



ILLINOIS STATE BAR ASSOCIATION

YLD NEWS

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

Wrapping up the case: a primer

By Angelica W. Wawrzynek

If you're just starting out and/or you're handling one of your first personal injury cases, this one is for you. You've settled the case, or you've won a judgment in your client's favor. Congrats! You've deposited the money in your trust account, and you just need to disburse the funds. You might feel like you're finished with the case. Unfortunately, you still have a lot of work to do. Fortunately, there is a light at the end of the tunnel.

First, if Medicare is involved, hopefully you've

already started the process of obtaining a lien amount from them. This can take months. (See the article in the December 2010 issue, "A quick guide on how to deal with a Medicare lien," which can be found at: <<http://www.isba.org/sections/yld/newsletter/2010/12/aquickguideonhowto-dealwithamedicarelien>>.

Although there have been minor changes

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YLD Law Student Committee: An introduction to the ISBA

By Amy Kelly

The Law Student Committee of the YLD is a great way for law students to get introduced to the ISBA and connect with members of the various committees and practice areas, as well as law students from other schools. The committee is comprised of two to four representatives from law schools throughout Illinois, Missouri and Indiana. Currently, there are representatives from Chicago-Kent College of Law, DePaul University College of Law, The John Marshall Law School, Loyola University Chicago School of Law, Northern Illinois University College of Law, Southern Illinois University School of Law, Saint Louis University School of Law, University of Illinois College of Law, and Valparaiso University School of Law. The representatives work to promote the ISBA in their respective schools, including membership drives during orientation days, distribution of applications and flyers at ISBA events, and sponsoring educational and social programs at their schools. They also represent the ISBA in their school's SBA board and often work with other bar association committees on projects at their school.

There are generally four to five meetings

throughout the year, with special attention paid to student schedules. This year's committee members did a great job of recruiting new members during fall orientation days and have many great networking events scheduled throughout the semester. The committee hopes to plan a social event next semester for all of the law schools. The committee has also been following the recent news of law school reporting data, the proposed changes to law school ranking methodology, and the distribution of law school tuition monies to other colleges at some universities, as these topics are all of great importance to today's students.

Be sure to encourage law school students you know to join the ISBA—membership is free! Even for those who are not members of the Law Student Committee, membership provides a lot of great benefit to law students, including a subscription to the *Illinois Bar Journal*, YLD Newsletter, five substantive law section newsletters, E-Clips, and a discount for the AdaptiBar enrollment fee. Law students also receive discounted ticket prices to events such as the YLD Holiday party. Applications are available online at <www.isba.org/lawstudents>. ■



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Chair's column

By Attorney Heather M. Fritsch

Success usually comes to those who are too busy to be looking for it.

-Henry David Thoreau

As I sit down to write this morning, it occurs to me that we are now in the final days of 2011 and, in what seems like no more than a blink, my tenure as Chair of the Young Lawyers Division is nearly half over. Although this thought leaves me a bit sad, it also is a very exciting time for YLD because very shortly we will begin planning and thinking about next year and all that we will accomplish in 2012-2013. Quite soon, next year's incoming Chair, Meghan O'Brien, along with our incoming Vice-Chair, Jean Kenol, will begin planning the 2012-2013 schedule of events and meetings.

Additionally, in the next few months, the ISBA will provide the nomination forms that must be filled out by anyone interested in being appointed to an ISBA committee or council, such as the YLD. I believe these nomination forms are typically due in early February. Each Spring, the ISBA President-Elect then makes these appointments. Although not everyone who asks to be appointed will be selected by the ISBA President-Elect because there are more volunteers than available positions, if you are interested in becoming involved in YLD, you should consider nominating yourself for appointment to the council for the 2012-2013 year.

I know many of you are likely thinking: "I am so busy with my practice and my life and struggling to find a balance now. Why would I want to add something else to my docket? Why do I want to be involved in YLD?" I will not lie and tell you that being an active member of the YLD council takes no time. It does take time and, on occasion, it takes a lot of time. We have meetings approximately every other month that you will be expected to attend, either in person or by telephone. We are also an extremely active council in that we throw a number of events throughout the year that range from the Holiday Party in the first weekend of December (which hopefully many of you reading this attended a few weeks ago) to the Bean Bag Tournament in early March to our end-of-the-year celebration, the Soiree, in late April-early May. Many, if not most, of our events are fundraisers for

the Children's Assistance Fund which we operate in conjunction with the Illinois Bar Foundation in order to provide grants to programs throughout the State of Illinois that pertain to children and the law. Before asking for appointment to the YLD, you should be aware of this busy schedule.

That being said, even with all the time and effort that YLDers put into the council and the work we do, I can guarantee that you will receive more from your participation on YLD than you put into it. As I am sure many past and current YLDers would agree with, I can certainly tell you that my personal experience as a YLDER for the past seven years has been more than fulfilling. I have truly not regretted a second of the time I have spent on YLD. Some of the best things that have happened to me in my professional life have been as a result of YLD – either directly or indirectly. Beyond that, some of the people that I consider my closest friends are other attorneys that I have met through my involvement with YLD. And, on a more superficial level—we YLDers always have a lot of fun when we get together!

That being said, as we change over from 2011 to 2012, if you are considering involvement in the Young Lawyers Division, my advice would be to send in your nomination for appointment. We are all busy, but I guarantee that you will benefit from your involvement. And, as I am sure many past and present YLDers can tell you, it will be well worth your time. ■

Save the Date!

The ISBA Young Lawyer's Division is proud to announce that the 4th Annual Soiree will be held next Spring on Friday, April 27, 2012, at the Hard Rock Hotel. Please mark your calendars and plan to join us for an evening of food, open bar, music, mingling, fun and great raffle prizes. Get yourselves ready to say good-bye to Winter by putting on some cocktail attire for an evening out with your fellow young lawyers. We look forward to seeing you there!

YLD NEWS

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Making corrections to depositions under Illinois and federal law

By Ryan J. Rodman

At the conclusion of every deposition, the court reporter invariably turns to the presenting attorney and mutters the single-worded question, "Signature?" The presenting attorney, likely now elated that his client is no longer on the proverbial "hot seat," will often respond with a single-worded response, "waived" or "reserved." "Waived" means the deponent waives the right to review his transcript for errors and "reserved" means the deponent wants the opportunity to review the transcript for errors and make corrections. If the deponent is not represented by counsel or counsel did not have the foresight to explain "signature" to his client before the deposition, what follows is an explanation of the deponent's right to make corrections to the deposition.

Regardless of your level of deposition experience, you might think this is a straightforward issue. And, if the deposition is being conducted pursuant to Illinois law, the deponent's rights to correct the deposition are clear enough. Illinois Supreme Court Rule 207 sets forth the rules regarding corrections to deposition testimony. Rule 207 provides that, unless signature is waived by the deponent, the deponent is afforded an opportunity to examine the deposition and to make corrections to it based on errors in reporting or transcription. The deponent may not otherwise change either the form or substance of his or her answers. See Rule 207. There does not appear to be any disagreement among the district courts as to the application of this Rule.

In contrast, if your case is in federal court, you should review the case law of the relevant circuit before you explain "signature" to your client, as there is no uniform position among the circuits as to what the deponent is able to correct. Federal Rule of Civil Procedure 30(e)(1) permits deponents to review the deposition and "if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them." Fed. R. Civ. P. 30(e)(1)(B). The rule seems straightforward, but it is far from it. The majority of courts interpret this statement literally, allowing deponents make any kind of change to the deposition answers. *Devon Energy Corp. v. Westacott*, 2011 WL 1157334, * 4 (S.D.Tex.) (collecting cases); *Tax Distributing Co. v. Cum-*

mins, Inc., 2009 WL 3518093, * 1 (C.D.Ill). Under this approach, changes in testimony are permitted because the deponent's original answers remain subject to impeachment. The minority approach permits a deponent to correct only transcription errors. *Trout v. FirstEnergy Generation Corp.*, 339 F.App'x 560, 566 (6th Cir. 2009) (unpublished) ("Rule 30(e) does not allow one to alter what was said under oath"); *Greenway v. International Paper*, 144 F.R.D. 322, 325 (W.D.La. 1992) ("A deposition is not a take home examination."). Additionally, the Third, Seventh, Ninth and Tenth jurisdictions employ various hybrid approaches. *Westacott*, 2011 WL 1157334 at * 5.

The Seventh Circuit's hybrid approach permits substantive changes to the deponent's testimony and thus "permits a party to change a deposition from what he or she said to what he or she meant, though the

rule requires that the original transcript be retained so that the trier of fact can evaluate the honesty of the alteration." *Thorn v. Sundstrand Aerospace Corp.*, 207 F.3d 383, 389 (7th Cir. 2000); *Reeves v. Federal Reserve Bank of Chicago*, 2004 WL 742248, *9 (N.D.Ill). However, the Seventh Circuit has not permitted a change in substance which contradicts the transcript, "unless it can plausibly be represented as the correction of an error in transcription, such as dropping a 'not.'" *Thorn*, 207 F.3d at 389.

In summary, in Illinois the rule is fairly clear that deponents cannot make changes to depositions unless there are errors in reporting or transcription. In federal court, there is no uniform position as to the deponent's ability to make corrections to the deposition, and you will want to consult the relevant circuit's law before advising your client as to what he or she will be able to correct. ■

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Benefits of joining bar associations for young lawyers

By Jessica Durkin

After slaving away for hours on the job, most young attorneys would rather relax than involve themselves with more legal activities through bar associations. However, active participation in bar associations can be very rewarding to young attorneys for several reasons. In my first two years as an attorney, I have become actively involved with the ISBA Young Lawyer's Division and a new law society formed by my fellow alumni from Mother McAuley High School. The following are some benefits I have found through my involvement with these associations.

Networking

The often-touted benefit of joining bar associations is the networking opportunities. I can verify that networking opportunities are abundant. Through bar association networking, I secured an amazing internship with a federal judge. However, networking does not just lead to new job opportunities. While networking, young attorneys can meet mentors who can help the young lawyer navigate

through the difficult first years of practice. Additionally, once young lawyers secure their first jobs, co-members of bar associations are great sources for new case referrals. The family law lawyer you met can refer to you a personal injury case and vice versa.

Community service

Bar associations also afford young lawyers with many opportunities to give back to the community. These opportunities are rewarding and a great respite from the practice of law. The ISBA Young Lawyer's Division raises money for the Children's Assistance Fund through all of their events, including their upcoming Holiday Party. These funds raised are then given as grants to programs that support children and the law. Additionally, the ISBA has volunteer opportunities such as its lawyers in the classroom program.

My personal most rewarding experience through a legal association has been volunteering my time to help train the members of my high school's mock trial club. The enthusi-

asm and inquisitiveness of the young women helps remind me of why I first became interested in the law. Furthermore, even if these students do not become lawyers one day, the lessons they have learned through this club have made them more confident public speakers, improved their analytical skills, and taught them the importance of team work. These skills will help them in whatever career path they choose in the future, and I am lucky to play a small part in their learning experience.

Camaraderie

After working those long hours, bar associations provide young lawyers with a great opportunity to commiserate with other attorneys. Although some bar association functions focus on business, a lot of bar association activities are social opportunities and great ways for young lawyers to unwind. Therefore, I, like many other young lawyers, may have joined bar associations for the networking opportunities, but I will stay actively involved due to the friendships I have made. ■

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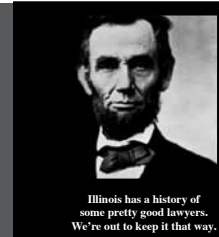
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Wrapping up the case: a primer

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since then, following that step-by-step guide will still get you through the process just fine). After that, there are rights of reimbursement, hospital liens, attorney liens, and outstanding hospital bills to consider.

In order to address the rights of reimbursement, ask: Does your client have auto insurance with a med-pay provision? Does your client have health insurance? If yes to either, did the auto insurance and/or health insurance pay any of the related medical bills? If yes, then that insurer probably has a right of reimbursement pursuant to the insurance policy signed by your client. If no, you get to move on. However, most times your client's insurance, of some type, has paid for at least some of the medical bills. Assuming that to be the case, has the insurer asserted a lien? If so, you need to contact the insurer to request the final lien amount as well as a copy of the policy to verify that they have a right of reimbursement. Never just assume that the insurance policy has such a right—double check.

If no lien has been asserted, you must speak with your client. Although your client may have an obligation to their insurance company pursuant to a right of reimbursement clause in the contract they signed, you cannot contact the insurer about this without your client's permission. Fortunately, most clients, when told that their insurance company might have the right to come after them for reimbursement of benefits paid, give you permission to address any obligations they have, so they don't have to worry about anything else about the case ever again. (Assuming you have permission from your client, contact the insurer just like you would if a lien had been asserted).

Then, assert the Common Fund Doctrine. By law, insurers who seek compensation based on their right of reimbursement are responsible for their share of the attorneys' fees. See e.g. *Morris B. Chapman & Associates, Ltd. v. Kitzman*, 193 Ill. 2d 560, 739 N.E.2d 1263, 251 Ill. Dec. 141 (2000). Assuming that your fees are 1/3 of the settlement, judgment or award, this means that the insurers must reduce the amount of their lien by 1/3. Most insurers do this automatically so double-check before you demand the reduction. However, some insurance companies will wait for you to bring it up. Do not be afraid to mention that you expect that they adhere to the Common Fund Doctrine and will accept a reduction in

their lien amount. Note: you can use the Common Fund Doctrine to convince your client to allow you to contact their insurers: the Common Fund Doctrine does not apply if the insurer has to take action to recoup the funds. Thus, your client has incentive to address any right of reimbursement now.

Next, ask yourself, is your client on Medicaid? If so, Medicaid has a right to be reimbursed for payment for related medical bills. Fortunately, all you need to do is contact a local office, and they can give you the lien amount or direct you to someone who can. Medicaid is generally very cooperative with regards to accepting (and often initiating) a reduction in their lien amount pursuant to the Common Fund Doctrine.

Now, move on to the hospital liens. Check all of the lien notices you received from hospitals and/or doctors to make sure that they comply with the Health Care Services Lien Act, 770 ILCS 23/1 et seq (and specifically 770 ILCS 23/10(b), requiring that the notice list the name and address of the injured person, the date of the injury, the name and address of the hospital/doctor asserting the lien, and the name of the person alleged to be liable for the injuries). Assuming that the notice is in compliance, and thus that you must honor the lien, call the hospital to double check the final lien amount. Note that unlike insurance companies, hospitals and doctors are not affected by the Common Fund Doctrine. See *Wendling v. Southern Illinois Hosp. Services*, 242 Ill. 2d 261, 950 N.E.2d 646, 351 Ill. Dec. 150 (2011).

Be aware that, no individual health care provider can receive more than 1/3 of the settlement, judgment or award, and the total amount of health care liens cannot exceed 40% of the total settlement, judgment or award, pursuant to the Health Care Lien Act, specifically section 770 ILCS 23/10(c). As such, after you've contacted all of the hospitals and doctors who have asserted liens, run the numbers. If the total amount of liens exceeds 40% of the settlement, judgment or award, then the doctors' liens should be reduced, pro rata, to 20% of the settlement, judgment or award, and the hospital liens should also be reduced, pro rata, to 20% of the settlement, judgment or award. If, after making this reduction, the total amount that would be paid to these health care lien-holders is not 40%, then increase, pro rata, the amount that

the hospitals or doctors receive (whichever group is owed the greater amount). Then, make sure that no individual health care lienholder would receive more than 1/3 of the settlement, judgment, or award, by reducing any such amount to 1/3 (and increasing the amount other lien-holders will receive, accordingly). While doing this, make sure you read the statute (770 ILCS 23/10(c)) to be sure you're following the procedure correctly. NOTE: if you are making a reduction pursuant to the Health Care Services Act, you cannot receive more than 30% of the settlement, judgment, or award in attorneys' fees. Also, if you intend to make a reduction pursuant to the Health Care Services Lien Act, you should probably contact the health care lien-holders to let them know.

Next, address any and all attorneys' liens in the file. Did another attorney refer the client to you? Did they incur any expenses in the file? Are any other attorneys entitled to fees? Make sure you account for every attorney with an interest in the file. Otherwise you may end up without any future referrals.

Then, if there is money to spare, ask your client if they would like for you to address the outstanding balances with their healthcare providers. Much like insurers who have not asserted a lien, you cannot disburse funds to healthcare providers who have not asserted a lien without your client's permission. However, most clients want all of their bills taken care of, if only so that they stop receiving calls from the billing department and/or collections agencies. If you have permission, get ready to make a lot of phone calls. Often the hospital has already sent the account balance to a collections agency.

Finally, add it all up and make sure (a) that you have not exceeded the amount of the settlement, judgment or award; and (b) that you have enough to give your client whatever you promised they'd receive from the settlement, judgment or award. Then, double- and triple-check your math. Once you are satisfied, cut the checks. Send a letter with every check that you mail, making sure to include language along the lines of: "negotiation of this check will serve as acknowledgement that this amount is full and final payment of any reimbursement (or claim or obligation) owed by [client] relating to the incident which took place on [date of incident]." Then write a check to yourself. You're done! ■

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

Thursday, 1/5/12- Teleseminar—Estate Planning in 2012: Now That the Federal Tax is a Dead Letter, Part 1. Presented by the Illinois State Bar Association. 12-1.

Friday, 1/6/12- Teleseminar—Estate Planning in 2012: Now That the Federal Tax is a Dead Letter, Part 2. Presented by the Illinois State Bar Association. 12-1.

Tuesday, 1/10/12- Teleseminar—Dangers of Using “Units” in LLC Planning. Presented by the Illinois State Bar Association. 12-1.

Friday, 1/13/12- Teleseminar—Bridging the Valuation Gap: “Earnouts” and Other Techniques. Presented by the Illinois State Bar Association. 12-1.

Tuesday, 1/17/12- Teleseminar—Real Estate Finance in A World With Tight Credit and Less Leverage. Presented by the Illinois State Bar Association. 12-1.

Wednesday, 1/18/12- Live Studio Webcast—Step-by-Step Appeals in Child Custody. Presented by the ISBA Child Law Section; co-sponsored by the ISBA Family Law Section. 11-1.

Thursday, 1/19/12- Teleseminar—Ethics, Technology and Solo and Small Firm Practitioners. Presented by the Illinois State Bar Association. 12-1.

Friday, 1/20/12- Teleseminar—Rescission in Business Transactions: Techniques for Fixing Transactions Gone Awry. Presented by the Illinois State Bar Association. 12-1.

Friday, 1/20/12- Chicago, ISBA Chicago Regional Office—Practical Professional Responsibility for Health Care, Life Sciences and Corporate Attorneys and their Outside Counsel. Presented by the ISBA Health Care Section. 1-4:15.

Friday, 1/20/12- Collinsville, Gateway Center—Motion Practice. Presented by the ISBA Tort Law Section. 9-12. Max 66.

Tuesday, 1/24/12- Teleseminar—Incen-

tive Trusts: Approaches and Limits to Encouraging “Good” Behavior in Beneficiaries. Presented by the Illinois State Bar Association. 12-1.

Thursday, 1/26/12- Chicago, Union League Club—Making the Record on Appeal and Ethics and Civility in the Court Room. Presented by the Illinois State Bar Association, the Illinois Judges Association and the Women’s Bar Association of Illinois. 1:30-4:55 CLE; 5-6:30 Reception.

Friday, 1/27/12- Collinsville, Gateway Center—Motion Practice. Presented by the ISBA Tort Law Section. 9-12. Max 75.

Friday, 1/27/12- Teleseminar—Drafting Effective and Enforceable Promissory Notes. Presented by the Illinois State Bar Association. 12-1.

Tuesday, 1/31/11- Teleseminar—Choice of Entity for Service Businesses, Including Law Firms. Presented by the Illinois State Bar Association. 12-1.

February

Thursday, 2/2/12- Teleseminar—2012 Ethics Update, Part 1. Presented by the Illinois State Bar Association. 12-1.

Friday, 2/3/12- Bloomington, Holiday Inn & Suites—Hot Topics in Agricultural Law 2012. Presented by the ISBA Agricultural Law Section. 9-4:45. Max 150.

Friday, 2/3/12- Teleseminar—2012 Ethics Update, Part 2. Presented by the Illinois State Bar Association. 12-1.

Tuesday, 2/7/12- Teleseminar—Estate Planning for the Elderly, Part 1. Presented by the Illinois State Bar Association. 12-1.

Wednesday, 2/8/12- Teleseminar—Estate Planning for the Elderly, Part 2. Presented by the Illinois State Bar Association. 12-1.

Thursday, 2/9/12- Chicago, ISBA Chicago Regional Office—Nuts and Bolts of Starting Your Own Practice: A Primer for Ethically Creating Your Own Law Firm. Presented by the ISBA young Lawyers Division. 12:30-5:00.

Friday, 2/10/12- Chicago, ISBA Chicago Regional Office—Limited Representation: The Ethical, Legal and Practice Issues Exposed. Presented by the ISBA Law Office Management and Economics Committee and the ISBA General Practice Solo and Small Firm Section. 8:30-12:45.

Tuesday, 2/14/12- Teleseminar—Compensation & Other Techniques for Getting Money Out of a Closely Held Business. Presented by the Illinois State Bar Association. 12-1.

Thursday, 2/16/12- Teleseminar—Ethics Issues for Lawyers Supervising Other Lawyers and Paralegals. Presented by the Illinois State Bar Association. 12-1.

Monday, 2/20/12- Chicago, ISBA Chicago Regional Office—Advanced Worker’s Compensation- Spring 2012. Presented by the ISBA Worker’s Compensation Law Section. 8:30-4:00.

Monday, 2/20/12- Fairview Heights, Four Points Sheraton—Advanced Worker’s Compensation- Spring 2012. Presented by the ISBA Worker’s Compensation Law Section. 8:30-4:00.

Tuesday, 2/21/12- Teleseminar—Negotiating and Drafting the Purchase of Bank-Owned Commercial Real Estate. Presented by the Illinois State Bar Association. 12-1.

Thursday, 2/23/11- Chicago, ISBA Chicago Regional Office—Family Law- Rookie Camp 2012. Presented by the ISBA Family Law Section. 8-5.

Saturday, 2/25/12- Oakbrook, Doubletree Chicago—DUI, Traffic, and Secretary of State Related Issues- 2012. Presented by the ISBA Traffic Laws and Courts Section. 9-4:30. Max: 175.

March

Thursday, 3/1/12- Chicago, ISBA Chicago Regional Office—eTechnology in the Courthouse: Present and Future. Presented by the ISBA Bench and Bar Section. 1:30-4:45 ■



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