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ILLINOIS STATE BAR ASSOCIATION

# THE PUBLIC SERVANT

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

## Comments from the Chair

*By Sharon L. Eiseman*

It seems that we just left the Abbey in Fontana and yet our new bar year is well underway! I would like to welcome our Government Lawyers Committee members and all of our supporters to our new term and give you a glimpse of our 2012-13 agenda. First, a few words about our origin are in order.

In 1999, the ISBA created this special committee in response to the lobbying efforts of the ISBA's Committee on Membership and Bar Activities (now the Committee on Bar Services and Activities), including one well-known and determined advocate—our current President John Thies. Those ISBA members, along with the first Committee on Government Lawyers members -- Chuck Gunnarson, Pat Hughes, Nancy Katz, Kate Kelly, Paul Logli, Pat Lord, Marc Loro, Raquel "Rocky" Martinez, Pat Moser, Lynn Patton, Don Ruff, and Sheila Simon – recognized the need for public sector lawyers within the ISBA to have a voice in the direction of the association as well as a more focused means of communication through a separate newsletter and programming and, more generally, a platform to articulate the legal, ethical and professional development issues that can arise within the various forms of government we serve. Without their vision and persistence, we wouldn't exist and I wouldn't have the privilege of writing this message.

This term, we are pleased to continue the tradition of presenting our popular and highly entertaining "Ethics Extravaganza," a professional responsibility program addressing the complex ethical challenges that lurk around every corner

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## Updating eavesdropping: *ACLU v. Alvarez* and potential legislation

*By Jordan M. Kielian and David J. Silverman*

### Introduction

Prior to the Seventh Circuit's opinion in *ACLU v. Alvarez*,[1] Illinois' eavesdropping statute prohibited all audio recordings of any oral communication absent consent of all the parties. Violation of the statute constituted a class 4 felony. If one of the communicating parties was a law enforcement officer, the charge was upgraded to a class 1 felony punishable with a possible prison sentence of four to fifteen years. In *Alvarez*, the Seventh Circuit ruled that the law was likely unconstitutional and directed the district court to issue a preliminary injunction barring prosecutors from enforcing the statute against people who openly record police officers performing their duties in public. The opinion only tackled a part of the issue surrounding Illinois' eavesdropping statute and even raised new questions about the portion it aimed to resolve. The unresolved issues will have to be addressed by future opinions or legislation.

### Background

The Illinois General Assembly first enacted

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## INSIDE



***(Notice to librarians:** The following issues were published in Volume 13 of this newsletter during the fiscal year ending June 30, 2012: October, No. 1; January, No. 2; March, No. 3; June, No. 4).*

## Comments from the Chair

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for the lawyer employed by a State or local government entity, for those who leave such employment, and for those who do business with government entities. Look for that program in the spring of 2013. For another approach to the subject of ethics in the workplace, be sure to read about Patrick Blanchard, the Cook County Independent Inspector General featured in this issue of the newsletter's "Someone You Should Know" article.

Additionally, a 2013 panel program on the legislative process and current legislative issues is in the planning stages. We will also offer a second series of public service programming for Cable TV. Our first series last year addressed the topic of identity theft and scams against vulnerable citizens. This term, we will gather a panel of community service experts and knowledgeable attorneys to cover a second topic of interest to our diverse communities: access to affordable housing and tenants rights. Both programs are cosponsored with the ISBA's Racial and Ethnic Minorities Standing Committee. Beyond that, we look toward devoting some newsletter space to substantive legal issues we in government often face, such as questions of absolute and qualified immunities for government officials, ethical violations, sovereign immunity and the electoral process.

Once I complete this "comment," our newsletter will go to press. *The Public Servant* is a publication in which we take great pride. It brings to those in public sector practice and the ISBA's broad membership some much-needed insight into the complexities, demands, and rewards of government practice, the accomplishments of those engaged in such service, and the contributions we can make to improve the public's perception of lawyers and public sector lawyers in particular. If you have an interest in raising an issue pertinent to our practices, please let us know. ■

## Updating eavesdropping: *ACLU v. Alvarez* and potential legislation

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the eavesdropping law in 1961.[2] The statute made it a crime to use an eavesdropping device to hear or record any oral communication without "the consent of any party thereto." In 1976, the legislature amended the statute to require the consent of all parties to the communication.[3] In 1986, the Illinois Supreme Court ruled that the eavesdropping law only protected communications that involved an "expectation of privacy."[4] Thus, neither party needed to give consent if the conversing parties did not have an expectation of privacy. In 1994, the Illinois Supreme Court clarified that no expectation of privacy existed if one of the parties to the conversation was the recording party.[5] This allowed a person to secretly record a conversation so long as they were a participant. Following these two decisions, the Illinois General Assembly amended and strengthened the statute by making it applicable to any oral communication "regardless of whether one or more of the parties intended their communication to be of a private nature under circumstances justifying that expectation."[6] This amendment pushed back against the Illinois Supreme Court decisions that effectively narrowed the statute. Now, it was clear that all parties needed to give consent before any recording could take place.

In contrast to the recording restrictions the statute places upon the general public, police are allowed to record a variety of situations as part of their law enforcement duties.[7] For example, the Seventh Circuit noted that police have the discretion to record an array of encounters loosely classified as "enforcement stops" without the consent of the other parties involved. Enforcement stops include "traffic stops," "motorist assists," "pedestrian stops," and "requests for identification." Secret recordings and interceptions for police investigations are covered by other subsections of the statute.[8]

*ACLU v. Alvarez* arose from the ACLU's request for declaratory judgment and injunctive relief against Cook County from enforcing the eavesdropping statute. This preenforcement action rested on a narrow issue: whether Illinois prosecutors could enforce the eavesdropping statute against people who openly record police officers performing their official duties in public. The district court initially dismissed the suit because the plaintiff did not sufficiently allege a threat of prosecution, and thus did not have standing to pursue the preenforcement action.[9] After the ACLU cured that defect in an amended complaint, the court again dismissed the suit, this time with prejudice, because the ACLU did not allege a cognizable First Amendment injury, as nothing in the First Amendment protects the "right to audio record." The ACLU appealed the ruling to the United States Court of Appeals for the Seventh Circuit.

### Analysis

On appeal, the Seventh Circuit discredited the State's argument that audio recordings are wholly unprotected by the First Amendment. The Seventh Circuit found that audio and audiovisual recordings are used to preserve and disseminate ideas and information, and therefore enable speech and implicate First Amendment rights. The Seventh Circuit concluded that the district court's dismissal of the ACLU's suit was based on an incomplete and incorrect reading of precedent.[10] In *Potts v. City of Lafayette*,[11] the Seventh Circuit did not, as the district court asserted, state a categorical principle that recordings are not protected under the First Amendment. Rather, *Potts* stated that the right to gather information can be limited under certain circumstances, but the limiting regulation must be appropriate under the "time, place, or manner" standard.[12]

The ACLU challenged its right to openly record—not to secretly record. The Seventh

Circuit stressed the distinction between the two circumstances: "At the risk of repeating ourselves, this case has nothing to do with private conversations or surreptitious interceptions."[13] The problem with Illinois' statute is its expansive scope. It does not simply outlaw secret recordings, but "sweeps much more broadly, banning *all* audio recording of *any* oral communication absent consent of the parties regardless of whether the communication is or was intended to be private."[14] The blanket eavesdropping rule infringes on basic speech and press freedoms, and the First Amendment limits the extent to which the statute may restrict recordings of public speech. The Court explained: "Any way you look at it, the eavesdropping statute burdens speech and press rights and is subject to heightened First Amendment scrutiny."[15]

The constitutional analysis consisted of weighing the public's interest in the recordings against the State's interest in their prohibition. Because the ACLU wished to record public officials carrying out their duties in public places, the ACLU had strong First Amendment interests.[16] While there was some discussion of whether the statute should be analyzed under strict or intermediate scrutiny, the Seventh Circuit sided with the lesser burden.[17] To pass the required intermediate level of scrutiny, the government would have to show that its regulation was (1) content neutral; (2) justified by an important public interest; and (3) not a greater burden on the right than is necessary to serve the government's interest.[18] The majority found that the State likely met the first requirement, but failed the latter two.[19]

The Court did not accept the State's privacy interest rationale and reasoned that even if the interest was acceptable, the means was not. While the Court agreed that conversational privacy is an important governmental interest, it rejected the privacy rationale because police officers speaking audibly in public places do not have any "reasonable expectation of privacy."[20] Further, even if the State fulfilled the second requirement, the third requirement is not met because the statute is unreasonably broad for the aim: "by making it a crime to audio record *any* conversation, even those that are *not* in fact private—the State has severed the link between the eavesdropping statute's means and its end."[21] The law is unacceptable because the legislature made no attempt to tailor the law to specifically serve its goal of protecting personal privacy. Instead, it bans all recordings of oral communications regardless of whether any privacy interests are implicated.

The Seventh Circuit reasoned that to ban the open recording of non-private public activities by police officers does not serve the government's privacy interests. Thus, under these circumstances, the eavesdropping statute is likely unconstitutional and the preliminary injunction should be granted. The Court left unresolved the issue of secret recordings. In a footnote, the Court noted that the First Amendment may also protect secret recordings, but the scrutiny analysis regarding those recordings would implicate stronger privacy interests.[22] In addressing concerns regarding effective law enforcement, the Court noted that police could still control a scene and deliver moving orders to bystanders based on public safety and legitimate law enforcement needs. Thus, while the Court's decision withdrew the authority of police to preclude recording, it noted the remaining remedies police may use to control a public situation.

In his dissent, Judge Posner framed the issue differently than the majority, focusing on the privacy of civilians rather than police. Regarding secret recordings, he seemed receptive to the right of a civilian to secretly record a police officer: "Maybe [the statute is] too strict in forbidding nonconsensual recording even when done in defense of self or others, as when the participant in a conversation records it in order to create credible evidence of blackmail, threats, other forms of extortion, or other unlawful activity."[23] But when a civilian's right to privacy is implicated, Judge Posner was more reluctant to allow recordings: "Police may have no right to privacy in carrying out official duties in public. But the civilians they interact with do."[24] Whether the civilian is a suspect, witness, or victim, Judge Posner argued that allowing recordings of interaction with police will undermine the civilian's privacy and also undermine effective law enforcement by police.[25]

Judge Posner also raised questions regarding "open" recordings. In a smart phone society, nearly everyone can record a public interaction and it is not altogether obvious what constitutes an "open" recording, because a cell phone can be "hidden in plain view."[26] Civilians wishing to keep private their conversations with police may not know that they are being recorded. The fact that police will be wary of cell phone


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recorders "will increase security concerns by distracting police."[27] Posner ultimately reasoned that people's right to nonconsensually record police interactions in a public place is outweighed by the civilian's privacy interests and the interests of effective law enforcement. Furthermore, Posner's dissent on the issue of "open" recordings raises questions about the ease to which the majority's decision can be applied to future situations involving public recordings.

## Potential Legislation

*Alvarez*'s narrow holding altered the law yet did not resolve all of the controversial issues. Proposed amendments to the eavesdropping statute worked their way through the General Assembly but ultimately failed to pass both houses. The proposed amendment that passed the House carved out an exception to the eavesdropping law for conversations involving police officers in public places while defining public place:

> (q) A person who is not a law enforcement officer nor acting at the direction of a law enforcement officer may record the conversation of a law enforcement officer who is performing a public duty in a public place and any other person who is having a conversation with that law enforcement officer if the conversation is at a volume audible to the unassisted ear of the person who is making the recording. For purposes of this subsection (q), "public place" means any place to which the public has access and includes, but is not limited to, streets, sidewalks, parks, and highways (including inside motor vehicles), and the common areas of public and private facilities and buildings.[28]

Notably, the proposed amendment did not refer to open or secret recording—just recording. Thus, the statute appears to have addressed the issue that the *Alvarez* majority left unresolved—the issue of secret recordings. Under this proposal, any type of recording would seem acceptable under the new statute so long as one of the parties was a police officer and the conversation was audible in a public place. Judge Posner's concerns of what qualifies as a secret or open recording in public would no longer be an issue. Further, because this amendment defined public place, the statute provided guidance and would have expanded the boundaries of the law. For example, because "public place" included the inside of a motor vehicle on a highway, it appears that the legislature was specifically allowing citizens to record their interactions with police during traffic stops.

The amendment also included a provision which would call for the prosecution of anyone who intentionally altered the recording of a police officer:

> If a recorded conversation authorized under subsection (q) of Section 14-3 of the Criminal Code of 1961 is used by the complainant as part of the evidence of misconduct against the officer and is found to have been intentionally altered by or at the direction of the complainant to inaccurately reflect the incident at issue, it must be presented to the appropriate State's Attorney for a determination of prosecution.[29]

This legislation, while passing the House, stalled in the Senate because some legislators were still unsatisfied with the amendments and wanted to see police officers have even more discretion with their own recordings. Consequently, the General Assembly was unable to reach an agreement on the statute and resolve the controversies. So, while statutory change is in order, disagreement over the appropriate change has hindered the process. It is possible that future opinions will answer some of the questions that the General Assembly failed to resolve. It is also possible that the General Assembly will pass legislation that will help guide courts in deciding the murkier issues.

## Conclusion

*ACLU v. Alvarez* changed the landscape of the eavesdropping law in Illinois. Prosecutors can no longer enforce the law against people who openly record police officers performing their duties in public. The Seventh Circuit's ruling did not resolve the issue of secret recordings, and the dissent cast skepticism over the distinction between open and secret recordings. The General Assembly tried but ultimately failed to amend the statute. The final outcome of this legal issue remains undecided, and it is unclear whether clarifications will come by way of judicial opinions or legislative amendments. It is further difficult to predict whether the scope of the law's exceptions will extend from police officers to other public officials. While the statute's future is uncertain, prosecutors will undoubtedly have to apply it differently than in the past. ■

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1. *ACLU v. Alvarez*, 2012 U.S. App. LEXIS 9303 (7th Cir. May 8, 2012).
2. *Id*. at 4.
3. *Id*. at 5.
4. *People v. Beardsley*, 115 Ill. 2d 47 (Ill. 1986).
5. *People v. Herrington*, 163 Ill. 2d 507 (Ill. 1994).
6. *Alvarez*, 2012 U.S. App. LEXIS at 6.
7. *Id.* at 7.
8. *Id.*
9. *Id*. at 9.
10. *Id.* at 17.
11. 121 F.3d 1106 (7th Cir. 1997).
12. *Alvarez*, 2012 U.S. App. LEXIS at 18-19.
13. *Id.* at 63.
14. *Id*. at 29.
15. *Id*. at 45.
16. *Id*. at 36.
17. *Id.* at 56.
18. *Id.* at 58.
19. *Id*. at 59.
20. *Id*. at 60.
21. *Id*. at 62.
22. *Id.* at FN 13.
23. *Id*. at 70.
24. *Id*. at 82.
25. *Id*. at 87.
26. *Id*. at 84.
27. *Id.*
28. TITLE: CRIM CD-TAMPERING PUBLIC RCD, 2011 Illinois Senate Bill No. 1808, Illinois Ninety-Seventh General Assembly - First Regular Session.
29. *Id.*

# Someone you should know: Patrick Blanchard, Independent Inspector General for Cook County

*By Sharon L. Eiseman*

In 2007, the Cook County Board of Commissioners took the bold step of enacting an ordinance that created the first Office of Independent Inspector General for Cook County. *See* Chapter 2, Article IV, Division 5, Ord. No. 07-O-52, 7-31-2007 (Cook County). This step might have been inspired in part by the ongoing *Shakman* litigation, but it was nonetheless a historic achievement for this—or any—governmental body. Just as noteworthy is the fact that the County Board, promptly thereafter, complied with the Ordinance's complicated and rigorous process of developing a "Candidate List." In 2008, from that list of 20 names, the Board appointed the County's first and truly Independent Inspector General (IIG) -- Patrick Blanchard. Blanchard had spent the previous fifteen years with the Cook County State's Attorney's Office. We have chosen to feature IIG Blanchard in this issue of *The Public Servant* so we might learn what made him aspire to be the first lawyer serving in such an important role and how this relatively new office and officer are faring four years later.

It is impressive that Patrick made the original list of twenty candidates, as all who did had to meet a set of substantial qualifications and undergo several levels of review, a process designed to assure objectivity and eliminate political pressure. For the first person appointed to the position of IIG, the process also included submission by the Cook County and the Chicago Bar Associations of names for the candidate list. Thereafter, a bipartisan selection committee, composed of a range of representatives, screened the candidates. Patrick passed all the tests.

When Patrick was hired, the only other employees in the Office of the IIG were an investigator and a secretary. Today, Patrick oversees a team of sixteen staff members, including two deputies. Having a full complement of qualified personnel enables the Office to fulfill its mission to "detect, deter and prevent corruption, fraud, waste, mismanagement, unlawful political discrimination and misconduct in the operation of Cook County government with integrity, independence, professionalism and respect for both the rule of law and the people we serve."

This quoted statement from the Ordinance might cause a cynical Chicago or Cook County citizen to smirk, but Patrick appreciates the weight of that mission and even embraces the huge responsibility it places on him and his Office. It helps that he is free from the political forces that may be at play in any given week, month, year or administration. Because his is *not* an executive appointment, Patrick—and anyone else who might come after him—does not report to a "boss" or have to worry about what that boss thinks when he processes a complaint, initiates an investigation or decides whether and how someone should be disciplined for an infraction. Instead, he can focus on eliminating political influence from the multiple and diverse County workplaces and insuring that contractors and subcontractors doing business with the County also comply with state and local laws.

In addition to having the mission and the County's Ethics Ordinance to guide him and his staff, Patrick is driven by an inner sense of the values that have long been a part of his character and perspective—the importance of good government and faith in the hard working public sector employees he calls "the salt of the earth." A glimpse at Patrick's roots and the paths he has traveled during his career will offer some insight into why Patrick is such a good fit for the position he now holds.

Although he died when Patrick was only ten, Patrick's father, an attorney, was and has remained a significant influence in his life and career. Patrick recalls nurturing a life-long respect for the "rule of law" and the ways in which government can help people. As a youth, he developed an interest in public sector service and law enforcement in particular, which led him to certification and practice as a paralegal at the law firm of Clausen Miller, followed by law school graduation in 1990 and an associate position at that same firm. Patrick then applied for an opening as a Cook County prosecutor and was pleased to finally "get the call" from the Cook County State's Attorney's Office in 1993. For the next 15 years, he devoted himself to being the best Assistant State's Attorney (ASA) he could be, all the while developing skills, insights into people's motivations and a strong moral center that would qualify him for his current role.

As an ASA, Patrick represented the state and county and their officials in complex federal civil rights litigation, handling many high profile cases including the Ford Heights Four matter. Having established himself as extremely competent, hard working and talented, Patrick was called upon to serve at various times as a supervisor in the Federal Civil Rights Section and in the Labor and Employment Section. Through his work in the Medical Litigation Section, which is charged with representing Stroger and Oak Forest hospitals, Patrick learned quickly about the constant pressures faced by medical personnel and became a supervisor in that section as well. Patrick spent his last five years as an ASA as Chief of the Special Litigation Division. In his multiple roles with the State's Attorney's Office, Patrick saw himself as an advocate for **the People** and for the work of the government and its employees. From such vantage points, he could make useful and effective recommendations for resolving cases and ameliorating conditions that caused the problems in the first place. These efforts, Patrick recognized, would ultimately improve the functioning of government.

As the Cook County IIG, Patrick is entrusted with assuring that the highest ethical standards are upheld at all levels of county government and that employees are treated with respect. Under the Ordinance, the IIG has jurisdiction over all County offices, employees and officers which means he has a very full plate. The County's sophisticated system for reporting misconduct provides Patrick with useful tools. Complaints will be investigated, but Patrick and his staff are also sensitive to instances of misconduct—particularly "unlawful political corruption" or UPD—which might never be reported by any employee or member of the public. Patrick believes that, with the support of a pro-active and independent Office, a "culture of professionalism can take root" in a government workplace over time and will contribute to reducing corruption and other forms of abuse. Additionally, Patrick is committed to creating a "place where people can turn to seek justice" so that they do not simply endure unacceptable behavior but feel comfortable reporting it to his Office as well as seeking guidance about behavior that may

fall into ethical gray areas.

To these ends, Patrick devotes many hours to educational efforts, referring to his presentations as a "road show" because he travels to various county workplaces to inform employees of their rights and responsibilities and explain how to identify and report suspected misconduct that they witness or that adversely impacts them. Patrick and his staff advise employees that if they are victims of political pressure or any other form of abuse and file a complaint, every effort will be made to protect their confidences notwithstanding that some cases may end up in the public domain if the accused is the subject of a hearing and such information has to be disclosed. When it is appropriate, Patrick offers to meet with complainants or witnesses off-site in order to preserve their anonymity.

In addition to his demanding position, Patrick stays engaged in outside professional activities closely associated with matters of professional responsibility. As just one example, he has been a Panel Chair of the Hearing Board of the Attorney Registration and Disciplinary Commission since 2008. He also serves on the Board of the Illinois Chapter of the Association of Inspectors General. And there is more, Patrick finds time to be an Adjunct Professor, teaching public administration law to graduate students in the Public Administration Program at IIT's Stuart School of Business, which allows him to share his broad experience and keep abreast of issues impacting government service.

It was clear to this interviewer that the County, its employees and the public have a solid and trustworthy champion of corruption-free workplaces in IIG Blanchard, and as he and his staff proceed with their mission, we can look forward to continued improvements in government work environments. Such a result will surely lead to more productive workers and the delivery of better services to the public. Hopefully, he will stick around for the necessary time it takes to accomplish all his goals and make the County's program a model for others. ■

# ISBA President challenges Illinois lawyers to fight hunger

It is a modern tragedy: some 1.9 million Illinoisans are considered "food insecure," lacking the ability to secure adequate, nutritious food. The problem is especially acute among children: some 600,000 Illinois kids lack access to the right type of food to lead a healthy lifestyle.

Lawyers Feeding Illinois is a positive step toward solving this problem. Our program's goal is noble, yet simple: collect food and raise funds for distribution to the eight Feeding Illinois member food banks. Illinois Attorney General Lisa Madigan supports our efforts and will join us at the kickoff event in November.

We invite all law firms and legal organizations statewide to participate in a food and fundraising drive during the final two weeks in February 2013. For further information, or to sign up, visit <www.lawyersfeedingil.org>.

No one in our country or state should ever go hungry because they can't afford to put food on the table. You can make a difference.

-John E. Thies
Terry Thies, Chair, Lawyers Feeding Illinois

# Don't!

*By Judge Michael B. Hyman*

Some years ago I bought a reprint of a little book called *Don't: A Manual of Mistakes & Improprieties more or less prevalent in Conduct and Speech*, first published around 1880. *Don't,* the work of an anonymous American author, contains epigrams on social matters. Chapters include, for example, "At Table" ("Don't eat with your knife"), "In Public" ("Don't expectorate on the sidewalk"), and "In the Drawing- Room" ("Don't respond to remarks made to you with mere monosyllables").

As a judge, I have wished I could slip a "don't" to signal that something should have been left undone or unsaid. So I started keeping a list of "don'ts." Here are a few that apply equally to proceedings in court and everyday life at the office.

**Don't let your career come before those who matter most in your life.** Not infrequently, I will get motions to move a deadline, a status hearing, or a trial date due to a vacation, an illness, a child's school event, and similar affairs of life. When professional obligations conflict with personal matters, deciding which takes precedence requires analyzing benefits and disadvantages. The key to both success at work and at home, to job satisfaction, and to personal happiness is the ability to choose wisely between them.

**Don't compromise your integrity for a case, client or cause.** Your career, standing in the legal community, and self-respect should never be sacrificed for the sake of tactics, perceived advantages, selfish motives, or even good intentions. Integrity gets tested, it happens, and cannot be avoided. How you act and react, on the other hand, are within your control. Throw integrity overboard, and you will sink to the bottom.

**Don't undermine your credibility.** As one of a lawyer's most precious attributes, credibility should be jealously guarded. Correct any lapses quickly or they might return to bite you. Like integrity, its close cousin, once it is lost, credibility is difficult to reestablish.

**Don't disrespect the legal system by disparaging the judge or bad mouthing an adversary.** What is a client to believe when his or her lawyer makes snide remarks about other lawyers, including the lawyer in the black robe who decides the client's fate? You come off as whiny, petulant, and immature. Worse yet, your insults undermine the very institution whose purpose is to ensure the fair and effective administration of justice, thereby threatening the image of justice in the eyes of your client and, by extension, your client's family and circle of friends.

**Don't be late.** Unless there is a true emergency, keeping a judge or anyone else waiting is inconsiderate because it wastes other people's time. Plan ahead. As a lawyer, I kept my watch six minutes fast just to avoid being late. As a judge, I have a clock on my chamber's wall that is a foot-and-a-half in diameter.

**Don't get emotionally involved in a case.** For clients, a lawsuit can be overwhelming, stressful, and draining. Keeping a client's emotions in check can become a feat. That's why it is critical for lawyers to prevent a client's emotions from clouding their own judgment or interfering with how the lawyer manages the case. Certainly, lawyers may get emotional. It is natural. But a lawyer's emotions always should be directed at the issues, never at individuals.

**Don't be caught unprepared.** Nine times out of 10, when someone is not prepared, it is evident, and the offender can suffer for it, or at the least, look foolish. Preparation is the hallmark of effective lawyers. The best lawyers meticulously prepare; and so do the best judges. Preparation has been called the great equalizer.

**Don't act like a guest on the Jerry Springer Show.** Be civil, considerate, and courteous. Maintain a respectful tone, and keep your dignity. 'Nuff said. ■

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Judge Michael B. Hyman, a member of the Bench & Bar Section Council, is assigned to the General Chancery Division, Circuit Court of Cook County. This article originally appeared in the November 2011 issue of the CBA Record, and the September 2012 issue of the ISBA's Bench & Bar newsletter.

# Attorney General issues opinions

*By Lynn Patton*

Under section 4 of the Attorney General Act (15 ILCS 205/4 (West 2010)), the Attorney General is authorized, upon request, to furnish written legal opinions to State officers and State's Attorneys on matters relating to their official duties. The following is a summary of informal opinion Nos. I-12-001 through I-12-010 that may be of interest to the government bar.

Copies of an opinion may be requested by contacting the Opinions Bureau in the Attorney General's Springfield office at (217)782 9070. Copies of official opinions may also be found on the internet at <http://www.illinoisattorneygeneral.gov/opinions/index.html>.

## Informal Opinion No. I-12-001, issued February 17, 2012

### Compatibility of Offices – County Board Member and Fire Protection District Trustee

Pursuant to section 1 of the Public Officer Prohibited Activities Act, a county board member may not be appointed to serve as a fire protection district trustee. If a county board member, during his or her term of office, is appointed to the office of fire protection district trustee, that appointment is void under section 1 of the Public Officer Prohibited Activities Act. 50 ILCS 105/1 (West 2010).

## Informal Opinion No. I-12-002, issued February 23, 2012

### Withdrawal of Unconditional Resignation by Township Supervisor

A township supervisor may not unilaterally withdraw his or her unconditional resignation after it has been tendered to the township board, regardless of whether the township board affirmatively acted on the resignation before its future effective date. 10 ILCS 5/25 2 (West 2010); 60 ILCS 1/60 20(a), (b) (West 2010).

## Informal Opinion No. I-12-003, issued March 2, 2012

### Operator of Ambulance Service Serving on County's Emergency Telephone System Board

An ambulance service operator may serve on an Emergency Telephone System Board (ETS Board) of a county that has a contract with his or her ambulance business because the operator- ETS Board member would not be required to vote on or otherwise act with respect to contracts with ambulance services or other emergency services providers. 50 ILCS 105/3 (West 2010), as amended by Public Act 97-520, effective August 23, 2011; 50 ILCS 750/15.3 (West 2010), as amended by Public Act 97-463, effective January 1, 2012; 50 ILCS 750/15.4(c) (West 2010), as amended by Public Act 97-517, effective August 23, 2011.

## Informal Opinion No. I-12-004, issued March 8, 2012

### Use of County Self-Insurance Funds to Pay Liability Insurance Premiums

Sections 9-103 and 9-105 of the Local Governmental and Governmental Employees Tort Immunity Act, authorize a "local public entity," a term which includes a county, to establish a reserve fund to provide for insurance or for self-insurance, as well as to pay for operating and administrative costs and expenses directly associated therewith. Insurance premiums would constitute other costs related to providing insurance coverage against such liabilities. 745 ILCS 10/9-103, 9-105, 9-107 (West 2010).

## Informal Opinion No. I-12-005, issued March 29, 2012

### Compatibility of Offices – County Board Member and Community College District Trustee

Section 1 of the Public Officer Prohibited Activities Act prohibits county board members in a county having more than 40,000 inhabitants from simultaneously serving as a community college district trustee. Because the dual officeholder in question was elected to the office of county board member while serving as a community college district trustee, his or her qualification for the office of county board member constituted an ipso facto resignation from the office of community college district trustee. 50 ILCS 105/1 (West 2010); 50 ILCS 105/1.2 (West 2010), as amended by Public Act 97-460, effective August 19, 2011.

## Informal Opinion No. I-12-006, issued June 14, 2012

### Application of County Competitive Bidding Requirements to the Purchase of Health Care and Liability Insurance

Section 5 1022 of the Counties Code generally requires that all purchases of services, materials, equipment, or supplies in excess of $30,000, other than professional services, must be by a contract let to the lowest, responsible bidder after advertising for bids in a newspaper published within the county. Whether the professional services exception to section 5 1022 applies is determined on the basis of whether the services require a high degree of professional skill or judgment or there is a need for confidence, trust, and belief in the person rendering the services. Neither contracts for insurance coverage nor contracts for insurance broker or agent services involve the provision of services requiring a high degree of professional skill or judgment, nor is there a need for confidence, trust, or belief in the person rendering the services. Accordingly, the competitive bidding requirements of section 5 1022 of the Counties Code apply to securing and renewing health care or liability insurance coverage and the use of designated agents to secure or renew the insurance coverage. 55 ILCS 5/5 1022 (West 2010).

## Informal Opinion No I-12-007, issued June 21, 2012

### Felony Forfeiture of Pension Benefits

The felony conviction of an employee of the State of Illinois for the offenses of mail fraud, wire fraud, intimidation, and official misconduct related to or arose out of or in connection with her employment as a State employee, thereby requiring the forfeiture of her pension benefits. 40 ILCS 5/14 149 (West 2010).

## Informal Opinion No. I-12-008, issued June 28, 2012

### Status of Community Mental Health Board and Its Employees

A community mental health board established by a county pursuant to the Community Mental Health Act is a county agency. Thus, employees of a community mental health board are county employees. A men-

tal health administrator appointed by a community mental health board is accountable to the community mental health board, not the county board. A vacancy in the position of mental health administrator is filled by the community mental health board, not the county board. 405 ILCS 20/2, 3a, 3b, 3c (West 2010); 405 ILCS 20/3e (West 2010), as amended by Public Act 97 227, effective January 1, 2012.

## Informal Opinion No. I-12-009, issued July 11, 2012

### Audit of the Illinois High School Association by the Illinois Auditor General

Section 10 22.40 of the School Code prohibits a school board from paying membership dues to an association which has as one of its purposes providing for athletic or other competition among schools and students unless the association permits a post audit by the Auditor General. If any of the Illinois High School Association's (IHSA) current revenue sources are fees or charges that schools must pay as a condition of membership in the IHSA, those revenue sources constitute "membership dues" within section 10 22.40 of the School Code. Absent a showing that the IHSA receives "public funds of the State," as that term is used in the Illinois State Auditing Act, however, there is no basis upon which the Auditor General may audit the IHSA. The questions of whether any of the IHSA's current revenue sources constitute "membership dues" and whether the IHSA receives "public funds of the State" are factual issues. 105 ILCS 5/10 22.40 (West 2010); 30 ILCS 5/1 12 (West 2010).

## Informal Opinion No. I-12-010, issued July 26, 2012

### State's Attorney May Form and Consult With Cold Case Advisory Committee; State's Attorney May Not Hold Funds Outside County Treasury

In light of their duties and recognizing the wide discretion afforded to State's Attorneys to determine how best to carry them out, nothing precludes a State's Attorney from forming an advisory committee consisting of attorneys, law enforcement officers, and investigators to review case files and consult with and assist local law enforcement agencies or the State's Attorney in reviewing cold case investigations. Absent express statutory authority, however, a State's Attorney may not generally receive donations of private funds or maintain those donated funds outside the county treasury. Monies donated to the State's Attorney must be paid into the county treasury and will generally be subject to budgeting and appropriation by the county board. 55 ILCS 5/3 9005 (West 2011 Supp.).■

# Upcoming CLE programs

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

## November

**Thursday, 11/1/12- Teleseminar**—Business Succession and Estate Planning for Closely Held Business Owners, Part 1. Presented by the Illinois State Bar Association. 12-1.

**Thursday, 11/1/12- Bloomington, Holiday Inn and Suites**—Real Estate Law Update- 2012. Presented by the Illinois State Bar Association. 9-4:30.

**Thursday, 11/1/12- Friday, 11/2/12- Champaign, U of I College of Law**—Attorney Education in Child Custody and Visitation Matters in 2012 and Beyond. Presented by the ISBA Bench and Bar Section; co-sponsored by the ISBA Family Law Section and the ISBA Child Law Section. 12:30-5; 9-5.

**Friday, 11/2/12- Teleseminar**—Business Succession and Estate Planning for Closely Held Business Owners, Part 2. Presented by the Illinois State Bar Association. 12-1.

**Friday, 11/2/12- Chicago, ISBA Chicago Regional Office**—Third Annual Great Lakes Antitrust Institute (viewing of Live Webcast). Presented by the ISBA Antitrust Section; co-sponsored by the Ohio State Bar Association, Indiana Continuing Legal Education Forum, and Pennsylvania Bar Institute. 8:25-5:00.

**Monday, 11/5/12- Webinar**—Introduction to Legal Research on FastCase. Presented by the Illinois State Bar Association- Complimentary Training and CLE Credit for ISBA Members Only. 12-1.

**Tuesday, 11/6/12- Teleseminar**—Attorney Ethics in Digital Communications- Remote Networks, Smart Phones, the Cloud and More. Presented by the Illinois State Bar Association. 12-1.

**Wednesday, 11/7/12- Webinar**—Introduction to Legal Research on FastCase. Presented by the Illinois State Bar Association- Complimentary Training and CLE Credit for ISBA Members Only. 12-1.

**Wednesday, 11/7/12- Chicago, ISBA Regional Office**—Do You Buy or Merge? Presented by the ISBA Business and Securities Law. 9-12:30.

**Wednesday, 11/7/12- Chicago, ISBA Regional Office—**Fiduciary Risk and Ethical Challenges for Fiduciaries and Their Advisors. Presented by the ISBA Trust and Estates Section.

**Wednesday, 11/7/12- LIVE Webcast**—Fiduciary Risk and Ethical Challenges for Fiduciaries and Their Advisors. Presented by the ISBA Trust and Estates Section. 2-4.

**Thursday, 11/8/12- Teleseminar**—Real Estate Partnership/LLC Divorces. Presented by the Illinois State Bar Association. 12-1.

**Thursday, 11/8/12- Chicago, ISBA Regional Office**—National Healthcare Reform and Its Effect on Illinois Employers and Health Insurance. Presented by the ISBA Health Care Section. 1-4:30.

**Thursday, 11/8/12- LIVE Webcast**—National Healthcare Reform and Its Effect on Illinois Employers and Health Insurance. Presented by the ISBA Health Care Section. 1-4:30.

**Friday, 11/9/12- Chicago, ISBA Regional Office**—2012 Federal Tax Conference. Presented by the ISBA Federal Taxation Section. All day program.

**Tuesday, 11/13/12-Teleseminar**—UCC Article 9 Practice Toolkit: From Attachment to Remedies, Part 1. Presented by the Illinois State Bar Association. 12-1.

**Wednesday, 11/14/12-Teleseminar**—UCC Article 9 Practice Toolkit: From Attachment to Remedies, Part 2. Presented by the Illinois State Bar Association. 12-1.

**Thursday, 11/15/12- Chicago, ISBA Chicago Regional Office**—The Student and Parent Side of School Law. Presented by the ISBA Education Law Section. All Day.

**Thursday, 11/15/12- Webcast (originally presented May 31, 2012)**—Neutralizing Obnoxious Conduct as Professionals and as a Profession. Presented by the ISBA. 12-1.

**Tuesday, 11/20/12- Teleseminar**—2012 FMLA Update. Presented by the Illinois State Bar Association. 12-1.

**Monday, 11/26/12- Webinar**—Fastcase Boolean (Keyword) Search for Lawyers. Presented by the Illinois State Bar Association- Complimentary Training and CLE Credit for ISBA Members Only. 12-1

**Tuesday, 11/27/12- Teleseminar**—Discretionary Distributions. Presented by the Illinois State Bar Association. 12-1.

**Wednesday, 11/28/12- Teleseminar**—Offers in Compromise. Presented by the Illinois State Bar Association. 12-1.

**Wednesday, 11/28/12- Chicago, ISBA Chicago Regional Office**—American Invents Act- Part 1: Protecting Innovation in a First to File System. Presented by the Illinois State Bar Association. AM Program.

**Wednesday, 11/28/12- Live Webcast—**American Invents Act- Part 1: Protecting Innovation in a First to File System. Presented by the Illinois State Bar Association. AM Program.

**Friday, 11/30/12- Chicago, ISBA Chicago Regional Office**—Trial Practice Series: How to Prove (or Defend) Your Case. Presented by the ISBA Labor and Employment Section; Co-sponsored by the ISBA Civil Practice and Procedure Section. 8:55-4:15.

**Friday, 11/30/12- Lombard, Lindner Conference Center**—Real Estate Law Update- 2012. Presented by the Illinois State Bar Association. All day.

**Friday, 11/30/12- Teleseminar**—Practical UCC- Understanding and Drafting Letters of Credit in Business Transactions. Presented by the Illinois State Bar Association. 12-1

## December

**Tuesday, 12/4/12- Teleseminar—**Drafting Buy/Sell Agreements in Business, Part 1. Presented by the Illinois State Bar Association. 12-1. ■