January 2010 Vol. 39, No. 5

ILLINOIS STATE BAR ASSOCIATION

ADMINISTRATIVE LAW

The newsletter of the Illinois State Bar Association's Section on Administrative Law

Chair's comment page, January 2010*

By Marc Christopher Loro; Chair, Administrative Law Section Council

Some days, this column practically writes itself. This is one of those days, 15 December 2009, as the Illinois and Chicago Rivers are overflowing their banks with indignation over the revelation of what has been widely referred to in press as the Department of Corrections' "secret" plan to release criminal offenders just a little early. A broad and liberal interpretation and manipulation of the DOC early release plan has resulted in the release of some 850 offenders, many of them felons, after having served as few as 11 days incarceration. The plan was discovered and revealed by the Associated Press and published in the Chicago and Springfield papers. (See the *Sun-Times* of 14 December: "Illinois Prisons Shave Terms, Secretly Release Inmates.") Poor Gov. Quinn is promising to fix it right up. See the Springfield *State Journal-Register* of 15 December: "Critics Bash Quinn over Inmates Release; Unclear whether governor knew about program.") This "secret" plan overlaps the publicized early release of about 1,000 non-violent offenders. The Governor has few options. The prisons are overcrowded and understaffed, and there is no money to hire more prison guards. Perhaps selling the Thomson Correctional Center to the feds is the answer. Is there anyone who thinks the money from that sale will be used to fund the DOC?

The big news in Springfield this week is that the State finally—apparently—has unloaded the Abraham Lincoln Hotel on a hotel developer from the Decatur area. The State loaned some influential developers a lot of money to build and run the hotel and they claimed that they were never able to turn a profit, so they never paid much on the loan. The State was out about $30 million when the Treasurer's Office took it over, and they sold it at auction yesterday for about $6.5 million. For those of you unfamiliar with Springfield, the hotel, at least 10 stories tall and sleeping about 300 people, sits in the heart of downtown and is con-

Continued on page 2

Corporate shell game shot down by the First District

By Patti Gregory-Chang

On September 1, 2009, the First District handed down a ruling in the case of *Vino Fino Liquors, Inc. v. License Appeal Commission of the City of Chicago*, No. 1-07-3269 (Ill. App. 9/1/2009) (Ill. App., 2009).

In disallowing Plaintiff's attempts to play the corporation shell game the Appellate Court sensibly affirmed the Circuit Court of Cook County and the License Appeal Commission. This case essentially involved an attempt by a business owner to avoid prior violations for selling liquor to minors by the simple expedient of creating a new corporation.

Factual Findings

In July 2001, Nilsa Gonzalez purchased Paco's Liquors, Inc. (Paco's Liquors), a licensed packaged goods liquor store located at 2558 West Division Street in Chicago. That corporation through its agent served liquor to a minor in January 2004. Four months later the City of Chicago issued another citation for serving minors. The second citation was settled as a result of a revocation proceeding. In 2004, Ms. Nilsa Gonzalez filed an application for a new license for a new corporation, Vino Fino, which was located at the same

Continued on page 3

INSIDE

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Chair's comment page

Continued from page 1

nected to the convention center. But they could not turn a profit. The charge is that the profits were diverted to other places. At least it is over and done with.

Down in southern Illinois, the question is whether the folks at Southern Illinois University-Carbondale and Edwardsville will get their last paycheck of the year. Seems it has just about run out of money and the State has not yet sent much money this half of the fiscal year to our state universities. See the State Journal-Register "State Capitol Q & A" section of 25 November 2009. These are state—public—universities that we are talking about.

The Governor did have some good news last week, when he was finally able to sign the long-promised campaign finance reform measure (Senate Bill 1466, now P.A. 96-832). You will recall that the first landmark bill was ceremoniously vetoed by Gov. Quinn. The current measure is a good example of how things get done in Springfield. The original bill was originally introduced by Sen. Emil Jones III back in February, and proposed that absentee ballots returned by mail had to be postmarked by midnight preceding election day. It passed the Senate and was sent to the House in early April, where its chief sponsor was Eddie Lee Jackson, Sr. A phony amendment—what is called a "shell bill"--was filed on 27 May (replacing or deleting everything and making what they call a "technical change" which—I'm not making this up—changed "the" to "the.") There it languished until 9 October when, lo and behold, Speaker Madigan became the chief sponsor. He filed House Amendment No. 2, which contains the substantive language that will be passed soon enough. The amendment went from the Rules Committee to the Executive Committee on 13 October and was voted out of the Executive Committee the following day. It passed both houses on 30 October and was sent to the Governor on 17 November. It is amazing how quickly things can get done when the General Assembly wants it done. The Governor signed the bill on 9 December.

The Ad Law Section Council conducted its mid-year meeting a few days earlier. In addition to the ethics resolution, which I will discuss below, we are considering a proposal which will seek to bring some uniformity to the rules of evidence used in administrative hearings state-wide. To that end, we intend to seek the assistance of the Commission for Uniform Laws, which is working on a revision of the model APA.

In this issue of the newsletter, you will find Ms. Patti Gregory-Chang's synopsis of an interesting First District Appellate Court decision in the case of *Vino Fino Liquors, Inc. v. License Appeal Commission of the City of Chicago,* No. 1-07-3269. The case shows how Cook County was able to deny a liquor license by piercing the corporate veil of entities that had been shown to have previously sold alcoholic beverages to minors. You will also find two commentaries from newsletter co-editor Julie Ann Sebastian. One involves a voluntary dismissal of an administrative review pursuant to Section 2-1009 of the Code of Civil Procedure, in the case of *Ross v. Illinois Municipal Retirement Fund, Illinois Municipal Retirement Fund Board of Trustees, and St. Clair County Housing Authority,* No. 5-07-0172. The other is on the representative of petitioners before the Illinois Department of Employment Security by lay people, in the case of *Grafner v. Department of Employment Security*, No. 1-08-1858.

Recognition is due to our Membership and Outreach subcommittee, chaired by Ms. Ann Breen-Greco. On October 15, she and subcommittee members Ms. Jewel Klein and Ms. Sheila Harrell, gave a presentation on administrative hearings to Judge Paul Lillios' administrative law class at the John Marshall School of Law. Ann Breen-Greco also had some students participate in a brief mock hearing, followed by questions from the students and Judge Lillios. The visit concluded with Ms. Ann Breen-Greco briefly discussing the benefits of membership in the ISBA and the Administrative Law Section Council in particular. Of special interest to the students is the fact that membership is free for students.

Recognition also goes to council members Mr. Edward Schoenbaum and Mr. William Price. We were very recently informed that their proposal for a CLE program, tentatively titled "Administrative Adjudication in the City of Chicago and other Municipalities" has been approved. It will be presented on 5 March 2010 at the ISBA's downtown Chicago Office, 20 South Clark Street. Keep an eye out for information on registration in your daily edition of the ISBA E-clips. The council will conduct its next meeting at the same location on the afternoon of 4 March and, as always, any section council member is welcome to attend.

The plan is to present two (2) half day stand-alone seminars, one in the morning and the other the same afternoon. You will be able to attend one or both, and pay for them separately. The morning session will cover several general topics on administrative adjudication, while the afternoon session will focus adjudication in Chicago and some suburban hearing rooms. We will provide additional details as they become available.

In regard to the Ethics Resolution, the cover article in the October issue of the *Illinois Bar Journal* is a summary of the recently promulgated revised Rules of Professional Conduct ("Get Ready for Illinois' New Rules of Professional Conduct", Vol 97, No. 30, IBJ at p. 500). The author, Mr. Robert Creamer of Evanston, was the co-chair of the ISBA/CBS Joint Committee on Ethics 2000. He packs a lot of information into a few pages of text, and we commend the article to you. We note with dismay, however, that Mr. Creamer's brief discussion of Rule 1.13 (Organizational clients) fails to make mention of the new comment on "Government Agency," which was noted in this space in our previous issue. The comment opens as follows:

> The duty defined in this Rule applies to governmental organizations. Defining precisely the identity of the client and prescribing the resulting obligations of such lawyers may be more difficult in the government context and is a matter beyond the scope of these Rules. See Scope [18].

We asked Mr. Creamer to elaborate on this comment, and he graciously and promptly responded. Our exchange of e-mail messages is reprinted in this newsletter. The exchange focuses on "who the client is" and the duties of a government lawyer once the client is identified. With respect, his response, while detailed, demonstrates that the Supreme Court's rule revision does not break new ground on this issue.

We hope that you enjoyed a safe, merry, and blessed holiday season, and that you will look upon the New Year with a sense of optimism and a determination to make things better in big and small ways. We wish you a healthy, happy and prosperous 2010. ■

***** The views and opinions expressed here are those of the author and are not intended to represent the views and opinions of the Illinois State Bar Association or the Office of the Secretary of State.

Corporate shell game shot down by the First District

Continued from page 1

address. Ms. Gonzales was the President of both corporations.

Local Liquor Control Commission, (LLCC), denied license application

The LLCC denied the application for a license for Vino Fino stating,

> The application for a packaged goods license is disapproved because the issuance of a liquor license to the applicant will create a law enforcement problem. The Municipal Code allows this Commission to disapprove a license 'if the issuance of such license would tend to create a law enforcement problem. The president and 100% shareholder of the Vino Fino Liquors, Inc., Nilsa Gonzalez, is the current president and 100% shareholder of Paco's Liquors, Inc., which is issued a license at this address, 2558 W. Division Street. Ms. Gonzalez and Paco's Liquors Inc., have an established a [sic] negative license history at 2558 W. Division.

License Appeal Commission, (LAC), affirmed LLCC

Ms. Gonzales appealed to the LAC which affirmed the decision of the LLCC after an evidentiary hearing. Testimony at that hearing included an explanation that the LLCC would revoke a liquor license upon a third sale to a minor within three years pursuant to 4-60-181 of the City of Chicago Municipal Code, (MCC). Witnesses opined that allowing a new license here would allow Ms. Gonzales to avoid her own history of violations found while she was President of Paco's Liquors, Inc.

A cadre of witnesses testified on behalf of Vino Fino's application. Mostly they stated that they didn't believe that the license would create a law enforcement problem. On cross examination, many admitted to a sketchy grasp of the facts and/or the license violation history.

In affirming the LLCC, the LAC specifically referenced the concern that allowing a new license here might allow a violator to avoid the consequences of prior bad acts. Owners who racked up violations could simply form a new corporation and start over.

One commissioner dissented stating that the testimony supported a finding that no law enforcement problems would be created by the issuance of a license to Vino Fino Liquors Inc. This commissioner declared that prior history could be taken into account regardless of corporate name.

Circuit Court Affirmed

Vino Fino Liquors, Inc contended that denial of its application for a packaged goods liquor license was against the manifest weight of the evidence. Vino Fino Liquors Inc. also claimed that in denying its license, the LLCC misapplied section MCC 4-60-040 which allows denial of a license where a law enforcement problem would be created. The Circuit Court disagreed and affirmed the LAC.

Appellate Court affirmed Circuit Court and LAC

On appeal after reviewing the ordinance scheme generally, the court determined that the ordinance was designed to allow the City to examine past violations with regard to the individual people and parties involved in each application. Then the court declined to substitute its judgment for that of the LAC and held that the decision was not against the manifest weight of the evidence. It was for the LAC to determine credibility and decide how to weigh the competing evidence presented. Interestingly the Appellate Court refrained from alluding to Ms. Gonzales' attempt to avoid violations by forming a new company.

Commentary

This case is an important common-sense decision. Sometimes individuals attempt to hide bad acts behind a corporation. The LAC and the Appellate Court extended prior decisions which frown on such behavior especially when it comes to public health, safety, and welfare issues. Cases like *Express Valet Inc. v. City of Chicago*, No. 1-05-3998 (Ill. App. 5/29/2007) (Ill. App., 2007) have already prevented an individual from barricading himself behind a corporation. This case stands for the proposition that one cannot move and rename the pieces and hide behind a corporate name to violate municipal codes either. ■

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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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Comments on Rule 1.13 from the Co-chair of the Joint Committee on Ethics 2000

By Robert Creamer

The October 2009 IBJ article made no specific mention of Comment [9] to new Rule 1.13 because of space limitations on what could be covered; and many other interesting and deserving topics were omitted as well. By way of background, 1990 IL Rule 1.13 was based on 1983 ABA Model Rule 1.13. The ABA amended Model Rule 1.13 in 2003 in the wake of Enron and other corporate scandals. The 2003 ABA amendments expanded the existing duties of lawyers under Rule 1.13 to act to protect organizational clients in cases of misconduct by an organization's constituents. The 2010 IL Rule 1.13 is based on 2003 ABA Model Rule 1.13, with some revisions that were explained in the article.

That Rule 1.13 extends to lawyers for government organizations is not new. Although the IL Supreme Court did not formally adopt official comments to the 1990 IL Rules, it typically looked to the ABA Model Rules comments in interpreting the IL rules. See, e.g., *Schwartz v. Cortelloni,* 685 NE2d 871(1997). And former ABA comment [6] to 1983 Model Rule 1.13 is substantially the same as 2003 ABA comment [9], which is 2010 IL comment [9]. So the basic concepts of Rule 1.13, namely: that a government lawyer represents the government organization or entity acting through its duly authorized constituents; and that a government lawyer has a duty to act to protect the government organization in certain circumstances, have been with us since at least 1990.

Similarly, the gist of comment [9] to Rule 1.13, the question of "who is the client," is not new or unique to government lawyers. For example, Scope [17] states generally that whether there is a lawyer-client relationship is determined by other law external to the Rules of Professional Conduct. Comment [9] to Rule 1.13 merely reminds government lawyers to look to applicable federal or state law that may give specific guidance on who is the client in any given situation and further points out that applicable law may define a government lawyer's duty differently than that of a private lawyer in similar circumstances. There are, for example, existing IL authorities on the "who is the client" issue. See, e.g., *People v. Crawford Distributing Co.*, 382 NE2d 1223 (1978); and ISBA Opinion 01-07 (April 2002). See also ABA Formal Opinion 97-405 (April 1997); and Comment c to Sec. 97 of Restatement Third, The Law Governing Lawyers (2000).

That said, Rule 1.13 does indeed define duties of government lawyers once the initial question of "who is the client" is resolved. One important example is the duty to act under paragraph (b) to protect the organization when the lawyer knows of serious misconduct by a constituent of the organization, which was redefined and expanded in the 2003 ABA Model Rule and hence the 2010 IL Rule. Another is paragraph (f), which provides that when dealing with an organization's constituents, a lawyer for an organization shall explain the identity of the client when the lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing. Although not mentioned individually, the other duties in the other paragraphs of Rule 1.13 apply generally to government lawyers, unless a specific statute, regulation or judicial decision provides otherwise in particular situations.

Finally, it should be noted that new Rule 1.13 is not unique to Illinois. As mentioned above, it is based on 2003 ABA Model Rule 1.13, and a version similar to the new IL rule has been adopted in about 33 states. The other states and DC still have a version of the prior Model Rule 1.13, which is similar to our 1990 Rule 1.13. ■

Editorial comment

By Julie Ann Sebastian, Co-Editor

Discussed at length in the December *Illinois Bar Journal* (vol. 97 at page 636) ("Yes" to Nonlawyers in Illinois Administrative Adjudications, by Jeffrey A. Parness) is an Illinois Appellate Court, First District, Fourth Division, case, *Grafner v. Department of Employment Security*, found at the court's Web site as No. 1-08-1858 (released August 6, 2009); 2009 WL 242420 (1st D 2009). Members are directed to the *IBJ* for a more complete summary of the facts and the holding of the court in this appeal of the Illinois Department of Employment Security (IDES) Board of Review involving the decision to deny Ellen Grafner employment compensation benefits.

Ellen Grafner appealed the trial court's decision affirming the decision of the Illinois Department of Employment Security (IDES) Board of Review that denied Grafner employment compensation benefits. On appeal, one of the arguments raised was that her employer's nonattorney representative and an employee of St. Bartholomew parish, where she had worked as a part-time musician from November 30, 2006 through January 7, 2007, engaged in the unauthorized practice of law during the IDES hearing. In addition to the parties' briefs on appeal, the Illinois State Bar Association filed an amicus curiae brief in support of plaintiff Ellen Grafner; the Society for Human Resource Management, the National Federation of Independent Business Small Business Legal Center, the Metropolitan Chicago Healthcare Council, the Association of Unemployment Tax Organizations, UWC-Strategic Services on Unemployment & Workers Compensation, the Illinois State Council for the Society for Human Resource Management, and the Illinois Manufacturers' Association filed an *amicus curiae* brief in support of the employer.

The Illinois State Bar Association *amici* brief in the *Grafner v. Department of Employment Security* case is reprinted in this newsletter as an informational item. We will continue to report on this case, which was brought to the ISBA Board of Governors by the Unauthorized Practice of Law Committee for consideration. Special thanks to Jack C. Carey and Charles J. Northrup for their work on behalf of the ISBA in the *amicus curiae* brief and to our Board of Governors liaison Carl R. Draper, who kindly provided the brief to the section council at its December 4, 2009 meeting. We invite comments from you, our readers, on this case and the brief. ■

The Illinois State Bar Association's *Amicus Curiae* Brief in support of Petitioner-Appellant

I. INTRODUCTION

This case presents three issues of importance to the Illinois State Bar Association ("ISBA") and the legal profession as a whole. The first relates to whether a nonlawyer appearing and participating at an Illinois Department of Employment Security ("IDES") administrative hearing on behalf of a participant constitutes the practice of law. As recited in Plaintiff-Appellant's Brief ("Pl. Brf."), a nonlawyer "employer representative" attended an IDES administrative hearing on behalf of the employer and examined and cross-examined witnesses (See Pl. Brf. at p. 6). The second issue revolves around the exclusive authority of the Illinois Supreme Court to define and regulate the practice of law. This issue is relevant here because the tribunals below allowed the participation of the nonlawyer "employer representative" under the authority of Section 806 of the Unemployment Insurance Act which purports to allow any person or entity in an IDES proceeding to be represented by a nonlawyer. 820 ILCS 405/806. The third issue identifies the important role of the courts in ensuring that the public is safeguarded from attempts to minimize the protections provided by a well regulated bar.

While the ISBA believes strongly that these issues should be resolved as discussed below, it takes no position on the underlying question of Plaintiff-Appellant's eligibility of services from the IDES.

II. ARGUMENT

A. Illinois Courts Have Found that Nonlawyers Appearing and Participating at Administrative Hearings on Behalf of Others Constitutes the Practice of Law.

The Illinois Supreme Court has repeatedly held that the practice of law defies "mechanistic formulation." E.g. *In re Howard*, 188 Il1.2d 423, 438, 721 N.E.2d 1126, 1 1134, 242 Ill.Dec. 595, 603 (1999). Nevertheless, the Court has provided reasonable guidelines on defining the practice of law and, in some cases, identified particular conduct that constitutes the practice of law. Broadly, the Court consistently has determined that an activity involving the "giving of any advice or rendering of any service requiring the use of legal knowledge or skill" is the practice of law. Id. The Court also has found that practicing law "encompasses not only court appearances, but also services rendered out of court." Id., citing *People ex rel. Chicago Bar Association v. Barasch*, 21 Ill.2d 407, 414, 173 N .E.2d 417 (1961). Such out of court services include a wide range of activities including preparing notes and mortgages, *King v. First Capital Financial Services Corp.*, 215 Il1.2d 1,828 N.E.2d 1155,293 Ill.Dec. 657 (2005), deeds and other title related documents, *Chicago Bar Association v. Quillian and Tyson, Inc.*, 34 Il1.2d 116,214 N.E.2d 771 (1966), and gathering information from clients and explaining legal process, *In re Discipio*, 163 Il1.2d 515, 645 N.E.2d 906, 206 Ill.Dec. 654 (1994). These opinions held the above referenced conduct required the use of legal knowledge and skill and therefore constituted the practice of law. In some cases, legal knowledge and skill was inferred from the conduct at issue. Id., 163 Il1.2d at 524, 645 N.E.2d at 911,206 Ill. Dec. at 659. Knowing what questions to ask, either on direct or cross examination, necessarily implies the use of legal knowledge and skill. Clearly then, appearing on behalf of another in a formal proceeding, such as a court or other tribunal, where legal rights are presented, considered, and decided, and participating in such a hearing by examining and cross-examining witnesses, would fall within this broad definition of the practice of law.

Specifically, the Illinois Supreme Court has found the practice of law when nonlawyers appear and participate at administrative proceedings on behalf of others. *Chicago Bar Association v. Goodman*, 366 Ill. 346, 8 N.E.2d 941 (1937). In *Goodman*, the nonlawyer solicited workers compensation claimants, negotiated settlements, filed petitions, orders, and other pleadings with the administrative tribunal (the Industrial Commission), and eventually brought matters to hearing before the Industrial Commission arbitrator. Id. 366 Ill. at 348, 8 N.E.2d at 943. The *Goodman* Court analyzed all these various activities and, with

respect to participation at hearing, noted the tremendous significance of establishing a record for proper review. As part of establishing a clear record, the Court noted the necessity of a representative to understand and weigh evidence and coordinate testimony. Id. 366 Ill. at 354, 8 N.E.2d at 946. Of importance to this case, the Court noted that "it is immaterial whether the acts which constitute the practice of law are done in an office, before a court, or before an administrative body." Id. 366 Ill. at 357, 8 N.E.2d at 947. These fundamental attributes of legal knowledge and skill are no less required where a nonlawyer appears and participates in eliciting testimony at a proceeding before the IDES as they were when the proceeding was before the Industrial Commission in Goodman. The Goodman opinion stands for the proposition that participation in an IDES administrative hearing is the practice of law.

Finally, there is some guidance from the Appellate Court on the specific question of nonlawyers appearing on behalf of others at IDES administrative hearings. In *Perto v. Illinois Department of Employment Security*, 274 Ill.App.3d 485,654 N.E.2d 232, 210 Ill.Dec. 933 (2nd Dist. 1995), the Appellate Court determined that a nonlawyer representing a claimant before the IDES did not engage in the practice of law. However, the conduct in *Perto*, did not rise to the level of an actual appearance or participation in an administrative proceeding such as is present in this matter. In *Perto*, the nonlawyer simply filled out a form and sent one letter to the IDES on behalf of a potential claimant. *Perto*, 274 Ill. App.3d at 487-88,654 N.E.2d at 234-35, 210 Ill.Dec. at 935-36. In reviewing this limited involvement, the court noted the "simplicity" of filing out a form and sending a letter and determined that neither of the activities required the use of legal knowledge or skill. *Perto*, 274 Ill.App.3d at 494,654 N.E.2d at 239-40,210 Ill.Dec. at 940-41. Importantly, the court specifically noted that the conduct at issue did not involve participation at the IDES hearing (which is the conduct at issue in this matter). Id. Notwithstanding the ISBA's amicus efforts to have the court rule broadly on the issue, the court also specifically· left open the question of whether attendance and participation of a nonlawyer on behalf of a claimant at an IDES hearing constituted the practice of law. *Perto*, 274 Ill.App.3d at 496,654 N.E.2d at 240,210 Ill.Dec. at 941 ("we need not determine whether there is a point in the administrative proceedings where participation by a nonattomey constitutes the unauthorized practice of law."). Accordingly, while *Perto* is not dispositive on the precise issue, its very limited holding is nevertheless consistent with precedent on the practice of law issue. Given that precedent and analysis, it would seem that a nonlawyer's appearance and participation at an IDES hearing on behalf of another is the practice of law.

B. The Judicial Branch of Government Has the Sole Authority to Define and Regulate the Practice of Law.

Determining whether non-lawyer participation in an administrative hearing on behalf of another person is the practice of law does not resolve the dispute pending before this Court. As referenced in the decisions of the lower tribunals in this case, the Unemployment Insurance Act ("Act") purports to authorize nonlawyers to represent participants in IDES hearings. Section 806 of the Act provides:

> Any individual or entity in any proceeding before the Director or his representative, or the Referee or the Board of Review, may be represented by a union or any duly authorized agent.

820 ILCS 405/806. In light of this purported authority, the question of significance to the ISBA and the legal profession becomes whether the General Assembly has the authority to permit the practice of law to be carried out by non-lawyers? The answer to that question appears to be well settled and answered in the negative.

The Illinois Supreme Court is the sole and exclusive authority to define the practice of law and to determine who shall be allowed to practice in Illinois. *King v. First Capital Financial Services Com*., 215 Ill.2d 1, 12,828 N.E.2d 1155, 1293, 1162 Ill.Dec. 657, 664 (2005)("The power to regulate and define the practice of law is a prerogative of this court under the Illinois Constitution."). This separation of authority is well ingrained in the law of Illinois. Article II, Section 1 of the Illinois Constitution provides, "The legislative, executive and judicial branches are separate. No branch shall exercise powers properly belonging to another." Constitution of the State of Illinois, Article II, Section 1.

The General Assembly has no authority to intrude upon this judicial function. In interpreting the authority of the Industrial Commission to allow nonlawyers to practice before it, the Court in the *Goodman* opinion stated:

> The General Assembly has no authority to grant a layman the right to practice law. (citations omitted.) It follows that any rule adopted by the commission, purporting to bestow such privilege upon one not a duly licensed attorney at law is void. Nor can the General Assembly lawfully declare not to be the practice of law, those activities the performance of which the judicial department may determine is the practice of law.

Goodman, 366 IlL at 352,8 N.E.2d at 945. This holding has been followed in a number of cases since *Goodman* and is now well established. See *King,* 215 Ill.2d at 12, 828 N.E.2d at 1162,293 Ill.Dec. at 664; *Lozoff v. Shore Heights, Ltd*., 66 Ill.2d 398, 401, 362 N.E.2d 1047,1048,6 Ill.Dec. 225,226 (1977) ("It is for this court to determine who shall be permitted to practice law in Illinois.").

Of particular interest in this case is the treatment of the authority issue in *Perto*, which interpreted Section 806 of the Act. In *Perto*, the Appellate Court was clear that only the Supreme Court can determine who may represent others when engaging in the practice of law:

> [I]n Illinois, only licensed attorneys are permitted to practice law. (705 ILCS 205/1 (West 1992).) The legislature. has no authority to grant a nonattorney the right to practice law even if limited to practice before an administrative agency. (*people ex rel. Chicago Bar Association v. Goodman* (1937),366 IlL 346, 352,8 N .E.2d 941.) The ultimate authority to regulate and define the practice of law rests with the supreme court. *Goodman*, 366 Ill. at 349,8 N.E.2d 941.

Perto, 274 IlLApp.3d at 493, 654 N.E.2d at 238. (The *Perto* court's conclusion that Section 806 of the Act was ineffective to authorize nonlawyers to represent others at IDES hearings compelled the court to reach and analyze the issue of whether or not sending a letter and filing out a form by a nonlawyer in an IDES matter was the practice of law.")

The *Perto* court's conclusion appears to be the correct one, and in fact has been embraced, at least informally, by the Illinois Attorney General's Office ("IAGO"). In an informal letter opinion dated October 8, 2002, the IAGO responded to a question posed by the Illinois Secretary of State's Office inquiring whether Secretary of State hearing officers could allow, pursuant to an administrative rule, nonlawyers to appear and represent others in pending Secretary of State matters.

After discussing cases such as *Goodman, Lozoff*, and *Perto*, the IAGO acknowledged the exclusive authority of the Supreme Court to determine who mayor may not practice law. The IAGO went on to conclude that Secretary of State hearing officers did not have any authority, notwithstanding the administrative rule to the contrary, to allow nonlawyers to appear and practice law in Secretary of State hearings. (Attorney General informal opinion letter to Nathan Maddox is attached as Exhibit A.)

Under this well-established precedent and authority, only the Illinois courts have the authority to define and regulate the practice of law. Section 806 of the Act can not operate to permit nonlawyers to appear and participate on behalf of others in IDES proceedings.

C. The Legal Profession and the Courts Must Guard Against the Practice of Law by Non-Lawyers.

The legal profession has a continuing duty to bring to the attention of the court . attempts to redefine and limit the practice of law and to otherwise generally restrict the authority of the judiciary. *Adair Architects, Inc. v. Bruggeman et al.*, No. 3-03-0229 (Ill. App. 2-19-04)(3rd Dist. 2004) (In upholding the primacy of a Supreme Court Rule requiring corporations to be represented in litigation by lawyers notwithstanding conflicting statutory authority, the court noted, "It is the court's solemn duty to protect the judicial power from legislative encroachment and to preserve the integrity and independence of the judiciary." citing *People v. Felella,* 131 Il1.2d 525, 538-39, 546 N.E.2d 492,498, 137 Il1.Dec. 547, 553 (1989)). Prohibitions on the practice of law by non-lawyers serve important public purposes, including the avoidance of "irreparable harm to many citizens as well as to the judicial system itself." *Mallen & Associates v. MylnjurvClaim.com Corp*., 329 Ill.App.3d 953, 956, 769 N.E.2d 74, 76, 263 Ill.Dec. 872, 874 (15t Dist. 2002); *Lawline v. American Bar Association*, 956 F.2d 1378, 1385 (7th Cir. 1992) ("The prohibition against the practice of law by a layman is grounded in the need of the public for integrity and competence of those who undertake to render legal services"). The importance of protecting the public in legal matters is underscored by the substantial regulation of the legal profession which includes, but is not limited to, educational requirements; a vigorous disciplinary process; mandatory continuing legal education; strict rules of conduct (particularly covering such matters as confidentiality, conflict of interest and competence); and high standards of integrity. These vital public purposes are thwarted where nonlawyers are allowed to appear and participate on behalf of others in administrative hearings where individual rights are presented, considered, and decided. As such, this court has the obligation to protect the public from such improper conduct as well as to preserve the authority of the courts, particularly in cases such as this one where the suspect conduct is carried out under claim of statutory authorization.

III. CONCLUSION

Nonlawyers appearing and participating at administrative hearings on behalf of others are engaging in the practice of law. Because the practice of law is solely defined and regulated by the judicial branch of government, the legislature has no authority to limit, expand, or redefine the practice of law. Because the purpose of prohibitions against nonlawyers practicing law is to protect the public, the courts must be vigilant in ensuring that those prohibitions are evenly and appropriately enforced. The case before this court presents just such an opportunity for the court to reaffirm these longstanding principles. WHEREFORE, for the above stated reasons, the ISBA as Amicus request that this Court reverse the judgment below.

Respectfully submitted,

Jack C. Carey, President
Charles J. Northrup, General Counsel
Illinois State Bar Association
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Charles J. Northrup
Attorney for Amicus Curiae
Illinois State Bar Association

Exhibit A:

February 2003 - ISBA Government Lawyers Newsletter

Attorney General's office issues opinion regarding appearance of attorneys licensed in other states in Illinois administrative proceedings

[Editors' note: In the August 2002 issue of the Committee on Government Lawyer newsletter, we published an article addressing the appearance of non-attorneys in hearings before State administrative bodies. (See, "Unauthorized practice of law in administrative hearings" by Claire Manning and Richard R. McGill, Jr.) Subsequently, Attorney General Jim Ryan's office issued an informal opinion regarding the appearance of attorneys licensed in other states in Illinois administrative proceedings. Because of the potential ramifications of the conclusions reached by Attorney General Ryan's office, the complete text of informal opinion No. 1-02-049, issued October 8, 2002, to Nathan Maddox of the Office of the Secretary of State is set out below.]

Dear Mr. Maddox:

I have your letter wherein you inquire whether, pursuant to a duly promulgated administrative regulation, administrative hearing officers appointed by the Secretary of State may permit attorneys licensed in States. other than Illinois to appear and represent clients in matters pending before them. Because of the nature of your inquiry, I do not believe that the issuance of an official opinion is necessary. I will, however, comment informally upon the question you have raised.

You have stated that there is currently pending in your office a matter involving litigants from California, Wisconsin and Illinois. Attorneys from California and· Wisconsin have sought leave to appear before a hearing officer pursuant to 92 Ill. Adm. Code 1001.30 (Jan. 1, 2002), which provides, in part:

***

1) Attorneys admitted to practice in states other than the State of Illinois may appear and be heard by special leave of the Hearing Officer appointed to conduct the hearing, upon the attorney's verbal representations or written documentation as to the attorney's admittance.

***

However, questions have been raised regarding the validity of the rule.

The question of whether an administrative agency may authorize a person who is not licensed as an attorney in Illinois to practice law before it was addressed by the Illinois Supreme Court in *People ex rel. The Chicago Bar Ass'n v. Goodman* (1937), 366 Ill. 346, 352, cert. denied, 302 U.S. 728,58 S. Ct. 49 (1937). The defendant in that case engaged in a rather extensive business of assisting injured workers with

the adjustment of claims before the Illinois Industrial Commission. The court stated:

* * *

* * * The respondent urges that because the legislative act relating to the Industrial Commission grants to that body the right to promulgate rules governing the procedure before it, and the commission has adopted a rule permitting a party to appear before it by his attorney or 'agent,' that he, as agent of the claimant, may lawfully appear before the commission as the representative of the client and try his claim there. Even though the Industrial Commission is merely an administrative body, yet, if what the respondent did for a fee, in the presentation of and hearing of a petitioner's claim before that body, amounted to the practice of law, a rule of the commission purporting to grant him that privilege is of no avail to him. The General Assembly has no authority to grant a layman the right to practice law. (Citation). It follows that any rule adopted by the commission, purporting to bestow such privilege upon one not a duly licensed attorney at law, is void. Nor can the General Assembly lawfully declare not to be the practice of law, those activities the performance of which the judicial department may determine is the practice of law.

* * *

Our appellate court acknowledged the general rule in *Perto v. Board of Review* (1995), 274 Ill. App. 3d 485,493, appeal denied, 164 Ill. 2d 581 (1995), while holding that a person who responded to factual questions on behalf of an employer in a proceeding before the Department of Employment Security was not engaged in the practice of law. The Illinois Supreme Court reiterated the rule that it has exclusive power to determine who shall be permitted to practice law in Illinois in *Lozoff v. Shore Heights, Ltd* (1977), 66 Ill. 2d 398, 401. In that case, a Wisconsin attorney arranged a real estate transaction among parties who were residents of Illinois. The court held that the attorney had engaged in the unauthorized practice of law in Illinois and was not entitled to attorney's fees.

It has been suggested that Supreme Court Rule 707 (145 Ill. 2d R. 707) may authorize the Secretary of State (through his hearing officers) to permit the appearance in particular administrative matters of attorneys who are licensed in other States. Rule 707 provides:

> "Anything in these rules to the contrary notwithstanding, an attorney and counselor-at-law from any other jurisdiction in the United States, or foreign country, may in the discretion of any court of this State be permitted to participate before the court in the trial or argument of any particular cause in which, for the time being, he or she is employed."

This is a rule by which the supreme court specifically empowers Illinois courts to permit the participation of attorneys who are licensed in other jurisdictions. The rule does not refer to proceedings held before administrative agencies, or conducted by officers of the executive branch of government. In no reported case has the rule been applied to administrative hearing officers, who look to the legislature, not to the court, for authority to act. To the contrary, the supreme court has held in *People ex rel. The Chicago Bar Ass'n v. Goodman* and *Lozoff v. Shore Heights, Ltd.* that the General Assembly has no authority to regulate the practice of law.

In this regard, I note that section 12 of the Attorney Act (705 ILCS 201112 (West 2000)) provides:

> "When any counselor or attorney at law, residing in any other state or territory, may desire to practice law in this state, such counselor or attorney shall be allowed to practice in the several courts in this state upon the same terms and in the same manner that counselors and attorneys at law residing in this state now are or hereafter may be admitted to practice law in such other state or territory."

The provision is essentially a reciprocity rule applying only to practice in the courts. In any event, the legislative provision is merely in aid of and does not detract from the power of the supreme court to control the practice of law. (*Lozoff v. Shore Heights, Ltd* (1977),66 Ill. 2d 398,402; *Perto v. Board of Review* (1995),274 Ill. App. 3d 485,493, *appeal denied*, 164 Ill. 2d 581 (1995).) The statute does not authorize administrative agencies to permit attorneys licensed in other States to practice law in Illinois.

While not controlling, reported cases from other jurisdictions that have addressed this issue are instructive. For example, in *In re Ferrey* (R.T. 2001), 774 A.2d 62, the Rhode Island Supreme Court entertained the motion of a Massachusetts attorney for admission *pro hac vice* to represent a client in an administrative proceeding before the Rhode Island Energy Facility Siting Board. Holding that the court had exclusive .and ultimate authority to determine who may be permitted to practice law in the State, the court granted the petition prospectively. The court refused to grant the petition *nunc pro tunc*, however, because the administrative board clearly did not have the authority to permit the representation, and the court did not wish to affix an ex post facto imprimatur of approval on what might be construed as the unauthorized practice of law. Thus, the court held that the attorney's acceptance of fees for past representation would violate Rhode Island statutes prohibiting the receipt of fees for unauthorized practice. Following *In re Ferrey*, the court summarily granted *pro hac vice* petitions in subsequent cases. *In re Soltis* (R.T. 2001), 786 A.2d 1074.

California law similarly prohibits an attorney not admitted to practice by the California courts from collecting fees for representing a petitioner before an administrative body, even though the representation was approved by the administrative hearing officer. In *ZA. v. San Bruno Park School District* (9th Cir. 1999), 165 F.3d 1273, the plaintiff had prevailed in an administrative proceeding conducted by the California Special Education Office pursuant to the Individuals with Disabilities Education Act (IDEA) (20 U.S.C.' 1400 et seq.) and related State statutes. The IDEA specifically provides that parents may be assisted at hearings by an attorney or other individual with special knowledge and training in special

education issues (20 U.S.C. ' 1414(d)(1)). The plaintiffs attorney was admitted to practice in the U.S. District Court for the Northern District of California, but was not a member of the California bar. It was held that although he could practice before the Federal court, he was in the same position as a lay person before the State administrative commission and could not receive fees for his appearance there.

The Montana Supreme Court, while denying the motion of an attorney licensed in another State for admission for purposes of participating in an administrative proceeding, held that the motion, if made by a Montana attorney in accordance with the court's rule for admission of non-resident counsel, would be granted. (*Application of American Smelting and Refining Co*. (1973), 164 Mont. 139,520 P.2d 103.) The Montana rule for admission for a particular case requires that out-of-State counsel be associated with a lawyer admitted to practice in the State. The ruling requires that the motion be made to the court, not to the agency, for permission to practice before an administrative agency.

In contrast to these cases, New Hampshire does not require leave of court for attorneys licensed in other States to appear in particular matters before either its courts or administrative bodies. In *Amy M v. Timberlane Regional School District*, No. CIV. 99-269-B (D.N.H. August 11,2000), the respondent school district objected to an award of attorney fees to a prevailing petitioner following a due process hearing held pursuant to the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. ' 1400 et seq.) because the attorney representing the petitioner was not licensed in New Hampshire. Based upon the specific wording of the New Hampshire statute (N.H. Rev. Stat. Ann. ' 311:7 (1995), it was held that in that State a person may appear in court on another's behalf without being admitted to practice in New Hampshire as long as the person is of good character and does not commonly practice law in the State. .

In Illinois, as in Rhode Island, California and Montana, the supreme court has been granted the exclusive authority to determine who may, or may not, practice law in the State. The court has not, by rule or otherwise, delegated to the· Secretary of State or to hearing officers whom he may appoint the authority to determine who may practice law in administrative proceedings before those hearing officers. It appears, therefore, that a hearing officer cannot permit an attorney who is not licensed in Illinois to appear and represent a client pursuant to an administrative rule. Consequently, attorneys licensed in other States who wish to represent clients in administrative proceedings before hearing officers of the Secretary of State must petition an appropriate court of this State for permission to do so.

Sincerely,

Michael J. Luke
Senior Assistant Attorney General
Chief, Opinions Bureau ■

Comment: Voluntary dismissal

By Julie Ann Sebastian, Co-Editor

Voluntary dismissal pursuant to Section 2-1009 of the Code of Civil Procedure bars administrative review: *Ross v. Illinois Municipal Retirement Fund, Illinois Municipal Retirement Fund Board of Trustees, and St. Clair County Housing Authority*, No. 5-07-0172, slip op. (5th Dist. Dec. 1, 2009) (previously issued as a Rule 23 Order, July 22, 2009).

In a December 2009 decision of the appellate court, the Court reminds us to consider the statutory provisions of the Administrative Review Law and to comply with those requirements. Failure to strictly adhere to those requirements deprives a court of subject matter jurisdiction over an administrative review action.

In July 2003, the Illinois Municipal Retirement Fund Board of Trustees (Board of Trustees) issued a final administrative decision terminating temporary total disability benefits to Robin Ross, who timely filed an administrative review action, naming as defendants the Illinois Municipal Retirement Fund (IMRF) "and its Board of Trustees." However, she served only one summons, which was addressed to the IMRF. The IMRF and the Board of Trustees filed a motion pursuant to section 2-619(a) of the Code of Civil Procedure (735 ILCS 5/2-619(a) (West 2002)), and argued that the summons was addressed solely to the IMRF but that the Board of Trustees was the party who had made the decision, and Ross failed to properly name or serve the Board of Trustees. As an alternative basis, the defendants asserted that Ross failed to serve the complaint within 35 days of the final administrative decision, as required by statute (735 ILCS 5/3-103 (West 2002)). St. Clair County Housing Authority, her employer, filed its answer. Ross filed a motion for a voluntary dismissal without prejudice, pursuant to section 2-1009 of the Code of Civil Procedure (735 ILCS 5/2-1009 (West 2004)). The trial court granted the dismissal motion and ruled that the defendants' pending motion to dismiss would be held in abeyance and may be refiled, and ruled upon by the court, should Ross choose to refile her complaint for Administrative Review.

A year later, she then filed a new complaint for administrative review, named as defendants the IMRF, the "[IMRF] Board of Trustees," and the St. Clair County Housing Authority. On March 28, she mailed three separate summonses, one to each defendant. The summonses sent to the IMRF and the Board of Trustees were sent to the same address. The IMRF and the Board of Trustees filed a motion to dismiss again for lack of jurisdiction. The circuit court denied their motion to dismiss, found the Board of Trustees' decision to be against the manifest weight of the evidence and reversed the administrative decision. The Fifth District Appellate Court reversed the trial court.

The appellate court noted that although the Board of Trustees is "an arm of [the] IMRF," the administrative agency that ren-

dered the decision at issue was the Board of Trustees, not the IMRF. *Ultsch v. Illinois Municipal Retirement Fund*, 226 Ill. 2d 169, 189, 874 N.E.2d 1, 13 (2007). Thus, the Board of Trustees itself had to be named and served.

Just as the Illinois Administrative Review Law provides procedural requirements necessary to vest courts of this state with jurisdiction over complaints for administrative review, it also includes provisions that terminate that jurisdiction, and provides that if a party seeks a voluntary dismissal, then the court's jurisdiction to review the administrative decision terminates. 735 ILCS 5/3-102 (West 2004) (providing that all administrative review proceedings "shall terminate upon the date of the entry of any Order" (emphasis added). Once the court's jurisdiction is terminated, the administrative decision is no longer subject to review by any court. 735 ILCS 5/3-102 (West 2004).

Though Ross asserted that she dismissed her petition voluntarily pursuant to an agreement with the defendant, that all the parties had agreed that she would refile her petition and properly serve the Board of Trustees, and the defendants "voluntarily waived [their] right to raise [section 3-102 of the Administrative Review Law] as a defense." The appellate court rejected this argument because of the jurisdictional nature of the statute. Under the Administrative Review Law, subject matter jurisdiction cannot be waived or "conferred by any form of laches, consent, *** or estoppel." *Board of Education of the City of Chicago v. Box*, 191 Ill. App. 3d 31, 35, 547 N.E.2d 627, 630 (1989). Therefore, once the trial court entered the order dismissing Ross's complaint for review pursuant to section 2-1009, it lost jurisdiction to review the agency's decision to terminate her benefits.

This case serves to remind practitioners to carefully consider the review law's requirements. The court cited to *Fredman Brothers Furniture Co. v. Department of Revenue*, 109 Ill. 2d 202, 210, 486 N.E.2d 893, 895 (1985) (relying on Ill. Const. 1970, art. VI, §9) and noted that the review law requirements are jurisdictional. *Fredman Brothers Furniture Co.*, 109 Ill. 2d at 210, 486 N.E.2d at 895-96 (explaining that when jurisdiction is conferred by statute,"that jurisdiction is limited to the language of the act conferring it"). A failure to strictly adhere to those requirements deprives a court of subject matter jurisdiction over a petition seeking administrative review. *Fredman Brothers Furniture Co.*, 109 Ill. 2d at 210, 486 N.E.2d at 896. ■

Summary of recent decisions

By Hon. Edward Schoenbaum

These summaries were prepared by Adrienne W. Albrecht for the ISBA Illinois E-Mail Case Digests, which are free e-mail digests of Illinois Supreme and Appellate Court cases available to members soon after the cases appear on the Internet, with a link to the full text of the slip opinion on the Illinois Reporter of Decision's Web site. These have been downloaded and reorganized according to topic by Ed Schoenbaum for members of the Administrative Law Section, with permission.

Administrative Review

***Ross v. Illinois Municipal Retirement Fund*, No. 5-07-0172 (5th Dist. Dec. 1, 2009) CHAPMAN (St. Clair Co.). Reversed.**

Voluntary dismissal of complaint for administrative review of IMRF decision terminating TTD terminates court's jurisdiction, so that decision is no longer subject to review by any court. Agreement of defendants that plaintiff could refile her petition is irrelevant as this prohibition on refilling petition is found within Administrative Review Law, which is jurisdictional and requires strict adherence to its terms.

Environmental Protection Act

***County of Kankakee v. The Illinois Pollution Control Board*, Nos. 3-04-0271, 3-04-0285, and 3-04-0289, Cons. (3d Dist. Dec. 4, 2009) McDADE (IPCB). Reversed.**

Pollution Control Board erred in finding that proposed landfill met criteria of Illinois Environmental Protection Act for consistency with County's solid waste management plan.

Landlord- Tenant / Attorney Fees

***The Housing Authority of Champaign County v. Lyles*, No. 4-09-0106 (4th Dist. Nov. 20, 2009) McCULLOUGH (Champaign Co.). Affirmed in part and reversed in part.**

Lessor or lessee entitled to attorney fees only if that party was suing to compel or make effective covenants of lease. Defendant, who was defending claim of breach of lease for failure to keep unit sanitary and safe in forcible entry and detainer action, thus not entitled to attorney fees for action.

Property Tax Code

***Millennium Park Venture, LLC v. Houlihan*, No. No. 108923. Appeal, 1st Dist.**

This case presents question as to whether trial court had subject-matter jurisdiction to consider plaintiff-taxpayer's action seeking declaration that real property tax assessment against plaintiff's contractual interest in property located in Millenniun Park was unlawful. Appellate Court found that plaintiff could bring instant lawsuit even though plaintiff had not paid assessment or filed tax objection complaint as required under Property Tax Code. It also concluded that plaintiff's contractual interest was more akin to nontaxable license or concession rather than taxable lease.

Tax / Municipalities

***In re: Application of the County Collector of DuPage County for Judgment for Taxes for the Year 1999*, No. 2-08-0927 (2d Dist. Nov. 17, 2009) SCHOSTOK (DuPage Co.). Affirmed.**

Authority to levy taxes for contributions to the Illinois Municipal Retirement Fund is contained in section 7--171 of the Pension Code. District properly collected and levied taxes pursuant to Forest Preserve Act in adopting its levying and appropriation ordinances.

Unemployment

***Champaign-Urbana Public Health District v. The Board of Review of the Department of Employment Security of the State of Illinois*, No. 4-08-0809 (4th Dist. Sept. 11, 2009) STEIGMANN (Champaign Co.). Reversed and remanded.**

Once public health district's finance director tendered her resignation letter, her resignation was final and irrevocable, as she was a public employee; irrelevant that her acting supervisor asked her if she would reconsider, and that the director returned to work the following week.

Union Representation Elections / Public Employees

***The City of Chicago v. The Labor Relations Board Local Panel and International Brotherhood of Teamsters, Local 743*, No. 1-08-2566 (1st Dist. Nov. 10, 2009) QUINN (ILRB). Affirmed.**

Two job titles of public health unit nurses were appropriately certified as bargaining unit; no historical pattern of recognition as to this category of nurses; and nurses shared community of interest in skills, functions, and location. It is consistent with Illinois Public Labor Relations Act that election and certification occur without hearing, as Board reasonably determined that no question of representation existed.

Workers Compensation

***Reynolds v. Illinois Workers' Compensation Commission Division*, No. 3-08-0759WC (3d Dist. Nov. 9, 2009) McCULLOUGH (LaSalle Co.) Affirmed.**

Employer's reliance on "relatively compelling" medical opinions of three physicians who reviewed MRI scan and report, that injuries could not be attributed to work accident, was reasonable and good cause basis to deny workers compensation benefits. Thus proper for circuit court to have denied imposing penalties for unreasonable and vexatious delay and refusal of benefits.

Workers Compensation / Jurisdiction

***TTC Illinois, Inc. v. The Illinois Workers' Compensation Commission*, Nos. 5-08-0644WC & 5-08-0645WC (5th Dist. Nov. 10, 2009) HOFFMAN (Williamson Co.) Affirmed.**

Content requirements of petition to reinstate workers compensation case after DWP, per Section 7020.90(b) of Workers Compensation Act, are not subject to 60-day time limit for filing such petition. Thus, where petition did not include date for claimant to appear before arbitrator to present petitions, reinstatement was timely and with consent of all parties that date would be set later on mutually convenient date.

Workers Compensation

***Securitas Inc. v. The Illinois Workers' Compensation Commission*, No. 5-09-0184WC (5th Dist. Nov. 23, 2009) HUDSON (Williamson Co.). Appeal dismissed.**

Defects in bond precluded appellate court's jurisdiction over appeal, where bond on its face did not state signor was officer of respondent; and bond was limited to $10,000 although Commission fixed amount of bond at $10,100. Amount of irregularity cannot be excused as "de minimum" failure to meet bond requirement.

United States Court of Appeals

Taxation

***Kanter v. Commissioner of Internal Revenue*, Nos. 08-1036 et al. Cons. (12/1/09). Appeal, U.S. Tax Ct. Reversed and remanded.**

U.S. Tax Ct. erred in rejecting several findings made by Special Trial Judge (STJ) when finding that taxpayers owed additional taxes based on claim that said taxpayers orchestrated kickback scheme and concealed income by assigning income to other entities/individuals. Under Tax Court Rule 183, Tax Ct. was required to give due deference to STJ's factual findings, and Tax Ct. improperly used *de novo* approach when overturning STJ factual findings. Moreover, under clear error standard, STJ could properly find that no kickback scheme existed, and that there was no improper assignment of income. ■

ISBA Administrative Law Section Council goes to school

By Hon. Ann Breen-Greco

On October 15, ISBA Administrative Law Section Council members Jewel Klein, Sheila Harrell, and Ann Breen-Greco gave a presentation to Judge Paul Lillios' administrative law class at John Marshall Law School. Bios of the presenters were prepared and distributed to the students and the presenters also gave the students handouts.

Jewel Klein, an experienced practitioner who often appears before administrative tribunals, discussed the different types of administrative hearings. She also explained how a career in administrative law can be rewarding as administrative law is where "government does to and for the people."

Sheila Harrell, Bureau Chief and Chief Administrative Law Judge for the Department of Human Services Administrative Hearings Bureau, discussed the DHS hearings and her work as both Chief ALJ and Chief of the DHS Hearings Bureau, Students were particularly interested in whether or not she saw a conflict between the two positions. Judge Harrell assured them there was none. She discussed the various types of hearings for which her Bureau has jurisdiction and also shared with the students the volume of appeal requests received by her Bureau, and the rate of disposition of matters. Students were interested in how the hearings were conducted, and Judge Harrell was able to share with them how some of her Bureau's hearings are held telephonically, while others are held in person.

Ann Breen-Greco discussed administrative hearings and had some students participate in a brief mock hearing based on one of her recently decided cases. Judge Breen-Greco provided the students with some elements of the case and closing argument and then she assigned parts to various students. One could see that the students enjoyed the role-playing and were engaged enough to see how the facts played into an administrative process, and then they participated in a lively discussion. Prior to leaving she also discussed the benefits of ISBA Ad Law membership, informing the students that membership is free for students. ■

Save the date: March 5, 2010

By Julie Ann Sebastian and Hon. Edward Schoenbaum

Administrative Adjudication: State & Municipal Issues

Sponsored by the ISBA Administrative Law Section
Co-Sponsored by the ISBA Local Government Law Section and the Section of General Practice

Friday, March 5, 2010
ISBA Regional Office
20 S. Clark Street, Suite 900
Chicago, Illinois

8:30 a.m. – 5:15 p.m.
7.25 hours MCLE credit

This program assists participants in processing contested case hearings and court review of Illinois state agency and local government decisions. Experienced municipal and state practitioners from both the government and private practice offer their perspectives on a number of administrative law issues, including types and functions of administrative judiciary, due process rights, limitations on agency actions, evidentiary issues, informational resources available, and constitutional, statutory and ethical issues.

Program speakers also feature authors from the Illinois State Bar Association's Handbook of Illinois Administrative Law. For more information about the handbook, please visit: <https://secure.isba.org/store/isbabooks/adlaw.html> The program is designed for both new and experienced government attorneys and practitioners who appear in administrative adjudication.

To order a copy of the Handbook of Illinois Administrative Law, please visit: <https://secure.isba.org/store/isbabooks/adlaw.html>.

Program Coordinator/Moderator:

Marc C. Loro, Secretary of State, Dept. of Administrative Hearings, Springfield

Program Speakers:

Hon. LaGuina Clay-Clark, 1st Municipal, District Circuit Court of Cook County, Chicago
Carl R. Draper, Feldman Wasser Draper & Cox, Springfield
Patti S. Gregory, City of Chicago, Dept. of Law, Chicago
Jewel N. Klein, Law Firm of Barry H. Greenburg, Chicago
Marc C. Loro, Secretary of State, Dept. of Administrative Hearings, Springfield
William A. Price, Growth Law, Warrenville
Hon. Edward J. Schoenbaum, Retired Administrative Law Judge, Springfield
Julie Ann Sebastian, Cook County State's Attorney's Office, Chicago
Alfred M. Swanson, Jr., Attorney at Law, Chicago
Jean M. Wenger, Cook County Law Library, Chicago

Content: How to present and defend contested cases and court review of Illinois state agency, and local government agency actions and decisions. Faculty feature authors from the ISBA Handbook of Illinois Administrative Law. Topics include:

- Due process rights in administrative adjudication
- Attorney's fees in administrative cases
- Limits on agency actions
- Elements an administrative adjudicator should consider when conducting a contested case file and how an attorney should present its side most effectively
- Constitutional, statutory, and ethical issues
- Overview of admissible and non-admissible hearsay rules for evidence in administrative hearings
- Judicial review of administrative action,
- Practice before the City of Chicago Department of Administrative Hearings, and
- How to find many agency – state and local – rules, regulations, and resources.

A reminder about continuing legal education credit:

If the first letter of your last name begins "A through M" then, for the second reporting period -- July 1, 2008 to June 30, 2010 --- 24 hours of credit are required. Lawyers with a last name between "A and M" need to complete 24 hours of MCLE credit before the June 30th reporting period deadline. A minimum of four hours of the required credit must be in the area of professionalism, diversity, mental illness and addiction, civility or legal ethics; up to 10 MCLE credits earned prior to the beginning of this reporting period can be carried into the two-year reporting period, except professional responsibility credits.

Different rules apply to newly admitted attorneys subject to the Basic Skills requirement. The MCLE rules require attorneys to maintain their own Certificates of Attendance and other proof of MCLE compliance for three years after the end of the relevant two-year reporting period.

At the end of the reporting period, attorneys must report whether they have complied with the MCLE rules, have not complied, or were exempt.

Please join us on March 5, 2010, for the Section Council's CLE, Administrative Adjudication in Illinois, the City of Chicago and other Municipalities

Upcoming CLE programs

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

February

Thursday, 2/11/10 – Chicago, ISBA Regional Office—Charitable Planning: Techniques to Help Your Client. Presented by the ISBA Trust and Estates Section. 9-3:45.

Friday, 2/12/10 – Fairview Heights, Four Points Sheraton—Worker's Compensation: Intake and Trial Issues for the Experienced Practitioner. Presented by the ISBA Workers' Compensation Section. Cap 75. Time TBD.

Monday, 2/15/10- Chicago, Conference Center at UBS Tower—Worker's Compensation: Intake and Trial Issues for the Experienced Practitioner. Presented by the ISBA Workers' Compensation Section. Cap 90. Time TBD.

Monday, 2/15/10 – Chicago, ISBA Regional Office—Documenting the Commercial Deal: Loans, Leases and Mortgages. Presented by the ISBA Commercial Banking and Bankruptcy Section. Time TBD

Friday, 2/19/10- Springfield, IASA Office- 2648 Beechler Ct, 62703—Legislative Changes in Education for the Advanced Practitioner- 2010. Presented by the ISBA Education Law Section. Cap 45. Time TBD.

Friday, 2/19/10 – Chicago, ISBA Regional Office—Second Amendment and Department of Corrections Issues for Criminal Practitioners. Presented by the ISBA Criminal Justice Section. 9-3:45.

March

Friday, 3/05/10 – Chicago, ISBA Regional Office—Administrative Adjudication in the City of Chicago and other Municipalities. Presented by the ISBA Administrative Law Section. Time TBD. ■

The Section Council notes with sorrow the passing of Deanna Alexander, wife of Carl Draper, our Board of Governors liaison. The members of the Section express their deepest sympathy to our member Carl and his family in this time of loss.

ADMINISTRATIVE LAW
ILLINOIS BAR CENTER
SPRINGFIELD, ILLINOIS 62701-1779
JANUARY 2010
VOL. 39 NO. 5

Non-Profit Org.
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Permit No. 820