May 2015 Vol. 25, No. 1



😰 ILLINOIS STATE BAR ASSOCIATION

THE CHALLENGE

The newsletter of the Illinois State Bar Association's Standing Committee on Racial and Ethnic Minorities and the Law

Chair's column

By Cory White

ello All,

We are drawing to the end of the 2014-2015 Bar Year, and I think it is a good time to take stock of where we are and what we have accomplished over the past several months, while considering where we are heading. The Standing Committee on Racial & Ethnic Minorities and the Law (REM) has accomplished a lot, although there is still much work to be done.

A) Renewed Focus on Useful and Effective CLE Programs

We have organized and hosted several suc-

cessful programs over the course of the year, including:

- Human Trafficking and the Commercial Sexual Exploitation of Children (Presented in association with Baker & McKenzie LLP);
- Race & Sports: Racially Charged Sports Controversies and Legal Concerns; and
- Workplace Discrimination: Current Issues in Employment Law (Presented in association with Taft Stettinius & Hollister LLP).

These programs proved to be useful resources for our legal community while also highlighting

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The Cook County Bar Association objects to cuts proposed by Governor Bruce Rauner to funding of services for "youth" in foster care Age 18-24

he Cook County Bar Association (CCBA), the oldest association of African-American judges and lawyers in the nation, objects to the proposed cuts to the funding for "youth" in foster care in the State of Illinois between the ages of 18-24. Governor Bruce Rauner stresses that these cuts "reflect difficult but necessary choices" in what he called a "turnaround budget" crafted to address the State's financial problems.

However, removing the funding for Illinois youth in foster care seeking a higher education at our public universities and other support services ultimately will not move our state forward. For without the tools and financial support from the State of Illinois, these "older" foster care youth are

more likely to be homeless, unemployed, and the next generation of the incarcerated.

CCBA members volunteer with the Illinois Judicial Council (IJC), the oldest association of predominately African-American judges in the State of Illinois, as part of the IJC "SAVE-OUR-YOUTH" PROJECT, which provides a CCBA lawyer and an IJC Judge of the Circuit Court of Cook County to mentor the "older" youth who have not been adopted and are still in foster care. We are committed to devoting some of our time, talents, and treasure to help these youth who have been previously neglected, and to remind-

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wider diversity issues. Our continuing legal education subcommittee members should be applauded for their efforts and success.

B) Gaining Ground

Over the course of the year, we were able to add new members, to the Standing Committee who proved to be amazing contributors to our efforts. Our new members, Korina Sanchez, Kiki Mosley, Ayesha Patel, and Geraldine D'Sousza, have provided new insights and fresh legs for the Committee, and we look forward to their contributions in the future.

C) Legislation

We have commented on important diversity related legislation, including initiatives to

better help our police officers communicate with and understand the communities they serve. Considering the current climate, we feel that this is extremely important work.

D) The Work that Remains

The importance of diversity and inclusion issues are in a state of flux both within and outside of the ISBA. Complacency usually precedes defeat. We cannot be complacent. In the coming bar year, the Committee and its members will work with the ISBA to improve diversity and diversity related programs within the ISBA, which will ultimately help to create a more diverse legal profession and community. With this in mind, I would like to ask all members of the ISBA to consider diversity issues as you progress

through your daily practices. Consider how you can help make our profession more diverse. Consider how you can help make the ISBA more diverse. Consider why diversity is important. Ultimately remember that diversity is about inclusion, whether it be within the legal profession or otherwise.

Best,

Cory White Chair P: 773-725-8856 M: 516-480-2786 Email: cwhite@intblg.com @cwcorywhite

The Cook County Bar Association objects to cuts proposed by Governor Bruce Rauner to funding of services for "youth" in foster care Age 18-24

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ing them that they are not forgotten.

Due to changes in Illinois law, the Circuit Court of Cook County - Juvenile Court - Child Protection Division and the Illinois Department of Children & Family Services have focused on "wrap around" services that have resulted in more children being kept in the home and more support for extended family who agree to raise the youth. Today, the Illinois child protection system is considered a model for reform in our country.

CCBA stands with the "older" foster children who need assistance with completing college and other support services as they embark on adulthood. We ask Governor Rauner to reconsider his decision and to stand with and support these young people through his budget priorities. The funds offered to the "older" foster youth from the State of Illinois are an investment. The youth will repay the State as better adjusted, employed, and caring adults who contribute not only as taxpayers but also as stronger citizens of our State.

The views expressed in this article are those of the Cook County Bar Association and do not necessarily represent the views of the Illinois State Bar Association.



Texas Department of Housing and Community Affairs v. The Inclusive Communities Project: Housing advocates' desperate fight to keep disparate impact alive

By Leodis McCray and Ayesha Patel

n January 21, 2015, the United States Supreme Court heard arguments in a case that, according to fair housing and civil rights advocates, could strip victims of "subversive" racial discrimination of access to the courts under the Fair Housing Act. The case, Texas Department of Housing and Community Affairs v. The Inclusive Communities Project, brings before the Roberts Court the question whether the Fair Housing Act only prohibits intentional discrimination. If the Supreme Court finds that "disparate impact" cases are not within the purview of the Fair Housing Act, plaintiffs claiming discrimination in housing cases will have to meet a higher standard to reach the courts. Specifically, Fair Housing Act plaintiffs will have to prove "intentional discrimination" or face dismissal of their cases. This article will examine the parties' arguments in Texas Department of Housing and Community Affairs and the possible effects on the Fair Housing Act litigation landscape in the event the Supreme Court finds that disparate impact claims are out of the Act's parameters.

The Supreme Court lost two opportunities to decide whether the Fair Housing Act allows for disparate impact claims when Magner v. Gallagher and Township of Mount Holly v. Mt. Holly Gardens Citizens in Action both settled before oral arguments. However, the Supreme Court got a third chance to decide the issue when it heard arguments in Texas Department of Housing and Community Affairs at the beginning of this year. Texas Department of Housing and Community Affairs started in 2008 when Respondent, Inclusive Communities, sued the Texas Department of Housing and Community Affairs, Petitioners, alleging that Petitioners were awarding affordable housing subsidies more frequently to individuals in minority neighborhoods than in predominantly white neighborhoods. Respondent asserted Petitioners had approved credits for 49.7% of the units in minority neighborhoods, in comparison to 34.7% of the units in neighborhoods that were 90% or more white. Petition for a Writ of Certiorari at 8, *Texas Department of Housing and Community Affairs*, 135 S. Ct. 46 (2014). The United States District Court for the Northern District of Texas found that Respondent had made the prima facie case of discrimination necessary to bring forth a disparate impact claim. The United States Court of Appeals for the Fifth Circuit affirmed the district court and mandated that Petitioners allocate the credits more evenly. The State of Texas appealed to the Supreme Court, seeking to have the Fifth Circuit's decision overturned, and, on October 2, 2014, the Supreme Court granted the writ of certiorari.

On January 21, 2015, the Supreme Court heard oral arguments on whether disparate impact claims are cognizable under the Fair Housing Act. Petitioners argued that the Fair Housing Act does not allow for causes of action relying on a disparate impact theory because the Act does not contain the necessary statutory language for disparate impact claims. Petition for a Writ of Certiorari at 18-21, Texas Department of Housing and Community Affairs, 135 S. Ct. at 46. In support, Petitioners pointed to the Supreme Court decision in Watson v. Fort Worth Bank & Trust, 487 U.S. 977 (U.S. 1988). Petition for a Writ of Certiorari at 19, Texas Department of Housing and Community Affairs, 135 S. Ct. 46. According to Petitioners, in Watson the Supreme Court indicated for the first time the language necessary to create disparate impact claims when the Court stated: "In both circumstances, the employer's practices may be said to 'adversely affect [an individual's] status as an employee, because of such individual's race, color, religion, sex, or national origin.... We conclude, accordingly, that subjective or discretionary employment practices may be analyzed under the disparate impact approach in appropriate cases." Watson, 487 U.S. 991.

In response, Respondent argued that the phrase in the Fair Housing Act "or otherwise make unavailable or deny," tracks the lan-

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Published at least four times per year.

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Daniel R. Saeedi, CLE Coordinator

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guage of Title VII quoted in *Watson* and empirically shows Congress' intent to allow for disparate impact claims under the Fair Housing Act. Respondent's Brief in Opposition of Petition for a Writ of Certiorari at 14, *Texas Department of Housing and Community Affairs*, 135 S. Ct. 46. Congress' failure to change the language when it amended the Act in 1988 further indicates Congress' intent to allow for disparate impact claims. Respondent's Brief in Opposition of Petition for a Writ of Certiorari at 16, *Texas Department of Housing and Community Affairs*, 135 S. Ct. 46.

During oral arguments, the Court's liberal judges considered the intent behind the Fair Housing Act. In particular, Justice Ginsburg guestioned whether the Court should disregard Congress' intent of reversing discrimination. Transcript of Oral Argument at 6, Texas Department of Housing and Community Affairs, 135 S. Ct. 46. Justices Kagan and Sotomayor noted that Congress had amended the Fair Housing Act in 1988 to provide three exceptions to disparate impact and the fact that Congress had only created the exceptions and not changed the rest of the Act was an indication that Congress did not intent to take away liability under disparate impact claims. Transcript of Oral Argument at 11-13, Texas Department of Housing and Community Affairs, 135 S. Ct. 46. Justice Breyer noted that disparate impact had been the law for at least 35 years and asked why the Court should reverse a well established law that seems to have been helpful to many while not causing any disasters. Transcript of Oral Argument at 17-18, Texas Department of Housing and Community Affairs, 135 S. Ct. 46. Chief Justice Roberts, on the other hand, questioned whether there is "a way to avoid a disparate-impact consequence without taking race into account in carrying out the governmental activity." Transcript of Oral Argument at 30, Texas Department of Housing and Community Affairs, 135 S. Ct. 46. The Chief Justice also expressed a general concern about disparate impact in that "it's very difficult to decide what impact is -- is good and bad." Transcript of Oral Argument at 39, Texas Department of Housing and Community Affairs, 135 S. Ct. 46. Justice Scalia, the critical vote, questioned both sides. Justice Scalia first pointed to support for Respondent's position that the Fair Housing Act provides for disparate impact claims:

"It has to construe the plain text of the law, and the law consists not just of what Congress did in 1968, but also what it did in '88. And you look at the whole law and you say, what makes sense? And if you read those those two provisions together, it seems to be an acknowledgment that there is such a thing as disparate impact. However, it will not apply in these areas that the 1988 amendment says. We don't just look at each little piece when it was serially enacted and say what did Congress think in '68? What did it think in '72? We look at the law. And the law includes the '68 act and the '88 amendments. And I find it hard to read those two together in any other way than there is such a thing as disparate impact."

Transcript of Oral Argument at 16, *Texas Department of Housing and Community Affairs*, 135 S. Ct. 46. However, Justice Scalia also questioned whether disparate impact could potentially lead to racial quotas and housing policies based around race. Transcript of Oral Argument at 48 *Texas Department of Housing and Community Affairs*, 135 S. Ct. 46. Thus, while Justice Scalia is known to look to the text of an act, in this particular case the Supreme Court Justice may well cast a vote to strike disparate impact claims from the Fair Housing Act.

Disallowing disparate impact claims may have far reaching consequences. As several courts have noted, open discrimination has become less common and disparate impact claims are crucial to ensuring that discrimination in housing is addressed in the courts. Metropolitan Hous. Dev. Corp. v. Village of Arlington Heights, 558 F.2d 1283, 1290 (7th Cir. 1977); Smith v. Anchor Bldg. Corp., 536 F.2d 231, 233 (8th Cir. Mo. 1976); City of Joliet v. Mid-City Nat'l Bank of Chi., 2014 U.S. Dist. LEX-IS 130800, 80 (N.D. III. Sept. 17, 2014); Arthur v. Toledo, 782 F.2d 565, 574 (6th Cir. Ohio 1986). If disparate impact claims are barred under the Fair Housing Act, a plaintiff will have to prove that the defendant had discriminatory intent in order to support a Fair Housing Act claim. This high burden could allow governmental, financial, and corporate policies that further entrench segregation in housing to go unchecked even as minority communities suffer substantial financial and social losses. Likewise, other groups like mothers with children and those who are disabled could be susceptible to various risks as housing providers develop ways to exclude them from living accommodations. In Illinois, however, plaintiffs could obtain disparate impact relief under the Illinois Human Rights Act and various county and municipal laws. Of note, the Illinois Supreme Court has established a method for identifying discrimination in a case where no direct evidence is present. See *Castillo v. Dep't of Human Rights*, 2014 IL App (1st) 130373-U, P29 (Ill. App. Ct. 1st Dist. 2014). While states courts are not necessarily bound by federal precedent, Illinois has found Supreme Court cases to be very persuasive and may opt to follow the Supreme Court's lead in this instance.

Limiting the Fair Housing Act to intentional discrimination will favor landlords, banks, and other housing providers. Thus, a finding in Texas Department of Housing and Community Affairs that disparate impact was not intended by the Fair Housing Act will be a blow to fair housing advocates. If the Supreme Court does make such a finding, Congress can negate the Court's limitations on the Fair Housing Act by amending the Act by a majority vote in the House and Senate. Should Congress fail to re-establish disparate impact, in Illinois, the Court's decision may merely lead to heavier reliance on state and local courts and administrative agencies. However, states with less expansive Fair Housing legislation than Illinois would face new and possibly insurmountable challenges. As the Seventh Circuit noted in Arlington Heights: "[a]strict focus on intent permits racial discrimination to go unpunished."■



Raising awareness about the commercial sexual exploitation of children

By Yolaine Dauphin

he Illinois State Bar Association's Standing Committee on Racial and Ethnic Minorities & the Law, Administrative Law Section Council, and Standing Committee on Women and the Law spearheaded the planning committee for a seminar on the commercial sexual exploitation of children (CSEC). Presented by the law firm of Baker & McKenzie LLP and the Illinois State Bar Association (ISBA), and co-sponsored by the IIlinois Judicial Council, Illinois Association of Administrative Law Judges, National Association of Women Judges District 8, Human Trafficking Task Force of the American Bar Association, Black Women Lawyers' Association of Greater Chicago, Inc., Chicago Bar Association Alliance for Women, Chinese American Bar Association of Greater Chicago, Cook County Bar Association, Hispanic Lawyers Association of Illinois, National Bar Association Region VII, Puerto Rican Bar Association of Illinois, Women's Bar Association of Illinois, ISBA Administrative Law Section, ISBA Child Law Section, ISBA Human Rights Section, ISBA International & Immigration Law Section, ISBA Standing Committee on Government Lawyers, ISBA Standing Committee on Racial and Ethnic Minorities & the Law, and ISBA Standing Committee on Women and the Law, the October 10, 2014, seminar raised awareness amongst attendees about the issue of human trafficking generally. The focus then shifted to trafficking in the United States and, particularly, in Chicago, with comprehensive information provided about CSEC. The seminar aimed to provide attorneys, social workers, and psychologists with the skills to: recognize the commercial sexual exploitation of children; detect risk factors; identify and effectively engage victims; and provide appropriate help to victims. The seminar also included a panel discussion on the role of the courts in the fight against trafficking.

Featured speakers from several disciplines shed light on the plight of children who are sexually exploited and challenged attendees to make a difference in the fight against human trafficking. The blue-ribbon seminar faculty included keynote speaker **Honorable Virginia Kendall**, United States District Court for the Northern District of Illinois, **Honorable Anita Alvarez**, Cook



Pictured left to right: Members of the conference planning committee - Ngozi Okorafor (conference speaker; Black Women Lawyers' Association, and Cook County Bar Association), Administrative Law Judge Ann Breen-Greco (District 8 Director/Liaison from NAWJ to the ABA Human Trafficking Task Force), Annemarie Kill (Conference Co-coordinator; ISBA Standing Committee on Women and the Law), Bob Deignan (Conference speaker; Senior Counsel, Baker & McKenzie LLP), Administrative Law Judge Yolaine Dauphin (Conference Co-coordinator and Co-moderator; ISBA Administrative Law Section Council ex officio, and Standing Committee on Racial and Ethnic Minorities & the Law), Judge Marilyn Johnson (conference speaker), Sharon Eiseman (Chicago Bar Association Alliance for Women; Women's Bar Association of Illinois Task Force), Carol Casey (Conference Co-moderator; Cook County Public Guardian's Office), and Mary Petruchius (ISBA Standing Committee on Women and the Law).

County State's Attorney; Dr. Maggie Bi**shay**, Therapist, Cornerstone Counseling of Chicago; Victor Boutros, United States Department of Justice, and co-author of The Locust Effect; Honorable William H. Hooks, Circuit Court of Cook County - Criminal Division; Honorable Marilyn F. Johnson, Circuit Court of Cook County, Juvenile Court Child Protection Division: **Detective Al** Krok (ret.), Special Investigations Unit, Chicago Police Department; Ngozi Okorafor, Illinois Department of Central Management Services; Dr. Eva Ponder, Clinical Director, Cornerstone Counseling of Chicago; **Profes**sor Jody Raphael, DePaul University College of Law; Kimberly Spagui, Administer Justice; and the **Director** of the Salvation Army Promise Program. Seminar Co-moderators Carol A. Casey, Office of the Public Guardian, and Administrative Law Judge Yolaine M. Dauphin, and Robert E. Deignan, Senior Counsel, Baker & McKenzie LLP, provided opening remarks.

Approximately 130 attorneys, social work-

ers and psychologists attended the October seminar. Through the partnership with Baker & McKenzie LLP, attorneys earned 7 hours of continuing legal education credits. Through a partnership with the Salvation Army Promise Program and Dominican University, social workers, and psychologists in attendance earned 7 continuing education units. Of note, interest in the seminar was high, with registration opening and closing within five days, and there are plans to repeat the program. Most importantly, seminar attendees expressed interest in volunteering to help fight the scourge of human trafficking, particularly as related to the commercial sexual exploitation of children.

Seminar Co-ordinators Administrative Law Judge Yolaine Dauphin and Annemarie E. Kill, Avery Camerlingo & Kill LLC., headed the seminar planning committee whose members included Arlene Barochin, Juliet Boyd, Administrative Law Judge Ann Breen-Greco, Carol Casey, Eulalia De La Rosa, Sharon Eiseman, Angela Evans, Pab-

lo Eves, Eileen Geary, Honorable William Hooks; Lashonda Hunt, Jeffrey J. Koh, Elizabeth McGuan, Suheily Natal, Ngozi C. Okorafor. Dartesia Pitts, Daniel Saeedi, Beatriz Santiago, Administrative Law Judge Theodore Sherrod, Athena Taite, Honorable Carl Walker, and Wiley Adams. Special thanks to ISBA CLE Director Jeanne **Heaton**, and staff members **Staci Howard Curtis** and **Tiffany Bordenkircher**, and to **Linda Henrikson** of Baker & McKenzie LLP. ■

Upcoming CLE programs

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

June

6/1/15 - 6/5/15 - Non CLE Co-sponsored event (DNP)—Settlement (Mediation) Week. Sponsored by the Illinois Chapter of the Association of Attorney Mediators, cosponsored by the ISBA ADR Section.

Tuesday, 6/2/15-Teleseminar—Options in Real Estate Transactions- Buying Time to Decide & Wait and See. Presented by the ISBA. 12-1.

Wednesday, 6/3/15, Live Webcast—Hot Topics in Insurance Coverage – 2015. Presented by the ISBA Insurance Law Section. 9:00 – 11:15.

Wednesday, 6/3/15 – Live Webcast— Sexual Harassment Claims: Key Topics for Initial Client Interview. Presented by the ISBA Labor & Employment Section. 12:00 Noon – 1:30.

Wednesday, 6/3/15 – Live Webcast—Cameras in the Courtroom. Presented by the ISBA Standing Committee on Government Lawyers. 3:00 – 5:00 pm.

Thursday, 6/4/15- Chicago, ISBA Chicago Regional Office—Marty Latz Negotiation Program. Master Series presented by the ISBA. All Day.

Thursday, 6/4/15- Live Webcast—Marty Latz Negotiation Program. Master Series presented by the ISBA. All Day.

Friday, 6/5/15 – Chicago, ISBA Regional Office—6th Annual Animal Law Conference.
Presented by the ISBA Standing Committee on Animal Law. All Day.

Friday, 6/5/15 – Live Webcast—6th Annual Animal Law Conference. Presented by

the ISBA Standing Committee on Animal Law. All Day.

Monday, 6/8/15- Teleseminar (live replay)—Employees, Social Media, Smartphones, Tablets: Legal Issues for Employers. Presented by the ISBA. 12-1.

Tuesday, 6/9/15- Teleseminar—2015 Ethics in Litigation Update, Part 1. Presented by the ISBA. 12-1.

Wednesday, 6/10/15- Teleseminar—2015 Ethics in Litigation Update, Part 2. Presented by the ISBA. 12-1.

Wednesday, 6/10/15 - Live Webinar— The Lawyer's Pen as Mighty Client-Finder: Writing for Business Development. Presented by the ISBA Standing Committee on Law Office Management and Economics. Noon – 1:00 pm.

Wednesday, 6/10/15- Live Webcast— Service Animals: Rights Under the Fair Housing Act and in Employment. Presented by the ISBA Standing Committee for Disability Law. 9-10 am.

Thursday, 6/11/15- Teleseminar—2015 Estate Planning Update. Presented by the ISBA. 12-1.

Thursday, 6/11/15 – Chicago, ISBA Regional Office—Modern Wordprocessing, Document Assembly and Electronic Storage. Presented by the ISBA Standing Committee on Legal Technology. 1:00 – 5:15 pm.

Thursday, 6/11/15 – Live Webcast—Modern Wordprocessing, Document Assembly and Electronic Storage. Presented by the ISBA Standing Committee on Legal Technology. 1:00 – 5:15 pm.

Friday, 6/12/15 - Chicago, ISBA Chicago Regional Office—Injunctions, Declaratory
Judgments, Receiverships and Other Equitable Proceedings; Identifying, Pleading and
Proving Equitable Causes of Action Beyond
Foreclosure. Presented by the ISBA Commercial Banking & Bankruptcy Section. All Day.

Friday, 6/12/15 – Live Webcast—Injunctions, Declaratory Judgments, Receiverships and Other Equitable Proceedings; Identifying, Pleading and Proving Equitable Causes of Action Beyond Foreclosure. Presented by the ISBA Commercial Banking & Bankruptcy Section. All Day.

Monday, 6/15/15- Teleseminar (live replay)—Estate Planning for Digital Assets. Presented by the ISBA. 12-1.

Tuesday, 6/16/15- Teleseminar—Drafting LLC/Partnership Operating Agreements, Part 1. Presented by the ISBA. 12-1.

Wednesday, 6/17/15- Teleseminar— Drafting LLC/Partnership Operating Agreements, Part 2. Presented by the ISBA. 12-1.

Friday, 6/19/15 – Lake Geneva, WI, Grand Geneva (during Annual Meeting)— Legal Writing: Improve your Ultimate Work Product. Morning. Presented by the Illinois State Bar Association.

Friday, 6/19/15 – Lake Geneva, WI, Grand Geneva (during Annual Meeting)— Ethics and Professionalism through the Lens of Literature - 2015. Presented by the Illinois State Bar Association. Afternoon Sessions.

Saturday, 6/20/15 – Lake Geneva, WI, Grand Geneva (during Annual Meeting)— CLE Coordinator Training for New Coordinators (DNP – Invitation Only). 8:00 – 9:30. ■

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ILLINOIS STATE BAR ASSOCIATION

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Illinois Rules of Evidence - ISBA's 2015 pocket-size edition. This update of ISBA's pocket-size edition reflects all rule changes through January 10, 2015. The amazingly affordable booklet, which contains the complete rules plus commentary, is perfect for depositions, court appearances – anywhere you need a quick reference. Buy one now for everyone in your office! Also sold individually.

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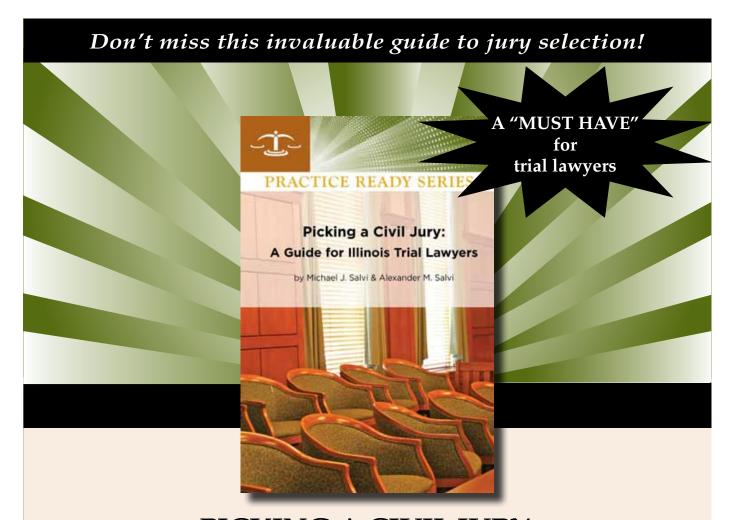
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