



YLD NEWS

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

Discovery depositions: A crash course

By Angel Wawrzynek

Every young lawyer needs basic skills when it comes to discovery depositions. Inevitably someone higher in the food chain will ask you, the junior associate, to cover a deposition for them. If (when) this happens, do not panic. Here's an overview that will keep you on track.

Preparing to take a discovery deposition

Before you take a discovery deposition you should make an outline of everything that you want to cover during the deposition. As part of that process you must figure out the purpose(s) of taking the deposition: assessing the credibility of

witnesses, discovering information, locking in the deponent's testimony, and/or creating a record.

For most depositions, part of the process will be assessing the credibility of the witness. Thus, you should start your outline with questions about background information (name, address, employer). You also should include questions about felony convictions and convictions for misdemeanors involving dishonesty. For most witnesses you will also want to ask about their education and employment histories. Beyond that, make a point of assessing the believability of

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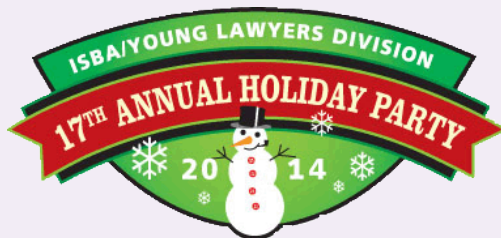
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Mark your calendars now for the 17th Annual Holiday Party! New location; same great cause!



*To Benefit the Illinois Bar Foundation
YLD's Children's Assistance Fund*

Tickets are on sale NOW at www.holidayparty.org for the YLD's 17th Annual Holiday Party.

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From the Chair—'Tis the season of giving

By Chris Niro

Greetings from the Chair – as we are now well into what feels like an early winter, I paused to reflect on all of the things happening in the YLD. The cold temperatures (and the fact that all of the “seasonal” drinks have now taken over Starbucks®) have reminded me that at this time of the year, we all are reminded to give thanks for all we have and embrace the season of giving. What does the “season of giving” have to do with the ISBA YLD, you ask? Well, a lot. About one month ago, the YLD Council spent its October meeting taking the first steps in formulating a strategic plan for the YLD’s near-term future. One theme (of many) kept coming up, “are we giving the young lawyer member what they want/need?”

For many years our Council operated under the presumption and belief that we demonstrated our commitment to the profession by giving both time and money. We host annual events and fundraisers to benefit the IBF YLD Children’s Assistance Fund. As a council we dedicate significant resources to these efforts... and we are proud to do it. But the strategy that worked in years past might not be fulfilling our mission today, which is to be a resource for Young Lawyers.

During our October meeting we learned that our members found more value in coming to our Professional Development Lunch Programs, our Speed Interviewing Career sessions and our CLE events than we previously thought. In many areas of our professional lives we have been told that “networking is everything.” Indeed, if you were so inclined you can find enough “networking” events to spend every night of the week networking away. Networking for networking’s sake advances a career not. It appears that our members do not want us to focus *all* of our resources to fundraising or throwing parties. This will only be *one* of the things we do. We will continue to give back to the community and support the Children’s Assistance Fund.

The YLD is moving to change its focus to create programming and events that are specifically tailored to the needs of our members: providing the tools to begin and advance your careers. However, we need to know from you, our members, where you want us to direct our resources. Should we tackle issues facing you (e.g., debt repayment, starting a

practice, lateral hiring, practical skills, etc.)? Should we become more involved in the legislative process (e.g. regulation of the law profession, etc.)? Can we bring more members back into the fold by engaging in community service projects that call on our unique set of skills (providing legal assistance, disaster relief efforts, etc.)? These are questions that we need your help answering. So, in this season of giving, I promise you this: if you give our association your time and effort, we will give you an association you are proud to be a part of.

Happy Thanksgiving and Holidays! ■

It’s Campaign Season for the 2015 Election

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 - 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.

Filing of Petitions begins on January 5, 2015 and ends on February 2, 2015.

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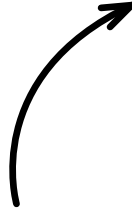
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States take the lead on legal education reform

By Daniel Thies

In March of 2013, the ISBA issued the Report of its Special Committee on the Impact of Law School Debt on the Delivery of Legal Services, which sounded an alarm about the detrimental impact of law school debt on the quality of legal services that the profession provides to the public, and the need to find practical ways to ensure that students are practice ready while limiting the cost of law school. Since that time, several other state bar associations have picked up the baton and taken other concrete steps to address the problem of law school debt and the need to train lawyers to be prepared to provide services to the public.

For example, in June 2013 the State Bar of California's Task Force On Admissions Regulation Reform issued its Phase I Final Report, which examined whether California should change its requirements for admission to the bar to include some sort of pre-admission competency program. Echoing the concerns in the ISBA report, the California report noted the need to improve training for new lawyers coming out of law school. To advance this end, the report included three recommended changes to the state's bar admissions requirements. Specifically, it suggested that applicants be required take 15 hours of practical skills training in law school, complete 50 hours of pro bono training by one year after admission, and complete 10

additional hours of CLE training in the first year of admission. More recently, in Phase II of its work the Task Force has proposed specific rules to implement these requirements.

Similarly, New York has implemented a new requirement for candidates seeking admission after January 1, 2015. Those candidates will be required to complete 50 hours of pro bono service prior to their bar admission. As Chief Judge Lippman explained when announcing the program, "the new pro bono service requirement for admission to the New York bar serves to address the state's urgent access to justice gap, at the same time helping prospective attorneys build valuable skills and imbuing in them the ideal of working toward the greater good."

In addition, New York has recently adopted a new "pro bono scholars program," which grants students early bar admission if they will commit to spending their last semester of law school engaged in pro bono work on behalf of low income clients. These candidates will be able to take the bar exam in February of their third year of law school, and will spend from March until June in a pro bono placement. Upon completion of the program, students will be admitted to the bar and will have gained valuable legal skills that will assist in preparing them to practice.

Arizona has taken New York's idea one step further, and has announced that, from

2013 to 2015 on an experimental basis, all students will be eligible to take the bar exam in February of their third year. To be eligible, students must leave no more than eight credit hours for their last semester, and must enroll in only two credit hours during the period preceding the bar examination. Again, the goal is to allow these students to be licensed by graduation or shortly thereafter, giving them a leg up in looking for jobs and potentially easing the transition to practice.

These various initiatives represent the best of American federalism: allowing different states to experiment with innovative ideas and allowing the best ideas to rise to the top. To be sure, such innovations are not without potential drawbacks. For one, law students who are likely to move to a new state at graduation will need to be aware of any unique admissions requirements that their state of practice may impose. Simply completing the requirements for the state in which the students' law school is located may not be sufficient. Nonetheless, even with such challenges, these state-led initiatives represent needed attempts to improve our system of legal education. As the results of these attempts at reform become known, other states will be able to emulate the ideas which work best, creating a better system of legal education for all. ■

ISBA YLD co-sponsors a real estate closing workshop at The John Marshall Law School

By Marie K. Sarantakis

The John Marshall Law School Justinian Society and Illinois State Bar Association's Young Lawyers Division co-sponsored a practical workshop and dinner social. Attorney Richard Caldarazzo taught students and alumni at The John Marshall Law School how to conduct a real estate closing while providing insightful tips and distributing a folder of supplemental materials for each guest to take home. Upon the conclusion of the event, guests enjoyed delectable pizza, an array of Pellegrino beverages, and a wide assortment of gourmet Italian bakery cookies. We are very grateful to Mr. Caldarazzo and the ISBA YLD for their support and contributions! ■



Pictured at left: The author and attorney Richard Caldarazzo at the workshop on October 30, 2014.

Discovery depositions: A crash course

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deponent during the deposition.

Getting back to your outline, especially if the witness is controlled by the opposing party, one of your main goals will be discovering information. Consider everything that the deponent could or might know. Is he/she an eyewitness? Does he/she have information about policies and procedures pertinent to the case? Does he/she have any information about the claimed injuries/damages? Does he/she have information about your client? Also consider any information which might indicate that the deponent has a bias in favor of one party or another.

When discovering information is your main goal, do not be afraid to ask questions that could solicit information damaging to your case. The more you know, the better you can prepare for trial. The best you can do with negative testimony is try to “lock in” the testimony of the deponent. For example, confirm that they have given you all of the items in a list (e.g., all of their complaints; every observation of your client; all of the conduct which they believe was negligent; all of the reasons they took a particular action; and so on). By asking follow up questions to confirm that they have listed everything, you will limit their ability to add new items to that list at trial.

On the other end of the spectrum, if you are deposing one of your own witnesses, you are normally trying to create a record. In these types of depositions, you are not trying to discover information. Your goal is both to disclose sufficient information to allow your witness to offer all necessary testimony at trial and to create a transcript which can be used as an indication of what the evidence will be at trial. This could be handy when arguing a motion for summary judgment, for example.

When creating a record is your goal, think through everything that you need to prove at trial, and then determine which pieces of the puzzle the deponent might be able to help you prove. Your outline will likely need to include particular phrases that you want to use (or avoid) and any pertinent terms of art. For this type of deposition, planning out (and writing down) entire questions on crucial points will help ensure that you cover everything necessary.

How to prepare if the other side is taking the deposition

If the other side has noticed the deposi-

tion, and the deponent is not your client, then your preparation process should be virtually identical to preparing for a deposition that you are about to take. You will be allowed to ask questions after the other side asks their questions. Create an outline just like you would if you are taking the deposition. During the deposition, if the other attorney adequately covers something on your outline, you can cross it off.

Exhibits

As part of your preparation process, you need to decide whether to use any exhibits. First ask yourself whether the witness can help you create a record of the foundation necessary to have one or more of your exhibits admitted into evidence at trial. Also consider whether you need any exhibits to explain your questions and/or to assist the deponent in providing answers.

If you decide to use exhibits, you should mark them in advance. This will help keep you organized and will eliminate the interruption of having the court reporter marking the exhibit for you at the deposition. Also make sure to bring a copy of each of your exhibits for each attorney who will be at the deposition, including yourself. (If you need to discuss the exhibit with the deponent, it is much easier if you have your own copy to refer to).

At the deposition

The scope of discovery is incredibly broad. See e.g. *TTX Co. v. Whitley*, 295 Ill.App.3d 548, 556-557, 692 N.E.2d 790, 796-797 (1st Dist. 2014). Thus, during a discovery deposition, both sides are allowed to ask about anything that might lead to the discovery of admissible evidence. So, listen to the deponent’s testimony. Do not get locked into your outline. If the deponent’s answer hints at more information in a direction that you had not previously planned, mark your place on your outline, and follow up on the new topic. You can then start back on your planned topics right where you left off.

Of course, either side may assert objections. However, unless the deponent is your client and you instruct them not to answer, the deponent will need to answer the question anyway. [Otherwise you have to bring the matter before a judge to rule on the ob-

jection and then re-take the deposition to the extent that any objections are overruled.] Thus, objections at discovery depositions are often unnecessary.

If the deponent is your client, you should generally only instruct him or her not to answer if the question asks for privileged information. As with any other objection, the other side can bring the matter up before the judge. You will need to present your client for a new deposition if your objection is overruled.

Final thoughts

Remember that the deposition will be transcribed and that you want to be able to use the transcript down the road. So, focus on keeping a clean and clear record at the deposition. Let the deponent finish talking before you ask your next question. Instruct the deponent (politely) to afford you the same courtesy before answering. Clarify the deponent’s testimony when they use nonverbal responses like “mm-hmm” or directional hand gestures. And lastly, after you’ve taken a deposition, review the transcript with an eye towards any odd speech patterns or nervous verbal ticks which you may have. That will ensure that your next deposition will go even more smoothly than the first. ■



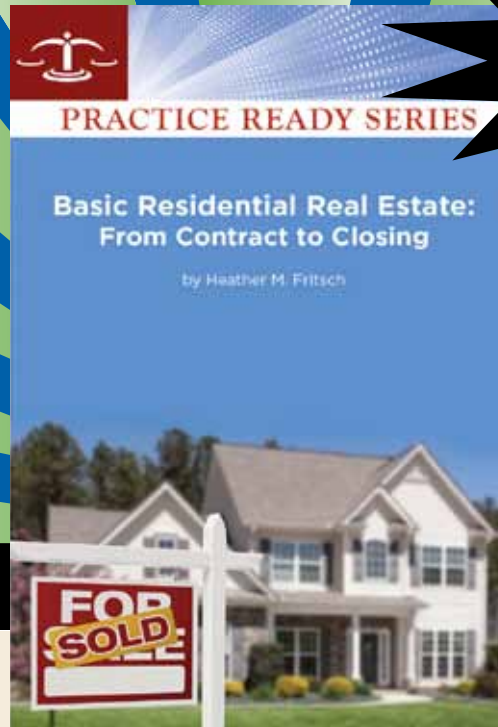
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Illinois has a history of
some pretty good lawyers.
We're out to keep it that way.

Bar Foundation update

By Jean A. Kenol

As the ex-officio of the YLD, I serve as the board liaison to the Illinois Bar Foundation ("IBF"). As such, I thought I would take this opportunity to provide some background on the IBF as well provide an update on its current events. The IBF was originally created to provide assistance to deserving members of the Illinois Bar who, because of age or infirmity, could no longer provide for their own care or support. Now, the IBF has expanded its scope to ensure meaningful access to the justice system, especially for those with limited means, and to assist lawyers who can no longer support themselves due to incapacity. The IBF sets forth to achieve the following objectives:

- "Enhance the availability of legal aid to those of limited means.
- Encourage pro-bono legal work.
- Educate Illinois residents regarding their rights and responsibilities under the law.
- Extend assistance to colleagues in need of support." (See: www.illinoisbarfoundation.org)

The IBF also assists the YLD in its efforts to raise funds for the Children's Assistance Fund.

The IBF recently completed its largest fundraising event, with its annual gala at the Four Seasons Hotel in Chicago. The 2014 Gala saw its' largest attendance ever at 540 guests to honor Mr. Peter J. Birnbaum, President and CEO of Attorneys' Title Guaranty Fund. This year set records for the IBF with the highest gross revenue ever raised in the event's 16-year history. More than \$480,000 was raised to support the IBF's causes.

With one of the most difficult job markets for entry level attorneys and the ongoing concern of limited access to justice, the IBF established the year-long Post-Graduate Legal Fellowships. Working with three law schools in this inaugural year, the IBF partly funds three recent law school graduates salaries to work in their alma mater's legal aid clinic. The first Fellows are: Alexis Simmons at NIU's civil legal aid clinic, Emily Vaughn at the Loyola Chicago's civil legal aid clinic, and Juan Mejia at the University of Illinois' civil le-

gal aid clinic.

The IBF is also proud to announce its adoption of the Illinois JusticeCorps program. Collaborating with The Chicago Bar Foundation in Cook County, this innovative program enlists student volunteers to serve as guides to make courts across Illinois more welcoming and less intimidating for people without lawyers. Illinois JusticeCorps recruits, trains, and provides the necessary support for college and law students to provide this procedural and navigational assistance. In this coming fiscal year, this program will expand from three to 10 courthouses in Illinois. Look for Illinois JusticeCorps members in the Bloomington, Champaign, Daley Center, Edwardsville, Galesburg and Macomb, Kankakee, Markham, Rockford, and Waukegan Courthouses.

As you can see, the Board and staff of the Illinois Bar Foundation have been hard at work to improve the state of the legal community throughout Illinois. Let's continue to support their efforts. ■

John Marshall ISBA representatives host election law panel

By Marie K. Sarantakis

On October 7, 2014, the Illinois State Bar Association Student Representatives for the John Marshall Law School hosted an Election Law Panel event open to all members of the student body. The event, Chaired by Timothy Meloy, presented law students with an opportunity to expand their professional networks. A politically diverse panel of attorneys and professors advised students about the electoral process. Attendees learned how they could personally become more engaged in the political arena as poll watchers and/or serve as election judges. Moreover, Professors Kevin Hull and Anthony O'Neill discussed recent revisions to the Illinois Election Law Code and advised students on what to do on Election Day.

Members from the JMLS Democrats and JMLS Republicans were present to encourage active involvement in their respective organizations on campus. The function was attended by ISBA YLD Liaison for the John Marshall Law School, Marron Mahoney and ISBA John Marshall Student Representatives Mara Salerno and Marie Sarantakis. The Illinois State Bar Association Young Lawyer's Division sponsored the non-partisan event and provided pizza and beverages from Plymouth Restaurant. ■



Attending the JMLS ISBA Election Law Panel event are (Clockwise from left): Marie Sarantakis, Marron Mahoney, Mara Salerno, and Timothy Meloy.

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