

General Practice, Solo & Small Firm

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

Incoming Chair's column: An introduction and welcome to the 2017-2018 bar year

BY MARY ANNE GERSTNER

Welcome to the 2017-2018 bar year!

My name is Mary Anne Gerstner. I am incoming Chair of the General Practice, Solo and Small Firm Section Council. I

am engaged in general practice with an emphasis on litigation with the Law Offices Gerstner & Gerstner in Chicago. Thank

Continued on next page

Incoming Chair's column: An introduction and welcome to the 2017-2018 bar year

1

Out-going Chair's column

1

Champ Davis selected as recipient of 2017 Matthew Maloney Tradition of Excellence Award

4

Estate planning during dissolution proceedings

6

Out-going Chair's column

BY EBONY R. HUDDLESTON

My tenure as Chairperson of the General Practice, Solo & Small Firm Section Council during the 2016-2017 Illinois State Bar Association's bar year has been a great experience. Not only have I continued to learn valuable information pertaining to the everyday practice of law, I have also continued to bond with the ISBA community. The ISBA has a wealth of information and resources to aid attorneys on our law career journeys. The vast opportunities to network with my fellow practitioners in an effort to improve

my practice and the practice of law as a whole are boundless. By participating in and chairing this section council, I proudly took part in evaluating recent case law and proposed legislation, contribute to the newsletter and provide guidance on great ideas for continuing legal education courses (CLE).

Most importantly for me as chair, I was keenly aware that the foundation for the existence of our legal careers is our clients. By focusing on this, my approach

Continued on next page

(Notice to librarians: The following issues were published in Volume 45 of this newsletter during the fiscal year ending June 30, 2017: July, No. 1; August, No. 2; December, No. 3; March, No. 4).

If you're getting this newsletter by postal mail and would prefer electronic delivery, just send an e-mail to Ann Boucher at aboucher@isba.org



Incoming Chair's column

CONTINUED FROM PAGE 1

you for the honor and privilege of serving as Chair. I invite your participation and input. If you would like to write an article for the General Practice, Solo and Small Firm newsletter, or to speak at a continuing legal education seminar, we will try to make it happen. All suggestions are appreciated. We will try to keep you updated. The Editor's Column in our newsletter written by John T. Phipps frequently features articles on current technology for solo and small firm practitioners. The newsletter also contains relevant and useful newsletter articles in a variety of substantive areas of the law which can be accessed going back to 1999 on the ISBA website. Keep in mind that our Section selects the Matthew Maloney Tradition of Excellence Award recipient. This is the only ISBA award given in recognition of an individual lawyer in a general, solo, or small firm practice. Please consider making a nomination when nominations open in November, 2017.

As part of this column, I would like to point out some recent developments:

- ISBA Professional Conduct Advisory Opinion No. 17-02, March 2017 addresses the records a lawyer must retain and maintain, and for what period of time, and includes, with certain exceptions, a retention period of seven years for ordinary closed file materials.
- Starting June 1, 2017, certain Judges in the U.S. District Court for the Northern District of Illinois will participate in a three-year Mandatory Initial Discovery Pilot Project in civil cases. As a part of this project, before undertaking other discovery, parties will be required to respond to a mandatory initial discovery request set forth in a Standing Order, and to disclose the requested information, including documents, ESI, and tangible things relevant to the parties' claims or defenses, whether favorable or unfavorable, and regardless of whether they intend to use the information in presenting their claims



Pictured above: Incoming Chair Mary Anne Gerstner (left) and outgoing Chair Ebony R. Huddleston (right).

and defenses. For a full description, see Standing Order Regarding Mandatory Initial Discovery Pilot Project on the Court's website.

Effective July 1, 2017 beginning with the two-year reporting period ending June 30, 2019, the minimum six hours of Professional Responsibility MCLE requirement will include at least one hour of diversity and inclusion, and at least one hour in the area of mental health and substance abuse. See, Amended Supreme Court Rule 794(d).

I hope that 2017-2018 will be a success for the Members of the General Practice, Solo and Small Firm Section. ■

About the author: Mary Anne Gerstner practices law with the Law Offices Gerstner & Gerstner, 53 W. Jackson Boulevard, Suite 1538, Chicago, Illinois 60604. She is engaged in general practice with a focus on general litigation and commercial litigation, labor and employment, and wills and trusts. She can be reached at 312-435-0040, or magerst@sbcglobal.net, or through the firm's website, www.gerstnerlawfirm.com.

General Practice, Solo & Small Firm

Published at least four times per year. Annual subscription rates for ISBA members: \$25.

To subscribe, visit www.isba.org or call 217-525-1760.

OFFICE

ILLINOIS BAR CENTER
424 S. SECOND STREET
SPRINGFIELD, IL 62701
PHONES: 217-525-1760 OR 800-252-8908
WWW.ISBA.ORG

EDITORS

John T. Phipps
Hon. Edna Turkington-Viktora

MANAGING EDITOR / PRODUCTION

Katie Underwood

✉ kunderwood@isba.org

GENERAL PRACTICE, SOLO & SMALL FIRM SECTION COUNCIL

Mary A. Spellman Gerstner, Chair
Van-Lear P. Eckert, Vice-Chair
Edward Graham, Jr., Secretary
Ebony R. Huddleston, Ex-Officio
Deidre Baumann
Chad S. Beckett
Ashley D. Davis
Carl R. Draper
Timothy E. Duggan
Robert Don Fink
Jennifer L. Friedland
Roza B. Gossage
Jewel N. Klein
Stephen M. Komie
L. Dominic Kujawa, Jr.
Ashanti Madlock Henderson
Lisa I. McLeod
Mary F. Petruchius
John T. Phipps
Hon. James M. Radcliffe, III
Hon. Edna Turkington-Viktora
Joseph F. Vosicky, Jr.
Mark D. Weis
Dennis J. Orsey, Board Liaison
Mary M. Grant, Staff Liaison
Timothy J. Storm, CLE Committee Liaison

DISCLAIMER: This newsletter is for subscribers' personal use only; redistribution is prohibited. Copyright Illinois State Bar Association. Statements or expressions of opinion appearing herein are those of the authors and not necessarily those of the Association or Editors, and likewise the publication of any advertisement is not to be construed as an endorsement of the product or service offered unless it is specifically stated in the ad that there is such approval or endorsement.

Articles are prepared as an educational service to members of ISBA. They should not be relied upon as a substitute for individual legal research.

The articles in this newsletter are not intended to be used and may not be relied on for penalty avoidance.

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

Out-going Chair's column

CONTINUED FROM PAGE 1

to and participation in our meetings was to make sure that we left each meeting with a better or improved way to refine our practice, understand the law and distribute that knowledge and information to other attorneys for the good of our clients. Each active member of the section council made great contributions to practitioners by sharing part of our lives with each other and the ISBA. Whether it was sharing experiences of cases we were currently handling or handled in the past in a practice tip or analyzing legislation that effects various practice areas, our dedication to carrying out the tasks bestowed on our council was genuine and consistent. This council works hard to produce quality services and information to the ISBA and all attorneys throughout this state. I am confident that this council will continue to improve our practice and the ISBA as a whole.

This section council has produced great articles for our newsletters and CLEs to keep practitioners up to date on the latest developments in various areas of the law. To those attorneys who have had the benefit of reading our newsletters and/or participating in our CLE courses I would posit that all participants take away more knowledge than before being exposed to those platforms. The benefits bestowed upon practitioners who view our information allow us to provide quality representation to our clients.

I happily turnover the chairperson seat to Mary Anne Gertsner for the 2017-2018 bar year. I am confident of the leadership and diligent commitment that she will bring to the section council and ISBA membership. I am excited to participate on this council as ex-officio and anticipate that this new bar year will be full of wonderful programs, newsletters and CLEs. It is a privilege to serve on this council and I look forward to

making quality contributions to the council under Mary Ann's tutelage. ■

About the Author: Ebony R. Huddleston is Assistant Vice President at Farrell, Hamilton & Julian, P.C. in Godfrey, IL. She is admitted to practice in the State of Illinois, Southern District of Illinois, Central District of Illinois and the United States Tax Court. Some of her areas of practice include civil litigation, taxation, bankruptcy, estate planning, real estate and family law. As an active member of the Illinois State Bar Association, Ebony is the outgoing Chair of the General Practice, Solo & Small Firm Section Council and is the council's CLE coordinator, and she serves on the Assembly. She is also a member of the Racial & Ethnic Minorities and the Law Standing Committee. Some of her other activities include serving on the board of directors for Land of Lincoln Legal Assistance Foundation and IMPACT CIL in Alton, Illinois. She has coordinated and presented on a variety of issues such as Navigating the Residential Foreclosure Maze, Hanging Out Your Shingle, Credit Union Convention and Expo, Nuts & Bolts of the Firearm Concealed Carry Act. She has been recognized as an Illinois Super Lawyer Rising Star for the past several years.

Looking for a title underwriter that offers ease of use, superior service, and a 50-year history of supporting lawyers?

There's only one.



Consider this: ATG members make more money, receive individual training, use intuitive ATG technology, and have access to the finest underwriting staff in the business. ATG is the only title insurance company that advocates the interests of lawyers and the clients they serve. Join ATG today, you'll be glad you did.



Check out what our members say about us.



ATG

ATTORNEYS' TITLE GUARANTY FUND, INC.

800.252.0402 www.atgf.com atginfo@atgf.com

Champ Davis selected as recipient of 2017 Matthew Maloney Tradition of Excellence Award

BY MARY ANNE GERSTNER

The General Practice, Solo and Small Firm Section Council is pleased to announce that Champ Davis has been selected as the winner of the ISBA 2017 Matthew Maloney Tradition of Excellence Award. Champ earned a Bachelor of Science degree in General Engineering at the University of Illinois in 1963 and a Juris Doctor degree at the University of Illinois College of Law in 1966. He is Senior Counsel at Davis McGrath LLC, comprised of eight lawyers, in Chicago, Illinois. Champ has practiced law for more than 50 years. He concentrates his practice in commercial litigation and alternative dispute resolution.

This award has special meaning for the General Practice, Solo and Small Firm Section.

The award is named in memory of Princeton attorney Matthew Maloney, a former Chair of the ISBA General Practice,

Solo and Small Firm Section Council, and is given to lawyers in a general, solo, or small firm practice who demonstrate the passion, zealous advocacy, and personal service to the profession for which Matthew Maloney was known and respected. Champ Davis exemplifies this tradition of excellence through his reputation for professional excellence, fairness and honesty, and a history of giving back to the legal profession. He has been listed as an "Illinois Super Lawyer," and recognized as a "Leading Lawyer" in commercial litigation and computer and technology law. He has been an arbitrator and a mediator in many arbitrations and mediations. Champ has served as an ARDC Hearing Board Member since 1987, and currently chairs an ARDC Hearing Board Panel in Chicago. He has a long history of active participation in the ISBA, as a long-time member and former Chair of the

ISBA Professional Conduct Committee, where he continues to serve, and as a former Chair of the ISBA Attorney Registration and Disciplinary Committee and of the ISBA Alternative Dispute Resolution Section Council. Champ has been a leader in continuing legal education, as a speaker, author, and Adjunct Professor at Chicago-Kent College of Law. We thank Champ Davis for continuing this tradition of excellence and congratulate him for this well-deserved honor. ■

About the author: Mary Anne Gerstner practices law with the Law Offices Gerstner & Gerstner, 53 W. Jackson Boulevard, Suite 1538, Chicago, Illinois 60604. She is engaged in general practice with a focus on general litigation and commercial litigation, labor and employment, and wills and trusts. She can be reached at 312-435-0040, or magerst@sbcglobal.net, or through the firm's website, www.gerstnerlawfirm.com.

ISBA LAW ED
CLE FOR ILLINOIS LAWYERS

SAVE THE DATE

**Title VII Now Covers Sexual Orientation -
The Law That Made History**

September 13, 2017 • 12 p.m. Central • Live webcast

CLE Credit: 2.0 MCLE • Presented by Labor & Employment

FREE ONLINE CLE:

All eligible ISBA members can earn up to 15 MCLE credit hours, including 6 PMCLE credit hours, per bar year.

For more information: www.isba.org/cle/upcoming

Learn about the groundbreaking case that has changed the labor and employment landscape and what it means for your clients!

In an en banc opinion, the 7th Circuit has now added Sexual Orientation as a Protected Classification under Title VII, making this a first in the country ruling that may or may not create a sea of change in anti-discrimination laws and the law, in general, as it relates to sexual orientation.

Member Price: \$60.00



Your Office

AWAY FROM THE OFFICE

At ISBA Mutual, you can find it all... a quiet & secure space to meet, a convenient place for your next event, or just a friendly spot to relax. Equipped with state-of-the-art technology and centrally located in downtown Chicago, our spaces are designed just for Illinois lawyers.

- ▶ **Micro-offices**
- ▶ **Conference rooms**
- ▶ **Café with a view**
- ▶ **Free WiFi**

For more information, or to request our space brochure, call 800 473-4722 or drop by, today!



ISBA Mutual
Lawyers' Malpractice Insurance

Estate planning during dissolution proceedings

BY LAUREN EVANS DEJONG

My first job as a lawyer was with a firm that did a lot of divorce work. I did estate planning even then, and I found myself being called on to create estate plans for the firm's clients at the conclusion of dissolution proceedings.

Over time it became clear that there was a need to do estate planning for clients during the course of dissolution proceedings. People died before they became divorced. People became ill and needed assistance with their finances.

There is no limit to the estate planning vehicles that can be used during the pendency of dissolution proceedings. Virtually everything that can be done outside of dissolution proceedings, can be done during dissolution proceedings, based of course, on the circumstances of the individual. However, there are some basics that can certainly benefit each individual going through a divorce.

These include:

- Changing beneficiary designations
- Preparing a statement regarding access to digital assets
- Creating/revising powers of attorney
- Creating/revising a will
- Creating/revising revocable trusts

I. Changing Beneficiary Designations

Changing beneficiary designations is pretty straight forward. Clients may want to change the beneficiary designations of their life insurance policies, individual retirement accounts, land trusts and annuities. Clients may have additional assets which have beneficiary designations which they may want to change, such as transfer on death or payable on death bank or brokerage accounts, land conveyed by a transfer on death deeds and employee benefits. For certain clients, the thought of their estranged spouse receiving these assets, instead of their children or another loved one, strains the senses.

Be aware that beneficiary designations

of certain assets, such 401(k)s, 403(b)s and pensions, cannot be changed from the spouse without the spouse's written consent.

II. Preparing a Statement Regarding Access to Digital Assets

There is a new law in Illinois effective August 12, 2016 named the Revised Uniform Fiduciary Access to Digital Assets Act, 755 ILCS 70/1 et seq., which allows someone to access another's digital assets. The Act provides a priority system for individuals to specifically control disclosure of digital assets and content of electronic communications.

The definition of digital assets in the Act encompasses a broad range of electronic records, including email, social media accounts and documents stored in the cloud.

Individuals can use online tools established by providers to direct disclosure of digital assets. Online tools currently available include Google's Inactive Account Manager and Facebook's Legacy Contact. If an online tool is used it takes precedence over any other method of directing disclosure.

If no online tool is used or one is not available, a statement allowing or prohibiting disclosure can be included in an individual's power of attorney, will or trust or stand-alone document.

If these tools are not used, the provider's terms of service will determine who has access, to what information and when. If access is allowed by the terms of service, it will most likely allow access to a spouse, upon certain conditions.

Finally, the Act provides a hierarchy of disclosure based on the type of fiduciary and the type of electronic record sought to be disclosed.

Clearly, if one is going through a dissolution proceeding, taking control of one's digital assets is paramount. Many

clients will not want their spouse, who they hope to soon call their ex, to have access to their e-mails, Facebook or Instagram accounts, financial or banking information, diaries or other personal information. To the extent that any of this is discoverable, the spouse can receive it through the proper channels, but not without the client's knowledge or control.

III. Create/Revise Powers of Attorney

In Illinois, there are two types of statutory powers of attorney – health care and property. The health care power of attorney allows someone to make health care and personal decisions for another. This includes end of life decisions, organ donation, decisions as to medications, decisions as to where one lives, including placement in nursing homes and psychiatric facilities, and whether a person is buried or cremated. The power of attorney for health care also allows access to medical records.

Most clients will not want their soon-to-be ex to have authority to take any of the above listed actions or have access to medical records. If that is the case, the first step for a client with a power of attorney for health care is to revise it immediately if it names the spouse as agent.

Second, if the client does not have a power of attorney for health care, you should recommend that they create one. Why? If a person has not planned for incapacity, whether short or long term, the law makes presumptions for them. The Health Care Surrogate Act, 755 ILCS 40/1 et seq., provides a priority list of those who can take action, beginning, of course, with the patient's spouse.

The power of attorney for property can be even more dangerous than the health care power. The power of attorney for property allows someone to manage another's financial assets. It's very broad. It allows access to bank, brokerage and

retirement accounts. Not only can money be withdrawn, but the named agent can obtain statements, change beneficiaries, gain access to a safe deposit box, execute a mortgage, borrow money and more.

Again, one can see the risk of putting this authority in the wrong hands. If your client has an existing power of attorney for property, it would be wise to have your client either revise the power of attorney for property removing the spouse and adding a truly trusted friend or family member as agent, or simply revoking the power of attorney.

IV. Revise/Create a Will

If your client has a will, it is important that your client consider revising the will. Many couples have wills that leave everything to each other. When someone is going through a divorce, that may be the last thing they want. In such case, the client should revise the will to provide for their children, parents, siblings, charities – any people or organizations they genuinely want to provide for in the event of their death.

That being said, a spouse can renounce the will. If the client dies giving all their assets to someone other than the spouse, the spouse can renounce the will and elect to take a third of the decedent's estate. But the spouse has to make that election.

In addition, the client should consider changing the executor from the spouse to another individual or a financial institution. The will was probably drafted to provide that the spouses were each other's executor. The executor is the person who administers the estate – pays the bills, files tax returns and distributes assets. The executor does not need to be the spouse. It's time to make the executor a friend, family member or financial institution.

The client should also look at the guardian provisions. If the client dies, the child's other parent will be guardian. But what if the client doesn't die first or the client dies first but the other parent dies without naming a guardian? It's also possible that the other parent may not want to be guardian or is not fit to be guardian. The client should name a guardian and successor guardian that he or she feels

comfortable having custody of his or her children.

If the client does not have a will, he or she should create one. Without a will, the laws of intestacy provide that if the decedent has no children, the spouse will receive one hundred percent (100%) of the decedent's estate. If there are children, the spouse receives fifty percent (50%). Compare this with the spouse's right to renounce the will and receive a third.

In addition, if there is no will, an administrator is appointed to fill the role of executor. The priority given by the probate act for naming an administrator begins with the spouse.

V. Revise/Create a Revocable Trust

An alternative method of disposing of assets is a revocable trust. A revocable trust provides an individual with all the benefits a will provides. An individual can name the beneficiaries they desire to receive their assets. An individual can name their trustee who can handle the administrative matters of the estate upon their death, and also upon their incapacitation.


A benefit to a trust is that a spouse

cannot renounce a trust. So if the spouse is not named as a beneficiary, it cannot elect to renounce and receive a third of the assets – the spouse receives nothing.

This only works however, if the trust is funded during the client's lifetime. This means that the client's assets are titled in the name of the trust, rather than the client's name individually. If a trust exists but is not funded, the assets are administered according to the client's will or according to the laws of intestacy if no will exists.

In conclusion, it is important to remember while advising your divorce clients, that estate planning can be done at any time, even during dissolution of marriage proceedings. Many estate planning vehicles, including those included in this article, can be revoked or amended at any time, whether to comply with a court order, a change of circumstances, or otherwise. ■


About the Author: Lauren Evans DeJong is a member of the General Practice, Solo and Small Firm Section Council, practicing at Stahl Cowen Crowley Addis, LLC, Chicago, Illinois, in the areas of estate planning and administration, tax and business planning.



**YOU'VE GOT
ONE SHOT.
Make it count.**

**Call Nancy to find out how
an ad in an ISBA
newsletter can make
the difference in
your business.**

**800-252-8908
217-747-1437**



**GENERAL PRACTICE,
SOLO & SMALL FIRM**

ILLINOIS BAR CENTER
SPRINGFIELD, ILLINOIS 62701-1779

AUGUST 2017

VOL. 46 NO. 1

Non-Profit Org.
U.S. POSTAGE
PAID
Springfield, Ill.
Permit No. 820



***THE ONLY BAR ASSOCIATION
REPRESENTING THE INTERESTS
SOLELY OF REAL ESTATE
ATTORNEYS IN ILLINOIS***

**ILLINOIS REAL ESTATE
LAWYERS ASSOCIATION**
1701 East Woodfield Road | Suite 910
Schaumburg, Illinois 60173
847.273.8700 | 847.273.8701 Fax
www.irela.org