



# THE PUBLIC SERVANT

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

## Comments from the Chair

By Sharon L. Eiseman

**H**ow did the end of my one year term arrive so soon? I should feel a sense of relief, and there is a bit of that, but as with so many life experiences, the feelings are definitely mixed, with sadness yet also a sense of joy recalling great discussions and good laughs with fellow Committee members all sharing the stage. And I am ready, or at least must be by June 20, to accept the oh-so-glamorous mantle of 'Ex-Officio' bestowed upon dearly departed chairs and to move aside to welcome Eileen Geary as the incoming Chair, along with Pablo Eves as her Vice-Chair and Kevin Lovellette joining the leadership line-up as Secretary? Until June 20, and beginning now as I write this set of comments, I will periodically reflect upon this past year and wonder what impact our accomplishments have had and will have upon our colleagues, the As-

sociation and the profession in general—and will do so in the hope that we are making a difference for the good.

Here, I will take the time to recount what we've done and how our Committee members have contributed to fulfilling our mission and goals and, like in the Reality-TV shows where the public calls in or 'tweets' its votes or 'likes' you on Facebook, you can be the judge of the value of our efforts. Out of the box, we weighed in on the Religious Freedom and Marriage Equality Act pending before our General Assembly, voting almost unanimously, and with great pride, to support that bill. We thank Marylou Louder Kent as our Legislative Subcommittee Chair for the comprehensive report on our position that she submitted to Jim Covington and for her regular

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## Does the Savings Statute save the day?

By Kevin Lovellette

**A** wise government lawyer once opined that there are very few genuine mistakes that cannot be rectified by a motion, an apology, and a smile. But even these tricks-of-the-trade may not save a case that is not re-filed in State court within a year of being dismissed by a federal court for lack of jurisdiction. In situations where the Illinois Savings Statute<sup>1</sup> allows a plaintiff one year to re-file a cause of action, this time limit may not be tolled by a pending appeal. If a plaintiff waits beyond one year to the end of the appeal process to re-file, even the most heartfelt apology could be of no use.

The Savings Statute allows a plaintiff to file a cause of action within the remaining statute of

limitations, or, if the statute has lapsed, within one year after a federal court dismisses the action for lack of jurisdiction.<sup>2</sup> This statute should be read in conjunction with the Illinois Stay of Action statute that tolls the time period to file a claim if it is subject to: (1) an injunction; (2) an order of a court; or (3) a statutory prohibition.<sup>3</sup> In other words, if a plaintiff is unable to proceed with a cause of action by law, the limitation period is tolled.

Lawyers can face a quandary in determining whether the limitations period is tolled because of a "statutory prohibition." Section 2-619(a)(3)

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## Comments from the Chair

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reports on pending bills.

### NEWSLETTER

On the newsletter front, Kate Kelly and Lynn Patton, our stalwart and dedicated co-editors of *The Public Servant*, never missed a beat in their publication schedule, even when Kate was dancing to the beat of the CBA's Christmas Spirits and Lynn was dancing through her many roles at the AG's Office. Moreover, the quality of our newsletter subjects and the writing continues to register at the top of the scale. With support this next term from Tiffany Elking, this unbeatable team will stay on board so you can look forward to more great reading about the lives, loves and daily legal conundrums of government lawyers. During this term, we have enjoyed the excellent articles by our members, the Hon. Steven Nordquist, Tom Cieccko, Matt Dionne, Pat Driscoll, Paul Thompson, Kevin and Marylou, and of course the informative updates on recently issued Opinions of Illinois Attorney General Lisa Madigan that Lynn Patton regularly provides. And I had the privilege of submitting a summary of my interview of Cook County Independent Inspector General Patrick Blanchard for a 'Someone You Should Know' segment, an undertaking that was inspired by Tom's 2012 newsletter article analyzing the statutory duties and powers of an Executive Inspector General under the State Officials and Employees Ethics Act and how they might impact those subject to investigation.

### CLE AND CABLE TV PUBLIC SERVICE PROGRAMS

And now, do you hear the applause? It's deafening, and it is in appreciation for our indefatigable CLE Coordinator Lisle Stalter and the cast and crew of the 2013 version of our annual "Ethics Extravaganza," a professional responsibility program addressing the complex ethical challenges that lurk around every corner for lawyers employed by the State or a local government entity and for those who do business with government entities. Pat, Tom and I were grateful to get the 'hot' tickets to witness the wildly dramatic antics of Lynn, Kate, Kevin, Matt and Mary Milano who made full use of their props, including colorful boas, various styles of mustaches, sunglasses and caps, and stuffed animals

to enact, in a delightfully comic way, realistic workplace scenarios. After each one, the insanely popular ARDC Ethics Guru Jim Grogan guided us through the application of PR Rules as we deconstructed the ethical issues confronting the characters portrayed by our colleagues. This kind of live, interactive and indelible learning makes me nostalgic for more of the same as we move ever faster toward replacing such CLE programming with remote electronic learning.

And yet...we ourselves presented one of those two-hour recorded panel programs—on The Illinois Legislative Process, featuring Rep. Louis Lang, Deputy Majority Leader, and Tiffany Elking who previously served as Assistant Counsel to Rep. Michael Madigan, Speaker of the House. Marylou, who is comfortable in the legislative arena, ably moderated. So there is after all a place in our CLE lexicon for excellent quality electronic programs, and this one serves as a shining example of how well that mode of delivery can work. Kudos are again in order for Lisle who worked closely with Tiffany and Marylou to bring this idea to life.

Finally, as promised, we delivered a highly informative two-part Cable TV program on Access to Affordable Housing and Tenant Rights. Photos of the panel participants appear in this issue so you can see what great talent looks like! This "show" was our second in an ongoing series of public service programming for Cable TV that we are co-sponsoring with the Standing Committee on Racial and Ethnic Minorities. Stay tuned for our next offering that will focus on Child Support. It is intended to reach parents who desperately need help navigating the sometimes confusing paths to the government agencies that will explain child support orders and assist them in collecting payments from obligors. Thanks to Kate, Pablo, and Karen Dimond for contributing to this proposal which we hope to tape in the late summer or early fall. **Please be sure to visit our Committee link on the ISBA website where you can access the YouTube videos of our law-related public service programs:** <http://www.isba.org/committees/governmentlawyers>

### FUTURE CLE PROGRAMMING

One of our future CLE programs will cover

a topic we expect will be of interest and benefit to government lawyers and to defense and labor and employment law attorneys: "The Role and Reach of Independent Inspectors General." It is proposed as a two-hour studio presentation by a panel of IIGs who serve or previously served their government offices in that capacity. We recognize and respect their mission to ferret out political harassment, violations of workplace rules and anti-discrimination laws and even criminal misconduct, but it is important to also explore questions about their authority. How extensive are their investigative and disciplinary powers and what controls on those powers are appropriate? Whose interests are being served? What rights are available to subjects of investigation and potential discipline, or to complainants and witnesses, and how important is it for those individuals to obtain legal counsel? Stay tuned for notice of the probable fall recording of this examination of governmental powers. For their invaluable support in the development of the program, I thank Paul Thompson, Justin Leinenweber, Pat, Tiffany, Pablo and Matt, as well as the incomparable and constant provocateur Mary Milano for her raising important issues about the rights of subjects that should be addressed. Special thanks are due again to Tom whose newsletter article on the statutory provisions creating such positions was an impetus for us to address the subject.

### THE END... (or close)

Now at last we reach the end of my extensive comments but I must leave room to bid a very fond adieu to Janet Sosin, the incredible woman who has been, since our Committee's inception, the most effective, thoughtful and creative liaison to the ISBA staff, administration and leadership that we could have imagined. At our last meeting at the CRO on a Friday afternoon in March, our group surprised Janet with her husband David and a celebration of her long and successful service to us and to the entire ISBA membership, replete with heartfelt acknowledgments, a song from Kate, tasty treats and an appropriate token reflecting our appreciation of her devotion to our many causes. We hope it and the memories of that day will remind her of us through her many years of happy retirement. So, Janet, on behalf of our

Committee...best wishes for a fulfilling journey through this next phase of your productive life.

We welcome Janet's successor Rachel McDermott and will give her a "run for her money" as we continue lobbying for approval of the ISBA's establishment of a new award, the Excellence in Government Service Award, in tribute to and in loving memory of Roz Kaplan, as well as approval for creating a discounted dues structure for government lawyers (as the ABA and numerous other states have done) to encourage more of us to join this great Association. We also hope that Board Liaison Sonni Williams returns to continue her support of our work.

The members of this hard-working committee represent a remarkably diverse range

of government offices at the city, county, state and federal levels, including law enforcement, regulatory and administrative agencies, state constitutional offices and the state and federal courts, and everyone is deeply committed to public service both within his/her office and through their bar activities. Moreover, we keep teaching and learning from each other and are relentless in our efforts to inform our bar colleagues and communities throughout the state about our value to the profession and the public. I am honored to serve on this Committee and extend warm regards to each of my fellow members for a satisfying career, as well as annual raises and pension security beginning NOW (ha!). I am grateful to you all for making this a special year for me. ■

## Does the Savings Statute save the day?

*Continued from page 1*

of the Code of Civil Procedure provides for dismissal of a second, duplicative action that arises out of the same set of facts and is pleaded against the same parties as a currently pending action.<sup>4</sup> If a federal case is on appeal after dismissal, and the plaintiff re-files the State law claims during the appeal, the newly-filed complaint may be subject to dismissal under this Section as a duplicative action. There is conflicting case law on whether this is a "statutory prohibition" that tolls the one-year limitations period to re-file State law claims.

In *Suslick v. Rothschild Sec. Corp.*,<sup>5</sup> the executor of an estate claimed that the defendant defrauded the estate in the handling of certain stock option trades.<sup>6</sup> The estate filed in federal District Court, alleging violations of federal securities law and state-based common law claims.<sup>7</sup> The District Court found that the estate failed to State a claim under federal law, then dismissed the State law claims by declining to accept supplemental jurisdiction over them.<sup>8</sup> Plaintiff appealed to the Seventh Circuit, which ultimately affirmed the dismissal of the federal claims.<sup>9</sup>

Subsequent to the appellate mandate, but more than one year after the District Court's decision, the estate filed an action in Cook County Circuit Court that re-alleged the common law claims.<sup>10</sup> Applying the Savings Statute, the Supreme Court of Illinois found

that the estate had not timely filed the State court action because it was commenced more than one year after the federal court's dismissal.<sup>11</sup> The Supreme Court found that the action was not pending following the dismissal of the plaintiff's action by the District Court, notwithstanding the appeal.<sup>12</sup> The parties in *Suslick* did not raise the "statutory prohibition" language in Section 2-619(a)(3).

The *Suslick* holding was reiterated by the Appellate Court of Illinois for the First District in *Wade v. Byles*.<sup>13</sup> The fact pattern in *Wade* was substantially similar to *Suslick*: the plaintiff filed a complaint in District Court making both federal and State law claims; the District Court dismissed and was affirmed on appeal; within one year after the affirmance, but more than one year after the District Court dismissed the State law claims, plaintiff re-filed the State law claims in the Cook County Circuit Court.<sup>14</sup> The First District found that "the language of section 13-217...is clear: there is no tolling while a case dismissed for lack of jurisdiction is on appeal."<sup>15</sup>

The *Wade* court also found that Section 2-619(a)(3) is not a "statutory prohibition" to the re-filing of a complaint in State court while a federal appeal is on-going.<sup>16</sup> The *Wade* court reasoned that the plain meaning of the language of this section *permits* a court to dismiss (or stay) a duplicate action; it is not mandatory.<sup>17</sup> Thus, the court rea-

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soned, it is not a “statutory prohibition” to filing a duplicate claim as that phrase is contemplated by Section 2-619(a)(3).<sup>18</sup> As such, the court found that the tolling mechanism contained in that Section did not apply, and the one-year period to re-file a claim after a federal court dismisses it for lack of jurisdiction begins to run at the time of the federal trial court’s dismissal.<sup>19</sup>

In contrast to these decisions, the Seventh Circuit has determined that Section 619(a)(3) is a “statutory prohibition” for filing another action while an appeal is pending, thus tolling the one-year limitation period.<sup>20</sup> In *Locke v. Bonello*, the plaintiff filed a case in Champaign County.<sup>21</sup> After the plaintiff voluntarily dismissed the action, defendants appealed to the Fourth District Appellate Court, seeking to compel a settlement.<sup>22</sup> The Fourth District denied the appeal, and plaintiff subsequently re-filed the case in federal court.<sup>23</sup> The Seventh Circuit found it was inherently unjust to allow a defendant to appeal a State court decision while simultaneously using Section 2-619(a)(3) to block the plaintiff’s attempt to re-file the claims while the appeal was pending.<sup>24</sup> Consequently, in order to avoid giving the defendants “the keys to the courthouse,” the Seventh Circuit ruled that Section 2-619(a)(3) served as a “statutory prohibition” to filing a duplicative action while the first action was pending on appeal.<sup>25</sup> Thus, the one-year limitation period to re-file an action was tolled while the appeal was pending by operation of the Stay of Action statute.<sup>26</sup>

While Illinois courts are bound to follow Illinois Supreme Court decisions, not Federal appellate authority,<sup>27</sup> the *Locke* decision has support in Illinois law—it was cited with approval by the First District Appellate Court in *Schnitzer v. O’Connor*.<sup>28</sup> That case involved two related shareholder derivative actions, both filed in State court.<sup>29</sup> At the time plaintiff filed the second action, the first one was on appeal following a dismissal on the merits.<sup>30</sup> The First District expressed approval of the *Locke* determination that a case is still “pending” while on appeal for purposes of Section 2-619(a)(3).<sup>31</sup>

In essence, there are a number of factual distinctions between these cases, and there does not appear to be a bright-line test for when the one-year limitations period is tolled by a pending appeal. Defense counsel should keep in mind the potential to dismiss a case based upon failure to timely file. Meanwhile, the more cautious plaintiff’s counsel should

consider re-filing the claims within one year of the trial court’s dismissal of the actions. This would avoid any potential argument that the claims are time-barred. As it is with most issues, the final determination of whether a claim is timely filed in any given case is up to the sound discretion of the trial judge. ■

Kevin Lovellette is an Assistant Illinois Attorney General and currently supervises the Prisoner Litigation Unit in the General Law Bureau. All opinions in this article are his and are not necessarily the opinions of the Office of the Attorney General. All mistakes are exclusively his.

1. 735 ILCS 5/13-217.
2. *Id.*; the statute provides the same time limitation for re-filing after: judgment is entered for the plaintiff but reversed on appeal or on an arrest of judgment; plaintiff voluntarily dismisses the action; the action is dismissed for want of prosecution; or a federal court dismisses the action for improper venue.
3. 735 ILCS 5/13-216.
4. 735 ILCS 5/2-619(a)(3); see also *Van der Hooning v. Bd. of Trustees of University of Illinois*, 2012 IL App (1st) 111531, ¶125 (comity, prevention of multiple actions, vexation and harassment are factors that a court can weigh when determining a motion brought under Section 5/2-619(a)(3)).
5. *Suslick v. Rothschild Sec. Corp.*, 128 Ill.2d 314

- (1989).
6. *Id.*, at 315.
  7. *Id.*, at 316-17.
  8. *Id.*, at 317-18.
  9. *Id.*, at 318.
  10. *Id.*, at 317.
  11. *Id.*, at 320-21.
  12. *Id.*
  13. *Wade v. Byles*, 295 Ill.App.3d 545 (1st Dist. 1998), *cert denied*, 178 Ill.2d 597 (1998).
  14. *Id.*, at 546.
  15. *Id.*
  16. *Id.*, at 547.
  17. *Wade*, at 548; see also *Zurich Ins. Co. v. Baxter Int., Inc.*, 173 Ill.2d 235, 243-44 (1996) (“a circuit court is not automatically required to dismiss or stay a proceeding under section 2-619(a)(3)”).
  18. *Wade*, at 548.
  19. *Id.*
  20. *Locke v. Bonello*, 965 F.2d 534 (7th Cir. 1992).
  21. *Id.*, at 535.
  22. *Id.*
  23. *Id.*
  24. *Id.*, at 536-37.
  25. *Id.*, at 536.
  26. *Id.*; 735 ILCS 5/13-216.
  27. *American Airlines, Inc. v. Dept. of Revenue*, 402 Ill.App.3d 579, 605-06 (1st Dist. 2009).
  28. *Schnitzer v. O’Connor*, 274 Ill.App.3d 314, 323 (1st Dist. 1995).
  29. *Id.*, at 317.
  30. *Id.*
  31. *Id.*, at 323.

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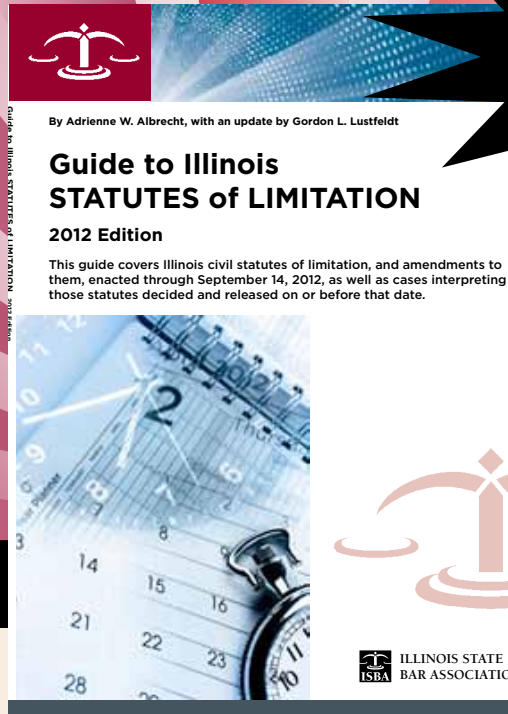
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Illinois has a history of  
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## Volunteer opportunities at the City of Chicago Law Department draw a highly experienced labor and employment lawyer

By Eileen M. Geary

After a short stint working for the State of Illinois, Dick Schnadig became an attorney at Vedder Price, where he practiced law for 47 years in the areas of labor and employment. After retiring from Vedder Price in January 2012, "instead of abandoning the law and all of its rewards," Dick approached the City of Chicago, where he was retained as a volunteer.

Dick works as a volunteer attorney in the Labor Division of the City's Law Department, where he is "doing whatever I am asked to do." The work Dick handles includes discipline hearings at the City's Police Board and Human Resources Board. Most of those cases involve the discharge of employees from City employment and are highly contested. He also has a case load of Labor arbitrations, which involve discipline matters and contract interpretation issues. Dick also has handled employment discrimination cases pending at agencies including the Illinois Department of Human Rights and the Equal Employment Opportunity Commission. Additionally, Dick mentors attorneys and does

some client counseling in relation to the cases he handles.

Dick finds the experience working in the Law Department "enlightening and fulfilling. I've been extremely impressed by the quality of my paid colleagues both in their professional capabilities and in general the warmth of their personalities, especially toward this old stranger in their midst," Dick said. "In fact, as much as I enjoy the work, I enjoy my peers even more." Dick works four to five days a week, usually arriving early in the morning and often leaving around 4 p.m. The work schedule has permitted Dick to enjoy more time off than his private practice allowed. He now is able to spend more time with his large family and enjoy his other interests, which include musical and cultural events. Dick offered that he is glad he made the decision to work in a government office, while also noting that the decision is "not irrevocable."

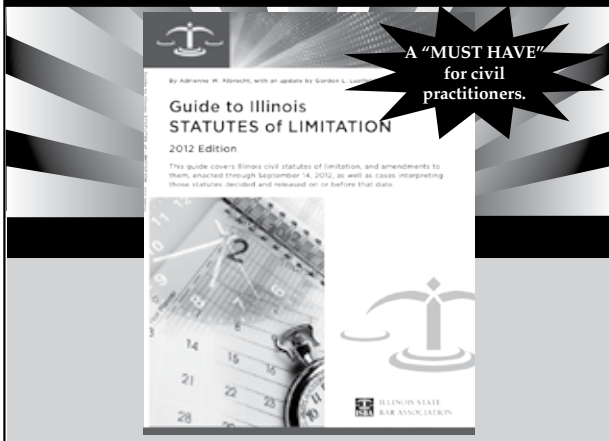
The Labor Division also has greatly benefited from Dick's presence and experience. Dick has worked alongside many of the attorneys in the Division, sharing his insights,

analysis, and extensive knowledge. Dick's enthusiasm and commitment to the work are always apparent, and he generously encourages and supports the other attorneys. Dick is always ready for the next challenging case.

For anyone interested in similar opportunities, the City of Chicago Law Department offers fellowships and a volunteer program for attorneys, in addition to externships. The Law Department Web site notes that the Department "serves the Mayor, the City Departments, Boards and Commissioners and the City Council." The Law Department's clients include more than forty City Departments, its agencies and officials. "The Department employs approximately 270 lawyers that handle litigation, transactional, and legislative projects, and enforce the Municipal Code."

For more information about volunteer opportunities in the City of Chicago's Law Department, visit <[http://www.cityofchicago.org/city/en/depts/dol/supp\\_info/dol\\_volunteer\\_program.html](http://www.cityofchicago.org/city/en/depts/dol/supp_info/dol_volunteer_program.html)>.

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Illinois has a history of  
some pretty good lawyers.  
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## Becoming more aware: A few tips on keeping you and your family safe

By Lisle A. Stalter

**S**ituational awareness: Understanding the current environment and being able to accurately anticipate future problems to enable effective actions.<sup>1</sup> Why is this important? Why is this important to a government attorney?

Situational awareness may protect us. The recent news of the murder of the Texas District Attorney and his wife in their home makes everyone's heart skip a beat and wonder. Wonder ... what if? Wonder ... could this happen here ... to me ... to my family? Although a lot of us don't deal with the bad criminals who we presume are the threat, being aware of our surroundings is still important for both ourselves and our families. So, the question becomes, what can we do to be safer?

My office recently participated in a safety training class. Here are some of my take-aways (expanded with some of my own thoughts and comments) that may be useful to you:

- 1. Don't be predictable.** Take a different route to work. Leave a little earlier. Leave a little later. Go to the store on a different day. Go to a different store.
- 2. Be aware of your surroundings.** First, notice your surroundings. When you know your surroundings, you can take better notice of the things that are out of the ordinary. Consider, whether you need to tell someone or react. Don't presume changes in your surroundings are innocent or fine. (In other words, be just a little paranoid.) Just because you are at home, in your world, does not mean you can let your guard down.
- 3. Play the "what if" game.** As you are taking your different route to work, ask yourself, what if that car pulls right out in front of you ... where will you go? What if that truck doesn't stop at its red light, do you have time to stop, someplace to go? What if the driver of the car in front of you slams on his brakes? Do you have time and distance to respond? You probably already do this, it is called defensive driving.
- 4. Be prepared.** Mentally prepare yourself, believe and know that you can protect yourself and your family if you need to. In the training, we saw a video of a man who starts whacking a car that is sitting

at a stop light with a large metal pipe. What would you do? Did you leave yourself enough room to maneuver away? Does it matter that the light is red? Would you go through it anyway? What if this was happening to the person in the car next to you? What would you do? By being mentally prepared, you can have the upper hand. Your aggressor will be surprised at your response, take advantage of that. But, if you are taken by surprise your ability to respond appropriately and adequately is limited. This does not mean to be provocative and ask for a confrontation. This is to be prepared and know how to respond if you are confronted.

- 5. Don't make yourself vulnerable.** Trust your gut. It has been said, your gut feeling is not just a guess, your gut feeling is your body reacting based upon knowledge or experience before your mind can fully process the information it is receiving. If you are out shopping and you notice someone frequently and they appear to be overly observant of or interested in, or acting out of normal (remember, point 4), trust your gut. Maybe he isn't so innocent. Watch yourself when you would be most vulnerable ... down the hall to the bathroom which is tucked way back in the corner or in the parking lot when no one else is around. If you feel vulnerable don't be afraid to ask for assistance. I recently had a personal experience here. I was going into a store. A man standing a few stores down yelled and asked me for bus money. I told him I didn't have any. He started yelling at me louder. I went into the store. When I was checking out, I noticed he was now standing in front of the store I had entered. I asked the clerk for someone to escort me out.
- 6. Be aware of who you are in the electronic world.** A lot of information is out there about you. Public officials have records of where you live for tax and property ownership purposes. If you participate in any type of social media, are your settings the most secure they can be? What about your friends? Do they talk with you and then everyone can see? Be careful what you put out there and how much information you put out there about your

family.

I did not write this with the intent of making you afraid of everything and discouraging you from leaving your house. But, the points that I took away from the training session were that you can protect yourself. But, you must be proactive to do so. You need to be aware of your surroundings, and you need to have an idea of how you will respond if you are faced with a threatening situation. So, go out there, do your job as a government attorney and keep safe. ■

1. Griffith D, and FL Greitzer. 2007. "Neo-Symbiosis: The Next Stage in the Evolution of Human Information Interaction." *International Journal of Cognitive Informatics and Natural Intelligence* 1(1):39-52.



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## ISBA presents cable programs on affordable housing and tenants' rights

**Tenant Rights in Subsidized Housing**, a half-hour program presented by "Illinois Law," a cable production of the Illinois State Bar Association (ISBA), aired on Chicago Access Network Television, Channel 21 in Chicago, on Tuesdays, March 12 and 26, 2013.

Appearing on the shows were (from left) Jeremy P. Bergstrom, staff attorney/Housing Justice, Sargent Shriver National Center on Poverty Law, in Chicago; Beverly Yang, Land of Lincoln Legal Assistance Foundation, Inc., in Alton; program moderator Nancy K. McKenna, of Provena Health, in Chicago; and J. Damian Ortiz, a clinical professor for the Housing Clinic at The John Marshall Law School, in Chicago.

The 32,000-member ISBA ([isba.org](http://isba.org)), with offices in Springfield and Chicago, provides professional services to Illinois lawyers, and education and services to the public through a [website](http://www.illinoislawyerfinder.com) ([illinoislawyerfinder.com](http://www.illinoislawyerfinder.com)), a cable television program ("Illinois Law"), consumer brochures, and distribution of legal information. ■



(From left) Jeremy P. Bergstrom, staff attorney/Housing Justice, Sargent Shriver National Center on Poverty Law, in Chicago; Beverly Yang, Land of Lincoln Legal Assistance Foundation, Inc., in Alton; program moderator Nancy K. McKenna, of Provena Health, in Chicago; and J. Damian Ortiz, a clinical professor for the Housing Clinic at The John Marshall Law School, in Chicago.

**Affordable Housing Development and Management**, a half-hour program presented by "Illinois Law," a cable production of the Illinois State Bar Association (ISBA), aired on Chicago Access Network Television, Channel 21 in Chicago, on Tuesdays, March 5 and 19, 2013.

Appearing on the shows were (from left) Dilia Camacho-Saeedi, vice president of property management, Hispanic Housing Development Corporation, in Chicago; program moderator Nancy K. McKenna, of Provena Health, in Chicago; and Britt Shawver, chief executive officer, Housing Opportunities for Women, in Chicago.

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(From left) Dilia Camacho-Saeedi, vice president of property management, Hispanic Housing Development Corporation, in Chicago; program moderator Nancy K. McKenna, of Provena Health, in Chicago; and Britt Shawver, chief executive officer, Housing Opportunities for Women, in Chicago.



# How county boards of review can assist the Illinois Property Tax Appeal Board

By Pablo Eves

State's Attorneys and other attorneys representing a county Board of Review may have noticed an increase in the number of local assessment complaints. Statewide, the appeals of county Boards of Review decisions to the Illinois Property Tax Appeal Board (PTAB) have increased 35% from 2010 to March 12, 2013.<sup>1</sup> The number of annual filings of such appeals was 31,554 in 2010, 37,960 in 2011, and 42,871 in 2012.<sup>2</sup> The PTAB's timeliness in rendering decisions and the need for additional resources to address the significant increase in workload were noted as a weakness by the PTAB's Auditor's Report for the two-year period ending June 30, 2012.<sup>3</sup> The goal of this article is to offer some practical guidance to county Boards of Review, and the attorneys who represent them, in addressing current assessment complaints and future appeals.

It is a Board of Review's duty to review the assessments of supervisors of assessments or chief county assessment officers upon the filing of a complaint.<sup>4</sup> Fortunately, there are statutes in place that provide guidance to the Boards of Review and their attorneys in these matters.<sup>5</sup> For example, complaints are required to be filed in writing, including a description of the particular property, and are to be filed within the time provided by law.<sup>6</sup> In addition, each county assessor, board of appeals, and board of review is authorized to make and publish reasonable rules for the guidance of persons doing business with them and for the orderly dispatch of business.<sup>7</sup> In 1991, then Attorney General Burriss reviewed the scope of the Boards of Reviews authority in adopting rules.<sup>8</sup> Specifically, a Board of Review in a county with less than 1,000,000 inhabitants has the authority to publish rules relating to proceedings before it.<sup>9</sup> Any such rules adopted must appropriately protect the due process and equal protection rights of the taxpayers whom they affect.<sup>10</sup>

A Board of Review rule requiring an assessment complaint to be signed by the taxpayer or an attorney representing the taxpayer is properly characterized as a rule of procedure. As long as the rule is adopted and published in such a way as to give prop-

erty owners notice and an opportunity to be heard before the tax is conclusively established, the requirements of due process are fulfilled in this context.<sup>11</sup> Further, the requirements of equal protection are satisfied, as long as a reasonable basis exists for establishing a classification and each member of that classification is treated uniformly.<sup>12</sup>

A Board of Review rule that an assessment complaint must be signed by the taxpayer or an attorney representing the taxpayer is consistent with PTAB rules already in place. PTAB rules provide that appeals shall bear an original signature of the contesting party or the contesting party's attorney on at least one petition.<sup>13</sup> PTAB rules further provide that a party has the right to represent him- or herself in any PTAB hearing, and only attorneys licensed to practice law in the State of Illinois are permitted to represent a party at a PTAB hearing.<sup>14</sup> Accountants, tax representatives, tax advisers, real estate appraisers, real estate consultants and others not qualified to practice law in this State may not appear at hearings before PTAB in a representative capacity.<sup>15</sup>

By putting into place the rule described above, a Board of Review may dismiss, before hearing, an assessment complaint filed without the signature of a taxpayer or the taxpayer's attorney. A pleading signed by a person not licensed to practice in Illinois is a nullity.<sup>16</sup> No person is permitted to practice law without having previously obtained a law license from the Illinois Supreme Court.<sup>17</sup> The filing of an assessment complaint without a law license is the unlawful practice of law. In addition to the dismissal of the filing, penalties are provided by statute. Any person practicing law without a license in the State of Illinois is guilty of contempt of court and shall be punished accordingly, upon complaint being filed in Circuit Court.<sup>18</sup> The remedies include: (i) appropriate equitable relief; (ii) a civil penalty up to \$5,000 paid to the Illinois Equal Justice Foundation; and (iii) actual damages.<sup>19</sup> And, although a person may appear in his or her own proper person to prosecute or defend a claim—and a corporation may act through any officer, director, manager,

or supervisor—the claim must be his or her own, or the corporation's, respectively, and not on behalf of another.<sup>20</sup>

A Board of Review that has adopted a rule prohibiting the filing of assessment complaints without the signature of the taxpayer or the taxpayer's attorney has a useful method by which to monitor and limit unauthorized filings. The enforcement of such a rule would be helpful to PTAB and does not offend taxpayers' constitutional protections of due process and equal protections if properly adopted, published, and applied. By remaining vigilant for individuals or entities not authorized to file assessment complaints, Boards of Review and the attorneys representing them can assist PTAB address current complaints and future appeals.

Pablo Eves, McLean County First Civil Assistant State's Attorney, with permission of Eric Ruud, Instructional Assistant Professor of Finance, Insurance, and Law, Illinois State University College of Business and Former McLean County First Civil Assistant State's Attorney.

1. State of Illinois Property Tax Appeal Board (March 2013). Minutes of the Property Tax Appeal Board Meeting held on March 12, 2013. Retrieved from <<http://www.state.il.us/agency/ptab/board/Minutes20130312.pdf>>.

2. Id.

3. Id.

4. 35 ILCS 200/16-25 through 16-90.

5. Id.

6. 35 ILCS 200/16-25.

7. 35 ILCS 200/9-5.

8. Honorable Craig H. DeArmond, 1991 Ill. Atty. Gen. Op. 87, 1991 WL 495526 (Ill.A.G.).

9. Id.

10. Id.

11. *Citizens Federation of St. Clair County, Inc. v. Brown*, 134 Ill.2d 1054, 481 N.E.2d 879 (1985).

12. *Mlade v. Finley*, 112 Ill. App. 3d 914, 445 N.E.2d 1240 (1983).

13. 86 Ill. Adm. Code 1910.30.

14. 86 Ill. Adm. Code 1910.70(a), (b).

15. 86 Ill. Adm. Code 1910.70(a).

16. *Fruin v. Northwestern Medical Faculty Foundation, Inc.*, 194 Ill.App.3d 1061, 551 N.E.2d 1010, 141 Ill. Dec. 667(1990).

17. 705 ILCS 205/1.

18. Id.

19. Id.

20. 705 ILCS 205/11; *Blue v. People of the State of Illinois*, 223 Ill.App.3d 594 (1992).

# Five quick questions with Jason R. Boltz, General Counsel of the Illinois Department of Public Health

By Paul Thompson

## 1. What exactly does the Department of Public Health (IDPH) regulate?

A lot of people don't realize that IDPH is involved in everything from nursing homes to plumbers and a multitude of areas in between. For example, we have extensive subject-matter expertise on quite a broad range of litigation, administrative hearings and State/Federal regulation involving:

Asbestos licenses, Lead Abatement contractors, Assisted Living licensure, Mobile Home Parks, Migrant Labor Camps, Ambulatory Surgical Treatment Centers, Nursing Homes, Clinical Laboratories, Plumber Licenses, Certified Nursing Assistants, Private Sewage installations, Child Support for all licenses, Pregnancy Termination Centers, Recreational Areas, Commercial Structural Pest Control licenses, Smoke Free Illinois enforcement, Emergency Medical Systems licenses, Swimming Pool & Bathing Beach facility licensures, Food, Drug and Dairy related licensures, Hearing Aids, Tanning Facility Permits, Home Health Agency licenses, Vital Records, Water Well Contractors and of course several others.

## 2. You mentioned your agency's involvement in administrative hearings and regulation. How deep does your IDPH legal team get involved?

As indicated in the response to the first question, IDPH participates in a multitude of administrative hearings and legal actions regarding any entity or person that the agency licenses, regulates or certifies. The role of government regulation is significant and often times, in my view, underappreciated. It is through that notion of state regulation that a state agency like IDPH utilizes the law to enforce and require the applicable regulated entity to comply with certain minimum standards. As stated in our agency title, I view IDPH's mandated standards to be essential and significant for the citizens of this State in the protection of its public health. As a matter of law, IDPH's Division of Legal Services might be involved in any number of significant legal actions, including setting forth licensure violations, fines, penalties, revoca-

tions, suspensions, denials, on site-monitors, or stop work orders.

## 3. What is the dynamic of your client relationships at IDPH, given that people don't often think of government attorneys as having "clients"?

To understand the client relationships at IDPH, it's also important to understand the nature of role of an attorney at IDPH. The Division of Legal Services at the agency serves like an internal in-house legal department at any large corporation. IDPH Legal also has a role in prosecuting administrative cases, similar to that of a civil prosecutions unit in a county state's attorney office. Our "clients" might be anyone who participates in the State's business (in meeting its statutory and legal mandates) of the Department, in any particular circumstance. These different sorts of relationships require the attorneys at IDPH, like myself, to constantly appreciate and cultivate those dynamics. At times, the relationships are cooperative and collaborative, working towards a common goal as set forth by statute. Other times, these relationships can be tested and stressed, since conceptual and professional disagreements may occur regarding the methods and approaches to achieve important agency goals. Serving as a government attorney requires me to always appreciate, continually assess and work through those dynamics, while also understanding the purpose and role of my Office, in serving to protect the integrity of the legal process and meeting the interests of the State.

## 4. Speaking of client development, has your extensive work in government practice provided you with any other important practice tips?

Yes, my public service has taught me several things. I have learned over time, it makes sense to remain circumspect over matters and if possible, always try and get the other side to the story. I have also learned in serving as a government attorney that constantly evaluating your actions and recommendations, under a "light of day" test, is an important smell test. If your action or recommended approach can meet this transparency test, for example as published in a court opinion,

periodical-review or newspaper—then it's likely a fair approach worth considering. Finally, I think in entering this field, you must make important choices about integrity, credibility, and professionalism. I would recommend to any new attorney setting out a career path in government practice to carefully consider their goals in this field, and to determine as soon as possible, how much they value these qualities. These professional attributes may be tested quite often.

## 5. Finally (and thank you for agreeing to this structured interview), where has your government practice taken you during your career?

I very much enjoy and believe in government service. My first job was in government legal practice and I hope my last job will be as well. For me, contributing to upholding concepts of fairness and justice in our democratic society brings quite a bit of personal satisfaction and fulfillment. In my view, I very much appreciate the bigger picture as to what it means to be an individual civil servant (within that system), and through that understand, why it means so much. Besides IDPH, I have also worked over the course of my career at the Illinois Attorney General's Office and the Illinois Environmental Protection Agency. ■



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### July

**Tuesday, 7/2/13- Teleseminar**—Portability of the Estate Tax Exemption: Planning Compliance and Drafting Issues. Presented by the Illinois State Bar Association. 12-1.

**Tuesday, 7/9/13- Teleseminar**—Real Estate Management Agreements. Presented by the Illinois State Bar Association. 12-1.

**Tuesday, 7/9/13 – Webinar**—Intro to Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 3:00 – 4:00 p.m. CST.

**Thursday, 7/11/13 – Webinar**—Advanced Tips for Enhanced Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 3:00 – 4:00 p.m. CST.

**Thursday, 7/11/13- Teleseminar**—Corporate Governance for Nonprofits. Presented by the Illinois State Bar Association. 12-1.

**Tuesday, 7/16/13- Teleseminar**—Health Care Issues in Estate Planning. Presented by the Illinois State Bar Association. 12-1.

**Wednesday, 7/17/13- Webinar (MCLE Credit Uncertain)**—Business Building Strategies for Lawyers: Using Technology, Finding Clients, Getting Referrals. Presented by the Illinois State Bar Association and The Rainmaker Institute. 12-1.

**Thursday, 7/18/13- Teleseminar**—Managing Employee Leave. Presented by the Illinois State Bar Association. 12-1.

**Tuesday, 7/23/13- Teleseminar**—Private Placements for Closely Held Businesses, Part 1. Presented by the Illinois State Bar Association. 12-1.

**Wednesday, 7/24/13 – Webinar**—Introduction to Boolean (Keyword) Search. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 3:00 – 4:00 p.m. CST.

**Wednesday, 7/24/13- Teleseminar**—Private Placements for Closely Held Businesses,

Part 2. Presented by the Illinois State Bar Association. 12-1.

**Tuesday, 7/30/13- Teleseminar**—Attorney Ethics in Real Estate Practice. Presented by the Illinois State Bar Association. 12-1.

### August

**Tuesday, 8/6/13 – Webinar**—Intro to Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 1:30 – 2:30 p.m. CST.

**Tuesday, 8/6/13- Teleseminar**—UCC Article 9 Update. Presented by the Illinois State Bar Association. 12-1.

**Thursday, 8/8/13 – Webinar**—Advanced Tips for Enhanced Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 1:30 – 2:30 p.m. CST.

**Tuesday, 8/13/13- Teleseminar**—Asset Protection in Estate Planning. Presented by the Illinois State Bar Association. 12-1.

**Thursday, 8/15/13- Teleseminar**—Ethics, Virtual Law Offices and Multi-Jurisdictional Practice. Presented by the Illinois State Bar Association. 12-1.

**Tuesday, 8/20/13- Teleseminar**—Understanding the Law of Debt Collection for Businesses, Part 1. Presented by the Illinois State Bar Association. 12-1.

**Wednesday, 8/21/13- Teleseminar**—Understanding the Law of Debt Collection for Businesses, Part 2. Presented by the Illinois State Bar Association. 12-1.

**Wednesday, 8/21/13 – Webinar**—Introduction to Boolean (Keyword) Search. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 1:30 – 2:30 p.m. CST.

**Thursday, 8/22/13- Teleseminar**—Outsourcing Agreements: Structuring and Drafting Issues. Presented by the Illinois State Bar Association. 12-1.

**Tuesday, 8/27/13- Teleseminar**—Buying/ Selling LLC and Partnership Interests. Presented by the Illinois State Bar Association. 12-1.

**Thursday, 8/29/13- Teleseminar**—Mixed Use Developments in Real Estate: Planning and Drafting Issues. Presented by the Illinois State Bar Association. 12-1.

### September

**Thursday, 9/5/13- Teleseminar**—Generation Skipping Transfer Tax Planning. Presented by the Illinois State Bar Association. 12-1.

**Monday, 9/9/13- Chicago, ISBA Chicago Regional Office**—ISBA Basic Skills Live for Newly Admitted Attorneys. Complimentary program presented by the Illinois State Bar Association. 8:55-5:00.

**Tuesday, 9/10/13- Teleseminar**—Choice of entity for Real Estate. Presented by the Illinois State Bar Association. 12-1.

**Tuesday, 9/10/13 – Webinar**—Intro to Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 10:00 – 11:00 a.m. CST.

**Thursday, 9/12/13 – Webinar**—Advanced Tips for Enhanced Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 10:00 – 11:00 a.m. CST.

**Thursday, 9/12/13- Teleseminar**—UCC 9: Fixtures, Liens, Foreclosures and Remedies. Presented by the Illinois State Bar Association. 12-1.

**Thursday, 9/12/13- Chicago, ISBA Regional Office**—Trial Practice Series: The Trial of a Retaliation Case. Presented by the ISBA Labor and Employment Section. 8:55-4:15.

**Monday, 9/16-Friday, 9/20/13 - Chicago, ISBA Regional Office**—40 Hour Mediation/Arbitration Training. Presented by the Illinois State Bar Association. 8:30-5:45 daily. ■

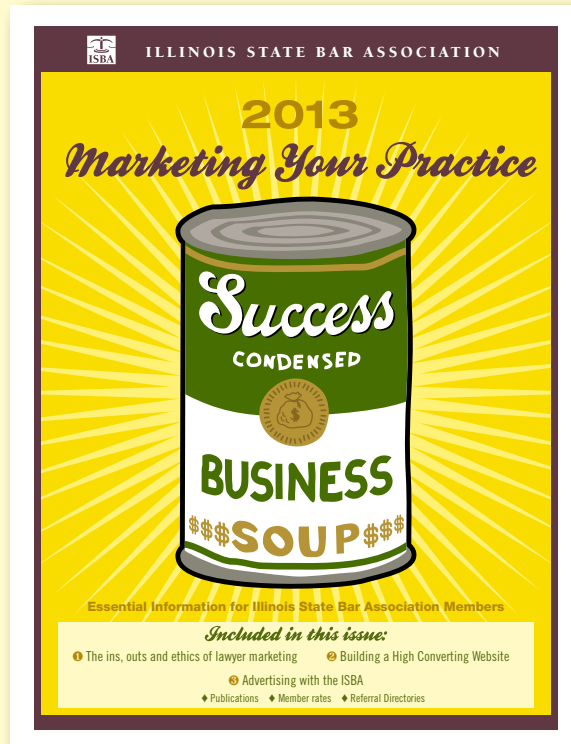


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