ILLINOIS STATE BAR ASSOCIATION

TRUSTS & ESTATES

The newsletter of the Illinois State Bar Association's Section on Trusts & Estates

In the May issue...

By Darrell Dies & Jacob Frost

This month's newsletter has several articles of interest to the estate/trust practitioner. Robert Held has submitted an interesting article about the Prudent Investor Rule in light of the recent case of *Carter v. Carter*. Thomas Bransfield and Darrell Dies have an appealing article regarding the ISBA Advisory Opinion No. 13-01 and the reasonableness of attorney fees. Gary Gehlbach provides a fresh perspective regarding equitable adoption as decided in the *DeHart* court. Tim Midura has some unique insights regarding the new Directed Trust and Decanting statutes. Finally, Phil Koenig provides a brief discussion regarding when to file a probate claim in light of *Water Tower Nursing v. Estate of Weil*.

We wish to express sincere thanks to each and every person that has helped make this newsletter a success by providing informative, substantive and practical articles. Members of the Trusts & Estates Section may now comment on the articles in the newsletter by way of the online discussion board on the ISBA Web site at <http://www.isba.org/sections/trustsestates/newsletter> and we welcome any comments from our audience. ■

Prudent investor rule chiseled away in *Carter v. Carter*

By Robert S. Held

The First District, in an opinion last year, effectively nullified – perhaps inadvertently – an element of the Prudent Investor Rule in Illinois. The ramifications are still being felt, but trust counsel and practitioners alike must be on notice: the duty of a trustee to remain impartial when investing marital trust assets has been eviscerated by *Carter v. Carter*.[1] An investment solely in tax-free municipal bonds for an entire trust was upheld without dissent in a ruling that was not filed under Sup. Ct. Rule 23.[2]

In *Carter*, the decedent's surviving spouse was the trustee and income beneficiary of a marital trust (a sub-trust created at the decedent's death to take advantage of the Internal Revenue Code's allowance for the deferral of tax on assets left to a surviving spouse).[3] The decedent's daughter was the remainder beneficiary of the marital trust who objected to her step-mother's singular investment. The surviving spouse had invested 100% of the marital trust in tax-free municipal bonds, she said, "to provide a good, safe income in a highly fluctuating and problematic market-place."[4]

The decedent's daughter brought a breach of fiduciary claim arguing that among other violations, the trustee had breached her duty of impartiality. The trustee's investment solely in bonds favored the trustee; it would provide a steady income (in nominal dollars) but would almost certainly not grow in value over time. Thus, the bond portfolio's purchasing power (after inflation), when inherited, could be far less than when the decedent died.

The Appellate Court correctly noted that its primary concern in interpreting a trust document is to ascertain the grantor's intent. Other than that observation, there is not a single portion of the court's analysis that is grounded in the Illinois statutes or relevant case law. The

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Court, instead, focused almost exclusively on one boilerplate provision of the trust. The trustee was authorized, as part of the provisions of the decedent's living trust "[t]o retain any property transferred to the trustee, regardless of diversification and regardless of whether the property would be considered a proper trust investment." In the *Carter* court's view, that language superseded (and nullified) the Prudent Investor Rule (the "Rule") requiring a trustee to pursue an investment strategy consistent with the trustee's duty of impartiality because the trustee's muni strategy was not "arbitrary or unreasonable."[5]

The Rule, developed decades ago, stems from modern portfolio theory—the effort to maximize return for a given level of risk of an entire portfolio. Essentially, a rational investor should consider how each asset class—and its proportion—affects the portfolio's expected return for a given level of risk. Effective in Illinois in 1992, the Rule provides that the trustee should diversify the investments of the trust unless the trustee believes it is in the interests of the beneficiaries and furthers the purposes of the trust not to diversify.[6] The Rule also requires that a trustee should pursue an investment strategy "consistent with the trustee's duty of impartiality."[7]

Until the decision in *Carter*, few thought that the boiler plate language quoted above, language in the form documents found in IICLE's Estate Planning Forms and Commentary, could nullify a trustee's duty of impartiality. In fact, the Rule in Illinois requires a settlor to expressly waive its provision if that is the settlor's intent. The Rule includes the following: "The provisions of this Section may be expanded, restricted, eliminated, or otherwise altered by express provisions of the trust instrument."[8] It appears that an implied waiver in *Carter* should not have been found.

While it is true that Illinois courts have consistently failed to understand the duty to diversify,[9] it is surprising that courts now are also willing to ignore the duty of impartiality. A fair reading of the Rule, the Restatement of the Law of Trusts or the conclusions of courts in other states facing similar questions should lead to what Professor Bogert and others have said for a century:

> [T]he trustee should endeavor to act in such a way that a fair result is reached with regard to the interests of the current or income beneficiaries and those who take possession of their interests at a subsequent date.[10] [T]he trustee must act impartially between the income and remainder beneficiaries in investment transactions.[11]

In short, by investing in tax-free municipal bonds, the trustee failed to balance the desire for income against the investment risk then allocated to the remainder beneficiary - the primary risk of a bond portfolio, inflation. While inflation is currently much lower, over the last 100 years price increases have averaged about 4%. During certain periods, like the ten-year period between 1972 and 1982, inflation insidiously eroded over one-half of the purchasing power of every dollar. Assuming only a 4% inflation rate and a 20-year investment in bonds, a remainder beneficiary could have the same purchasing power as a portfolio worth less than half its initial value. If the income beneficiary survives *25* years, the purchasing power is 37% of its initial value. And those calculations assume that interest rates are unchanged. In fact, if interest rates rise, the value of the portfolio at the income beneficiary's passing would be even less (as bond prices vary inversely to interest rates). A prudent investor would not invest in a way that ignores the eroding effects of inflation.

Further, it is difficult to imagine that the settlor contemplated that boilerplate language would allow the trustee to invest in assets in derogation of her duty of impartiality. In the *Carter* Court's view, the income beneficiary's welfare became foremost; the remainder beneficiary's rights, subordinate—and all based on one standard trust provision. Of course, the income beneficiary herself—if she lives long enough—will also discover the disadvantage of an investment exclusively in bonds. The income she is receiving today, again assuming a 4% inflation rate, may only buy her one-half of those goods and services 20 years down the road.

The old adage to not put all your eggs in one basket comes to mind. By creating a portfolio that balanced her desire for income with the need to protect against inflation, the trustee could have fulfilled her duty of impartiality, reduced the overall portfolio risk and created a higher expected return. Further, after creating a balanced portfolio she could have withdrawn a fixed percentage of the portfolio each year regardless of the income created by taking advantage of Illinois' Total Return Trust statute.[12]

A portfolio with several asset classes would also be more likely to serve the income beneficiary in the future by protecting the portfolio against inflation. It was in the income beneficiary's own interest to ensure that if she lives long, her purchasing power from the income is maintained. Ironically, in addition to helping herself, such a strategy would also fulfill her husband's wish that the portfolio (not 37% of it) would go to his daughter at his wife's passing. Practitioners, mindful of the *Carter* opinion, must now consider amending existing trust documents or advising their current clients of the altered landscape affecting the duties of a trustee. ■

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1. *Carter v. Carter*, 2012 IL App (1st) 110855, 965 N.E.2d 1146 appeal denied, 968 N.E.2d 1064 (Ill. 2012)
2. An order entered under Rule 23 is not precedential and may not be cited by any party except to support contentions of double jeopardy, *res judicata*, collateral estoppel or law of the case. Ill. Sup. Ct. R. 23
3. 26 USCA 2056
4. *Id.*
5. *Id.*
6. IL ST CH 760 § 5/5
7. *Id.*
8. *Id.* (emphasis supplied)
9. As the Court in *Cent. Nat. Bank of Mattoon* v. U.S. Dept. of Treasury, 912 F.2d 897, 902 (7th Cir. 1990), "This leaves the status of the duty to diversity in Illinois law in a fog . . ."
10. The Law Of Trusts And Trustees § 541
11. The Law Of Trusts And Trustees § 612
12. IL ST CH 760 § 5/5.3

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Reasonable attorney fees & ISBA Advisory Opinion No. 13-01

By Thomas Bransfield and Darrell Dies

For those of you who represent representatives of decedent's estates, the ISBA Advisory Committee ("Committee") Opinion No. 13-01 issued January 2013 ("Opinion"), is a must read. The Committee issued its opinion "that an agreement that a client shall pay fees disallowed by the Probate Court, *regardless of the reason for disallowance,* is a violation of the Rules of Professional Conduct 1.5." (emphasis added).

I. Summary

The question posed to the Committee was whether it is ethically permissible for a lawyer for a representative of a decedent's estate to enter into a fee agreement, or to collect a fee, for an amount in excess of the amount of fees allowed by a Probate Court as reasonable.[1] The Committee cites the Illinois Probate Act of 1975, several cases, the Illinois Rules of Professional Conduct, and other ethical opinions to support its conclusion that such an arrangement is a violation of the Rule of Professional Conduct 1.5. This article is designed as an in depth review of the Opinion and the references cited by the Committee to support its conclusion.

II. Committee's Analysis

The Committee proposes a hypothetical fact scenario between an attorney and client to begin the discussion. Under the facts assumed, the attorney is hired by an individual client to represent the client as representative of a decedent's estate. The attorney's engagement letter, accepted by the client, provides for the attorney to be paid on an hourly basis from the estate and provides that if any part of the attorney fee is disallowed by the Probate Court for any reason, the estate shall pay the "allowed portion" and the client shall pay the "disallowed portion" from the client's individual funds. The attorney prepares a bill for $10,000 total. The Probate Court allows an attorney fee of $7,500 to be paid from the estate and disallows the balance of $2,500 for unstated reasons. Pursuant to the engagement letter, the attorney requests the client to pay the "disallowed portion" in the amount of $2,500 from the client's individual funds.

The Committee poses this question: whether it is a violation of the Rules of Professional conduct, governing the reasonableness of attorney fees, for an attorney to contract with a client for payment of fees in excess of an amount approved[2] by the Probate Court.

A. Statute.

The Committee first examines the Probate Act that provides the well known provision that the attorney for a representative is entitled to reasonable compensation for his services.[3] The Committee acknowledges that "while such compensation normally is to be paid with estate assets, that is not always the case." The Committee also cites *In re Elias,*[4] "there is no provision in the Probate Act requiring that the executor's attorney fees and costs be exclusively paid from the estate."

The Committee does not discuss the differences in the Probate Act provisions between attorney and executor fees. The court in the case *In re Elias*[5] held that unlike attorney fees, executor and administrator fees are limited to being paid from the assets of the estate. The Probate Act does not require an attorney fee for an estate representative to be paid exclusively from estate assets.

B. Illinois Case Law.

The Committee returns to *In re Elias* for the proposition that a Probate Court, a court of general jurisdiction, has the authority to apportion the payment of attorney fees to other parties, other than just to the estate.[6] The court in *Elias* first made a determination that the attorney fees charged to the estate were reasonable.[7] Then the court examined whether it would be fair for the estate beneficiaries to bear the burden of the entire fee. Instead of charging the estate the entire fee, the court applied the equitable theory of equitable contribution and allowed for only a part of the requested attorney fee to be charged to the estate. The court ordered the "disallowed portion" to be charged to a third party.

The court held that "attorney fees for an executor can be assessed against a party in a probate proceeding based on equitable contribution or as punitive damages where there was willful or outrageous conduct due

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to evil motive or a reckless indifference to the rights of others."[8] *In re Elias* therefore stands for the proposition that a reasonable attorney fee may be allocated by a court between an "allowed portion" to be charge to the estate and a "disallowed portion" to be charged to an individual, over that individual's objections.

Similarly, in *Roe v. Estate of Farrell*,[9] the Supreme Court allocated an attorney fee between and "allowed portion" to be charged to the estate, with the "disallowed portion" to be charged to the owner of joint asset that passed outside the estate. The trial court allocated the fee based evidence concerning the time and service required by the attorney of the administrator to attend to jointly held assets.[10] Using its equitable powers the court entered an order directing the "disallowed portion" of the attorney fee to be paid by the individual receiving the joint property, over that individual's objections.

Both cases support the position that a "disallowed portion" of attorney fees may be reasonable, but as a matter of fairness and equity, the "disallowed portion" was charged to a third party, not to the estate. Neither of the individuals responsible for payment of the "disallowed portion" consented to the payment of the representative's attorney fee.

The Committee also cites *In re Estate of Bitoy*[11] for the premise that a retainer agreement between a lawyer and representative is irrelevant to the determination as to the "reasonableness" of an attorney fee. In other words, a properly executed engagement letter between an attorney and client is not controlling if the fee charged were not reasonable. An attorney fee must always be reasonable under case law as well as under the Rules of Professional Conduct, regardless of the terms of the engagement letter.

C. Ethics Opinions (IL)

The Committee then incorporates the Illinois Rule of Professional Conduct Number 1.5(a) ("Rule 1.5") and the subsequent comments into its analysis. Rule 1.5 states that an attorney may not charge or collect an unreasonable attorney fee. The Committee cites comment 9 of Rule 1.5 to support several propositions:

> [9] Disputes over Fees: If a procedure has been established for resolution of fee disputes, such as an arbitration or mediation procedure established by law or rule, the lawyer must comply with the procedure when it is mandatory, and, even when it is voluntary, the lawyer should conscientiously consider submitting to it. Law may prescribe a procedure for determining a lawyer's fee, for example, in representation of an executor or administrator, a class or a person entitled to a reasonable fee as part of the measure of damages. The lawyer entitled to such a fee and a lawyer representing another party concerned with the fee should comply with the prescribed procedure. ("Comment 9")[12]

Comment 9 directs attorneys to use procedures, established by laws or rules, for resolution of fee disputes, such as arbitration or mediation. However, neither the Probate Act, nor the Probate Court, offers such procedures to resolve fee disputes. In fact, if two parties disagree on the attorney fee asserted by the representative, the only option is to litigate the issue in Probate Court.

Comment 9 also directs attorneys to comply with any prescribed procedure to determine the amount of the lawyer's fee in representing an estate representative. However, the Probate Act does not provide a procedure that governs the determination of a lawyer's fee in representing an estate representative. The lawyer is only entitled to a "reasonable" fee based on all the relevant facts and circumstances of the estate.[13]

Unlike the Probate Act, other areas of practice have statutes that set forth detailed procedures for addressing attorney fees. See the provisions for attorney fees set forth in The Illinois Marriage and Dissolution of Marriage Act[14] and Workers' Compensation Act[15] as examples of detailed statutory provisions governing attorney fees for these areas. Certain states like Florida and California also have detailed statutes that determine estate attorney fees based on formulas incorporating the value of probate and non-probate assets.[16] Both Florida and California statutes also include provisions for attorneys to seek additional compensation in supplementing the statutory fee schedule for extraordinary services rendered by the attorney for the estate representative.[17]

However, neither the Probate Act, nor the Probate Court, set forth procedures to determine the amount of an attorney fee for services rendered in a decedent's estate.[18] The Probate Act's only provision addressing attorney fees is contained in one sentence: "[A]n attorney for a representative is entitled to reasonable compensation for his services."[19]

D. Assumptions

The Committee then makes two assumptions in the Opinion regarding attorney fees for executors and administrators:

1. In order for a lawyer to collect any fee at all for work on behalf of an executor, the lawyer must apply to a Probate Court.
2. It is evident that the required judicial scrutiny is designed to prevent overreaching, as in Rule 1.5.

The Probate Act, under Independent Administration, does not require a lawyer to apply to the Probate Court before collecting fees on behalf of an executor. In fact, the exact opposite is true. The Probate Act allows the attorney to collect a fee for representing an executor if all interested parties approve the fee requested.[20] If all parties consent to the attorney fee requested, the attorney fee is not subject to judicial review.

Even Supervised Administration has a procedure of avoiding judicial review of attorney fees. If the parties can agree to all disputed matters, the representative may convert the Supervised Administration to Independent Administration for purposes of closing the estate, without filing an account or petition for attorney fees. Probate Court judges routinely grant this petition if all parties consent.[21] By converting the administration to Independent, the representative avoids judicial review of attorney fees and of the accounting.

The Committee's rationale is difficult to follow. The Committee does not cite any authority nor does it offer an argument to support its conclusion that "the required judicial scrutiny is designed to prevent overreaching." If overreaching were a concern, then the statute and judiciary actions that allow for beneficiaries to approve attorney fees without any judicial review are not consistent with this concern. In fact, the only time the judiciary is involved in reviewing attorney fees in a decedent's estate is when an interested party files a timely objection, compelling the court to be involved. Otherwise, the judiciary exercises absolutely no oversight of attorney fees.

E. Ethics Opinions

After these assumptions, the Committee then turns to citing other ethics opinions to support its position.

1. Minnesota.

The Committee cites *In re Dvorak,*[22] to support the proposition that a fee in excess of the amount authorized by court order is unreasonable. Dvorak was an attorney before the Supreme Court in Minnesota for misconduct. In one matter, Dvorak represented clients in a bankruptcy proceeding. She charged the bankrupt estate over $11,000, even though the Bankruptcy Court only authorized her to charge $10,000.

Charging a bankrupt estate more than allowed by court order is obviously an ethical problem. These facts are not related to the hypothetical considered by the Committee, as Dvorak was in direct contempt of a court order.

2. Kentucky Bar Association.

The Committee then cites a 1962 Kentucky Bar Association ("KBA") ethics opinion dealing with an attorney representing clients under the Kentucky Workmen Compensation Act.[23] Attorney fees in workman compensation cases in Kentucky are fixed by statute. The KBA opined that a lawyer who is practicing in this area may not charge more than is allowable by this statute.

However, the KBA opinion also makes an exception, "[w]hen the judgment is 'towards' [the total] attorney fee, [then] there is nothing to preclude a lawyer from charging the client a fee in excess of that ordered by the judge 'toward' the total fee, as long as the total fee is reasonable." In other words, the KBA expressly allows an attorney to charge a client an additional amount, in excess of the fee awarded by the court, as long as the total fee is reasonable.

3. New York State Bar Association.

The Committee also cites a New York State Bar Association ("NYSB") opinion from 1972.[24] The NYSB considered the situation of an attorney representing a wife in a divorce action. The court entered an order allowing a certain amount of the wife's attorney fee to be charged against the husband. The wife's attorney then charged the wife the balance due. The NYSB opined that, "[w]here a court fixes a fee as reasonable, it is improper to make an additional charge."

The very next sentence limits this opinion to certain circumstances, "[t]his rule applies only in the event the Court intended by its order to determine what was a reasonable fee for the services performed." The NYSB concludes its opinion by stating "[since] the Court does not purport to fix the reasonable value of the services, the attorney is free to negotiate an additional fee from the wife, provided that she is fully informed of the Court's order and that the aggregate fee is not excessive."

Like the KBA, the NYSB also allows an attorney to bill his client an amount in excess of the court order, as long as the client is fully informed of the court's order and the fee is not unreasonable. It is difficult to follow the Committee's argument that these bar association opinions support the Committee's conclusion, as both opinions expressly bless the arrangement that the Committee condemns.

III. Committee's Conclusion

The Committee concludes its Opinion by finding:

1. [A]n agreement that the client shall pay legal fees disallowed by a Probate Court, regardless of the reason for the disallowance is violative of RPC 1.5;
2. A lawyer may not enter into an agreement intended to provide fees to the lawyer in excess of the amount found reasonable by a Probate Court;
3. The opinion is limited to circumstances involving excessive legal fees for probate work and is not addressed to other situations, such as those involving fee agreements of litigation in which a fee shifting statute is applicable.

The universal application of the Opinion set forth in the first paragraph above to all fees disallowed "regardless of the reason" appears to conflict with the limitation set forth in the third paragraph, that this Opinion applies only to "circumstances involving excessive legal fees for probate work." However, if the Committee assumed that any portion of an attorney fee not allowed by a Probate Court is by definition "unreasonable," the two provisions may be read harmoniously.

The Committee arrives at that conclusion by following this line of reasoning. The representative's attorney is entitled to "reasonable" attorney fees under the Probate Act. By disallowing a portion of the total fee requested, the court has ruled that a portion of the fee is unreasonable or excessive. Since an attorney may not charge his client an unreasonable fee, an attorney charging a client this "disallowed portion" would be a violation of the Rules of Professional Conduct. An engagement letter with a client agreeing to pay any "disallowed portion" is not relevant, as the disallowed portion is excessive by definition.

Since the Committee views the "disallowed portion" as per se unreasonable, the Committee rendered the opinion that a probate attorney is prohibited from entering into an agreement with a client that would obligate the client to pay a "disallowed portion" of an attorney fee.

IV. Authors' Analysis

The question posed to the Committee was whether it is ethically permissible for a lawyer for a representative of a decedent's estate to enter into a fee agreement, or to collect a fee, for an amount in excess of the amount of fees allowed by a Probate Court as reasonable. As referenced in the question posed, the Court must determine whether the fee requested is reasonable and whether the fee requested will be allowed as a claim against the estate assets.

The first determination of whether the attorney fee for the executor is reasonable, is generally in response to the opposing party's objections. If the fee requested were not reasonable, then neither the estate, nor the client would be responsible for payment.

The second determination is whether the entire attorney fee may be "allowed" or "disallowed" as a claim against the estate.[25] In making this determination, the court has broad discretionary powers in awarding attorney fees for a representative.[26] Inherent in the process of deciding whether to allow attorney fees to be charged to the estate, is a determination of whether it would be fair and equitable for the beneficiaries of the estate to have to bear the entire burden of attorney fees requested.

These two determinations are separate and distinct. For example, a Court may make a determination that the attorney fee requested is reasonable, but disallow a portion of the fee from being charged against the estate. However, an order disallowing a portion of the total fee requested, does not necessarily render that "disallowed portion" to be excessive or unreasonable.[27]

In *Elias*[28] and *Roe,*[29] both courts determined that the attorney fees requested were reasonable, but neither court "allowed" the entire fee to be charged against the estate. Both courts determined that it would not be fair and equitable for the estate beneficiaries to have to bear the entire burden of

the attorney fee for different reasons. Using equitable powers, both courts apportioned the total attorney fee between an "allowed portion" charged against the assets of the estate and a "disallowed portion" charged to third party, notably over that third party's objection. These cases highlight the two-step judicial review of attorney fees and that a disallowance of a portion of a fee, does not render that "disallowed portion" unreasonable per se.

In the hypothetical examined by the Committee, the client of the representative willingly agreed to be responsible for any "disallowed portion" of the attorney fee, regardless of the reason for disallowance. If the court disallowed a portion of the total fee, on the basis the fee was unreasonable or excessive, then the attorney would be prohibited from seeking payment from the client or the estate, regardless of the terms of the agreement. This ethical prohibition applied well before the issuance of the Opinion.

Prior to the Opinion, an attorney could ethically seek payment from the client for this "disallowed portion," as long as the total amount requested was reasonable. The Opinion expands the general prohibition of charging unreasonable fees, to a prohibition of charging fees disallowed by the Probate Court. As attorneys in this area well know, the reasons for disallowance are as varied as the personalities of the judges who hear probate cases. In fact, not every fee disallowed is unreasonable or excessive, like in *Elias* and *Roe*. However after the Opinion, even if a "disallowed portion" of an attorney fee were determined to be reasonable and a client were willing to pay the fee as agreed, the Committee's Opinion effectively prohibits the attorney from seeking payment. As a result, the "disallowed portion" of the total bill, even if it were considered reasonable, would be a reasonable fee that the attorney would be prohibited from seeking payment.

V. Authors' Conclusion

An attorney is always prohibited from charging an unreasonable fee. Since a court has broad discretionary powers, an attorney fee could be disallowed because it is unreasonable, but it could also have been disallowed for many other reasons, ranging from technical theories of equitable apportionment to arbitrary limitations on hourly rates imposed by individual judges. Unfortunately, the Opinion rendered by the Committee condemns attorneys from seeking payment of any "disallowed portion" of a fee petition, even if the fee is reasonable and the client is willing to pay. This prohibition conflicts with the Probate Act that entitles attorneys to be paid reasonable compensation for services.[30]

Part II of this article will be published in the June 2013 Trusts & Estates Newsletter and shall address the ramifications of this Opinion and suggestions for attorneys to implement in their practice in response to this opinion.

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1. The Opinion only discusses the attorney for the decedent's representative in probate, it does not mention representation of a disabled adult or minor representative, nor any other relationship that may give rise to the right to petition for attorney fees, so our discussion is limited to the an executor/attorney relationship
2. Attorney fees are generally "allowed" or "disallowed" as a claim against the estate. The Committee uses the term "approved" which is synonymous with and included in the Black Law Dictionary definition of "allowed."
3. 755 ILCS 5/27-2(a)
4. *In re Estate of Elias*, 408 Ill.App.3d 301, 946 N.E.2d 1015, 349 Ill. Dec. 519 (1st Dist. 2011)
5. *Id* at 1035
6. *Id* at 1035
7. *Id* at 1035
8. *Id* at 1038
9. *Roe v. Estate of Farrell*, 69 Ill.2d 525, 372 N.E.2d 662,14 Ill. Dec. 466 (1978) *In re Estate of Elias*, 408 Ill. App. 3d 301, 946 N.E. 2d 1015, 349 Ill.Dec. 519 (1st Dist. 2011)
10. Id at 533
11. *In re Estate of Bitoy,* 395 Ill.App.3d 262, 917 N.E.2d 74, 334 Ill. Dec. 477 (1st Dist. 2009)
12. Illinois Rule of Professional Conduct Number 1.5, comment 9
13. 755 ILCS 5/27-2(a)
14. 750 ILCS 5/508
15. 820 ILCS 305/16a
16. Florida Statute Chapter 733.6171 and See California Statute Probate Section 10810
17. See Florida Statutes Chapter 733.6171(4) and California Probate Code Section 10811
18. Query whether this reference in Comment 9 is a hold over from a bygone era when some Judges used a sliding scale to determine fees?
19. 755 ILCS 5/27-2(a)
20. 755 ILCS 5/28-11 (b)
21. The procedure is so common that the Cook County Clerk offers an official form CCP 1013 setting forth this request.
22. *In re Dvorak*, 554 N.W. 2d 399 (Minn. 1996)
23. Kentucky Bar Association, Ethics Opinion KBA E282 (January 1984)
24. New York State Bar Association, Opinion #251 (May 24, 1972)
25. The terms "allowed" and "disallowed" are terms of art in Probate Court referring to the treatment of claims. The terms do not necessarily follow the determination of reasonableness.
26. *In re Elias* 946 N.E.2d 1035
27. See *Roe v. Estate of Farrell*, 69 Ill.2d 525, 372 N.E.2d 662,14 Ill. Dec. 466 (1978) *In re Estate of Elias,* 408 Ill.App.3d 301, 946 N.E.2d 1015, 349 Ill.Dec. 519 (1st Dist. 2011)
28. *In re Estate of Elias*, 408 Ill.App.3d 301, 946 N.E.2d 1015, 349 Ill. Dec. 519 (1st Dist. 2011)
29. *Roe v. Estate of Farrell,* 69 Ill.2d 525, 372 N.E.2d 662,14 Ill. Dec. 466 (1978)
30. 755 ILCS 5/27-2(a)

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Illinois adopts equitable adoption

By Gary R. Gehlbach

Heirship Affidavits Expanded

Preparing an Heirship Affidavit just became more involved. In addition to natural born heirs, since 1955 Illinois has had a presumption that an adopted child is deemed a child born to the adopting parent unless a contrary intent is clearly demonstrated.[1] Accordingly, the affidavit of heirship should include adopted children as well as children of a predeceased adopted child.

Practice Tip

Now, however, the affidavit should also include a putative adopted child, or the children of a putative adopted child that predeceased the decedent. Our estate administration questionnaires should be expanded to inquire whether the decedent intended someone to be legally adopted or treated someone as if he or she had been legally adopted when in fact no adoption took place.

The basis for this development is the Illinois Supreme Court's decision, *James DeHart v. Blanca DeHart,*[2] filed March 21, 2013. While recognizing that no Illinois court had ever "expressly recognized the concept of equitable adoption…," neither had any Illinois court rejected this theory. Rather, a number of Illinois cases have found that an adoption should be deemed to exist even though no formal adoption in fact took place, based on the theory that a contract had been formed.[3] In its ruling in the *DeHart* case, however, the court, by adopting the holding in a California case,[4] expressly found that a person may establish an equitable adoption without having to prove all of the elements of an enforceable contract.[5]

The *DeHart* case

In an all-too-familiar scenario, the case involved a dispute between the decedent's son and his father's new wife who was several years younger than the son (and considerably younger than her husband). The case was essentially a will contest brought by James against Blanca, individually and as executor of the estate of James' father and Blanca's new husband, Donald. In addition to pleading that a contract had been formed for Donald to adopt him or, in the alternative, that he had been equitably adopted, James also pled that Donald lacked testamentary capacity, that Blanca had unduly influenced Donald to disinherit him, that Blanca had fraudulently induced Donald to disregard James in his estate plan, and that Blanca had tortuously interfered with his lawful expectancy—the very claims designed to ensure that he receive no further birthday cards from Blanca.

The Pleadings

This case is essentially a pleadings case. The Will County Circuit Court dismissed all of James' counts with prejudice. However, the appellate court reversed all of those dismissals unanimously, except that one judge dissented on the reinstatement of the contract-for-adoption count.

The Facts

James alleged the following. For more than 60 years Donald held James out to be his biological son. In planning his funeral a couple years before he died, Donald listed James as his son and listed James' children and grandchildren as Donald's own grandchildren and great-grandchildren. Donald had even given James a birth certificate listing Donald as his father. James successfully used this birth certificate "to conduct the affairs of life."[6] However, in 2000 James tried to use the birth certificate to obtain a passport. When his application was rejected, he obtained a certified copy of his birth certificate from the Cook County Office of Vital Statistics, finding that his surname was Staley rather than DeHart. When confronted with this information, Donald responded that Staley was indeed James' biological father but that he, Donald, had adopted James when he was two years old. He and James' mother, whom Donald had then married, had agreed to keep the adoption secret. Donald also assured James that he had hired an attorney to handle the adoption and that "it was all legal."[7] These events occurred in 2000. James' mother and Donald's wife, Virginia, passed away in April 2001. However, she had dementia and apparently was not able to shed any light on the situation.

Through at least 2005 Donald, James and James' wife and children maintained a close familial relationship, even vacationing together, and Donald had prepared a will providing for James and his family.

However, in the spring of 2005 Donald met Blanca, 29 years his junior, and they were married in December 2005. A year later Donald signed a new will, this time at a different law office than he had used for his first will, with the new will reciting his marriage to Blanca and asserting that he had no children. James alleged that Blanca maintained a position of trust and confidence with Donald and was thus in a fiduciary relationship with him, and that she convinced Donald that James was not his son and otherwise misrepresented his character, and essentially cut off contact between Donald and James and his family.

Contract to Adopt

Before addressing James' equitable adoption argument, the court addressed his claim that a contract to adopt had existed. Relying on *Monahan v. Monahan,* a 1958 Illinois Supreme Court decision,[8] the court found that James had pled sufficient facts to avoid a motion to dismiss.

In *Monahan*, when the plaintiff was two years old his mother boarded him with the Monahans, paying for his keep. The lad's father soon left for good. A few years later the mother's payments ceased and she consented to his adoption. The Monahans thereafter raised the plaintiff, had him baptized, and sought legal advice about adoption. However, believing that the plaintiff's father's consent was required and being unable to locate him, the Monahans never proceeded with the adoption. Nonetheless, they raised the plaintiff, referring to him as their son and holding him out to relatives and the community as their son. The *Monahan* court thus found that the facts were sufficient to prove by clear and convincing, *albeit* circumstantial, evidence that a contract to adopt existed.

In the *DeHart* case, the court similarly "found that the well-pled facts, viewed in the light most favorable to [James], sufficiently inferred that a contract to adopt existed between Donald and [James'] mother Virginia and that [James] was a third-party benefi-

ciary of that contract."[9] The fact that James' father was not a party to the contract was irrelevant, as he had abandoned James.[10]

Equitable Adoption

James also pled that he had been equitably adopted, regardless of whether an expressed or implied contract to adopt could be proved. The court noted, however, that where the doctrine of "'equitable adoption' is recognized, the most important prerequisite…is proof that a contract of adoption was entered into between the foster parents and the natural parents or someone standing *in loco parentis*."[11]

A California case in 2004, *Estate of Ford v. Ford*,[12] deviated from this requirement. That court ruled that "if a claimant can, by clear, cogent and convincing evidence, prove sufficient facts to convince the trier of fact that his status is identical to that of a formally adopted child, except only for the absence of a formal order of the adoption, a finding of an equitable adoption is proper without proof of an adoption contract."[13] A familial relationship by itself would not be adequate; rather, "a claimant 'must demonstrate the existence of some direct expression, on the decedent's part, of an intent to adopt the claimant.'"[14] "[T]his intent may be shown by an unperformed agreement or promise to adopt, but…it also may be shown by 'proof of other acts or statements directly showing that the decedent intended the child to be, or to be treated as, a legally adopted child,… the decedent's statement of his or her intent to adopt,…or the decedent's representation to the claimant or to the community at large that the claimant was the decedent's natural or legally adopted child.'"[15]

The Illinois Supreme Court found that the *Ford* decision "struck the proper balance" and adopted its holding and rationale, adding that a claimant must also "show that the decedent acted consistently with that intent by forming with the plaintiff a close and endearing familial relationship."[16] The proof must be "by clear and convincing evidence…[and] the decedent's intent to adopt and form a close and endearing familial relationship must be clear and conclusive….[I]t must not be just as readily harmonizable with the mere intention to provide a good home, but must instead indicate a clear intent to adopt or to continuously represent to the plaintiff and the world at large that the plaintiff was the decedent's natural child."[17] Finally, the *DeHart* court rejected the requirement that proof of a contract to adopt is a prerequisite to an equitable adoption.[18]

Lack of Testamentary Capacity

James also sustained an allegation that Donald lacked testamentary capacity, that is, that his will in question "was the product of an unsound mind or memory."[19] "The standard test of testamentary capacity…is that 'the testator must be capable of knowing what his property is, who are the natural objects of his bounty, and…be able to understand the nature, consequence, and effect of the act of executing a will.'"[20] "The absence of any one of these requirements would indicate a lack of testamentary capacity."[21]

Undue Influence

James also alleged that Blanca asserted such undue influence on Donald as to invalidate his will. Citing a 1993 Illinois Supreme Court decision,[22] the *DeHart* court stated that "undue influence which will invalidate a will is ' "any improper…urgency of persuasion whereby the will of a person is overpowered and he is indeed induced to do or forebear an act which he would not do or would do if left to act freely" [citation].' To constitute undue influence, the influence ' "must be of such a nature as to destroy the testator's freedom concerning the disposition of his estate and render his will that of another."'"[23] "[A] presumption of undue influence will arise [for example]…where (1) a fiduciary relationship exists between the testator and a person who receives a substantial benefit from the will, (2) the testator is the dependent and the beneficiary the dominant party, (3) the testator reposes trust and confidence in the beneficiary, and (4) the will is prepared by or its preparation procured by such beneficiary."[24]

"As a matter of law, a power of attorney gives rise to a general fiduciary relationship between the grantor and the grantee."[25]

Fraudulent Inducement

James also alleged that Blanca had fraudulently induced Donald to execute a new will, omitting any reference to or provision for James or his family. "To constitute fraud in the inducement, the defendant must have made a false representation of material fact, knowing or believing it to be false and doing it for the purpose of inducing one to act."[26]

Sustaining a cause of action for fraudulent inducement, however, does not adversely affect the decedent's will but rather results in a monetary judgment against the defendant personally.

Interference with Expectancy

Finally, James asserted that Blanca interfered with his expectancy, which would require him to prove "(1) the existence of his expectancy; (2) defendant's intentional interference therewith; (3) tortious conduct such as undue influence, fraud or duress; (4) a reasonable certainty that the expectancy would have been realized but for the interference; and (5) damages."[27] Again, the remedy would be a judgment against Blanca individually rather than setting aside Donald's will.

Conclusion

The *DeHart* case provides a useful primer on the requirements for setting aside a will or asserting that someone tortuously interfered with an economic expectancy. More importantly, the decision establishes a new cause of action, equitable adoption. ■

Gary R. Gehlbach is a member of the ISBA Trusts & Estates Section Council and practices in Dixon, Illinois with the firm of Ehrmann Gehlbach Badger Lee & Considine, LLC and can be reached at gehlbach@egblc.com.

1. 755 ILCS 5/2-4(e).
2. *James DeHart v. Blanca DeHart*, 2013 IL 114137.
3. *DeHart ¶ 52.*
4. *Estate of Ford v. Ford*, 82 P.3d 747(Cal. 2004).
5. *DeHart ¶ 53.*
6. *DeHart ¶ 3.*
7. *DeHart ¶ 5.*
8. *Monahan v. Monahan*, 14 Ill. 2d 449 (1958).
9. *DeHart ¶ 47.*
10. *DeHart ¶ 48.*
11. *DeHart ¶ 52.*
12. *Estate of Ford v. Ford, supra.*
13. *Id.* at 374.
14. *Id.*
15. *Id.*
16. *DeHart ¶ 65.*
17. *DeHart ¶ 65.*
18. *DeHart ¶ 66.*
19. *DeHart ¶ 20 (Citation omitted).*
20. *DeHart ¶ 20(Citations omitted).*
21. *DeHart ¶ 20 (Citation omitted).*
22. *In re Estate of Hoover*, 155 Ill. 2d 402, 411-12 (1993).
23. *DeHart ¶ 27.*
24. *DeHart ¶ 30 (Citations omitted).*
25. *DeHart ¶ 31 (Citation omitted).*
26. *DeHart ¶ 39 (Citation omitted).*
27. *DeHart ¶ 39 (Citation omitted).*

Reflections on the Illinois decanting and directed trusts statutes

By Timothy S. Midura

The Illinois directed trusts statute, 760 ILCS 5/16.3 and 16.7, and the Illinois distribution of trust principal in further trust statute (or commonly the decanting statute), 750 ILCS 5/16.4, became effective January 1, 2013. Having anticipated them and then studied them academically and worked with them practically, I now make some reflections and offer some tips.

When these statutes were first realized, I thought that the decanting statute was going to be a profound new tool in the trust modification arsenal; and that the directed trusts statute was fairly pedestrian without much affect. I anticipated that since for many years I've been drafting for trust protectors, distribution advisors, investment advisors, and the like that the directed trusts statute was merely a legal affirmation of what we all have in practice been doing for quite some time. As I continue to study and apply these statutes, my developed thinking has crystallized and flip flopped.

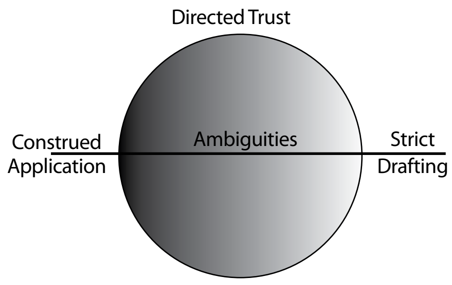
I now view the directed trusts statute as fundamentally changing the way I draft my documents for trust protectors and other advisors. Since I often use these roles, this means a high percentage of my documents are drafted differently. The Holy Grail of a trustee is to be classified as an "excluded fiduciary." Narrowing the possibility of ambiguities and coordination of efforts between the trust's acting parties actually takes a lot of precise drafting.

I now view the decanting statute as incidental to other methods of trust modifications. Yes, it is a new tool—especially for older and poorly drafted documents. However, going forward the decanting statute further encourages me to draft my documents for internal flexibility that will not require statutory decanting. This too brings greater meaning to empowering directing parties. The most profound aspect of the Illinois decanting statute is that it expressly recognizes non-statutory decanting equivalencies, such as decanting by trust instrument provision, non-judicial settlement agreement, and court order.[1] It appears that we have always had decanting in Illinois! The Illinois decanting statute provides a bright line statutory path and also endorses other decanting equivalencies.

760 ILCS 5/16.4(j)—Other authority to distribute in further trust. This Section shall not be construed to abridge the right of any trustee to distribute property in further trust that arises under the terms of the governing instrument of a trust, any provision of applicable law, or a court order. In addition, distribution of trust principal to a second trust may be made by agreement between a trustee and all primary beneficiaries of a first trust, acting either individually or by their respective representatives in accordance with Section 16.1 of this Act.

In our past practices we have tried, and practically succeeded, in drafting for bifurcation of trustee responsibilities. The Illinois directed trusts statute brings clarity and endorsement to our efforts. But with the statutory clarity, it also illuminates the dark corners of lurking ambiguities.

Construed or Strict Directed Trust: In the context of the directed trusts statute, we now have trusts that we can view as "construed" application or "strict" application. If you have an "Illinois trust" with some kind of directing party, the directed trusts statute is mandated to be construed onto that trust along with a probable cloud of ambiguity. So the new best practice is to expressly draft trusts so the statute is "strictly" applied to the trust and inherent ambiguities are minimized.



Statutory or Non-Statutory Decanting: In the context of the decanting statute, we can look to the statutory decanting process or look to a variety of other equivalencies (including non-statutory decanting) and modification methods. Thus, we may be able to pick and choose whether statutory decanting or non-statutory decanting better suits the particular case. In other words, we need to be thinking "decanting" as (1) just one method of trust modification, and (2) it has two possible options of either statutory decanting or non-statutory decanting – and we can start to proactively create the availability of those options.

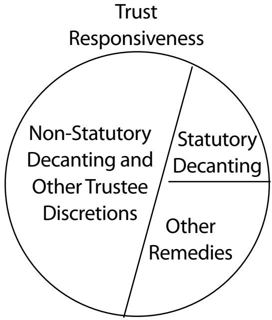


Exhibit A lists some considerations for drafting for directed trusts statutory application.

Exhibit B lists some considerations for drafting for decanting statutory application.

Exhibit C lists eight prima facie questions when analyzing the use of statutory decanting.

Should you want the author's separate papers that extensively cover Illinois directed trusts and Illinois decanting, you may request them by writing Tim Midura at tmidura@huckbouma.com.

Exhibit A

Drafting Considerations and the Directed Trusts Statutory Application

1. Expressly empower the directing party with detailed powers (whether all expressed in the governing instrument [recommended] or partially incorporated by reference to the statute). It can be further expressed that it is the settlor's intention that this person be a directing party [as applicable: distribution trust advisor, investment trust advisor, or trust protector] within the meaning of 760 ILCS 5/16.3. Note: Distribution trust advisors and investment trust advisors (but not a trust protector) have default powers under the statute, unless the terms of the governing instrument provide otherwise.
2. Direct the trustee and other directing

parties to follow (act or omit to act only upon) the directions of the subject directing party. It can be further expressed that it is the settlor's intention that this non-directing person is to be (and other directing parties are also by application) an excluded fiduciary within the meaning of 760 ILCS 5/16.3.

3. Express whether the directing party is acting in a fiduciary capacity or non-fiduciary capacity. This could differ for each kind of directing party. For example, the investment trust advisor could be a fiduciary while the nonfiduciary capacity being assigned to the distribution trust advisor and trust protector.
4. Provide for different trustees and directing parties for various sub-trusts.
5. Provide for succession of the directing party—just as is done for trustees.
6. Provide for the vacancy of the directing party (of role or bifurcated power) – that the trustee, in default, assumes those responsibilities and duties or some other procedure for successor appointment. In certain cases and powers, the successor should always be an independent new directing party. In other cases and powers, the successor could be the trustee.
7. Provide for handling the circumstances in which the directing party is not being timely responsive (say, within 20 days of when the trustee sends written notice) to the requests or needs of the trustee., i.e., succession trigger or the trustee acting. Visa versa for the trustee being responsive to the directing party.
8. Provide for any necessary tax or other failsafe or cutback provisions for the directing party (and also for the trustee should for any reason the trustee needs to act due to a vacancy of role or bifurcated power).
9. Express the directing party's compensation and ability to hire independent counsel or agents at the expense of the trust(s) involved. Merely authorizing reasonable fees and expense reimbursement should be sufficient. This should extend beyond the directing party's activity should the directing party be dragged back into trust matters.
10. Express the directing party's entitlement to seek judicial remedy or direction at the expense of the trust.
11. Express the trustee's compensation, considering any relief of responsibilities and risk and additional need to coordinate with the directing party. Merely authorizing reasonable fees and expense reimbursement should be sufficient. Consider whether the trust boilerplate states that a corporate trustee shall be paid based on its fee schedule, but now its responsibilities are lessened due to the directing party bifurcations.
12. Have the directing party acknowledge acceptance of his or her role by signing the instrument—just as the trustee does.
13. Consider whether the governing instrument should expressly opt out of the application of "the provisions of § 16.3 of the Trusts and Trustees Act and any corresponding provision of future law."

Exhibit B

Drafting Considerations for the Decanting Statutory Application

1. Should decanting be explained to each client and expressly opting out of decanting be a decided drafting option?
2. Should all trusts now waive the Rule Against Perpetuities and use perpetuity trusts?
3. Should the trustee, distribution trust advisor, or trust protectors be given express powers to decant outside of the decanting statute?
4. The trustee-beneficiary has increased gift tax exposure via decanting. Therefore, proactive use of independent trustees, independent distribution trust advisors, and independent trust protectors along with greater care in "interested trustee" drafting is in order. There should be greater usage of "failsafe" provision drafting for the interested trustee and interested directing party along with the ability of the interested trustee and interested directing party to appointment an independent substitute to act in events the interested trustee's or interested directing party's inability to act.
5. One should be mindfully drafting trusts in a fashion where Illinois statutory decanting is a secondary option (such as the prudent and empowered usage of trust protectors) and statutory decanting should not be necessary.

Exhibit C

Eight Prima Facie Questions When Analyzing the Use of Statutory Decanting

1. Does an authorized trustee have a discretionary power to distribute principal?
2. Is decanting in furtherance of the purposes of the trust?
3. Are there bars or restrictions to decanting?
4. Who can decant?
5. Which decanting pathway can be followed: absolute discretion or non-absolute? This depends on the trust distribution provisions and who can be the "authorized trustee."
6. What procedures are required for the circumstances?
7. What are the tax implications? How is the second trust settled for tax purposes? Are there any adverse tax consequences lurking in the decanting transaction?
8. Should statutory decanting be pursued or either (a) non-statutory decanting or (b) some other remedy? ■

Timothy S. Midura, C.P.A., J.D., LL.M practices in Wheaton, Illinois with the firm of Huck Bouma PC, and can be reached at tmidura@huckbouma.com.

1. See 760 ILCS 5/16.4(j)

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When to file a probate claim

By Phil Koenig

The First District Court of Appeals decided the case of *Water Tower Nursing v. Estate of Weil*[1] thereby affirming the holding of the trial court that merely mailing a copy of a claim to the court or the representative of an estate does not necessarily constitute timely filing.

Claimant, Water Tower Nursing, provided home health care services to Frederic Weil, the decedent. At the time of Weil's death, there was an unpaid balance owed by the decedent to the claimant. The executor of the estate mailed a letter to Water Tower stating that in accordance with 755 ILCS 5/18-3 that any claim had to be filed within three months from the date of the notice. In addition, the letter stated that Water Tower's claim had been disallowed and that Water Tower had to file its claim with the court by a certain date (here six months later), in accordance with the procedure set forth in 755 ILCS 5/18-11.

On the date set forth in the notice as the date by which a claim must be filed, Water Tower mailed its claim to the court, the executor and the attorney for the executor. Claimant did not file its claim prior to the expiration date, however. The executor move to dismiss the claim, stating that because the claim had been disallowed under 755 ILCS 5/18-11, the claim had to be actually filed with the court. Claimant argued that its claim was timely filed because it had been sent to the executor, her attorney and to the court on the expiration date set forth in the letter sent to the claimant. The trial court granted the executors motion to dismiss and the claimant appealed.

The Appellate Court affirmed the trial court and stated that because the notice sent to the claimant disallowed the claim, in accordance with 755 ILCS 5/18-11, the claim had to be filed with the court. Section 18-11 which states in part that a representative may at any time disallow a claim by mailing a notice of disallowance to the claimant requiring that the claim of the claimant must be filed with the court by a date not less than 2 months from the date of the notice and that if the claim is not filed with the court, the claim is barred. The court also cited section 18-12(a)(3) that states a claim is barred if notice of disallowance is given, and the claimant does not file his claim on or before the date set forth in the notice. Despite recognizing the unfavorable result the court held the plain language of the statute requires actual filing of the claim, not merely service of the claim. The court pointed out that if merely mailing notice of the claim were sufficient, section 18-11 and 18-12 would be meaningless.

The court's decision provides a clear exception to "mailing constitutes filing". Under certain circumstances, a filing date is the date on which pleadings are mailed. See for instance Supreme Court Rule 373 which holds that mailing of a notice of appeal by the date by which the notice must be filed is timely filing even if the notice does not arrive on the date required. The mailbox rule does not apply in instances where actions are being initiated.[2]

Further, the court rejected the Plaintiff's argument that a claim cannot be "disallowed" until it is first filed. Thus, when attempting to bar a claim, it is may be helpful to "jump the gun" and disallow a known claim even before filed. This could also shorten administration time for the estate. When representing claimants if actual filing is required, be sure to do so. ■

Phil Koenig is a member of the ISBA Trusts & Estates Section Council with an office in Rock Island, Illinois and can be reached at pkoenig@koeniglawfirm.com.

1. *Water Tower Nursing v. Estate of Weil,* 2013 IL App. 1st 122681.
2. See *Wilkins v. Dellenback*, 149 Ill.App3d 549,500 NE2d 692, 102 Ill Dec 799, 801 (Second District, 1986).

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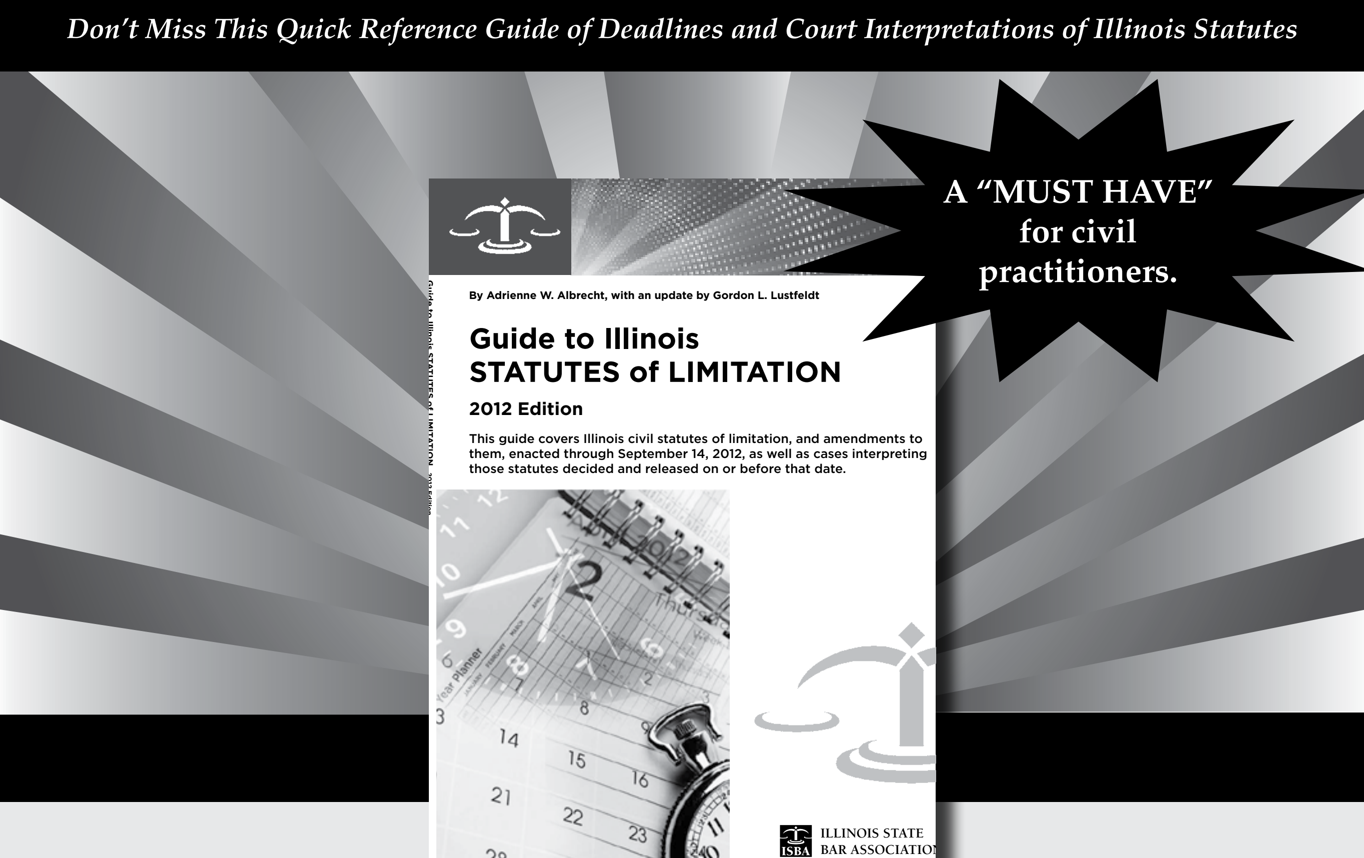

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Thursday, 6/6/13- Live Studio Webcast (Studio only)—The Style Manual: A Webcast on Writing in the Illinois Courts. Presented by the ISBA Bench and Bar Section. 1:55-3:00.

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Thursday, 6/6/13- Springfield, Hilton Hotel—The Intersection of Social Media and the Practice of Law. Presented by the ISBA and Sangamon County Bar Association. 1-4:15.

Friday, 6/7/2013 – Chicago, ISBA Chicago Regional Office—5th Annual Animal Law Conference. Presented by the ISBA Animal Law Section. 8:30 a.m. - 4:45 p.m.

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Thursday, 6/13/13- Live Studio Webcast—Medicare and its Impact on Tort Practitioners. Presented by the ISBA Tort Law Section. 9:30-11:30.

Friday, 6/14/2013 – Chicago, ISBA Regional Office—Ethics of Persuasion. Master Series Presented by the Illinois State Bar Association. 9:00 – 3:00

Tuesday, 6/18/13- Teleseminar—Planning & Drafting LLC Operating Agreements, Part 1. Presented by the Illinois State Bar Association. 12-1.

Wednessday, 6/19/13- Teleseminar—Planning & Drafting LLC Operating Agreements, Part 2. Presented by the Illinois State Bar Association. 12-1.

Wednesday, 6/19/13 – Webinar—Introduction to Boolean (Keyword) Search. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 10:00 – 11:00 a.m. CST.

Friday, 6/21/13- Lake Geneva, Grand Geneva Resort and Spa (Annual Meeting)—Legal Ethics and Social Media. Presented by the ISBA Standing Committee on Law Office Management and Economics.

Friday, 6/21/13- Lake Geneva, Grand Geneva Resort and Spa (Annual Meeting)—Deliver Knockout Presentations Your Audience Won't Forget. ISBA's Law Ed Faculty Development Series: The Art of Effective Communication. Exclusively for ISBA Law Ed Faculty (and for those who want to become Law Ed Faculty). 8:30am-11:45am.

Friday, 6/21/13- Lake Geneva, Grand Geneva Resort and Spa (Annual Meeting)—Introduction to Legal Research. Presented by the Illinois State Bar Association- Complimentary to ISBA Members Only. 9:00-10:00am.

Friday, 6/21/13- Lake Geneva, Grand Geneva Resort and Spa (Annual Meeting)—Advanced Tips for Enhanced Legal Research on Fastcase. Presented by the Illinois State Bar Association- Complimentary to ISBA Members Only. 10:15-11:15am.

Friday, 6/21/13- Lake Geneva, Grand Geneva Resort and Spa (Annual Meeting)—ISBA's Reel MCLE Series: Flight- How Many Ethical Dilemmas Can You Spot? Master Series Presented by the Illinois State Bar Association. 1:00-5:15pm.

Monday, 6/24/13- Teleseminar—Structuring Preferred Stock and Preferred Returns in Business- Live Replay from 4/16/13. Presented by the Illinois State Bar Association. 12-1. ■

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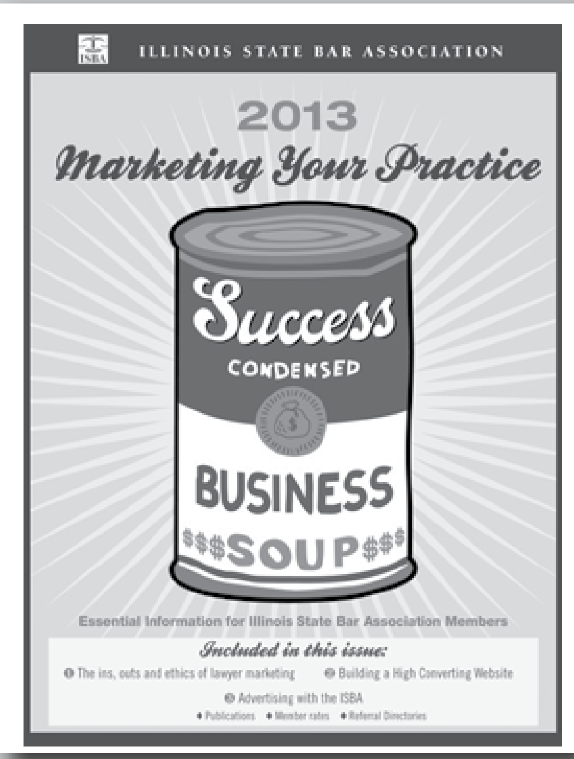

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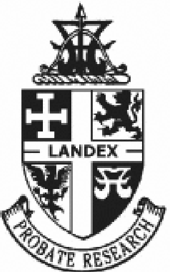

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