody judgment entered pursuant to the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/101 et seq.) or section 14 of the Illinois Parentage Act of 1984 (750 ILCS 45/14); or a modification of custody entered pursuant to section 610 of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/610) or

> section 16 of the Illinois Parentage Act of 1984 (750 ILCS 45/16).The time in which a notice of appeal may be filed from a judgment or order appealable under this Rule 304(b) shall be as provided in Rule 303.
>
> (Emphasis provided).

The committee comments to this amendment clarify certain points.

COMMITTEE COMMENTS February 26, 2010.

Paragraph (b). The term "custody judgment" comes from section 610 of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/610), where it is used to refer to the trial court's permanent determination of custody entered incident to the dissolution of marriage, as distinguished from any temporary or interim orders of custody entered pursuant to section 603 of the Act (750 ILCS 5/603) and any orders modifying child custody subsequent to the dissolution of a marriage pursuant to section 610 of the Act (750 ILCS 5/610). The Illinois Parentage Act of 1984 also uses the term "judgment" to refer to the order which resolves custody of the subject child. See 750 ILCS 45/14.

Subparagraph (b)(6) is adopted pursuant to the authority given to the Illinois Supreme Court by article VI, sections 6 and 16, of the Illinois Constitution of 1970. The intent behind the addition of subparagraph (b)(6) was to supersede the supreme court's decision in *In re Marriage of Leopando*, 96 Ill. 2d 114, 119 (1983). In *Leopando*, the court held that the dissolution of marriage comprises a single, indivisible claim and that, therefore, a child custody determination cannot be severed from the rest of the dissolution of the marriage and appealed on its own under Rule 304(a). Now, a child custody judgment, even when it is entered prior to the resolution of other matters involved in the dissolution proceeding such as property distribution and support, shall be treated as a distinct claim and shall be appealable without a special finding. A custody judgment entered pursuant to section 14 of the Illinois Parentage Act of 1984 shall also be appealable without a special finding. The goal of this amendment is to promote stability for affected families by providing a means to obtain swifter resolution of child custody matters.

This new subsection makes a "custody judgment" entered before the entire case is resolved appealable without a special finding—just like a finding of contempt. What the amendment does is put teeth into Rule 922. Now judges all over the state can sever the issue of custody at the 18 month mark and try custody as a separate issue. After such a trial, the court may enter a "custody judgment" which becomes final and immediately appealable. The financial aspects of the case may then go forward with their own trial or settlement. According to the committee comments, this rule change supersedes *Leopando*. Now, some concerns.

The first problem is educating judges and lawyers all over the state about the impact of this rule change. We can help by including it in CLE programs as soon as possible. We can also reach out to IICLE, NBI, and other CLE providers to include the subject in their upcoming family law programs.

Second, is the question of "bifurcation" versus "severance." In the committee's discussion of the Supreme Court's superseding of *Leopando*, they remark that, before the amendment, the issue of custody could not be "severed" as a separate issue. Under the amendment, however, the committee says that a child custody judgment, "...even when it is entered prior to the resolution of other matters involved in the dissolution proceeding such as property distribution and support, shall be treated as a distinct claim...."

According to 750 ILCS 5/403(e), bifurcation is the separation of grounds from all other issues in a case. Section 2-1006 of the Code of Civil Procedure, on the other hand, provides that, "(a)n action may be severed,... as an aid to convenience, whenever it can be done without prejudice to a substantial right. It would appear that a reading of the appropriate statutes and the committee's comments suggests that bifurcation would be inappropriate because of the entanglement of grounds, while severing the "distinct claim" regarding custody would isolate the issue and preserve it for appeal.

Third, there is nomenclature. When the issue of custody is severed and tried separately, the resulting written decision MUST be identified as a "CUSTODY JUDGMENT." Not only is that required in order to make the determination appealable under the new rule, but it more accurately describes the type of final custody judgment which is not only immediately appealable, but which can only be modified under section 610 of the IMDMA. (750 ILCS 5/610) If careful procedure is followed, then regardless of when in the chronology of the case it occurs, the Custody Judgment will become a final order.

It would seem that diligent parents could invoke the finality created by the amendment without severing the issue of custody or actually going to trial. Almost all family law trial and motion judges try desperately to resolve custody issues as early as possible, and more often than not with the litigants themselves making parenting decisions for their children. We encourage parents to bring us voluntary parenting agreement as early as possible in the litigation. We motivate them with parenting classes (Supreme Court Rule 924) and mediation programs (Supreme Court Rule 905). Sometimes we add a Guardian *ad litem* or a Children's Representative to further encourage resolution of custody issues without trial. These efforts are frequently met with success in the form of Joint Parenting Agreements, agreements granting sole custody to one parent or the other, visitation schedules, and case-oriented solutions. Most of the time, and even though the reality is that these agreements are only temporary, the parties evidence their intent in the agreements by providing that their intention is to have the agreements incorporated in their eventual settlement agreements and judgments for dissolution. These voluntary agreements can be made permanent, however, if such is the parties' intent.

In those cases where the parties have genuinely resolved issues of custody and visitation, it would seem that all they need do is designate their final agreement as a "Custody Judgment," and express their intent to be so bound in the language of the agreement itself.

Fourth is the question of the effect to be given to a "Custody Judgment" regardless of whether it came to be as the result of a trial or the voluntary actions of the parents. As the amendment to the rule and the committee comments give a Custody Judgment intended to be final all of the indicia of finality, such a judgment can only be modified under 750 ILCS 5/610. This is of monumental importance for a trial judge and for the litigants.

Section 501(d) of the IMDMA provides that:

> A temporary order entered under this Section:(1) does not prejudice the rights of the parties or the child which are to be adjudicated at subsequent hearings in the proceeding;(2) may be revoked or modified before final judg-

ment, on a showing by affidavit and upon hearing; and(3) terminates when the final judgment is entered or when the petition for dissolution of marriage or legal separation or declaration of invalidity of marriage is dismissed.

750 ILCS 5.501(d).

An order or agreement which does not conform to the requirements of Rule 304((b)(6) is temporary in nature and may be revoked or modified, "...on a showing by affidavit and upon hearing;..." [750 ILCS 5/501(d)(2)] However, a Custody Judgment which does conform with the amendment—or is intended by the parties to do so—becomes a final order which can only be modified under the terms and conditions of 750 ILCS 5/610, which are considerably more stringent.

Fifth, as this "Custody Judgment" is a final, appealable order, it MUST be appealed within 30 days of its entry. It cannot be set aside until the financials are disposed of and then appealed with the rest of the case. It is, for all intents and purposes, literally a final custody order, not a temporary order. This restriction is imposed by Supreme Court Rule 304(b) which states that, "The time in which a notice of appeal may be filed from a judgment or order appealable under this Rule 304(b) shall be as provided in Rule 303. And Rule 303(a)(1) sets the time limits for filing of the notice of appeal. That is, 30 days following either the entry of the Custody Judgment itself, or 30 days following, "... the entry of the order disposing of the last pending post judgment motion directed against that judgment."

When Rules 922 and 304(b)(6) are read together, they afford trial judges the opportunity to truly expedite the disposition of children's issues in family law cases. Every family law trial judge in the State has fought for years to bring clarity and quick, final resolution to the issues facing children in divorce, parentage and related cases. The Supreme Court has now given us the tools we have needed for so long. We must make good use of these tools to bring stability to all of the children in the cases before us. ■

Recent amendment to Supreme Court Rule 304(b) and its impact on family law cases

Part Two: An Appellate Judge's perspective

By Justice Mary Jane Theis, 1st Dist.

The Illinois Supreme Court has recently reaffirmed its commitment to promote stability for families by amending the Civil Appeals Rules. The goal of the changes is to obtain swifter resolution of child custody matters. Practitioners need to understand how the new appellate procedures will affect their clients, and most importantly, their clients' children.

Appellate jurisdiction can raise thorny questions for lawyers who only occasionally take on appeals. Appellate jurisdiction is the power of an appellate court to review and revise a lower court's decision. It is a definite, black-and-white concept; it either exists or it does not. See, e.g., *Almgren v. Rush-Presbyterian-St. Luke's Medical Center,* 162 Ill. 2d 205, 210 (1994). It cannot be conferred upon the court by agreement of the parties or by a waiver. *County Collector v. Redco, Inc.*, 3 Ill. App. 3d 917, 919 (1972). The Supreme Court has made clear that, " '[a] reviewing court must be certain of its jurisdiction prior to proceeding in a cause of action,' " and has reaffirmed that "the ascertainment of its own jurisdiction is one of the two most important tasks of an appellate court panel when beginning a case." *People v. Smith*, 228 Ill. 2d 95, 106 (2008), quoting *R.W. Dunteman Co. v. C/G Enterprises, Inc.*, 181 Ill. 2d 153, 159 (1998).

The foundations of appellate jurisdiction are set forth in the Illinois Constitution. Article VI, section 6, provides that:

> Appeals from final judgments of a Circuit Court are a matter of right to the Appellate Court in the Judicial District in which the Circuit Court is located except in cases appealable directly to the Supreme Court and except that after a trial on the merits in a criminal case, there shall be no appeal from a judgment of acquittal. The Supreme Court may provide by rule for appeals to the Appellate Court from other than final judgments of Circuit Courts.

Ill. Const. 1970, art. VI, §6. The Supreme Court rules function in conjunction with this constitutional right. See, e.g., 134 Ill. 2d R. 301. Thus, subject to only the exceptions specified in the Supreme Court rules, an appeal can be taken in a case only after the circuit court has entered final judgments on all claims against all parties. See *Pekin Insurance v. Phelan*, 343 Ill. App. 3d 1216, 1219 (2003), citing *Marsh v. Evangelical Covenant Church*, 138 Ill. 2d 458, 465 (1990).

The first question to ask, then, is whether the order in question is final. "Finality," in the sense of appellate jurisdiction, is a term of art with a very precise meaning. See, e.g., *F.H. Prince & Co. v. Towers Financial Corp.*, 266 Ill. App. 3d 977, 982 (1994). An order is said to be final if it " ' "disposes of the rights of the parties, either upon the entire controversy or upon some definite and separate part thereof," ' " such as a claim in a civil case. In re Estate of French, 166 Ill. 2d 95, 101 (1995), quoting *Treece v. Shawnee Community Unit School District No. 84,* 39 Ill. 2d 136, 139 (1968), quoting *Village of Niles v. Szczesny*, 13 Ill. 2d 45, 48 (1958). The mere fact that an order resolves important issues does not render it final. *In re Curtis B.*, 203 Ill. 2d 53, 59 (2002). An order is final for purposes of appeal if it terminates the litigation between the parties so that, if affirmed, the trial court only has to proceed with the execution of the judgment. *In re Guardianship of J.D.*, 376 Ill. App. 3d 673, 676 (2007). Perhaps most importantly, a final order is not modifiable by the circuit court after the expiration of 30 days, regardless of whether an appeal has been taken. See, e.g., *Busey Bank v. Salyards*, 304 Ill. App. 3d 214,

218 (1999). If an appeal is not taken from a final order within 30 days, the order becomes res judicata. *Busey Bank*, 304 Ill. App. 3d at 218.

However, because of the "all claims, all parties" rule, even if an order is final, it is generally not immediately appealable if other claims or parties remain in the proceeding. Supreme Court Rule 304 provides for appeals from final judgments as to fewer than all parties or claims, but only in very specific circumstances. *State Farm Fire & Cas. Co. v. John J. Rickhoff Sheet Metal Co.*, 394 Ill. App. 3d 548, 556 (2009). Rule 304(a) allows the court to make a written finding that there is no just reason for delaying either enforcement or appeal or both. *Rickhoff,* 394 Ill. App. 3d at 556. The matter must then be appealed within 30 days, or the right to appeal is lost. Official Reports Advance Sheet No. 15 (July 16, 2008), R. 303, eff. May 30, 2008, corrected eff. June 4, 2008; Official Reports Advance Sheet No. 20 (September 27, 2006), R. 304(a), eff. September 20, 2006; see also *Williams v. Manchester*, 372 Ill. App. 3d 211, 220 (2007), vacated in part on other grounds, 228 Ill. 2d 404 (2008).

Rule 304(b) lists a series of orders that are appealable automatically upon entry without a special finding of appealability by the trial court. Official Reports Advance Sheet No. 20 (September 27, 2006), R. 304(b), eff. September 20, 2006. The law is clear that orders within the scope of 304(b) must be appealed within 30 days of their entry; otherwise, the right to appeal such an order is lost. *D'Agostino v. Lynch,* 382 Ill. App. 3d 639, 642 (2008) (post-judgment collection proceeding under 2-1402); *Longo v. Globe Auto Recycling*, 318 Ill. App. 3d 1028, 1036 (2001) (contempt proceeding); *Village of Glenview v. Buschelman*, 296 Ill. App. 3d 35, 39 (1998) (section 2-1401 petition for relief from judgment); *In re Liquidation of MedCare HMO, Inc.*, 294 Ill. App. 3d 42, 46 (1997) (liquidation proceeding); In re Estate of Thorp, 282 Ill. App. 3d 612, 616 (1996) (estate administration). That is because the 30-day time frame is mandatory, not optional. *Longo*, 318 Ill. App. 3d at 1036.

In order for Rule 304(b) to be effective, practitioners must be aware of its applicability to the child custody context; otherwise, the opportunity to file an appeal will be lost. For example, in *D'Agostino v. Lynch,* 382 Ill. App. 3d 639, 642 (2008), a post-judgment collection proceeding, the court entered a final order compelling the turnover of funds. Unaware that this final order was immediately appealable without a special finding under Rule 304(b)(4), the party seeking to appeal the turnover filed a request that the court enter a Rule 304(a) finding of appealability. By the time the court entertained and ruled on that request, the 30-day time frame in which the turnover could have been appealed pursuant to Rule 304(b)(4) had expired. Consequently, that party lost its right to appeal the turnover order. *D'Agostino*, 382 Ill. App. 3d at 642.

On February 26, 2010, Rule 304(b) was amended to include subparagraph (6), which provides for an immediate appeal without a special finding for "a custody judgment entered pursuant to the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/101 et seq.) or section 14 of the Illinois Parentage Act of 1984 (750 ILCS 45/14); or a modification of custody entered pursuant to section 610 of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/610) or section 16 of the Illinois Parentage Act of 1984 (750 ILCS 45/16)."

Because this addition of child custody judgments in marital dissolution proceedings is so new, it is imperative that domestic relations practitioners be aware of the 30-day mandatory time frame for filing a notice of appeal. Otherwise, the right to appeal will be lost in a number of cases.

This amendment has two important consequences. First, the supreme court has recognized that the trial court may enter a final custody order before the dissolution judgment is entered. The custody judgment is immediately enforceable and, as defined in the Committee Comment to the Rule, the judgment can only be modified pursuant to the strict standards of Section 610 of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/101 et seq. (West 2006)). Second, the Supreme Court has superseded its decision in *In re Marriage of Leopando*, 96 Ill. 2d 114, 119 (1983), which held that child custody was merely an issue in a dissolution proceeding, rather than a separate claim. The enactment of Rule 304(b)(6) elevates custody to the level of a fully separate claim.

As with appeals pursuant to Rule 304(a) and the other subparagraphs of 304(b), the time in which a notice of appeal must be filed from a custody judgment is also 30 days, as provided in Rule 303. See Official Reports Advance Sheet No. 20 (September 27, 2006), R. 304(a), eff. September 20, 2006. Also as with the other types of orders appealable under Rule 304(b), if a notice of appeal is not filed within 30 days of entry of the custody judgment, the right to appeal is lost and the custody judgment becomes res judicata. See, e.g., *D'Agostino*, 382 Ill. App. 3d at 642.

Family law practitioners should also be aware that Rule 306(a)(5) still remains in effect. That Rule enables the non-prevailing party to request leave to appeal from an interlocutory, or non-final, order affecting child custody. See, e.g., *Curtis B.*, 203 Ill. 2d 53, 63-64 (2002) (suggesting that party should have sought to appeal permanency planning order, which was interlocutory, pursuant to Rule 306(a)(5)). The procedures for requesting leave to appeal pursuant to Rule 306(a)(5) are set forth in Rule 306(b). Those procedures are also expedited.

Finally, regardless of whether an appeal has been taken from a final or interlocutory order, practitioners must be aware that expedited procedures apply to the disposition of the appeal as set forth in Rule 311(a). Rule 311(a) specifically applies to appeals from any final order affecting child custody as well as an appeal from any interlocutory order affecting child custody from which leave to appeal has been granted pursuant to Rule 306(a)(5). Practitioners should note that Rule 311(a) contains the expedited procedures that were formerly set forth in Rule 306A; however, the Supreme Court relocated those procedures because of not only confusing nomenclature—Rule 306A and Rule 306(a)(5)—but also to eliminate confusion over whether the expedited procedures affected appealability. It should also be noted that the expedited procedures contained in Rule 311(a) in the first instance place the responsibility of designating an appeal as an expedited child custody appeal on the parties by requiring them to include a special caption on all documents filed in the appellate court. The purpose of this special caption is to ensure that the parties, the appellate court clerk's office personnel, and the court are aware of the expedited nature of the case.

In conclusion, the recent amendments to the child custody rules help to clarify the procedures involved, facilitating their use for practitioners. This, in turn, promotes the goal of expeditiously achieving stability for children affected by custody disputes. ■

Judges are not like umpires

By J. Andrew Hirth

Editor's Note. In August 2009, we published an article by former Cubs and Phillies center fielder Doug Glanville about the relationship between baseball players and umpires to illustrate the relationship between lawyers and judges. Here is another view on the subject.

If there is any silver lining to umpire Jim Joyce's botched call that cost the Detroit Tigers' Armando Galarraga a perfect game, it's that Elena Kagan was slightly less likely to be asked during her Senate confirmation hearings whether she thinks judges are like umpires.

Since John Roberts first suggested during his 2005 Senate confirmation hearings that judges merely call balls and strikes, his baseball metaphor has become a shibboleth among Republicans on the Senate Judiciary Committee. The umpire analogy appeals to conservatives and purported champions of judicial restraint because, as then Circuit Judge Roberts reminded the Senate, "Umpires don't make the rules; they apply them." It's a misleading metaphor, however, because it confuses the roles of judges and juries and leaves no room for the adversarial process. It also reinforces the misconception—cultivated by conservative think-tanks, pundits and politicians—that liberal judges who invalidate statutes as unconstitutional are "judicial activists" while conservative judges who do the same thing are merely applying the law to the facts.

The main problem with the umpire analogy is that it conflates judges and juries. Legal disputes have two components: issues of law (such as what evidence is admissible at trial) and issues of fact (such as whether the light was red or green). Issues of law are always resolved by judges, who have specialized training in what rules previous courts have applied in similar situations. Issues of fact are generally resolved by jurors with no legal training. Judges instruct the jury on the law, and the jurors apply that law to the facts they find. Juries form an important bulwark between the rights of the individual and the power of the state by assigning the power to determine the truth to the people rather than to the government. Indeed, it is this division of labor—more accurately, this division of power—between judges and juries that makes our legal system the best in the world.

It's also why the judges-as-umpires analogy flies foul. In a baseball game, there are no issues of law to resolve. The rules are fixed by Major League Baseball, and (with the exception of the designated hitter rule) they are applied universally to every game. The only decisions left to the umpires are factual: Did the pitch fall within the batter's strike zone? Did the runner beat the throw to first? Umps have no power to determine which rules apply or to interpret what the rules mean. They merely determine the occurrence or non-occurrence of relevant facts and enforce the rules as given to them by the League. To say that judges are like umpires who merely call balls and strikes, then, is to suggest that judges are no different than jurors applying a series of if/then algorithms given to them by Congress or the state legislature. It insinuates that judges who assert their constitutional power to keep the president and the legislature in check are self-aggrandizing usurpers undeserving of life-tenure. What might seem a curiously modest position for the nation's top judge to take, the umpire analogy is in fact part of a conservative jurisprudential narrative undermining the independence of the judiciary.

The portrait of judicial restraint among conservative judges is also disingenuous. For all the outcry against the "judicial activism" of liberal judges, conservative judges have no greater qualms about striking down legislation enacted by duly elected representatives. Going far beyond simply calling balls and strikes, the Roberts Court has invalidated federal statutes as unconstitutional in *United States v. Stevens* (striking down bans on violent images), *Citizens United v. FEC* (striking down limits on campaign contributions by corporations), and *District of Columbia v. Heller* (striking down limits on gun possession in the nation's capital) to name just a few. The rights at issue in those cases may have been different, but from a separation of powers perspective the Roberts Court has been every bit as "active" as the Court in *Roe v. Wade* or *Marbury v. Madison*. Whether the majority of justices trend toward the left or right, it remains emphatically the province and duty of the judiciary to say what the law is. Conservatives should stop pretending otherwise.

Finally, the umpire analogy makes short shrift of the adversarial nature of our legal system. The official comment to Rule 9.02(a) of Major League Baseball warns those who would challenge an umpire's decision that "Players leaving their position in the field or on base, or managers or coaches leaving the bench or coaches box, to argue on BALLS AND STRIKES will . . . be ejected from the game." (Emphasis in original). Those who contend a judge's only purpose is to call balls and strikes must think very little of the arguments advanced by the advocates who come before the Court. Arguing with the ump did not lead to justice for Armando Galarraga. Let's hope that those who seek justice from our courts fare better. ■

J. Andrew Hirth is an associate in the Appellate and Supreme Court Practice Group at Jenner & Block LLP in Chicago. The views expressed by Mr. Hirth are his alone and do not necessarily reflect those of the firm. This article was previously published in the *Chicago Daily Law Bulletin* before the Judiciary Committee considered and voted upon Ms. Kagan's nomination.

Upcoming CLE programs

To register, go to www.isba.org/cle or call the ISBA registrar at 800-252-8908 or 217-525-1760.

September

Wednesday, 9/1/10- Teleseminar—Selection and Use of Expert Witnesses. 12-1.

Wednesday, 9/8/10- Teleseminar—Health Care & Estate Planning: Vital Issues at Each Stage of Planning Process. 12-1.

Thursday, 9/9/10- Teleseminar—LIVE REPLAY: Art of the Equity Deal for Startup and Growth Companies. 12-1.

Friday, 9/10/10- Teleseminar—LIVE REPLAY: Art of the Equity Deal for Middle Market Companies. 12-1.

Friday, 9/10/10- Webinar—Advanced Legal Research on Fastcase. *An exclusive member benefit provided by ISBA and ISBA Mutual. Presented by the Illinois State Bar Association. 12-1.

Tuesday, 9/14/10- Teleseminar—Choice of Entity/Form for Nonprofits. 12-1.

Tuesday, 9/14/10- Webinar—Continuing Legal Research on Fastcase. *An exclusive member benefit provided by ISBA and ISBA Mutual. Presented by the Illinois State Bar Association. 12-1.

Thursday, 9/16/10- Chicago, Chicago History Museum—GAIN THE EDGE!® Negotiation Strategies for Lawyers. Master Series Presented by the Illinois State Bar Association. 8:30-4:00.

Thursday, 9/16/10- Live Webcast—GAIN THE EDGE!® Negotiation Strategies for Lawyers. Master Series Presented by the Illinois State Bar Association. 8:30-4:00.

Thursday, 9/16/10- Friday, 9/17/10- Robinson, Lincoln Trail College—Attorney Education in Child Custody and Visitation Matters. Presented by the ISBA Bench and Bar Section; co-sponsored by the ISBA Family Law Section and the ISBA Child Law Section. 8:30-4:30, 8:30-12:30.

Friday, 9/17/10- Live Webcast—The Health Information Technology for Economic & Clinical Health Act: A Brave New HIPAA. Presented by the ISBA Healthcare Section. 10-12.

Friday, 9/17/10- Chicago, ISBA Regional Office—The Health Information Technology for Economic & Clinical Health Act: A Brave New HIPAA. Presented by the ISBA Healthcare Section. 10-12.

Friday, 9/17/10- Chicago, ISBA Regional Office—Hot Topics in Tort Law- 2010. Presented by the ISBA Tort Law Section. 1-4:15.

Friday, 9/17/10- Teleseminar—LIVE REPLAY: Ethics for Business Lawyers. 12-1.

Tuesday, 9/21/10- Teleseminar—Joint Ventures in Real Estate: Structure and Finance. 12-1.

Wednesday, 9/22/10- Teleseminar—Joint Ventures in Real Estate: Operation and Tax. 12-1.

Thursday, 9/23/10- Chicago, ISBA Regional Office—Experts and Litigators on Issues Impacting Children & Custody in Family Law. Presented by the ISBA Family Law Section. 8-6.

Friday, 9/24/10- Teleseminar—LIVE REPLAY: Fundamentals of Exempt Taxation. 12-1.

Friday, 9/24/10- Springfield, Illinois Primary Healthcare Association—Don't Make My Green Acres Brown: Environmental Issues Affecting Rural Illinois. Presented by the ISBA Environmental Law Section. 9-5.

Tuesday, 9/28/10- Teleseminar—Art of the Debt Deal for Startup and Growth Companies. 12-1.

Wednesday, 9/29/10- Teleseminar—Art of the Debt Deal for Middle Market Companies. 12-1.

Thursday, 9/30/10- Teleseminar—LIVE REPLAY: Restructuring Trusts. 12-1.

Thursday, 9/30/10- Chicago, ISBA Regional Office—Recent Developments in State and Local Tax- 2010. Presented by the ISBA State and Local Tax Committee. 8:45-12.

October

Friday, 10/1/10 – Chicago, ISBA Regional Office—Countering Litigation Gamesmanship. Presented by the ISBA General Practice Solo & Small Firm Section, Co – Sponsored by the Federal Civil Practice Section. 9-5.

Friday, 10/1/10 – Live Webcast—Countering Litigation Gamesmanship. Presented by the ISBA General Practice Solo & Small Firm Section, Co – Sponsored by the Federal Civil Practice Section. 9-5.

Tuesday, 10/5/10- Teleseminar—Pre-Mortem Estate and Trust Disputes. 12-1.

Wednesday, 10/6/10- Webinar—Continuing Legal Research on Fastcase. *An exclusive member benefit provided by ISBA and ISBA Mutual. Presented by the Illinois State Bar Association. 12-1.

Wednesday, 10/6/10- Webinar—Virtual Magic: Making Great Legal Presentations Over the Phone/Web (invitation only, don't publicize). Presented by the ISBA. 8-5.

Thursday, 10/7/10- Chicago, ISBA Regional Office—Probate/Estate Administration Boot Camp. Presented by the ISBA Trust and Estates Section. 8:30-4:30.

Friday, 10/8/10- Carbondale, Southern Illinois University, Classroom 204—Divorce Basics for Pro Bono Attorneys. Presented by the ISBA Committee on Delivery of Legal Services. 1-4:45. Max 70.

Friday, 10/8/10- Chicago, ISBA Regional Office—Health Care Reform. Presented by the ISBA Employee Benefits Section; co-sponsored by the ISBA Health Care Section. 9-3.

Monday, 10/11/10- Chicago, ISBA Regional Office—Advanced Worker's Compensation- 2010. Presented by the ISBA Workers' Compensation Section. 9-4:30. ■

Recent appointments and retirements

1. The Illinois Supreme Court, pursuant to its constitutional authority, has appointed the following to be Circuit Judge:
   - Celia G. Gamrath, Cook County Circuit, 8th Subcircuit, June 10, 2010
   - Hon. Michael D. McHaney, 4th Circuit, July 3, 2010
   - Mathew L. Sullivan, 5th Circuit, July 9, 2010
   - Hon. Richard A. Brown, 20th Circuit, July 14, 2010

2. The Illinois Supreme Court, pursuant to its constitutional authority, has appointed the following to the Appellate Court:
   - Hon. Thomas R. Appleton, 4th Dist., June 4, 2010

3. The Judges of the Circuit Court have appointed the following to be Associate Judges:
   Joshua A. Meyer, 7th Circuit, June 1, 2010
   Raymond A. Cavanaugh, 9th Circuit, July 6, 2010
   - Allan F. Lolie, Jr. 4th Circuit, July 8, 2010

4. The following Judges have retired:
   - Hon. John J. Moran, Cook County Circuit, July 1, 2010
   - Hon. John R. Clerkin, Associate Judge, 9th Circuit, July 2, 2010
   - Hon. Charles R. Hartman, 17th Circuit, July 2, 2010
   - Hon. Kathleen P. Moran, 4th Circuit, July 2, 2010
   - Hon. Ronald L. Pirrello, 17th Circuit, July 2, 2010
   - Hon. Robert T. Hall, Associate Judge, 7th Circuit, July 6, 2010
   - Hon. Michael W. Stuttley, Cook County Circuit, 2nd Subcircuit, July 6, 2010
   - Hon. Lawrence P. Fox, Associate Judge, Cook County Circuit, July 7, 2010
   - Hon. William A. Schuwerk, Jr., 20th Circuit, July 7, 2010
   - Hon. Richard E. Scott, 5th Circuit, July 8, 2010
   - Hon. Frank DeBoni, Associate Judge, Cook County Circuit, July 12, 2010
   - Hon. Mary K. Rochford, Cook County Circuit, 12th Subcircuit, July 23, 2010
   - Hon. Perry R. Thompson, 18th Circuit, July 30, 2010
   - Hon. John A. Mehlick, Associate Judge, 7th Circuit, July 31, 2010
   - Hon. Edward P. O'Brien, Cook County Circuit, 11th Subcircuit, July 31, 2010
   - Hon. Michael J. O'Malley, 20th Circuit, July 31, 2010
   - Hon. Mark A. Schuering, 8th Circuit, July 31, 2010
   - Hon. Joseph P. Skowronski, Jr., Associate Judge, 5th Circuit, July 31, 2010
   - Hon. Gordon R. Stipp, Associate Judge, 5th Circuit, July 31, 2010 ■

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