



ILLINOIS STATE
BAR ASSOCIATION

THE CATALYST

The newsletter of the ISBA's Standing Committee on Women and the Law

Chair's Column

By E. Lynn Grayson¹

Given the progress of women attorneys in the legal profession, the need for or relevance of women's bar associations, including similar groups existing within traditional bar associations, often is questioned. While women attorneys have made tremendous strides in the legal profession, challenges remain that adversely impact the equality of opportunities available for women to succeed personally and professionally. To address a variety of common concerns and to give voice to issues unique to women, women's bar associations remain as important now as these organizations proved to be in the past.

Women's bar associations were established during a time in our history when the legal profession was not as welcoming to women attorneys. In the past, traditional bar associations did not actively support the entrance of women attorneys into the profession and likewise, did not provide social, mentoring or learning

opportunities for them. As a result, women attorneys began to form their own associations to provide much needed mentoring networks, to achieve a specific goal or objective (such as getting a woman on the bench)

or sometimes just as a means to share common experiences and day-to-day challenges in a supportive setting. Since the establishment of the Equity Club at the University of Michigan in 1886, women law students and attorneys have continued to form legal organizations on their own. Some of the oldest bar associations still in existence today include the National Association of Women Lawyers (1899), Women's Bar Association of Illinois (1914), Florida Association of Women Lawyers (1915), Women's Bar of the District of Columbia (1917) and the Queen's Bench of San Francisco (1921).

Through the good work of many bar leaders, bar associations have made it a priority to provide a more welcoming environment for all attorneys and to promote and foster greater diversity within these organizations. This is certainly true within the ISBA as demonstrated by our leadership's commitment to diversity and the advancement of diverse attorneys within the ISBA. This committee appreciates the ongoing support it enjoys from the ISBA leadership and professional staff. Without such support, we would be unable to advance our varied interests in promoting women attorneys and raising awareness about significant legal issues of importance to us and the membership we represent.



E. Lynn Grayson, Chair

One key example is the Save Our Sisters program we co-sponsored titled "Trafficking of Women and Girls: Forced Labor, Forced Prostitution and Hope," hosted by Jenner & Block in Chicago on October 7, 2008. This program series is focused on raising awareness about the plight of women and children in areas of conflict around the world -- an initiative led by women's bar associations in Illinois coming together to draw attention to these concerns and to potentially raise monies to support organizations providing aid and support to these women in need. The sold out October 7th program addressed issues and legal challenges associated with human trafficking in the United States and abroad and highlighted the economic empowerment work of Hagar International working with women in Cambodia.

Other key initiatives this year for our committee include:

- Efforts to restore Victims of Crime Act ("VOCA") funds used to support a variety of legal aid, domestic violence and children's services statewide;
- Sponsoring a program at 2008 Mid Year Meeting titled "Ethically and Effectively Representing Clients With Substance Abuse and Mental Health Problems" to be held on Friday, December 12th during the a.m. CLE session;
- Support for the 2009 Mid Year Meeting program on diversity and human rights led by Incoming President John O'Brien;
- International Women's Day luncheon event on March 6, 2009;
- Participation in the March 6-7, 2009 Ms. JD program hosted by Northwestern University Law School's Women's Law Society;
- Panel discussion and reception as outreach to the University of Illinois

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women law students on April 23, 2009; and,

- Co-sponsor the reception with the Minority and Women Participation Committee at St. Louis School of Law in cooperation with ISBA President Jack Carey.

This committee is busy this year working to reach out to women law students

and attorneys statewide. The sampling of this committee's work noted above confirms the relevance and importance of women's bar associations and committees like ours for women attorneys.

If you would like to know more about the Women and the Law Committee, write an article for this newsletter and/or bring any issue, topic or concern to

our attention, we invite you to join us at our next meeting on Friday, December 12, 2008, from 2:00 p.m. - 4:00 p.m. at Jenner & Block in Chicago. In the alternative, please feel free to contact me at lgrayson@jenner.com.

We look forward to hearing from you and your support for our ongoing projects and initiatives.

Atending the October 7th SOS program in Chicago, co-sponsored by the ISBA Women and the Law Committee, are ISBA members, from left to right: Lynn Grayson, Chair of the Women and the Law Committee, Sandra Crawford, Secretary of the Women and the Law Committee, Sharon Eiseman, Past Chair of the Women and the Law Committee, Jewel Klein, Michele Jochner and Tish Spunar-Sheats, Women and the Law Committee member.



New law offers better protection for victims of violence (but we're not where we need to be quite yet)

By Sharon L. Eiseman

Recently, our State Legislature passed and the Governor signed into law as PA095-0999 an amendment to the 2006 Safe Homes Act ("SHA"). Found at 765 ILCS 750/1 et seq., the SHA is a relatively new addition to state statutes that aim to protect victims of domestic and sexual abuse; the amendment further facilitates the protections. Because the overwhelming number of victims of such violence are women and children, this article uses the female gender throughout, but with the clear appreciation that any individual can be subjected to abuse and is entitled to seek the benefits of the SHA.

According to its stated purpose, the SHA is intended to "enable victims of

domestic or sexual violence and their families to flee existing dangerous housing in order to leave violent or abusive situations, achieve safety, and minimize the physical and emotional injuries from domestic or sexual violence, and to reduce the devastating economic consequences thereof." 765 ILCS 750/5. In essence, the SHA permits a woman living in private rental housing (public housing is excluded from coverage), along with any endangered children, to vacate her rental premises and terminate her written or oral lease when her physical safety and emotional wellbeing are threatened by an abuser. If a woman in such danger has a written lease, she may also change the locks on her unit

in order to keep the abuser out of the home.

To avail herself of the SHA's protection, the tenant must face a 'credible imminent threat' (defined in Section 10) on the residential premises, and give the landlord written notice three days before or after she leaves the home. If the tenant follows this process and also satisfies the other elements set forth in Section 15(b), including, with some exceptions, a showing that the sexual violence occurred not more than 60 days prior to the date of giving notice to the landlord, she is entitled to an affirmative defense against the landlord's claims for rent and/or breach of lease, and is not liable for any rent that accrues

for the period after she vacates the premises.

If the woman decides to stay on the premises (possibly with her children and/or other protected persons in the unit) but wants the lock changed, she may request the landlord to change it. The request must be in writing and signed by all tenants who are lessees under the lease, and it must be based upon a reasonable belief that "one of the tenants or a member of tenant's household is under a credible imminent threat of domestic or sexual violence at the premises from a person who is not a lessee under the lease." At least one of the several forms of evidence listed in Section 20 must accompany the notice, such as a statement from a victim services employee or rape crisis organization, or court or police evidence of domestic or sexual violence. Following receipt of notice, the landlord has 48 hours to change the locks or give the tenant permission to do so.

The amendment, set forth in a new Section 27 of the SHA, buttresses the protections for abused or threatened women by prohibiting landlords from disclosing (1) information to a prospective landlord that a tenant has exercised her rights under the SHA or (2) information the tenant has shared with her landlord in her exercise of those rights. By written consent, this prohibition may be waived by the tenant or member of the tenant's household. 765 ILCS 750/27. Any landlord who violates the prohibition faces potential civil liability of up to \$2,000 in actual damages resulting from the disclosure, as well as payment of attorney fees for the prevailing plaintiff.

Having the benefits of this legislation could be comforting and even useful, but there are many hurdles for victims to overcome in their attempts to pursue the remedies available under the SHA. Getting out of the rental premises may be necessary, but supportive services must be readily available and accessible so the fleeing woman does not end up on the streets either alone or with her children. Additionally, some of the requirements imposed upon the tenant, especially the one for obtaining signatures of all lessees in order to get a lock changed, can be so time-consuming and burdensome that a woman in danger of suffering abuse or further abuse is likely be attacked before the necessary notice is obtained and presented to the landlord.

Despite the problems inherent in the SHA, its early advocates believed that getting it passed, even with compromises, was an important first step. Now the work on gradual amendments benefiting tenants, like the one discussed in this article, can continue. Further efforts are also needed to educate women and the communities in which they live, as well as landlords, about the SHA, and to disseminate information about social service and housing agencies that can assist women and their families exposed to domestic and sexual violence in exercising their rights under the SHA and finding alternative housing, employment and legal aid services. These resources may succeed in preventing landlords from hiring collection agencies to harass tenants who have left under the auspices of the SHA or wrongfully keeping those tenants' security deposits. As importantly, the resources will enable women who have taken these brave steps, many with children, to continue on the path to safety, increased self-esteem, and independence.

If you know of someone on either a personal or professional basis (a client or colleague) who is in need of protection from an abuser, additional information and guidance on how to utilize the resources of the SHA and assure that a landlord subject to its provisions is in full compliance with the law, refer her to Kate Walz, Senior Housing Attorney at the *Sargent Shriver National Center on Poverty Law* at 50 E. Washington St. in Chicago, Phone No. 312.263.3830. Another valuable resource is *Housing Opportunities for Women*, an organization that helps single mothers find affordable housing and employment that will enable them to stay in that housing. Britt Shawver, Executive Director of that Chicago group, can be reached at 773.454.1142. These individuals and their organizations, and others like them, should be supported in their missions, as they are working continually on reaching out to victims and the public, enlightening legislators on the need for passing legal remedies and law enforcement on the need for understanding victims' circumstances and for providing appropriate intervention in the cycle of violence, and generally advocating for development and funding of sufficient and relevant programs. The Shriver Center and H.O.W. can also offer materials and speakers.

The Catalyst

Published at least four times per year.

Annual subscription rate for ISBA members: \$20.

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

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

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Don't Miss This Easy-To-Use Reference Guide of Deadlines and Court Interpretations of Illinois Statutes

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This guide covers Illinois civil statutes of limitations, and amendments to them, enacted before September 1, 2008, as well as cases interpreting those statutes decided and released before September 1, 2008.

By Adrienne W. Albrecht, with an update by Gordon L. Lustfeldt



2008 Guide to ILLINOIS STATUTES OF LIMITATION

This new, updated Guide contains Illinois civil statutes of limitation enacted and amended before September 1, 2008. It provides information on deadlines and court interpretations of Illinois statutes. It has an index listing statutes by Act, Code, or by subject. The Guide is designed as a quick reference for practicing attorneys, helping them to initiate their legal proceedings in a timely fashion.

This new guide has been prepared by the **Honorable Adrienne W. Albrecht**, with an update by the **Honorable Gordon L. Lustfeldt**. Every effort has been made to ensure that the Guide is current, accurate, complete, and reflects Illinois statutes and cases through September 2008.

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Illinois has a history of some pretty good lawyers. We're out to keep it that way.

A wary world in Web 2.0

By Charles Lee Mudd Jr.

The emergence of new technologies always seems to be accompanied by casualties or victims of the darker, more nefarious uses of such technologies. Social networking sites prove no exception. Nor does the convergence of developments in digital photography and online platforms for the publication of photography and other visual media. This article briefly discusses recent injuries and litigation emanating from these developments.

Over the last few years, my practice has handled a number of privacy related litigation matters. Of these, a small percentage focused on the misuse of photographs. As examples, the cases involved the misuse of a child's photograph; the unauthorized taking and publication of photographs of a nude model sitting for a college art class; and, the unauthorized distribution of private, intimate photographs by e-mail.

With respect to this latter example, an individual distributed private, intimate photographs of his former partner naked to her employer, friends, and family. However, the distribution occurred solely by e-mail.

With the advent of social networking sites such as Facebook and MySpace, the distribution channels available to someone intent on causing harm through the distribution of private, intimate photographs has increased in choice, type and target audience. Where several years ago the distribution recipients represented a small, calculable number of individuals, the emergence of sites such as Facebook and MySpace has dramatically enabled media to reach thousands (if not millions) of individuals in a short amount of time. Unfortunately, this changing landscape provides individuals who wish to cause an individual harm a myriad of choices through which to do so.

Indeed, my firm has seen an increase in the number of situations where a former boyfriend, fiancée, spouse or partner has used Facebook, MySpace, YouTube or similar Web sites to upload private, intimate photographs or videos of their former (and sometimes existing) partners. Not only does the publication of media to these sites increase the extent of the distribution, some view-

ers of the photographs will often copy or download the photographs for their private use. Additionally, some viewers proceed one step further and upload the media to other sites – including adult-oriented Web sites. For example, private, intimate videos often find their way onto sites such as <www.youporn.com> and <www.dirtytube.com>, which allow user-submitted material. These sites often have sharing relationships with other adult Web sites. Consequently, a single publication can quickly become viral and, without proper handling, uncontrollable.

Responding to situations such as those described above requires precision and diligence. For, the most immediate objective should be the removal of the content wherever it can be found. Although litigation may later ensue, the primary objective for the attorney representing the client should be the mitigation of harm. However, in doing so, the attorney must absolutely be cognizant of the need and procedural methods required to preserve the evidence should the client later wish to file suit. This preservation should occur on two fronts: observational and systemic. The content of the Web pages containing the unauthorized content should be preserved. Additionally, efforts need to be made to ensure third party preservation of back-end evidence related to the publication of the unauthorized content.

At the same time, it is paramount that legal counsel be aware of the client's psychological state of mind. For, the unauthorized publication of private, intimate photographs represents an invasion of one's privacy and betrayal of one's trust. The extent to which these violations affect an individual will vary from person to person. However, there exists no dispute that the individual victims in such circumstances have been violated. Consequently, counsel must recognize this fact, be cautious and observant in counseling their clients, and ensure that every decision considers the ramifications of such a violation on the client's psyche.

Apart from the embarrassment of knowing the photographs and/or videos exist (even for a limited duration) on the Internet, the potential for the

photographs and/or videos to remain on the Internet for a significant amount of time cannot be understated. As previously discussed, the media can be copied from site to site. Additionally, Google and other search engines may cache the content of some Web sites and their respective pages. Because of this, an individual's name could be associated with the media. When one searches the individual's name, the unauthorized content could appear in search results. The impact of this is significant. Potential employers and other parties interested in reviewing an individual's history on the Internet can often find content that – although published without authorization – can lead to adverse consequences, such as a lost employment opportunity or terminated employment relationship.

Regrettably, the number of cases involving the publication of private, intimate photographs will likely continue to increase. Given the potential long-term harm that can be caused by such publications, proactive measures should be taken to educate individuals on the dangers of allowing themselves to be photographed. Consequently, in addition to reactive measures involved in the removal of content and pursuit of damages through litigation, our firm also counsels proactive measures that should be implemented. In this Internet-era, our mindsets must be Internet focused. In other words, an individual must consider the Internet-related consequences of any conduct in which he or she engages. "Do I want this photograph on <www.cnn.com>?" "Do I want this e-mail on the front page of the *New York Times*?" For those who remember the X-Files, it is difficult to ignore the mantra "Trust No One."

Charles Lee Mudd Jr. is the principal of Mudd Law Offices, a law firm with its main office in Chicago, Illinois. He graduated magna cum laude from Quinnipiac University School of Law in 1997.

After law school, Charles served as a law clerk for the Honorable John T. Sharpnack, Chief Judge of the Indiana Court of Appeals of Indiana and the Honorable Alan H. Nevas, U.S. District Court Judge in Bridgeport, Connecticut. After clerking for Judge Nevas, Charles joined Cummings & Lockwood, a full-service, mid-sized law firm in Connecticut,

as a litigation associate in its Stamford, Connecticut office.

In 2001, Charles and his wife, Katherine, returned to Chicago, Illinois where he established his own law practice. Mudd Law Offices is now in its 8th year with individual and business clients throughout the United States and the world.

Charles was admitted to the Indiana State Bar in 1997, the Illinois State Bar in 1998, the Connecticut State Bar in 2000, and the Utah State Bar in 2007. He remains an active mem-

ber of each of these state bars.

Charles is admitted to the Supreme Court of the United States as well as the Sixth and Seventh Circuits of the United States Courts of Appeals. He is admitted to the trial bar of the United States District Court, Northern District of Illinois. He is also admitted to the bars of the Northern District of Indiana, Central District of Illinois, Northern District of Florida, the District of Colorado, and the District of Utah.

Charles currently is on the adjunct fac-

ulty of John Marshall Law School where he has taught privacy and technology courses. He has taught Privacy in Cyberspace at the University of Connecticut School of Law as well as United States Government and United States History at Quinnipiac College and Indiana University-Purdue University at Indianapolis.

Charles can be contacted at Mudd Law Offices, 3114 West Irving Park Road, Suite 1W, Chicago, Illinois 60618.

“Who Me? A Law Professor?” aims to diversify law faculty

By *Suzanne Schmitz*

Did you know that 63 percent of the law professors in the U.S. are men? 70 percent of full professors are men. 74 percent of law professors are white or Caucasian.

Only 7 percent of law professors are African American and only 3 percent are Latino or Hispanic. 44 percent of all law professors come from only 11 law schools.

If you think there needs to be more diversity in the ranks of law school teachers, perhaps you should consider becoming a law professor. Or perhaps you know

someone who should. Law students deserve to see professors who look like they do. And the legal academy deserves to hear all the voices engaged in and affected by the law.

Southern Illinois University School of Law is holding workshops entitled “Who Me? A Law Professor?” to encourage those are considering – or who should consider – becoming a law professor. The workshop will be Thursday, December 11, at 6 pm, at the Sheraton Towers in Chicago, in conjunction with the Illinois State Bar Association Midwinter Meeting.

The workshop will cover: why being a law professor is a great profession, the process of applying to become a law professor, what law schools look for, what to do now to prepare for this profession. There will be handouts and ample time for questions and answers.

Please RSVP to Kristyw@siu.edu if planning to attend.

The statistics described in this article come from Association of American Law Schools Statistical Report on Law Faculty, 2007-2008, available at www.aals.org, and are based on self-reporting by faculty.

Health Savings Accounts: One option for small firms when a group health plan is unaffordable

By *Julie A. Neubauer, Downs Law Offices, P.C.*

As this election year comes to a close we have repeatedly heard the ideas and plans of politicians for how to improve the current health care crisis that millions of Americans now face. Today 47 million Americans are currently uninsured. The vast majority of uninsured Americans are employed but have no option for an employer-provided group plan. Left on their own, most individuals cannot afford to provide health care coverage for themselves and their families via individ-

ual plans that are subject to the whims of insurance company underwriters. In my own search for affordable options for health insurance, I came across an option that may bridge the benefits gap that exists today for small businesses and law firms alike. Small law firms can stay competitive and continue to subsidize their employees' benefits without having to take on the astronomical costs of a group plan, by contributing to employee owned Health Savings Accounts (HSA).

I am a relatively young woman, age

30, divorced, with no kids and just finishing my first year as a practicing attorney in a small private firm in Chicago. My firm does not provide an employee group health insurance plan. The cost is just too high, for both the firm and the employees to bear. On my own, I searched for an individual plan that I could afford while also paying rent, matured student loans and the incredible cost of creating a court-appropriate wardrobe. Quickly, it was clear to me that, although I feel pretty healthy, a pre-existing condition nearly

prevented my obtaining an individual plan as well. Alas, after weeks of begging all the various insurance companies to take me on, I was approved for a low premium, high deductible plan. Combining my monthly premiums, prescriptions and doctor visits, I have accrued about \$7,000 in health care costs so far in 2008 alone. Although, I make a decent salary, this expense has made it very difficult to make ends meet, forcing me to search out better options.

Some say that attorneys constitute the top percentages of Americans in earning potential, education level and potential for career growth. If the cost of healthcare has this detrimental of an effect on me, the devastation this country faces is astronomical. According to The Wall Street Journal, big companies on average spend more than \$6,000 per year on health insurance for each employee. Employer health care costs have risen an average of 15 percent each year over five years to an average of about \$700 per month per employee, according to surveys by The Kaiser Family Institute and The National Association of Health Underwriters. It is not surprising that 47 percent of America's small business owners provide no health care coverage at all. Health premiums costs have outpaced both the 2.2 percent growth in wages and 2.3 percent growth in inflation by five times as reported by the Kaiser survey. The average premium for single coverage rose 9.2 percent to \$3,383 annually.¹

HSA's are a fairly new option. They

were created as part of the Medicare Prescription Drug, Improvement and Modernization Act of 2003. HSA's are tax sheltered savings accounts that must be paired with a high-deductible individual health insurance plan. Employer contributions to HSA accounts have the following advantage over group insurance plans:

- HSA's are used in combination with high-deductible plans that offer low premiums that most Americans can afford. Employer contributions to an HSA allow for accumulations of funds to help support the cost of any services prior to meeting the deductible. Contributions can be made by both employers and employees to an HSA, are pre-tax and excluded from an employee's gross income. The funds are only taxed at the time they are used and only when the funds are used for "unqualified" medical expenses.
- HSA's are owned by the individual employee. They accumulate interest and dividends and can accumulate from year to year without penalty.
- Contributions made by employers are exempt from payroll taxes.
- Employees self-administer HSA's so other than the initial set up, there is little to no administration requirements for the employer
- There is no minimum contribution for HSA's however there is a maximum contribution that changes annually, employers need not match or exceed the employee's chosen contribution,

and it can be done in a lump sum, by paycheck issuance period or any other time increment.

As a woman I know that there will never be a year when I do not see a doctor at least once. Also, I know I will have prescription costs monthly. These facts brought up initial skepticism as to how cost-effective HSA's really would be. Thankfully, most HSA's establish an initial pre-deductible exemption for gynecological preventative care. In other words, our annual visits are covered 100 percent at no effect to our plan or existing savings accumulated in the HSA.

There are many resources available online for small firms and businesses to investigate their options for implementing or transitioning to an HSA contribution program. If you are a small firm owner or partner or a solo practitioner with associates and support staff or if you are the associate or support staff, it may be to your benefit to investigate if an employer contributed HSA is right for you and your firm. See the following Web sites and resources to learn more:

<<http://sbinformation.about.com/od/insurance/a/uchsa.htm>>

<<http://www.smsmallbiz.com>>

<<http://www.nfib.com/object/4157753.html>>

<<http://www.hsafinder.com/>>

1. Reprinted from "HSA: A Small Business Health Care Alternative" Jo Ann Laing for About.com

Upcoming CLE programs

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

January 2009

Date and Location TBD—2009
Federal Tax Conference. Presented by the ISBA Federal Taxation Section.

Friday, 1/23/09 – Chicago, ISBA Regional Office—Civility and Professionalism in 2009. Presented by the ISBA Bench and Bar Section.

February 2009

Tuesday - Saturday, 2/03/09 -

2/07/09 – Chicago, ISBA Regional Office—40-hour Mediation/Arbitration Training. Master Series Presented by the Illinois State Bar Association.

Friday, 2/06/09 – Bloomington, Doubletree—Agricultural Law Update 2009. Presented by the ISBA Agricultural Law Section, co sponsored by the ISBA General Practice, Solo & Small Firm Section.

Thursday, 2/12/09 – Chicago,

ISBA Regional Office—Workers' Compensation - Back to Basics. Presented by the ISBA Workers' Compensation Section.

Friday, 2/13/09 – Chicago, ISBA Regional Office—Fool for a Client: A Guide to Representing Yourself in ARDC Proceedings. Presented by the ISBA Standing Committee on Attorney, Registration & Disciplinary Commission.