

Family Law

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

Chairman's column

BY LANE HARVEY

As the Illinois State Bar Association begins a new year with a new president, I want to express my gratitude to President Vincent Cornelius for appointing me Chairman of our Section Council for the coming year. I consider it a privilege to have the opportunity to serve in this position.

What I have learned about our Section Council during my time of service on it is that it is the most active and effective Section Council in the Illinois State Bar Association. In looking back on the things we have accomplished in the last 2-3 years, I must say that it is impressive. Our Section Council has been intimately involved in the process of re-writing the Illinois Marriage

and Dissolution of Marriage Act as well as other significant family law related statutes such as the Parentage Act and the Income Shares/Child Support Act (which has been passed by both houses of the legislature). Members of this Section Council are to be congratulated on their efforts and participation in this significant process. The one thing upon which we can all agree is the efforts put in by the members of our Section Council improved the revised Illinois Marriage and Dissolution of Marriage Act ultimately passed by the legislature and that is now in effect.

Our Section Council has, likewise, been

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Polishing the new IMDMA

BY ZACHARY W. WILLIAMS

As with any new substantial piece of new legislation, there are always "glitches" that need to be worked out. Since the new Illinois Marriage and Dissolution of Marriage Act ("IMDMA") took effect on January 1, 2016, the Illinois legislature has been working on trailer bills to clarify and/or modify certain provisions of the new IMDMA. These clarifications and modifications are not meant to be substantial but rather necessary cleanup changes and technical corrections. The

following is a summary of some of the more important changes House Bill 3898 (HB3898) contains as of the filing date of May 4, 2016:

Amendments to the IMDMA

- Section 501, Temporary Relief - Clarifies that both parties are enjoined from removing a child from the jurisdiction of the court for more than 14 days;

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(Notice to librarians: The following issues were published in Volume 59 of this newsletter during the fiscal year ending June 30, 2016: July, No. 1; August, No. 2; September, No. 3; October, No. 4; November, No. 5; December, No. 6; January, No. 7; February, No. 8; March, No. 9; April, No. 10; May, No. 11).

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Chairman's column

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a leader in the ISBA as to both quantity and quality of continuing legal education. A review of our CLE efforts over the last 3 years, include our award winning custody trial in Galena, the various seminars in preparation for it, our financial trial in Grafton; other programs facilitated by our Section Council, and a comprehensive seminar on the revisions to the Illinois Marriage and Dissolution of Marriage Act, are matters of which we should be proud. Significantly, the quality of our CLE programs have been recognized by those who judge these things on a national basis as our custody trial receiving a national award. Our coordinator, Pam Kuzniar, is to be congratulated for her efforts.

It is certainly appropriate that at the beginning of this new year we reflect on what we have accomplished in the immediate past and the efforts our section has made is something of which we should be proud. However, as Shakespeare noted in *The Tempest*, Act 2, (albeit in a slightly different context) "The past is prologue." It is not sufficient that we congratulate ourselves and assume that our task is finished. Indeed it is not.

In our initial meeting on June 17, 2016, we were presented with an aggressive CLE program for the coming year involving table covering a wide variety of topics with broad participation from members of the section over a broad range of issues to improve the quality of practice of family law throughout the state. The effort represented in the organization and selection of topics for the table clinics by our coordinator is to be commended. The effort required from the rest of us to carry out that program is a challenge which I am sure we are ready to meet.

In addition, because of the enactment of new statutes, problems not contemplated at the time of their enactment have and will continue to arise. The problem which, in my view, requires our most immediate investigation is the interaction between the maintenance guidelines statute and our child support statute, both current and the coming income shares statute. Clearly, there

have been anecdotal incidents that suggest that the interaction of those statutes may well be other than intended by the authors and may, while in compliance with the statutes, be fundamentally inequitable. At our June 17th meeting, our Income Shares/Maintenance Committee was charged with undertaking an investigation of the interaction of those statutes and be prepared to suggest any potential changes to the Section Council which they may deem necessary to remedy any potential inequities. That will, of course, be a significant task in a relatively short period of time and I extend my thanks in advance to the tri-chairs of that committee, as well as its members. I am satisfied that Judge Grace Dickler, Judge Pam Loza and Maggie Bennett will do an excellent job in directing the investigation and that the members of the committee are prepared to do the work necessary to arrive at a reasoned analysis and solution.

I request that any member of our section who has any idea of projects for our Section Council, please communicate with me as to your ideas so that we may give them full and fair consideration. It is our intent as a Section Council to do everything within our power to make the practice of family law more effective and more efficient and to serve the members of our section and the Illinois State Bar Association in achieving such a result.

Finally, I would like to congratulate Matt Kirsh on his extraordinary year of leadership of our Section Council. The accomplishments of our Section Council referenced above would not have been possible without the leadership that we have had over the past three years. That certainly includes Matt. So Matt, my friend, congratulations on a job well done and don't, for a minute, think you may rest on your laurels. There is plenty more for you to do.

I look forward to my opportunity to serve our Section Council as Chairman for the coming year and would appreciate any suggestions, as indicated, that any members of our section may have as to what we may do to further our mission. ■

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Polishing the new IMDMA

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- Section 501.1, Dissolution Action Stay - Clarifies that both parties are restrained from concealing a minor child of either party from the child's other parent (the previous language of "restraining both parties from removing any minor child of either party from the State of Illinois or from concealing any such child from the other party, without the consent of the other party or an order of the court" has been removed)
- Section 504, Maintenance - Adds that upon review of any previously ordered maintenance award, the court may extend maintenance for further review, extend maintenance for a fixed non-modifiable term, extend maintenance for an indefinite term, or permanently terminate maintenance in accordance with subdivision (b-1)(1)(A) of this Section.
- Section 513, Educational Expenses for Non-Minor Child - Clarifies that the actual cost of the child's post-secondary expense, including tuition and fees, does not exceed the amount of *in-state* tuition and fees paid by a student at the University of Illinois at Urbana Champaign.
- Section 600, Definitions- Clarifies that mileage is to be measured by an Internet mapping service
- Section 602.10, Parenting plan -
 - Adds that if no appearance has been filed by the Respondent, no parenting plan is required unless ordered by the court.
 - Modifies that a parenting plan is binding upon the court unless it finds that the agreement is not in the best interests of the child, as opposed to unconscionable
- Section 602.11, Access to health care, child care, and school records by parents - Modifies that a parent shall not have access to school records of a child if the parent is prohibited by an order of protection from inspecting or obtaining such records pursuant to the Domestic Violence Act of 1986 or the Code of Criminal Procedure of 1963, as opposed to a parent who is not allocated parenting time.
- Section 604.10, Interview, evaluations, investigation -
 - The court is no longer obligated to pay for the court reporter and transcript in the court's interview of a child.
 - A 604.10(b) evaluation must be tendered to the parties and the court no later than 60 days before trial on the allocation of parental responsibilities. The court may review the writing upon receipt.
- Section 606.5, Hearings - Adds that the court may tax, as costs, the payment of necessary travel and other expenses incurred by any person whose presence at the hearing the court deems necessary to determine the best interests of the child
- Section 607.5, Abuse of allocated parenting time - Clarifies that if counseling is ordered by the court, all counseling sessions shall be confidential, and the communications in counseling shall not be used in any manner in litigation nor relied upon by an expert appointed by the court or retained by any party
- Section 607.6, Counseling - Adds back the section of the old IMDMA that the court may order individual and/or family counseling, as well as parenting classes
- Section 610.5, Modification -
 - Clarifies that no motion to modify an order allocating parental decision making responsibilities, not including parenting time, may be made earlier than 2 years after its date
 - Adds that parenting time may be modified at any time, without a showing of serious endangerment, upon a showing of changed circumstances that necessitates modification to serve the best interests of the child

Amendments to the Illinois Parentage Act

- Section 103, Definitions -
 - Adds that definitions of "assisted reproduction" and "donor"
- Article 7, Child of Assisted Reproduction - Adds an entirely new section to the Illinois Parentage Act that applies to the birth of a child as a result of a valid gestational surrogacy arrangement. The Article discusses the parental status of a donor, the parentage of a child of assisted reproduction, the withdrawal of consent of an intended parent or donor, and the establishment of parentage.

It should be noted that a previous trailer bill, specifically HB1190, included a provision that was in direct response to the Appellate Court's ruling in *In re Marriage of Squire*, 2015 IL App (2d) 150271. The court in *IRMO Squire*, upheld the ruling of the circuit court that ordered the wife's attorneys to disgorge \$60,000 of the fees already paid to them as a retainer and to turn over that amount to the husband's attorney, relying upon the decision in *IRMO Earlywine* and the "leveling of the playing field" doctrine. The court rejected the argument raised by wife's attorneys that the analysis and holding in *IRMO Earlywine* did not allow the trial court to disgorge those fees that the firm had already billed against and earned. HB1190 corrected the ruling in *IRMO Squire* by modifying Section 501(c-1)(3) so that the court shall enter an order allocating to each party's counsel funds held by party's counsel but not yet earned (including retainers). As such, this took care of any concerns that the court could disgorge fees that had already been earned. However, after much debate, this provision was not included in the most recent trailer bill.

While this trailer bill is certainly the first step in clarifying and modifying certain provisions of the new IMDMA, it is likely not the last. As we speak, House Bill 3982, which implements an income

sharing model for child support purposes, is presently pending in the Senate as it has already passed the House. Changes will continue to be made to the IMDMA to reflect many of the changing norms facing

families today. However, it is clear that this trailer bill will for now provide more clarity, guidance, and direction for Illinois practitioners in advising their respective clients. ■

The author would like to give credit to his associate, Agnes Z. Olechno, for her assistance with this article.

Admissibility of school report cards

BY KATHLEEN M. KRAFT

School report cards are often utilized in trials involving the allocation of parenting time and removal. School districts prepare and issue report cards for each school within the district using a format prepared by the Illinois State Board of Education. The Illinois Legislature mandated both the production and content of the report cards in 105 ILCS 5/10-17a. The official Illinois school report card can be found at <<http://webprod.isbe.net/ereportcard/publicsite/getsearchcriteria.aspx>>. To further understand the information on the report card, you may want to visit the companion site at www.ilreportcard.com.

There are two avenues to utilizing the school report cards. First, an attorney may move for admission of the document into evidence. Counsel who are not fully acquainted with the Rules of Evidence may object on the basis of hearsay. If faced with that objection, an attorney should argue Rule 803 of the Illinois Rules of Evidence.

Rule 803 (8) provides an exception for public records and reports. Specifically, “records, reports, statements, or data compilations, in any form, of public offices or agencies setting forth . . . (B) matters observed pursuant to duty imposed by law as to which matters there was a duty to report, . . . , unless the sources of information or other circumstances indicate lack of trustworthiness” not excluded by the hearsay rule regardless of the availability of the declarant. The 2nd District previously held that Illinois school report cards are admissible as an exception to the hearsay rule, as they are official public records that are mandated by

statute. *Board of Education of Community High School District No. 94 et al. v. Regional Board of School Trustees of DuPage County et al.*, 242 Ill.App.3d 229, 613 N.E.2d 754 (1993). The source of the report cards was not listed, though they were certified copies. It is not likely that those were obtained through the internet, as the opinion was released in 1993.

If encountering difficulty in admitting records found via the Internet, counsel should consider the second option of seeking judicial notice. Rule 201 of the Illinois Rules of Evidence provides that a ‘Judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the

territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” This has been utilized for the following types of records:

Illinois Department of Corrections website records, *Cordrey v. Prisoner Review Board et al.*, 2014 IL 117155, 21 N.E.3d 423 (2014);

Sangamon County Circuit Clerk’s Website records, *In re F.P.*, 2014 IL App (41h) 140360, 19 N.E.3d 227 (2014); and

Cook County Treasurer’s website records, *In re Coun.tv Treasurer*, 356 Ill. App.3d 1102, 827, N.E.2d 526 (2005). ■



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Thursday, 08/04/16- Webinar—Introduction to Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 12:00- 1:00 pm.

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Tuesday, 08/09/16- Teleseminar—Charging Orders in Business Transactions. Presented by the ISBA. 12-1 pm.

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Wednesday, 08/17/16- Teleseminar—Real Estate Finance, Part 2. Presented by the ISBA. 12-1 pm.

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Wednesday, 08/24/16- Teleseminar—Sales of Family Businesses: An Interdisciplinary Approach, Part 1. Presented by the ISBA. 12-1 pm.

Thursday, 08/25/16- Teleseminar—Sales of Family Businesses: An Interdisciplinary Approach, Part 2. Presented by the ISBA. 12-1 pm.

Thursday, 08/25/16- Webinar—Introduction to Boolean (Keyword) Searches for Lawyers. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 12:00- 1:00 pm.

Friday, 08/26/16- CRO (ABCDE)—Deliver Great Presentations and CLE. Part of ISBA's Law Ed Faculty Development Series. 9:00 a.m. – 4:30 p.m.

Wednesday, 08/31/16- Teleseminar—Lawyer Ethics and Disputes with Clients . Presented by the ISBA. 12-1 pm.

September

Thursday, 09/01/16- Webinar—Introduction to Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 12:00- 1:00 pm

Thursday, 09/08/16- Webinar—Advanced Tips for Enhanced Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 12:00- 1:00 pm.

Thursday, 09/08/16- Webcast—Monetizing Intellectual Property. Presented by IP. 12:30 p.m. – 2:15 p.m.

Friday, 09-09-2016- Webcast—Telemedicine: Diagnosing the Legal Problems. Presented by Health Care. 9:00

a.m. – 11:00 a.m.

Wednesday, 09/14/16- Webcast—Hot Topic: Union Dues/Fair Share—Friedrichs v. California Teachers Association. Presented by Labor and Employment. 10:00 a.m. – 12:00 p.m.

Wednesday, 09-14-16—Webinar—2016 Military Law Overview. Presented by Military Affairs. 12:00 p.m. – 1:15 p.m. (maybe later)

Thursday, 09/15/16- CRO—Family Law Table Clinic Series (Series 1). Presented by Family Law. 8:30 am – 3:10 pm.

Friday, 09-16-06- CRO and Live Webcast—The Fear Factor: How Good Lawyers Get Into (and avoid) Bad Ethical Trouble. Master Series Presented by the ISBA—WILL NOT BE RECORDED OR ARCHIVED. 9:00 a.m. – 12:15 p.m.

Wednesday, 09-21-16—Webcast—Restorative Practice in Illinois: Practical and Creative Alternatives to Resolve Civil and Criminal Matters. Presented by Human Rights. Part 1- 10:00 a.m. – 12:00 p.m. Part 2- 1:00 p.m. – 3:00 p.m.

Thursday, 09-22-16- Webcast—Family Law Changes and Mediation Practice. Presented by Women and the Law. 11:00 a.m. – 12:00 p.m.

Thursday, 09/22/16- CRO and Webcast—Recent Developments in E-Discovery in Litigation. Presented by Antitrust. 1:00- 5:15 pm.

Thursday, 09/22/16- Webinar—Introduction to Boolean (Keyword) Searches for Lawyers. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 12:00- 1:00 pm.

Monday, 09/26/16- Friday, 09/30/16—CRO—40 Hour Mediation/Arbitration Training Master Series. Presented by the ISBA. 8:30 am – 5:45 pm each day

Friday, 09-30-16—DoubleTree Springfield—Solo and Small Firm Practice Institute Series. Title TBD. Presented by GP, SSF. ALL DAY.

October

Wednesday, 10-05-16—CRO—Cybersecurity: Protecting Your Clients and Your Firm. Presented by Business Advice and Financial Planning; co-sponsored by IP (tentative). 9:00 a.m. – 5:00 p.m.

Thursday, 10/06/16- Webinar—Introduction to Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 12:00- 1:00 pm.

Thursday, 10-06-16—Webcast—Nuts and Bolts of EEOC Practice. Presented by Labor and Employment. 11:00 a.m. – 12:30 p.m.

Monday, 10-10-16—CRO and Fairview Heights, Four Points Sheraton—What You Need to Know to Practice before the IWCC. Presented by Workers Compensation. 9:00 a.m. – 4:00 p.m.

Thursday, 10/13/16- Webinar—Advanced Tips for Enhanced Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 12:00- 1:00 pm.

Thursday, 10-13-16—IPHCA, Springfield—Open Meetings Act: Conducting the Public's Business Properly. Presented by Government Lawyers. 12:30 – 4:00 p.m.

Thursday, 10-13-16—CRO—Limited Scope Representation: When Less is More. Presented by Delivery of Legal Services. 1:00 p.m. – 5:00 p.m.

Wednesday, 10-19-16- CRO and Live Webcast—From Legal Practice to What's Next: The Boomer-Lawyer's Guide to Smooth Career Transition. Presented by Senior Lawyers. 12:00 p.m. to 5:00 p.m.

Thursday, 10/20/16- Webinar—Introduction to Boolean (Keyword) Searches for Lawyers. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 12:00- 1:00 pm

Friday, 10/21/16- Galena, Eagle Ridge Resort—Obtaining a Judgement and Collections Issues. Presented by: Commercial Banking, Collections, and Bankruptcy. 8:50 am - 4:30 pm.

Wednesday, 10-26-16—Webcast—Federal Rule of Civil Procedure 56—Summary Judgement a Refresher Course. Presented by Federal Civil Practice. 12:00 – 2:00 p.m.

Wednesday, 10-19-16—DoubleTree Bloomington 10-27-16—Holiday Inn, Bloomington—Real Estate Law Update 2016. Presented by Real Estate. 8:15 a.m. – 4:45 p.m.

Friday, 10-28-16—CRO—Solo and Small Firm Practice Institute Series. Title TBD. Presented by GP, SSF. ALL DAY.

November

Wednesday, 11-02-16—Linder Conference Center, Lombard—Real Estate Law Update 2016. Presented by Real Estate. 8:15 a.m. – 4:45 p.m.

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Thursday, 11/10/16- Webinar—Advanced Tips for Enhanced Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 12:00- 1:00 pm

Friday, 11-11-16—CRO and live Webcast—Motion Practice from Pretrial through Post Trial. Presented by Civil Practice and Procedure. 8:50 a.m. - 4:00 p.m.

Thursday, 11/17/16- CRO—Family Law Table Clinic Series (Series 2). Presented by Family Law. 8:30 am – 3:10 pm.

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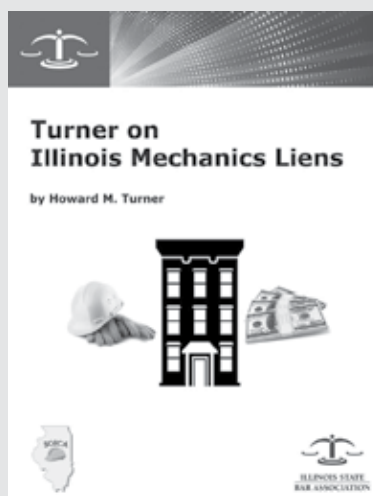
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THE BOOK THE JUDGES ARE READING!

Turner on Illinois Mechanics Liens



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