



ILLINOIS STATE BAR ASSOCIATION

# GENERAL PRACTICE, SOLO & SMALL FIRM

The newsletter of the Illinois State Bar Association's General Practice, Solo & Small Firm Section

## Chairs column: Developing "practice-ready" lawyers

By Timothy J. Storm

I remember a moment during a session of my bar review course many years ago. The instructor paused in the midst of his lecture, turned to the audience of recent law school graduates and asked: "Don't you hope that new doctors know more about practicing medicine than you know about practicing law?" The wave of nervous laughter sweeping the room showed that the others were thinking just what I was.

I knew very well that I wasn't really ready to practice law on my own, even though I had been given significant responsibility at the law firms where I worked since my second year of law school. Most everyone else in the room knew that they, too, had no business being unleashed on the public as full-fledged attorneys. And yet, that was exactly what was about to happen for the 80 percent or so of us who would pass the bar.

All these years later, some important questions are beginning to get more attention than a mere throwaway laugh line at a bar review course. Are new law graduates "practice ready"? Who is responsible for assuring that they are? Should es-

tablished lawyers care?

During much of the history of lawyering in the United States, the answer to those questions was fairly straightforward. Those who sought admission to the bar "read" law with an established practitioner in the professional version of an apprenticeship. The responsibility for launching the new lawyer on the proper path rested with the lawyer to whom the younger practitioner was apprenticed.

Over time, the responsibility for educating lawyers came to rest primarily with law schools. There can be little doubt that the modern law school curriculum provides a broader, more balanced, and more comprehensive education in law than the older model. But does anyone believe that law schools—on their own—produce truly "practice ready" lawyers? Does anybody care?

The answers seem to be "no" and "not until recently." Even as law schools assumed the primary responsibility for educating lawyers, relatively

*Continued on page 2*

## Editor's column: Developing "practice-ready" lawyers

By John T. Phipps

It is not very often that the Editor gets to do tandem columns with the Section Chair, but this time I couldn't resist responding to Tim Storm's Chair Column.

What is 'practice ready'? What are law schools supposed to get new lawyers ready for? As an older lawyer I can remember a time when law students were required to all take the basic courses and couldn't begin to get into any elective course until the second semester of the second year. We all went through the same basic ordeal of learning-by-fire where we were exposed to constant questions from the law pro-

fessors. We had to be ready for class every day. If you weren't, you quickly learned to improvise. The basics were beaten into us and we learned how to analyze cases and problems and think like a lawyer. At that time most law students were going to go into some type of practice whether private, government or corporate. Today, law graduates go into so many different areas it is extremely difficult for law schools to make 'practice-ready' lawyers. What Tim refers to are specialized courses and recent developments in

*Continued on page 5*

## INSIDE

**Chairs column: Developing "practice-ready" lawyers** ..... 1

**Editor's column: Developing "practice-ready" lawyers** ..... 1

**Practice tip: New defenses. The Collection Agency Act requires documentation of assignments** ..... 6

**New citation lien procedure provides enforcement help for judgment creditors** ..... 7

**Council member profile: Jewel N. Klein** ..... 9

**Upcoming CLE programs** ..... 10



IF YOU'RE GETTING THIS NEWSLETTER BY POSTAL MAIL AND WOULD PREFER ELECTRONIC DELIVERY, JUST SEND AN E-MAIL TO ANN BOUCHER AT ABOUCHER@ISBA.ORG

## Chairs column: Developing “practice ready” lawyers

*Continued from page 1*

little attention was directed to whether students were being taught to practice law, as opposed to being taught the law and how to learn the law. No doubt, those are elemental to practicing law, but there is much more. Even so, law schools by and large defined their mission in a way that mostly excluded bridging the gap between the classroom and the courtroom.

The relatively modest level of attention to making new lawyers “practice ready” upon graduation from law school may strike many as surprising. After all, it hardly seems a stretch to ask whether graduates of a professional school are equipped to practice the particular profession for which they have studied. Yet formal critiques have demonstrated in a fairly convincing way that law schools do an excellent job of preparing graduates to think like lawyers, but are severely deficient in the sort of practice-based learning that would make lawyers “practice ready.” See, e.g., Sullivan, *et al.*, *The Carnegie Foundation for the Advancement of Teaching, Educating Lawyers: Preparation for the Profession of Law* (John Wiley & Sons, Inc. 2007).

After decades of avoiding the issue, law schools (some of them, anyway) are now taking the question of producing “practice ready” lawyers quite seriously. In my view, that’s the good news. The less heartening news is that, in doing so, law professors are often talking mostly to themselves, rather than to experienced practicing lawyers. That news is not so good because the vast majority of law professors can be divided into two groups: those who haven’t practiced actively in decades and those who have never practiced (at least not beyond the level of first- or second-year document reviewer at a large firm). The latter group is ascendant within the typical modern law faculty.

One wonders about the probable success of a “practice ready” program guided by lawyers with little or no practice experience or those who have not practiced since before *Perry Mason* ended its original run. More about that in a moment.

Even the rising prominence of law schools did not entirely supplant the role of apprenticeships in legal education. Many students work at law firms or other law-related jobs during school. Some students pursue judicial clerkships that will stretch for a year or two after law school. But, most important, we

still expect the supervising attorneys at the new lawyer’s first job to carry the bulk of the responsibility for creating a “practice ready” lawyer.

While that has been the model under which most currently-practicing lawyers developed, it is no longer dependable. Law students still seek out clerkships during school. But the poor economy has had its impact even in those most entry-level legal jobs. Fewer lawyers in profitable practices translates to fewer job openings for clerks. Even for those who do find such jobs, the time available for meaningful interaction and learning opportunities with an employer who is hustling to make a living may be limited.

Law students still apply for judicial clerkships, as well. Those slots have always been notoriously difficult to obtain and typically available only to those students with the top grades from the top-tier law schools. Now, there are still more challenges. A combination of judges’ personal preferences and a difficult employment market for lawyers means a growing proportion of judicial clerkship spots are held by permanent or career clerks. Every slot held by a career clerk is one less that will be available to a new graduate.

As for the apprenticeship aspect of one’s first job, that still happens, of course. But it is not as reliable a contributor to one’s legal training as it once was. For those employed by Big Law, there is little mentoring involved in first- and second-year low-level tasks, such as document review. “Read slowly, it’s an hourly case” hardly qualifies as sage advice to the aspiring lawyer. Valuable, perhaps. But not terribly insightful. Yet there may be little more forthcoming.

The clear result has been that more and more new lawyers are effectively on their own as they enter into the practice of law. Before we go further, perhaps we ought to consider whether the general practice competence of new law graduates should be of any particular concern to our membership—the solo and small firm lawyer.

I think it is. First, many of those new lawyers *are* our members, or at least prospective members. The proportion of new graduates who will hang out their own shingles continues to grow. I most certainly do not envy them the very difficult task that they are undertaking—sometimes driven by personal inclination and sometimes by the scarcity of

other options.

I also sympathize with the judges, other attorneys, and clients who may encounter those who hold the same license to practice as the rest of us, but who have never been fully socialized into the practice of the learned profession. That leads to the second important reason that I think we should care. Wider access to that socialization process will manifest an eventual benefit to all of us.

If the profession cannot rely upon law firm clerkships, judicial clerkships, or formative experiences in entry-level attorney jobs to produce “practice ready” lawyers, what are the alternatives? The courts have a role in helping to define what “practice ready” means and imposing certain minimal requirements to achieve that level. For example, the Illinois Supreme Court has mandated a basic skills course for new attorneys. The required course must cover “such topics as the jurisdiction of local courts, local court rules, filing requirements for various government agencies, how to draft pleadings and other documents, practice techniques and procedures under the Illinois Rules of Professional Conduct, client communications, use of trust accounts, required record keeping and other rudimentary elements of practice.” Ill. Sup. Ct. R. 793(c).

Thus, the Illinois Supreme Court has advised us that it believes there to be a real concern over whether new attorneys—those who have, by definition, graduated from law school and passed the Illinois bar examination—have within their grasp the “rudimentary elements of practice.” There is the Illinois Supreme Court’s answer to the question of whether new law graduates are “practice ready.”

The courts set the standards but they are not generally in the business of providing education or other guidance to meet those standards. So who is left?

As is so often the case when the question turns to improving the practice of our profession, the answer returns to the organized bar. The ISBA is doing its part. Among other things, our CLE department offers a basic skills course that is fully compliant with the Supreme Court’s requirements. See <[www.isba.org/cle/newadmittees](http://www.isba.org/cle/newadmittees)>.

The ISBA’s mentoring program provides a means to match more experienced lawyers to those who seek guidance but do not know how to reach out for assistance. See <[www.isba.org/mentoring](http://www.isba.org/mentoring)>.

isba.org/mentorcenter>. The Supreme Court has provided an additional incentive for both mentors and mentees. In October, 2010, the Court adopted a provision for earning CLE credit for lawyer-to-lawyer mentoring, as follows:

Lawyers completing a comprehensive year-long structured mentoring program, as either a mentor or mentee, may earn credit equal to the minimum professional responsibility credit during the two-year reporting period of completion, provided that the mentoring plan is preapproved by the Commission on Professionalism, the completion is attested to by both mentor and mentee, and completion occurs during the first three years of the mentees practice in Illinois. For reporting periods ending in 2011 or earlier, the maximum number of professional responsibility credit hours shall be four. Beginning with the reporting periods ending on June 30 of either 2012 or 2013, in which 30 hours of CLE are required, the maximum number of credit hours available shall be six. Ill. Sup. Ct. R. 795(d)(12).

In addition, involvement in bar association activities can serve as a means to gain valuable insights from more experienced (or just differently-experienced) lawyers that might not otherwise be available. I know the value of those contacts first-hand. Although I finally have to admit that I am middle-aged (unless I expect to live longer than 92 years), I still learn from lawyers I have met through the ISBA—people like Bob Hanaford, Jewel Klein, Lisa Nyuli, John Phipps, Julie Ann Sebastian, Bryan Sims, and Bernie Wysocki, to name only a handful.

Other bar associations are also quite active in those areas. Several bars have taken up the challenge of providing a basic skills course aimed at making young lawyers “practice ready.” Many have also instituted very fine mentoring programs, with benefits flowing to the mentors, the mentees, the association, and the profession as a whole.

Still, there is much more that can be done. One key area for improvement is in the relationship between academia and the practicing bar. The dichotomy that now prevails between the training that one receives in law school and the subsequent “real world” experience need not, and should not, continue.

As law schools begin to look more closely at the obligation to produce “practice ready” lawyers, law professors should not be talking

only to each other. They should also tap into the expertise of the practicing bar, which has a vital role to play in helping law schools produce more professionally competent practitioners.

There are many ways that partnership can be established and enhanced. One avenue is through development of law school courses aimed at practice management issues or at preparing the student for real-world practice. For example, The John Marshall Law School offers a course called Law Practice Management, which is co-taught by full-time professor Cliff Scott-Rudnick (himself a full-time practitioner until rather recently) and Judge Russell Hartigan, who is very active within the ISBA.

John Marshall also recently launched a course called Advanced Persuasive Writing, which I co-teach with full-time professor Joanne Hodge. (This is not intended as an advertisement for John Marshall, it is just what I am most familiar with). Our students are required to draft three appellate briefs based on actual case records. Believe it or not, after no less than four semesters of required writing courses, most of the students have never used a full case record before taking our course.

These are only a few examples of how practicing lawyers can participate in improving the profession by assisting in making newer lawyers more “practice ready.” As my bar review instructor suggested many years ago, new lawyers still are not sufficiently proficient in the actual practice law. But the situation is improving. The courts, the law schools, the bar associations, and individual lawyers are realizing that we all have a stake in maintaining professional standards by supporting the professional development of newer lawyers. After a few years of focused commitment to improve the situation, perhaps a question like “Don’t you hope that new doctors know more about practicing medicine than you know about practicing law?” will draw only puzzled looks, not nervous laughter, from recent law graduates. ■

**About the Author: Timothy J. Storm maintains a law practice in the northwest suburbs of Chicago which centers on appellate litigation in state and federal courts and consulting with trial counsel on appellate strategy. In addition to serving as Chair of the ISBA General Practice, Solo and Small Firm Section Council, he is also Vice-Chair of the Solo and Small Firm Conference Planning Committee and a member of the ISBA Assembly elected from the 19<sup>th</sup> Judicial Circuit. He can be reached at [tjstorm@illapp.com](mailto:tjstorm@illapp.com).**

## GENERAL PRACTICE, SOLO & SMALL FIRM

*Published at least four times per year.*

*Annual subscription rate for ISBA members: \$20.*

*To subscribe, visit [www.isba.org](http://www.isba.org) or call 217-525-1760*

### OFFICE

Illinois Bar Center  
424 S. Second Street  
Springfield, IL 62701  
Phones: 217-525-1760 OR 800-252-8908  
[www.isba.org](http://www.isba.org)

### CO-EDITORS

John T. Phipps 44 Main St. P.O. Box 1220 Champaign, IL 61824	Hon. Edna Turkington-Viktora P.O. Box 641727 Chicago, IL 60664
---	--

### MANAGING EDITOR/

### PRODUCTION

Katie Underwood  
[kunderwood@isba.org](mailto:kunderwood@isba.org)

### GENERAL PRACTICE, SOLO & SMALL FIRM SECTION COUNCIL

Timothy J. Storm, Chair  
Susan M. Brazas, Vice Chair  
Michael J. Zink, Secretary  
Michael K. Goldberg, Ex-Officio

Kenneth J. Ashman Timothy E. Duggan Brett R. Geiger Ebony R. Huddleston Michele M. Jochner Jewel N. Klein Anna P. Krolkowska L. Dominic Kujawa, Jr. Nolan Lipsky Daniel WL O'Brien	Peter R. Olson John T. Phipps James R. Shultz Mary A. Spellman Gerstner Marleen M. Suarez Hon. Edna Turkington-Viktora Richard W. Zuckerman
---	--

Janet M. Sosin, Staff Liaison

Disclaimer: This newsletter is for subscribers' personal use only; redistribution is prohibited. Copyright Illinois State Bar Association. Statements or expressions of opinion appearing herein are those of the authors and not necessarily those of the Association or Editors, and likewise the publication of any advertisement is not to be construed as an endorsement of the product or service offered unless it is specifically stated in the ad that there is such approval or endorsement.

Articles are prepared as an educational service to members of ISBA. They should not be relied upon as a substitute for individual legal research.

The articles in this newsletter are not intended to be used and may not be relied on for penalty avoidance.

Postmaster: Please send address changes to the Illinois State Bar Association, 424 S. 2nd St., Springfield, IL 62701-1779.

## ORDER YOUR 2012 ISBA ATTORNEY'S DAILY DIARY TODAY!

*It's still the essential timekeeping tool for every lawyer's desk and as user-friendly as ever.*

**A**s always, the 2012 Attorney's Daily Diary is useful and user-friendly.

It's as elegant and handy as ever, with a sturdy but flexible binding that allows your Diary to lie flat easily.

The Diary is especially prepared for Illinois lawyers and as always, allows you to keep accurate records of appointments and billable hours. also contains information about Illinois courts, the Illinois State Bar Association, and other useful data.



**The ISBA Daily Diary is an attractive book, with a sturdy, flexible sewn binding, ribbon marker, and elegant silver-stamped, dark green cover.**

**Order today for \$27.95** (Includes tax and shipping)

*The 2012 ISBA Attorney's Daily Diary*  
**ORDER NOW!**

*Order online at*

*<https://secure.isba.org/store/isbabooksorder.html>  
or by calling Janice at 800-252-8908.*



### WHY ATG?

“

I've been a member for more than 30 years. Would I do it again? In a heartbeat. It's not just a part of what I do, it's *what* I do. We prospered with ATG. This long relationship with ATG, the mentoring and the loyalty—it has improved my practice, even defined my practice. Commercial companies will never be able to emulate what ATG does because their motivation is solely profit, they are focused on selling services to lawyers. Because it's lawyer-owned, ATG is focused on the professional relationship that exists between the organization and the lawyers and the results that flow from that.

**Thomas F. Courtney, Sr.**  
**Thomas F. Courtney Law Office**  
Palos Heights  
ATG Member Since 1977

”



ATTORNEYS'  
TITLE  
GUARANTY  
FUND,  
INC.

**ATG: Making good lawyers better.**

**800.252.0402**  
**WWW.ATGF.COM**

Contact us for more information:  
Phil Krawiec  
Business Development Representative  
Direct Phone: 312.752.1219  
E-mail: [pkrawiec@atgf.com](mailto:pkrawiec@atgf.com)

ATG is an Illinois Accredited  
Continuing Legal Education Provider.  
Offices in: Champaign | Chicago, | Frankfort  
Libertyville | Lombard | Mt. Prospect | Oak Lawn  
Skokie | Wheaton | Belleville | Madison, Wis.

NLT | Belvidere | Crystal Lake | Rockford

## Editor's column: Developing "practice ready" lawyers

*Continued from page 1*

clinical or practice-area courses that gives more options to law students who want to go into non-traditional types practice or employment in non-legal areas. Exploring all of the options are important in responding to today's volatile job market.

I was particularly impressed by the John Marshal Law School's *Advanced Persuasive Writing* course that Tim is teaching. The University of Illinois College of Law has a similar *Appellate Persuasive Writing* course, which it offers each year. These are much-needed courses. My experience with law clerks over the years is that law school teaches them to write memos and examination answers from a Judge's or neutral perspective instead of teaching them to be an advocate. I think it's important for law schools to address the role of the lawyer as advocate and how persuasive writing can be used to advance their clients' interest.

Promoting the best interest of your client is a topic that needs to be defined in both the classroom and the real world. In the last couple months I've heard three or four young lawyers talk about the ethical requirement to be "zealous advocates" for their clients. They used this concept to justify advocating some far-out position or to litigate rather than negotiate. From talking to law clerks, young lawyers and other law students it seems that the ethics classes unduly focus on being a zealous advocate rather than a lawyer's need to be a "zealous advocate" to protect the clients' interest. Zealously advocating for the client's interest means that you put the client's overall interest at the front of your advocacy and do not get unnecessarily involved in litigation. Too many young lawyers are afraid to negotiate or give away any point because they fear they are not doing their ethical duty to zealously advocate. Law schools need to look at programs and courses that help law students develop judgment and to look at the client's "big picture" so they can act accordingly to best protect the client.

I think the law school's clinic programs and the other practice-oriented courses that the law schools are developing are beginning to help young lawyers be practice ready. Of critical importance for beginning lawyers is the involvement of the Bar Association and especially the development of mentoring. The Illinois Supreme Court and ISBA have done some excellent work in the mentoring area

and continue to develop programs and ways to mentor young lawyers. ISBA also provides basic skills CLE courses. It's important that the law schools educate law grads about the benefit of Bar Association participation and how such involvement can help them to hit the ground running and gain valuable contacts along the way.

Tim talks about the new doctors and what they know about the practice of medicine. That is a funny story, but the reality is medicine is different from law because the human body doesn't change. Doctors start with certain basic body concepts that don't change, which allows them to be prepared for basic medical practice. Lawyers, on the other hand, have to deal with a constantly changing picture. It is a much different situation. The body of law changes constantly with new cases and new or amended legislation, with change being the only constant. Lawyers have to constantly keep up with these changes. If we cannot then even the older lawyers don't stay practice ready. Attorneys who go to the ISBA CLE and other CLE providers know that we have to constantly hone our skills and keep up with the ever-changing legal landscape. Lawyers need to

recognize that in order to make law students 'practice ready,' law schools must give students the tools to identify the problems, get the basic information needed to make good decisions and develop good judgment. Given the variety of legal topics and fields that now exist, that's about all that law schools could be expected to do to make a lawyer practice-ready. Law schools could do a better job of preparing new lawyers for practice but the reality is that the law schools' primary function is to teach the basics and experience is what builds upon the basics. It is the bar associations that need to do what ISBA is doing to mentor and educate young lawyers, as well as help seasoned lawyers stay "practice ready." ■

**About the Co-Editor: John T. Phipps is engaged in the general practice of law in Champaign, IL as John T. Phipps Law Offices, P.C. His primary emphasis is in the areas of family law, general civil litigation, real estate, criminal law, probate and business law. He is a past chair of the ISBA General Practice, Solo and Small Firm Section Council and Co-Editor of the Section's newsletter and a member of the ISBA Assembly.**

## ISBA Solo and Small Firm Conference

*Illinois' premier event for solo and small firm lawyers*

**October 27-29, 2011**

**Springfield Hilton**

**Springfield, IL**

You may be a solo or small firm lawyer, but you are not alone. Get connected to your peers, the latest in technology, and current practice updates at this year's conference.



Download the program schedule and register today at  
<<http://www.isba.org/soloconference>>



## Practice tip: New defenses. The Collection Agency Act requires documentation of assignments

By Brett R. Geiger

Defendants subject to debt collection agency lawsuits rarely have the resources or inclination to defend. Those few that resist, and their (usually) not-so-well compensated attorneys, may find a powerful tool in *Unifund CCR Partners v. Mohammad Shah*, 2011 WL 477725 (1st Dist. 2011). This recent case, answering two certified questions, remanded a collection case for further consideration, and described in detail the documents that must be attached by a collection agency in order to proceed.

The decision itself concerns the Collection Agency Act. 225 ILCS 425. The specific provision addressed in the *Unifund* case establishes the required content of assignment documents that must be attached to complaints. 225 ILCS 425/8b.

*Unifund* held that when a debt collection agency brings an action in its own name, they must attach assignment documents to the complaint containing the following information:

1. Date of assignment
2. Consideration received for assignment
3. Relevant identifying information

The case strongly suggests the action is not properly pled without these documents, and should be dismissed. *Unifund* at 10. The documents of assignment (and documents incorporated by those documents) must contain this information, and cannot be supplemented by affidavit to fill in the blanks. *Unifund* at 12. Of course, many debts have been assigned more than once. In the *Unifund* case, the debt had been assigned to four different entities in one day. Because the debt collector must show chain of title, the debt collector will need assignment documents (not affidavits or sworn pleadings) showing these three required pieces of information for each assignment. *Unifund* at 14.

I will now address each more specifically.

### Date of Assignment

First, the documents of assignment must provide the effective date of the assignment. Recitation of the document creation date, or the date it was signed, is not sufficient. *Business Service Bureau Inc. v. Webster*. 298 Ill.

App.3d 257, 259 (4th Dist. 1998) (A document with a date at the top, and a dated notarized signature by an agent of the creditor was insufficient). Presumably, the documents must specifically say "assignment effective on (date)," or something very similar.

Because it is unlikely that an original creditor would sell/assign its debt before default, previous assignment documents are important to establish the statute of limitations date. The wheels of debt collection frequently turn slowly, and the five-year limitations period may expire long before an action is filed. *Portfolio Acquisitions, LLC v. Feltman*, 391 Ill.App.3d 642 (1st Dist. 2009) (signed application for credit and other misc. documents insufficient to show written contract establishing cause of action based on a writing, five year statute of limitation applies).

### Consideration Paid

Second, the documents of assignment must specifically state the consideration paid. *Business Service* at 257. Case-law provides two examples of what is *not* sufficient: (1) "For value received and subject to the terms and conditions of the purchase and sale agreement" (*Unifund*) (purchase and sale agreement not attached); (2) "An agreed percentage of the amount collected (*Business Service*)." Because many of these agreements may contain generic language, a close look is warranted.

It appears that a specific number or percentage will be required for each assignment. In addition, knowing what the agency paid for the debt (or is being paid to collect) may aid the debtor in settlement negotiations.

### Relevant Identifying Information

Finally, all assignment documents showing chain of title must contain sufficient information identifying the account transferred. Though the author can find little guidance as to what is required, *Unifund* seems to suggest that each assignment (for each transfer) would need to be supported by documents showing at least the identity of the debtor, creditor, and account number. The cases at this stage leave room for argument about

the specificity of identity required (SSN, address, amount owed, etc.). Because one of the primary purposes of the Debt Collection Act is to prevent duplicative litigation, there should be at least enough to be certain they are pursuing the right person. I assume these arguments will be easier to make if your client's name is John Smith.

Given the amount of book-keeping required to compile the necessary documents, and the number of cases filed by debt collection agencies, these requirements will undoubtedly provide ample leverage in the negotiation process.

All this, of course, may pale in comparison to the time-tested strategy of issuing a general denial and setting the matter for trial. But that is another story. ■

**About the Author: Brett R. Geiger is a partner at Malmquist & Geiger, a firm in Morris, Illinois, and practices in the counties of Grundy, LaSalle, Will and Kendall. Brett concentrates in civil litigation, including commercial collections, family law, and mechanics lien matters. Brett is a member of the GP Solo and Small Firm Section and the Construction Law Section. He can be reached at (815) 942-5072 or at BrettGeiger@MGLA-offices.com.**



ILLINOIS STATE  
BAR ASSOCIATION

### Now Every Article Is the Start of a Discussion

If you're an ISBA section member, you can comment on articles in the online version of this newsletter

Visit  
**WWW.ISBA.ORG**  
to access the archives.

# New citation lien procedure provides enforcement help for judgment creditors

By Mary Anne Spellman Gerstner

Ever have trouble collecting a judgment? Many attorneys have had this problem. Help is on the way. House Bill 3478, approved August 12, 2011 and effective January 1, 2012, amends the Code of Civil Procedure and makes improved remedies available to judgment creditors in citation to discover assets proceedings and other post-judgment procedures.

The amendments permit a creditor who uncovers personal property of a judgment debtor subject to the lien of a citation to discover assets to have the court impress a lien against a specific item of personal property, including a beneficial interest in a land trust. The lien remains effective in the same manner as a judgment lien against real property, and may be made a matter of public record. A judgment creditor who is required or permitted to use the remedy of a charging order (such as a charging order to impose a lien against a member's distributional interest in a limited liability company) will now have the right to bring and obtain a charging order through post-judgment enforcement procedures such as service of a non-wage garnishment or a citation to discover assets. Under the amendments, a foreign judgment registered or filed in Illinois shall be construed as an Illinois judgment and treated as an original Illinois judgment for purposes of enforcement and revival.

Generally, a citation to discover assets proceeding is authorized after an enforceable judgment is entered for examination of a judgment debtor or other person to discover nonexempt assets and income of the judgment debtor and to compel the application of such property to an unpaid judgment under Section 2-1402 of the Illinois Code of Civil Procedure.<sup>1</sup> A lien which binds the nonexempt personal property of the judgment debtor is created in favor of the judgment creditor against the personal property of the judgment debtor as of the date when the citation is served in accordance with the requirements of 735 ILCS 5/2-1402(a).<sup>2</sup> The general citation lien established under Section 2-1402(m) "... does not affect the rights of citation respondents in property prior to the service of the citation upon them and

does not affect the rights of bona fide purchasers or lenders without notice of the citation."<sup>3</sup>

The amendment changes Section 2-1402 by adding subsection (k-10). New Section 2-1402 (k-10) provides that a judgment creditor who discovers property of the judgment debtor subject to the lien of a citation to discover assets may have the court impress a lien against a specific item of personal property, including a beneficial interest in a land trust. The lien survives the termination of the citation proceedings and remains as a lien against the personal property in the same manner that a judgment lien recorded against real property pursuant to Section 12-101 remains a lien on real property. Under Section 12-101, a judgment is a lien on real property from the date a memorandum of judgment is properly recorded until seven years from the entry of the judgment, unless the judgment is revived.<sup>4</sup> A lien against a beneficial interest in a land trust or other specific item of personal property established under Section 2-1402 (k-10) will be effective from the date the lien is imposed by the court until seven years from the entry of the judgment, unless the judgment is revived. If the judgment is revived before dormancy, the lien remains. New Section 2-1402 (k-10) provides that the lien may, but need not, be recorded in the office of the recorder or filed as an informational filing pursuant to the Uniform Commercial Code.

This amendment authorizes a court to impress a lien in a citation proceeding against a judgment debtor's beneficial interest in a land trust, and gives this lien the same effect as a judgment lien upon real estate. Where title to real property is held in an Illinois land trust, the land trustee takes legal and equitable title to the real estate, while the beneficiary retains all rights of possession and management, the right to direct the trustee in dealing with title, and the right to receive income and all proceeds from the sale of the property.<sup>5</sup> A beneficial interest in an Illinois land trust is personal property under Illinois law.<sup>6</sup> A judgment debtor's beneficial interest in a land trust is subject to the lien of a properly served citation to discover assets upon

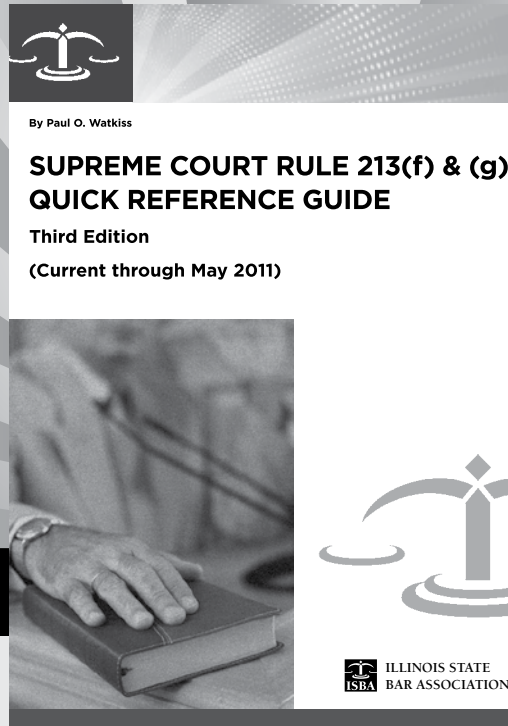
the judgment debtor and land trustee.<sup>7</sup> By authorizing imposition of a lien by the court against land trusts and other specific items of personal property, by providing for continuity of the lien and prescribing methods for placing the public on notice of the lien, the amendment will negate defenses such as the claim the citation lien lapsed upon termination of the citation proceeding. Proper implementation of this new provision will help to avoid transfers of the property subject to the lien without notice to the judgment creditor or satisfaction of the judgment creditor's lien.

This amendment reflects in part a codification of existing law. The Illinois Supreme Court has affirmed the power of a Court in a citation proceeding to impose by court order a "judicial lien" against funds realized by a judgment debtor from a mechanic's lien lawsuit, to "spread the lien of record" in the mechanic's lien lawsuit, and to enter judgment against the defendants, who, with notice of the lien, paid settlement proceeds directly to the judgment debtor without notice to the judgment creditor.<sup>8</sup>

The amendments add Section 12-112.5, regarding charging orders, to the Code of Civil Procedure.<sup>9</sup> The Limited Liability Company Act provides that Section 30-20 of the Act provides the exclusive remedy by which a judgment creditor may charge a distributional interest in a limited liability company of a member or member's transferee in satisfaction of a judgment.<sup>10</sup> New Section 12-112.5 provides that if a statute or case requires or permits a judgment creditor to use the remedy of a charging order, this remedy may be brought and obtained by serving any of the enforcement procedures set forth within Article XII of the Code of Civil Procedure, (such as non-wage garnishment) or by serving a citation to discover assets.

Section 12-652 of the Code of Civil Procedure has also been amended.<sup>11</sup> Under this amendment, a foreign judgment duly filed with the circuit court clerk shall be construed to be an original Illinois judgment from the date filed and treated in the same manner as an Illinois judgment for purposes of enforcement and revival.<sup>12</sup> ■

*Don't miss this easy-to-use reference guide to Supreme Court Rule 213(f) & (g)*



## SUPREME COURT RULE 213(f) & (g) QUICK REFERENCE GUIDE (Current through May 2011)

**From Dog Bite to Divorce!** Illinois Supreme Court Rule 213(f) & (g) applies to all civil litigation in Illinois. It governs the procedure for identifying trial witnesses and disclosing their proposed testimony. ISBA is excited to offer this update of our popular *Supreme Court Rule 213(f) & (g) - Quick Reference Guide*, last published in 2002.

The *Guide* is a useful tool for quickly learning the law under Rule 213(f) & (g). It reviews all of the Illinois Appellate and Supreme Court decisions to date concerning Supreme Court Rule 213(f) & (g). In addition to a summary, the *Guide* organizes the propositions for which the cases stand by topics that can be quickly referenced during argument on a motion in limine or motion to bar opinion witnesses.

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.

Order the new guide at [www.isba.org/store/books/supremecourtrule213](http://www.isba.org/store/books/supremecourtrule213)  
or by calling Janice at 800-252-8908  
or by emailing Janice at [jishmael@isba.org](mailto:jishmael@isba.org)

### SUPREME COURT RULE 213(f) & (g) QUICK REFERENCE GUIDE

\$35 Member/\$50 Non-Member (includes tax and shipping)  
FastBook price \$32.50 Member/\$47.50 Non-Member



Illinois has a history of  
some pretty good lawyers.  
We're out to keep it that way.



1. 735 ILCS 5/2-1402; Illinois Supreme Court Rule 277(a).
2. 735 ILCS 5/2-1402(m).
3. 735 ILCS 5/2-1402(m).
4. 735 ILCS 5/12-101. A lien against real estate remains no longer than 7 years unless the judgment is revived. Section 12-101 provides for a judgment to be a lien on real estate for the period from the time a transcript, certified copy or memorandum of the judgment is filed in the office of the recorder in the county in which the real estate is located, to no longer than 7 years from the time the judgment is entered or revived, unless the judgment is revived within 7 years after its entry or last revival and a memorandum of judgment is filed before the expiration of the prior memorandum of judgment. The language of Section 12-101

- requiring revival of the judgment within 7 years after its entry or last revival for the lien to remain, is also being amended by requiring that a new memorandum of judgment be recorded prior to the judgment and its recorded memorandum of judgment becoming dormant.
5. *In re Estate of Crooks*, 266 Ill.App.3d 715, 638 N.E.2d 729, 733 (1st Dist. 1994).
  6. *Id.* at 733.
  7. See *In re Nowicki*, 202 B.R. 729, 737 (Bankr. N.D. Ill. 1996).
  8. *Podvinec v. Popov*, 168 Ill. 2d 130, 658 N.E.2d 433 (1995).
  9. 735 ILCS 5/12-112.5.
  10. 805 ILCS 180/30-20(e).
  11. 735 ILCS 5/12-652.
  12. 735 ILCS 5/12-652(a).

**About the Author: Mary Anne Spellman Gerstner is a partner with the Law Offices of Gerstner & Gerstner, Suite 1538, 53 W. Jackson, Chicago, IL 60604. In addition to creditor's rights, debtor's remedies and bankruptcy, Ms. Gerstner's practice includes all manner of general civil litigation in State and Federal Court. She is licensed to practice law in Illinois and Nebraska, and is a member of the Illinois State Bar Association and the Nebraska State Bar Association. Ms. Gerstner is a former President of the Abraham Lincoln Marovits American Inn of Court in Chicago and currently serves on the General Practice, Solo & Small Firm Section Council of the Illinois State Bar Association.**

## Council member profile: Jewel N. Klein

A 1966 graduate of the University of Chicago Law School, Jewel Klein has spent the previous summer in Richmond, VA, clerking in the law firm that represented the NAACP in school desegregation cases. One of the other law clerks that summer was Steven Klein, who became Jewel's husband five days after her last law school final. In the Peace Corps for two years after law school graduation, she helped Peruvian farmers get legal recognition for agricultural co-ops.

General counsel to the Illinois Racing Board for 12 years before becoming a partner in a Chicago firm, Klein was president of the Women's Bar Association of Illinois in 1989-90. She chaired the ISBA Administrative Law Section Council in 1992-93 and again in 2008-09.

Named a Laureate of the ISBA Academy of Lawyers in 2007, Klein considers herself "almost" a jack of all trades. Staying away from any complex criminal case, she has done real estate closings, written some wills, and handled every virtually every kind of civil case from national class actions to Cook County Municipal Division contract disputes, from embittered custody battles to nursing home defense, with stops in eviction court and building court along the way. Klein is delighted that she was appointed to the General Practice Section Council, and hopes to be able to make meaningful contributions.

A 30-plus year resident of Chicago's north side, Klein has been an officer of the Hollywood-North Park Community Associa-

tion for years and chairs the HNPCA Board of Directors. Recently, she became President of Friends of Peterson Park, a Chicago public park.

Talk to Klein for more than a minute and she is very likely to pull out pictures of

her grandchildren. All three of her married daughters live within a 15-minute drive from her home, making her think of herself as one of the luckiest mothers on the planet. Her children and five grandchildren occupy much of her free time. ■

## Target your message!

- Reach the exact practice area you need with no wasted circulation
- Ads cost less
- ISBA newsletter readers ranked their newsletters 2nd highest of all Illinois legal publications in terms of usefulness. (Illinois Bar Journal was ranked 1st)
- 72% of newsletter subscribers either save or route each issue, so your ad will have staying power.

**For more information contact:  
Nancy Vonnahmen  
Advertising Sales Coordinator  
Illinois State Bar Association  
800-252-8908 or 217-747-1437**



**ILLINOIS STATE  
BAR ASSOCIATION**

## Upcoming CLE programs

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

### November

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

**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 Chicago 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.

**Wednesday, 11/30/11- Live Studio Webcast**—Social Media Is Here To Stay. Presented by the ISBA Labor and Employment Section. 8:55-10:30.

**Wednesday, 11/30/11- Studio Taping (DNP)**—Green Building Ordinances. Presented by the ISBA Environmental Law Section. 1-2:30.

### 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.

**Wednesday, 12/7/11- Chicago, ISBA Chicago Regional Office**—Guiding Your Client Through These Financially Turbulent Times. Presented by the ISBA Business Advice and Financial Planning Section. 9:00-1:00. ■

## BACK TO SCHOOL SAVINGS!

### ISBA's Unlimited Law Ed Passport

Sign up for the *Unlimited Law Ed Passport Live* or the *Unlimited Law Ed Passport Online* and earn unlimited MCLE credit through June 30, 2012!

To enroll and for more information, please visit

**WWW.ISBA.ORG/CLE/PASSPORT**



## It's Time To Analyze Your Professional Liability Insurance...



### Don't assume a simple renewal of your Liability Insurance is the correct course of action.

There is more to providing professional liability insurance to Illinois Lawyers than collecting premiums and paying claims. ISBA Mutual Insurance goes beyond the typical client-insurer relationship. We are actively involved with our members to reduce risk and prevent loss. Our premiums include providing resources, training and advice that is specific to the unique needs of Illinois Lawyers.

These efforts have literally paid dividends for our membership and have afforded them over **\$9,700,000 in premium dividends** since fiscal year 2000. In addition to these hard dollar savings, we believe our investment in our members have saved them countless hours of soft dollar savings providing them more time to focus on their clients.

### ISBA Mutual Insurance has been exclusively serving Illinois lawyers and law firms since 1988.

ISBA Mutual was formed twenty-three years ago through the efforts of Illinois lawyers banding together to help one another by establishing our own insurance company. Our company has grown to be one of the most significant providers of malpractice insurance for lawyers in Illinois.

We specialize in professional liability insurance written specifically and exclusively for the needs of Illinois attorneys. ***It's our only business.***



**Strength | Commitment | Dedication**

Professional Liability Insurance

Newly Licensed Attorney Program

Risk Management

Surety Bonds

Rated "A" Excellent by A.M. Best

Endorsed by Illinois State Bar Association

Over \$9.7 Million in Policyholder Dividends Since 2000



ISBA Mutual Insurance Company  
223 West Ohio Street  
Chicago, IL 60654  
(800) 473-4722  
[www.isbamutual.com](http://www.isbamutual.com)



# Illinois Real Estate Lawyers Association

*THE ONLY BAR ASSOCIATION  
REPRESENTING THE INTERESTS  
SOLELY OF REAL ESTATE  
ATTORNEYS IN ILLINOIS*

**Illinois Real Estate  
Lawyers Association**  
2340 S. Arlington Heights Road  
Suite 400  
Arlington Heights, Illinois 60005  
(847) 593-5750 · Fax (847) 593-5171  
[www.irela.org](http://www.irela.org)



Non-Profit Org.  
U.S. POSTAGE  
PAID  
Springfield, Ill.  
Permit No. 820

GENERAL PRACTICE,  
SOLO & SMALL FIRM  
ILLINOIS BAR CENTER  
SPRINGFIELD, ILLINOIS 62701-1779  
OCTOBER 2011  
VOL. 40 NO. 3