



# THE PUBLIC SERVANT

The newsletter of the Illinois State Bar Association's Standing Committee on Government Lawyers

## From the Chair

By Kevin Lovellette

It is hard to believe that November has arrived, bringing cool weather and the changing leaves of autumn. It has also brought a change in the ISBA Standing Committee on Government Lawyers: Mr. Pablo Eves has resigned as the Chair of the Committee due to an increased workload from a promotion at the Office of the McLean County State's Attorney. During our last meeting, the Committee wished him sincere congratulations and thanked him for his service. As the Vice-Chair, I was appointed to fill the vacancy. I appreciate the chance to continue Mr. Eves' initiatives for this year, and I thank ISBA President Richard Felice for this opportunity. The Committee continues to appreciate the work of Marylou Kent as our Secretary, Patrick Driscoll as the CLE

Liaison, and Lynn Patton and Kathryn Kelly as the editors of *The Public Servant*.

The members of the Committee have been off to a fantastic start this year by planning three CLE presentations. We are planning to present the Ethics Extravaganza as a live program, which has garnered great reviews in the past. We are also planning two programs that will be taped and available on the ISBA Web site, free to ISBA members. The topics of these programs will be Concealed Carry Permits and Technology/Cameras in the Courtroom. The subcommittee members are hard at work planning these programs to be available to ISBA members in early 2015.

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## A review: Pro se parties and unbundling in Illinois

By Athena T. Taite

When a person needs an attorney's help but cannot hire an attorney to represent him throughout his case, he might benefit from an attorney's limited scope representation. A *pro se* party may find an attorney's limited scope representation to be better than foregoing legal assistance in drafting documents, responding to civil proceedings, or negotiating a resolution to a legal problem. Both *pro se* parties and attorneys should learn about limited scope representation, also known as the unbundling of legal services. It's a win-win for *pro se* parties and the legal community.

Illinois Rule of Professional Conduct 1.2(c) allows attorneys to limit the scope of their representation, if that limitation is reasonable and the client provides informed consent. Limited scope representation allows an attorney to participate in part of a client's case and leave the remain-

ing part to the client. For example, the attorney might represent the client at depositions but not represent the client in any other proceedings. Likewise, the attorney might represent the client at trial but not represent the client at status dates. The client thus obtains the assistance of an attorney only when the client decides that he really needs it. As such, limited scope representation is cost-effective for clients and increases a layperson's access to legal services.

However, limited scope representation is allowed only in civil proceedings. The attorney appearing in a limited scope capacity must have a written agreement with her client to provide a limited scope representation. The attorney must file a Notice of Limited Scope Appearance. The appearance form is appended to Illinois Supreme Court Rule 13. The appearance must

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**The Ethics Extravaganza is coming in 2015!**

**Watch the ISBA Web site (www.isba.org) for details.**

## From the Chair

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Details will be on the ISBA Web site in the coming weeks.

In addition to the CLE programs, the Committee has the pleasure of nominating a distinguished government attorney to receive the Roz Kaplan Award, to be presented by the ISBA for the first time in 2015. Roz Kaplan was an attorney who dedicated her career to public service. She worked for many years in the Office of the Illinois Attorney General, eventually serving as the Illinois Solicitor General. She was also employed with the Attorney Registration and Disciplinary Commission, serving as a supervisor of the appellate division. She also served for many years on the ISBA's Committee on Government Lawyers. Roz died a few years ago, and the ISBA has established this award in her name to be presented to long-serving government

attorneys who embody the dedication and excellence that Roz represented. Please feel free to contact any member of the Committee if you would like to nominate a government attorney for this award.

In closing, I would like to invite all readers to share their comments and concerns about practicing law in the public sector with the Committee. A goal of the Committee is to bring ideas from one government legal office to other government legal offices. Please share your thoughts with us on issues, solutions, and any topic that you face in your practice as a government attorney. We believe it may surprise us how often the same issues arise throughout the public sector. Thank you and we look forward to another great year. ■

## A review: *Pro se* parties and unbundling in Illinois

*Continued from page 1*

describe each part of the case on which the attorney will represent the party. There is no limit on the number of limited scope appearances that an attorney can make. Opposing counsel must serve the attorney appearing in a limited scope, as well as the attorney's client, with all documents until the attorney withdraws. Nonetheless, opposing counsel may communicate with a person represented by a limited scope attorney about matters outside the subject of the limited scope representation.

Supreme Court Rule 13 allows for the easy withdrawal of the attorney who filed a limited scope appearance and has completed his representation. The attorney may withdraw by oral motion or a written notice. The court must grant the attorney's motion unless the party objects and claims that the attorney has not completed her representation. If there is an objection, the court must hold an evidentiary hearing. Unless the court finds that the attorney did not complete her representation, the court must still grant the motion to withdraw. If the attorney withdrew by a written notice, the limited scope appearance will terminate without further order if the client does not file an objection

within 21 days. Regardless, the court must allow the attorney to withdraw if the attorney has completed her limited scope representation. If the client's objection is for reasons other than the attorney's failure to complete her representation, the court will hold a non-evidentiary hearing to explain to the client that his objection is unfounded.

What if a *pro se* party wants legal assistance only in drafting a pleading? An attorney may review a *pro se* party's pleading without filing an appearance or otherwise identifying the lawyer's involvement. No limited scope appearance is necessary, and the attorney may rely on the *pro se* party's representation of facts, unless the attorney knows the facts to be false. Still, the *pro se* party, not the attorney, must sign the document.

Limited scope representation is not a new concept and exists in other states. However, there were amendments to the Illinois Supreme Court rules in 2013 to explain and encourage the practice of limited scope representation. For more information, review Rules of Professional Conduct 1.2(c) and 4.2. Also review Supreme Court Rules 11, 13(d) and 137. ■

## THE PUBLIC SERVANT

*Published at least four times per year.*

*To subscribe, visit [www.isba.org](http://www.isba.org) or call 217-525-1760*

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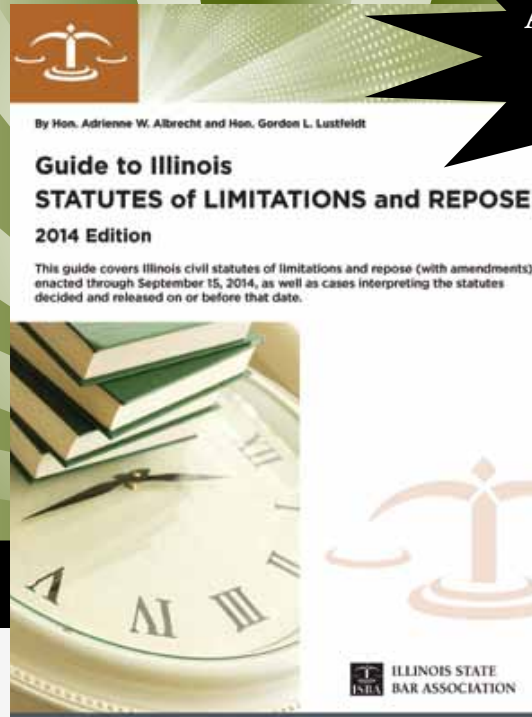
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## Guide to Illinois STATUTES of LIMITATIONS and REPOSE 2014 Edition

The new Guide to Illinois Statutes of Limitations and Repose is here! It contains Illinois civil statutes of limitations and repose (with amendments) enacted through September 15, 2014. The Guide concisely brings together provisions otherwise scattered throughout the Code of Civil Procedure and other chapters of the Illinois Compiled Statutes. It also includes summaries of cases interpreting the statutes that were decided and released on or before September 15, 2014. Designed as a quick reference guide for practicing attorneys, it provides comprehensive coverage of the deadlines you can't afford to miss. The Guide includes a handy index organized by act, code, and subject, and also includes a complete table of cases. Written by Hon. Adrienne W. Albrecht and Hon. Gordon L. Lustfeldt.

Order the new guide at  
[www.isba.org/store/books/guidetoillinoisstatutesoflimitation](http://www.isba.org/store/books/guidetoillinoisstatutesoflimitation)  
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or by emailing Janet at [Jlyman@isba.org](mailto:Jlyman@isba.org)

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Illinois has a history of  
some pretty good lawyers.  
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# Issues of domestic-violence crimes within governmental employment

By Paul Thompson

Government attorneys may on occasion have cause to review the effects of domestic-violence convictions or the issuance of restraining-orders upon their office's workforce. In particular, for those positions in law enforcement, military service, or other occupations that require the capability to carry a firearm as a condition of employment, a domestic-violence conviction very well may affect an employee's ability to continue in his or her position. The Gun Control Act of 1968, 18 U.S.C. Chapter 44, provides generally that felons (normally persons convicted of a crime punishable by imprisonment of more than one year (18 U.S.C. §922)) cannot possess a firearm or ammunition. The Gun Ban For Individuals Convicted of a Misdemeanor Crime of Domestic Violence (18 U.S.C. §921 *et seq.* (1996)) adds, as the amendment's title reflects, individuals convicted of misdemeanor domestic-violence crimes (assault and/or battery) to the prohibition on possessing firearms or ammunition. This additional restriction, in part, attempts to prevent the escalation of hostilities in domestic-violence situations by removing access to firearms (both personally-owned and government-issued) from any future conflict. The measure is commonly referred to as the "Lautenberg Amendment" named after the legislation's primary sponsor, Senator Frank Lautenberg of New Jersey, who served several terms in Congress from 1982 through 2013.

The interplay between the prohibitions enacted for felony convictions and misdemeanor domestic-violence convictions, however, provides for some initial perplexity in application due to a statutory gap. While there is a governmental exception to the felony conviction restriction that technically enables public law enforcement or military service-members with a felony conviction to still use a government-issued weapon in the line of duty (18 U.S.C. §925), the same exception does not exist for a law enforcement employee or military service-member convicted of a domestic-violence crime. As a result, an anomalous situation is hypothetically possible for one to be convicted of felony domestic-violence and be allowed to carry an issued firearm on duty, while a co-worker convicted of a misdemeanor domes-

tic-violence crime could be discharged or assigned to a non-firearm carrying position. In practice, however, most hiring jurisdictions, personnel laws, or human-resource policies prohibit the employment of individuals in law enforcement or in the military if a felony conviction occurs. There are several reasons for this, including: (i) suspect duplicity in future enforcement actions; and (ii) personnel being subject to impeachment during official testimony.

To avoid the possibility of such anomalous situations arising, *Army Command Policy*, AR 600-20 and *Department of Defense Instruction*, 6400.06 expand the prohibition on firearm possession to both felony and misdemeanor domestic-violence convictions for members of the armed forces. As may be surmised, there are very few positions as a sworn-officer or as a military service-member that do not require the possession of a firearm. Therefore, a domestic-violence conviction often forces a career change. Of note is the domestic-violence restriction on possessing a firearm which applies retroactively to any conviction and is not limited to only those convictions occurring after the effective date of the law. Thus, the prohibition also applies to certain domestic-violence convictions imposed before the passage of the Lautenberg Amendment, as long as the conviction complied with due process, legal representation, and jury requirements.

Federal law defines a crime of domestic violence to include offenses consisting of "the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim." 18 U.S.C. §921. While the federal definition is broadly worded to capture most jurisdictional provisions for these types of crimes, each State has differing elements or terms within its domestic-violence statutes. For example, after receiving a conviction of domestic battery or aggravated domestic battery in Illinois, sections 12-3.2 and 12-3.3 of the Criminal Code of 2012 (720 ILCS 5/12-

3.2, 12-3.3) mandate that the court admonish the offender that "an individual convicted of domestic battery may be subject to federal criminal penalties for possessing, transporting, shipping, or receiving any firearm or ammunition in violation of the federal Gun Control Act of 1968."

Federal law also criminalizes the actions of anyone who transfers firearms to a person subject to the prohibition, if the transferor knew or had reason to know that the receiver had a domestic-violence conviction. 18 U.S.C. §922. This provision generally requires knowledge of credible, substantive information by the transferor and would apply to the employee or commander who authorizes or assigns service-weapons or issues these weapons. To alleviate the burden on the prospective transferor of the weapon, most jurisdictions require affirmative disclosure by the offender of both felonies and domestic-violence convictions.

In addition to felony and domestic-violence convictions, the firearm prohibition applies to certain restraining or protective orders issued in domestic-violence cases. In the case of these orders (as with felonies), the law still allows for a restraining-order exception for governmental units, 18 U.S.C. §925, but only for use of government-issued service-weapons. Possession of personal firearms could still be prohibited while the order is effective. For this restriction to apply, the restraining/protective order must have been issued by the court after a two-party hearing with proper notice and an opportunity to be heard given to the defendant. Thus, the federal prohibition on firearms possession would not necessarily be enforced as a result of a temporary restraining order issued by the court after an *ex parte* hearing. Additionally, the court order must include a determination paralleling that the person presents a credible threat to the partner or child and must explicitly prohibit "the use, attempted use or threatened use of physical force." 18 U.S.C. §922. Most courts' forms for these types of orders generally have an option to also specifically prohibit the use or possession of firearms by the subject of the order.

As has been introduced in this synopsis, domestic-violence convictions and restraining orders may affect the government work-

force in several distinct ways. Please note that the cited federal and State statutes are merely a starting point from which to begin associated legal research. Please consult the subject law and the pertinent rules and regu-

lations directly for further details on the applicable requirements and obligations generally affecting governmental employees, as well as their public employers. Please also note that in describing the effects on the ca-

reers of the convicted domestic-violence offenders, this article in no way seeks to lessen the focus upon the more significant effects on the victims of the underlying crimes. ■

## Upcoming CLE programs

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

### January

**Wednesday, 1/28/15- Chicago, ISBA Regional Office**—Lawyer to Lawyer Mentoring Orientation. 12-2. Lunch included.

**Wednesday, 1/28/15- Live Webcast**—Lawyer to Lawyer Mentoring Orientation. 12-2. Lunch included.

**Thursday, 1/29/15- Live Studio Webcast**—Non-Competes and Other Restrictive Covenants: What you Need to Know. Presented by the ISBA Business and Securities Law Section. 10-11:15am.

### February

**Wednesday, 2/4/15- Chicago, ISBA Regional Office**—Lawyer to Lawyer Mentoring Orientation. 12-2. Lunch included.

**Wednesday, 2/4/15- Live Webcast**—Lawyer to Lawyer Mentoring Orientation. 12-2. Lunch included.

**Friday, 2/6/15- Normal, Bloomington-Normal Marriott Hotel & Conference Center**—Hot Topics in Agricultural Law- 2015. Presented by the ISBA Agricultural Law Section. 8:30-4:30.

**Friday, 2/6/15- Chicago, ISBA Regional Office**—2015 Federal Tax Conference. Presented by the ISBA Federal Taxation Section. 8:30-5.

**Friday, 2/13/15- Chicago, ISBA Regional Office**—FOIA and OMA Update. Presented by the ISBA Education Law Section. 9-noon.

**Friday, 2/13/15- Live Webcast**—FOIA and OMA Update. Presented by the ISBA Education Law Section. 9-noon.

**Monday, 2/16/15- Chicago, ISBA Chicago Regional Office**—Advanced Workers' Compensation. Presented by the ISBA Work-

ers' Compensation Section. 9:00am-4:00pm.

**Monday, 2/16/15- Fairview Heights, Four Points Sheraton**—Advanced Workers' Compensation. Presented by the ISBA Workers' Compensation Section. 9:00am-4:00pm.

**Thursday, 2/26/15- Naperville, NIU Conference Center**—ISBA Solo & Small Firm Practice Institute. Presented by the Illinois State Bar Association. 8:30-5:30.

### March

**Friday, 3/13/15- Springfield, Hilton Springfield**—Spring 2015 DUI & Traffic Law Updates. Presented by the ISBA Traffic Law Section. 8:55-4.

**Thursday, 3/9/15- Live Studio Webcast**—How To: Summary Judgement and Appeals in Human Rights Cases. Presented by the ISBA Human Rights Section. 9-11:30.

**Thursday, 3/19/15-Friday, 3/20/15- New Orleans, Hyatt French Quarter**—Family Law in New Orleans. Presented by the ISBA Family Law Section. 1-6:15; 9-5.

### April

**Thursday, 4/9/15- Chicago, ISBA Regional Office**—Using Freelance Attorneys and Other Outsourcing Choices to Grow Your Practice and Profits. Presented by the ISBA General Practice, Solo & Small Firm Council. 8:30-12:15.

**Thursday, 4/9/15- Live Webcast**—Using Freelance Attorneys and Other Outsourcing Choices to Grow Your Practice and Profits. Presented by the ISBA General Practice, Solo & Small Firm Council. 8:30-12:15.

**Thursday, 4/16/15- East Peoria, Holiday Inn**—ISBA Solo & Small Firm Practice Institute- Spring 2015. Presented by the Illinois State Bar Association. 8:30-5:30.

**Thursday, 4/30/15-Saturday, 5/2/15- Utica, Starved Rock State Park**—Allerton Conference (invite only, DNP). Presented by the ISBA Bench and Bar Section.

### May

**Wednesday, 5/13/15- Chicago, ISBA Regional Office**—The Best CLE Program for Divorce Lawyers. Master Series presented by the ISBA. Full Day.

**Wednesday, 5/13/15- Live Webcast**—The Best CLE Program for Divorce Lawyers. Master Series presented by the ISBA. Full Day. ■

## It's Campaign Season for the 2015 Election

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#### Positions Available:

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  - Cook (1)
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  - Area 4 (Circuits 10, 14 and 15) (1)
  - Area 6 (Circuits 7, 8 and 9) (1)
  - Area 8 (Circuits 3 and 20) (1)
- Assembly:
  - Cook (23)

See the Notice of ISBA Election and get your Candidate Packet on the Web at [www.isba.org/elections](http://www.isba.org/elections).

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**RECENT RELEASES****Guide to Illinois Statutes of Limitations and Repose – 2014 Edition**

The new Guide to Illinois Statutes of Limitation contains all Illinois civil statutes of limitation enacted and amended through September 15, 2014, with annotations. This quick reference guide brings together provisions otherwise scattered throughout the Code of Civil Procedure and various chapters of the Illinois Compiled Statutes, and also provides deadlines, court interpretations, and a handy index listing statutes by Act, Code or Subject. \$35.00 mbr./\$50.00 nonmbr.

**2015 Attorney's Daily Diary**

The ISBA Daily Diary is an attractive book, with a sturdy, flexible sewn binding, ribbon marker, and elegant burgundy cover. As always, the 2015 Attorney's Daily Diary is useful and user-friendly. It's as elegant and handy as ever, with a sturdy but flexible binding that allows your Diary to lie flat easily. \$28.45.

**GENERAL TOPICS****A Practical Guide to the Illinois Domestic Violence Act**

If you take family law cases, you'll find this book an essential aide. Although intended primarily for attorneys who practice in civil court, this book is also valuable for assistant state's attorneys and domestic violence advocates. It provides a clear and comprehensive understanding of the Act, and can be used as a quick reference for researching specific problems. Prepared by attorney Jan Russell from the Chicago Police Department, a highly-rated trainer on domestic violence and child abduction issues who has trained more than 15,000 police officers, lawyers, and social service providers from Florida to Hawaii. \$40 mbr./\$50 nonmbr.

**The Illinois Rules of Evidence – A Color-Coded Guide**

Are you still not fully familiar with the intricacies of the Illinois Rules of Evidence? Then you shouldn't be without this handy hardcopy version of Gino L. DiVito's authoritative color-coded reference guide. It not only provides the complete Rules, with insightful commentary, but also a side-by-side comparison with the full text of the Federal Rules of Evidence (both pre- and post-2011 amendments). DiVito, a former appellate justice, serves on the Special Supreme Court Committee on Illinois Evidence, the body that formulated the Rules approved by the Illinois Supreme Court. \$35.00 mbr./\$50.00 nonmbr.

**Guide to Sentencing and Bond Hearings in Illinois: 2014 Edition**

This essential guide for criminal defense attorneys and prosecutors condenses everything you need to know before appearing at a sentencing or bond hearing. It includes a comprehensive sentencing guide, bond hearing guide, and a detailed listing of the most common felony offenses, which provides statutory citations, offense classes, and relevant notes. \$35 mbr./\$49 nonmbr.

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