



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 Ebony R. Huddleston, Esq.

Welcome to the newsletter of the Standing Committee on Racial & Ethnic Minorities and the Law (REM). I am excited and humbled to serve as chair of this relevant and distinguished committee for the 2011-2012 year. The committee is committed to making sure that minority racial and ethnic groups have their voices heard in the Illinois State Bar Association and throughout the legal community. We are emphasizing the importance of having open and honest communications within the legal community in order to enhance our legal community and maximize the trust and confidence of those individuals and businesses we serve.

We strive to convey relevant issues affecting minorities to the public and other lawyers. We do this by organizing cable television programs, and continuing legal education seminars, weighing in on proposed legislation, forming community partnerships and by publishing our newsletter. Since becoming a member of this committee, I have used these resources to enhance my practice and form great relationships with practitioners across the state. Practicing law requires more than knowledge of the law. It requires maximizing the numerous resources available to execute

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Attorney mentoring—Pass it on

By Jayne Reardon, Executive Director of the Illinois Supreme Court Commission on Professionalism

As they emerge from the cloistered halls of law school, most newly minted attorneys have little if any experience with the day-to-day practical realities of practicing law. While they may have received a solid education in the substance of the law from their professors, young lawyers look to their more-experienced colleagues for wisdom and guidance about the real-world issues they will face as practicing attorneys. Similarly, seasoned members of the bar can promote and inculcate among the next generation of lawyers the core values of the profession, including the importance of diversity and inclusion.

Recognizing this fact, the Illinois Supreme Court adopted Supreme Court Rule 795(d)(12) in October 2010 upon the recommendation of the Commission on Professionalism. Pursuant to the Rule, lawyers completing a year-long struc-

ture mentoring program, as either mentors or mentees, may satisfy their entire professional responsibility CLE requirement. It is in the truest sense "continuing legal education" for all participants. Mentees will appreciate the networking and informal, fact-specific advice provided, and mentors will also reap significant benefits from the relationship, including learning new ways in which technology can enhance their practice and ensuring that good young lawyers stay in the community. Mentoring thus is a process whereby education and the transmission of the principles of civility, professionalism, ethics and diversity are weaved into the social fabric of the legal community.

The Commission's Lawyer-to-Lawyer Mentoring Program, which is currently being rolled out

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my cases most effectively for my clients. Participating in CLE programs, writing articles for the newsletter and working with committee members are ways to enhance my knowledge of the law and broaden my perspective on issues shaping our community. I hope our readers receive the same benefits.

This year REM is focusing on building stronger relationships with the Illinois law schools and racial and ethnic bar associations across the state. We encourage law

school students to participate in discussions promoting legal issues which affect racial and ethnic minorities across the state. Similarly, we encourage local bar associations in the various counties of the state to voice concerns which arise in their communities to the larger legal community. By partnering with our committee, and ultimately the Illinois State Bar Association, all segments of our legal community can effectively communicate with one another in an effort to build

a stronger network.

Our committee has a great mix of men and women involved in various areas of the law. Our members serve in private practice, government venues and law school settings. We intend to use these perspectives and expertise to weigh in on legal issues affecting racial and ethnic minorities across the state. We are excited about the programs and support this committee will provide. We look forward to you joining us in our efforts! ■

Attorney mentoring—Pass it on

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in Chicagoland and statewide, serves two important goals: first, the development of a relationship between a new lawyer and a more experienced lawyer; and second, education about professional responsibility topics that require situational or practical exposition to be fully appreciated.

The Commission has developed procedural guidelines and protocols for learning focused mentoring whereby experienced attorneys facilitate the professional learning and development of new lawyers. Any law firm, law school, bar group, state, county or local government agency, or circuit court of Illinois may submit a lawyer-to-lawyer mentoring program to the Commission on Professionalism for preapproval. To encourage participation in the program and to make it easy for organizations to adopt, the Commission has developed a detailed *Lawyer-to-Lawyer Mentoring Plan* which can be used in whole or modified as needed. In order to further assist organizations with their program development and implementation, the Commission also created the *Lawyer-to-Lawyer Mentoring Program Guide* which spells out all of the steps for running a successful program.

The *Mentoring Plan* consists of worksheets organized around the five substantive areas of professional responsibility CLE (legal ethics, professionalism, diversity, civility, and substance abuse and mental illness) from

which the mentoring pair can select activities and discussions for the twelve months of the formal relationship. Organizations can complete the Commission's quick online *Mentoring Program Application* and designate a program administrator who will be responsible for starting and managing the program during the course of the year. The Commission has developed a training and orientation program for administrators, mentors and mentees that will assist them as they begin their mentoring journey. Although administration of the program will be at the organizational level, the Commission's staff will be available to answer any questions and otherwise support the successful implementation of the mentoring program. The Commission's Web site offers a plethora of resources.

The Commission is already supporting participants in the program and is looking forward to meeting with firms and other organizations as they consider joining this exciting and important program. The Commission envisions the Lawyer-to-Lawyer Mentoring Program as a powerful way to pass on the highest aspirations of the legal profession to the next generation of attorneys, and as a means of advancing principles of diversity and inclusion which will benefit the profession as a whole. Where will new lawyers better learn ethical and professional behavior, the skills of civility, integrity, and in-

clusion and work/personal life balance than from an experienced mentor?

For further details please call the Commission on Professionalism at 312.363.6210 or visit the Web site at <www.ilsccp.org> to access information, including downloadable forms and materials. ■



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ILLINOIS STATE
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Adjusting to the practice of law: Reflections on five years of practice

By *Ebony R. Huddleston, Esq.*

As a new attorney in a small firm, there are three (3) important things I have discovered for which law school could not have prepared me: the importance of creating and maintaining a meaningful life/work balance; a paying client does not always equal a good client; and, the information a client thinks I need to know to effectively represent his/her interest is entirely different from what I *should* know.

Work Life Balance

Young and new attorneys become so consumed with trying to impress the partners, prove themselves to the legal community and learn everything there is to know about the chosen field of practice, that personal lives often take a back seat. Not only does time at the office and focus on a particular client file increase in the first years of practice, but networking events and community-driven initiatives also become an intricate part of life. Soon, those relaxing and enjoyable activities we used to do get lost in the hustle and bustle of everyday life. For example, I used to have a regular exercise program each week. No matter what was on my schedule, I exercised at the designated times. I had control over what occurred from week to week. However, after about a year of full-time practice, my exercise workouts became sporadic, an afterthought. Fitting a time into my schedule to exercise became a burden and exercise was no longer the fun part of my life it had always been. Exercise became another item on my to-do list rather than an activity I enjoyed doing just for the fun of it – an activity for which I needed no prompting.

Exercise is just one example. Fill in the blank with your own personal story – i.e. going to the movies, hanging out with friends, or reading a leisure book. These life pleasures fall to the bottom of the priority list or sometimes fall off the list altogether. So, how does a young attorney create a work life balance that includes leisure activities while still making the extra effort at work? Set a limit on the amount of time that passes without a voluntary, enjoyable personal activity occurring. Just as researching an issue on Westlaw or Lexis is important to your client's case,

having meaningful personal life activities outside of work is important to your individual health and welfare. Too much of any one thing is not good. I love practicing law and I love exercising, so I am moving my work and life back into balance.

A paying Client does not always equal a good Client

As a new attorney I am always excited to recruit a new client. If I'm honest, I am most excited when I recruit a new paying client, the client who understands that my legal services and knowledge are valuable and is willing to compensate me accordingly. I bring new business to the firm and increase the firm's receivables. This is perfect, or is it? The client intake and initial meeting is held. The client understands the working relationship just created. A couple of months into the case, however, the client tells me that the case is taking too long and I should be able to speed it along; or the client does not want me to engage in discovery because the client believes the opposing party's position is simply wrong; or the client tells me that I can force the opposing party into a position the opposing party does not legally have to take.

Occasionally, a client's patience runs out or the client becomes dissatisfied with the legal process. There are not enough letters, phone calls, e-mails or in-office visits explaining the legal procedures and timeframes that can satisfy the client at this point. When this occurs, I humbly suggest to the client that I can withdraw from the case and he/she is free to deal with the case as he/she chooses. Strangely, the usual response is "No, I don't want you to withdraw." From this I surmise that the client is not unhappy with my work and is willing to continue to pay for my time and costs spent on the case, but the client is going to be a challenge for the duration of the case.

Weighing the client's demands against the receivables makes for interesting decisions. If the client's concerns are legitimate and the case does not interfere with the rest of my caseload productivity, I keep the client. In the event the client's concerns cannot be managed without hindering productivity,

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the loss of one client's receivables does not outweigh several other manageable clients who may be a bit slow in making payment.

The facts the Client thinks I should know are different from what I should know

No matter how many times I tell a new client to err on the side of giving me too much information about the situation rather than not enough, inevitably I discover facts that can be crucial to the resolution of the issue(s) at hand at a later date. I have seen numerous client intake forms structured to gain the necessary information from a client. In my opinion, however, there will never be an intake form broad enough to prompt a client to provide all of the necessary facts. Frankly, we are combating the client's pre-conceived notions regarding the facts he/she believes will resolve the issue. The client is not objective. Friends, family and/or the numerous legal drama television shows have worked to craft an idea in the client's mind about how the case should be resolved. Based on that idea, the client believes that there are a limited number of facts necessary to get the end

result.

I have asked the following questions in an attempt to prompt the client to tell me all of the facts: "Is there anything else you want to say about the issue?"; "Pretend you are on the opposite side of this issue. What do you believe is important to get a resolution supporting the opposite view?"; "What do you believe are the weaknesses in your case?" One of my clients did not think it was important to tell me that he has two legally adopted children whom he raised. I did not think I had to include a caveat regarding adopted versus biological children when I asked, "How many children do you have?" When I asked why he did not tell me this, the client responded that he and the children no longer enjoy a close relationship. In fact, information regarding the number of children was very relevant to the issues at hand. Fortunately, after several amendments, the case was favorably resolved.

Another client involved in a dispute with her neighbor neglected to tell me that the neighbor called the police and a police report was made. I did not discover this fact until the neighbor revealed it in a complaint

against my client. Whether the client does not understand what may or may not be relevant or consciously decides not to tell me pertinent information, ultimately, I am forced to reassess my strategy and rethink the issues. This process sometimes leads me to conclude that the case requires alternative dispute resolution rather than a court action.

Scenarios like those mentioned in this article push us to constantly reinvent the way we practice law. Whether we choose to adjust our schedules to allow for that extra vacation time, do not take certain cases, or draft disclaimers to protect our representative capacity, we navigate a unique set of talents and insights. Lessons learned from these few scenarios are valuable and could only be taught on-the-job. After five years, I view practicing law as a daytime television soap opera. Just when the storyline seems to make sense, the never-imagined twist occurs. There is not a dull moment when dealing with various client personalities and this, along with balancing fun with work responsibility, is a daily cycle that requires regular reprogramming. ■

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Breach Notification Laws—What every business owner needs to know

By Gary Zhao and Peter Maris

Breach Notification Laws—What they are

Identity theft and the theft of electronically stored personal information have dramatically increased in recent years, imposing financial harm and other costs on businesses and individuals.¹ The consequences of a breach are significant, and may include unwanted government investigations, consumer civil actions, adverse media attention, and damage to corporate reputation. According to the fifth annual U.S. Cost of a Data Breach Study, data breach incidents cost U.S. companies \$204 per compromised customer record in 2009.²

There is no comprehensive regulatory scheme, state or federal, for securing consumer data and remedying breaches. Personal information protection law in the U.S. is rapidly evolving towards the reality that businesses have an obligation to provide appropriate security protections for personal information and an obligation to disclose a breach to affected consumers. More recently, however, the law has shifted to expand protections to personal information held by businesses across all industries and economic sectors. The Federal Trade Commission has begun to require stronger protections for consumers' personal information through more aggressive enforcement of Section 45 of the Federal Trade Commission Act.³ Although only a handful of states require *ex ante* security measures for personal information or reasonable security laws, all but four states require that individuals be notified if their personal information is disclosed or accessed without authorization. These laws are known as "breach notification laws." As of October of 2010, the District of Columbia and every U.S. state except New Mexico, Kentucky, South Dakota, and Alabama had passed breach notification laws requiring that residents of the state be notified if their personal information security has been compromised.

Each state's breach notification law differs in certain respects. For the most part, these statutes do not penalize businesses for allowing the *data* breach itself to occur, but only provide penalties if a business fails (or is too slow in taking steps) to notify affected individuals. Generally, these laws define protected personal information as a person's

first name and last name, in combination with any of the following: (1) social security number; (2) driver's license or I.D. card number; and (3) account, credit card, or debit card number, in combination with any required security access code or password.⁴

Breach Notification Law in Illinois

The Illinois Personal Information Protection Act (hereinafter PIPA or the Act) falls under the breach notification laws category.⁵ PIPA requires businesses to notify individuals when a security breach results in their personal information being released to unauthorized parties. The Act specifies the notification steps businesses must follow in the event of a security breach.

The Act requires that any data collector notify a resident of a breach at no charge.⁶ Notification must be given as expeditiously as possible, and without unreasonable delay, subject to any steps that must be taken to determine the scope of the breach and restore the system's security.⁷ Notice can be written or electronic, provided the electronic notice complies with federal law regarding electronic writing and signatures.⁸ Substitute notice can be provided if the data collector demonstrates that the cost of providing notice would exceed \$250,000, more than 500,000 people would have to be notified, or the data collector does not have sufficient contact information for the affected people.⁹ Substitute notice consists of e-mail, conspicuous posting on the data collector's Web site, or notification to major statewide media.¹⁰

Most states impose some type of civil liability for failing to comply with breach notification statutes. A violation of PIPA constitutes an unlawful practice under the Consumer Fraud and Deceptive Business Practices Act.¹¹ If an entity commits an unlawful practice under this act, the Attorney General or a State's Attorney may bring an action for injunctive relief, restitution, and civil penalties.¹² Individuals may also bring an action against a person who violates the Consumer Fraud and Deceptive Business Practices Act to recover any actual damages the plaintiff suffered as a result of a violation of the Act.¹³

Nuts And Bolts of Notification Compliance

Breach notification laws vary as to the

lengths of time in which an entity must comply, with some imposing hard deadlines and others not. Complying with breach notification looks simple on paper: just promptly notify the affected customers by following your state's breach notification statute, right? However, the compliance process does not begin or end there. Good business practice requires a lot more. In addition to giving notice to customers, once a breach occurs, a business should also act quickly to determine the scope of the breach and potential notification duty and ensure that the breach has been contained. Affected information systems must be isolated to prevent further breach and exposure.

The best way to comply with these laws is to prevent information security breaches in the first place. This can be accomplished by establishing an information security policy. It has been widely recognized that data security is an ongoing process that must be continually evaluated and changed. To remain effective, an information security policy should be based upon the size and type of business in question and the type of information involved. Most importantly, within a business, relevant employees or "first responders" must be educated about the basic tenets and responsibilities of data security.

Various governmental agencies have published guidelines for businesses to follow in establishing their respective information security policies. The Federal Trade Commission has adopted a process oriented approach in its guide.¹⁴ The FTC's recommendations for compliance are built on 5 key principles: 1) determining what information the business has, 2) keeping only that information the business needs, 3) protecting the information the business needs and keeps, 4) disposing of what is no longer needed, and 5) creating a plan to respond to security incidents.¹⁵

The State of California Office of Privacy Protection has also issued a list of 13 recommended practices to minimize the risk of data breach. These practices include: 1) collecting the minimum amount of personal information necessary to complete the transaction, 2) creating an inventory of systems that contain personal information, 3) classifying personal information according to sensitivity, 4) using appropriate physical and

technological safeguards, 5) paying particular attention to personal information stored on laptops and other portable devices, 6) not using data containing personal information in testing software or systems, 7) promoting awareness of security and privacy policies and procedures through ongoing employee training and communications, 8) requiring service providers and business partners to follow your security policies and procedures, 9) using intrusion detection technology and procedures to ensure rapid detection of unauthorized access to high-risk personal information, 10) when feasible, using data encryption in combination with host protection and access control, 11) disposing of records and equipment containing personal information, 12) reviewing a security plan at least annually, or whenever there is a material change in practices that implicates the security of personal information, and 13) health plans or health insurance providers should provide patients with regular explanation of benefits statements.¹⁶

quire an entity to alert its customers if their personal information was improperly accessed, preventing such unauthorized access is the surest way to both comply with the law, and maintain a satisfied customer base and avoid costly breaches. All businesses are well advised to explore the information security threats they face and formulate a plan that is responsive to those threats. Fortunately, the law allows a substantial measure of flexibility in this area so that small businesses are not subject to the same security requirements as complex, multi-national corporations. On the other hand, this flexibility makes it difficult to know when an information security plan will comply with the laws in a given state. Not only must businesses comply with the laws in their home state, they must also comply with the laws in each state in which they have a customer or do business. For any multi-state or nationwide business, preventing information security breaches is most likely the easiest and cheapest way to comply with breach notification laws. ■

Chumney, *Due Diligence on the Run: Business Lessons Derived from FTC Actions to Enforce Core Security Principles*, 45 Idaho L. Rev. 283, 285 (2009).

2. See, Ponemon Institute, *U.S. Cost of a Data Breach Study*, 2010 at <<http://www.ponemon.org/news-2/23>>.

3. *Id.* at 289. See also, *In the Matter of Eli Lilly & Co.*, 133 F.T.C. 763.

4. See, e.g., Wis. Stat. §134.98 (2010).

5. 815 ILCS 530/10 (2010).

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. 815 ILCS 530/20 (2010).

12. 815 ILCS 505/7 (2010).

13. 815 ILCS 505/10(a) (2010).

14. See, *Protecting Personal Information: A Guide for Business*, <<http://www.ftc.gov/bcp/edu/pubs/business/idtheft/bus69.pdf>>.

15. *Id.*

16. California Office of Privacy Protection, *Recommended Practices on Notice of Security Breach Involving Personal Information*, <<http://www.privacyprotection.ca.gov/res/docs/pdf/secbreach.pdf>>.

This article originally appeared in the February 2011 issue of the ISBA's Business Advice & Financial Planning newsletter, Vol. 25, No. 2.

Conclusion

While breach notification laws simply re-

1. Janine S. Hiller, David L. Baumer, & Wade M.

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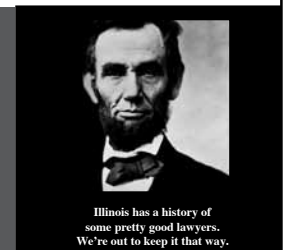
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Wednesday, 11/2/11- Teleseminar—Middle Market M&A, Part 2. Presented by the Illinois State Bar Association. 12-1.

Thursday, 11/3/11- Lombard, Lindner Learning Center—Real Estate Law Update 2011. Presented by the ISBA Real Estate Section. 9-4:45.

Friday, 11/4/11- Chicago, ISBA Chicago Regional Office—2011 Federal Tax Conference. Presented by the ISBA Federal Taxation Section. 8:30-4:30.

Tuesday, 11/8/11- Teleseminar—Title Insurance in Real Estate. Presented by the Illinois State Bar Association. 12-1.

Thursday, 11/10/11- Teleseminar—Ethics of Working with Witnesses. Presented by the Illinois State Bar Association. 12-1.

Thursday, 11/10/11- Chicago, ISBA Chicago Regional Office—Family Law Nuts and Bolts Chicago 2011. Presented by the ISBA Family Law Section. 8-5.

Tuesday, 11/15/11- Webcast—Environmental Law for Non-Environmental Lawyers—Session 1: Permitting and Due Diligence Issues. Presented by the ISBA Environmental Law Section. 10-12.

Tuesday, 11/15/11- Teleseminar—UCC Article 9/Foreclosure of Personal Property Part 1. Presented by the Illinois State Bar Association. 12-1.

Wednesday, 11/16/11- Teleseminar—UCC Article 9/Foreclosure of Personal Property Part 2. Presented by the Illinois State Bar Association. 12-1.

Friday, 11/18/11- Chicago, John Marshall Law School—Economic Ramifications of Health Care Reform. Presented by the Illinois State Bar Association Health Care Section. 1:00-4:15.

Friday, 11/18/11- Chicago, ISBA Chica-

go Regional Office—Master Series- Forensics: Using Evidence to Build Your Case. Presented by the ISBA Criminal Justice Section Council. 8:50-5:00.

Tuesday, 11/22/11- Teleseminar—Estate Planning for Farms and Ranchland. Presented by the Illinois State Bar Association. 12-1.

Tuesday, 11/29/11- Teleseminar—Trust Alternatives. Presented by the Illinois State Bar Association. 12-1.

Wednesday, 11/30/11- Teleseminar—Employment Tax Planning Across Entities. Presented by the Illinois State Bar Association. 12-1.

December

Thursday, 12/1/11- Chicago, ISBA Chicago Regional Office—Recent Developments in State and Local Tax- 2011. Presented by the ISBA State and Local Tax Committee. 9-12.

Thursday, 12/1/11- Teleseminar—Business Planning with S Corps, Part 1. Presented by the Illinois State Bar Association. 12-1.

Friday, 12/2/11- Teleseminar—Business

Planning with S Corps, Part 2. Presented by the Illinois State Bar Association. 12-1.

Friday, 12/2/11- Chicago, ISBA Chicago Regional Office—Motion Practice- From Pleadings through Post-Trial. Presented by the ISBA Civil Practice & Procedure Section. 8:50-2:15.

Thursday, 12/6/11- Teleseminar—Estate Planning for Retirement Benefits. Presented by the Illinois State Bar Association. 12-1.

Tuesday, 12/13/11- Teleseminar—Individual Liability for Corporate Obligations: Piercing the Corporate Veil. Presented by the Illinois State Bar Association. 12-1.

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Tuesday, 12/20/11- Teleseminar—Asset Protection Strategies for Real Estate. Presented by the Illinois State Bar Association. 12-1.

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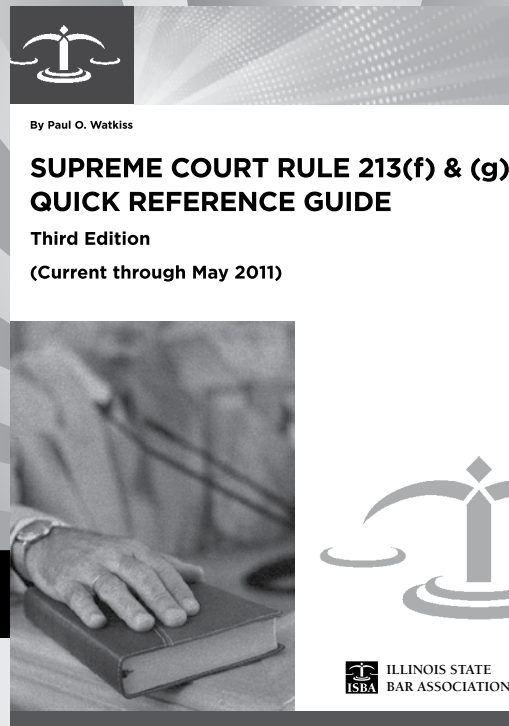
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As every litigator knows, the heart and soul of every case is presented through the witnesses who testify. Accordingly, being able to raise and respond to Rule 213(f) & (g) objections is an essential trial skill. The *Guide* is designed to help the litigator do just that! Written by Paul O. Watkiss, the *Guide* is published in a uniquely useful format and makes clear the pitfalls of ignoring its nuances.

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