

Administrative Law

The newsletter of the Illinois State Bar Association's Section on Administrative Law

Chair's column

BY HON. PATRICIA JACKOWIAK

Congratulations to Admin Law's current CLE coordinator and past Section Council Chair, Yolaine M. Dauphin! Our Section Council received notification that the International Association for Continuing Legal Education (ACLEA) awarded the ISBA one of its 20 annual awards. There were 300 organizations involved in this competition, so we are very proud of Yolaine for the hard work, diligence and commitment to CLE that she has exhibited during many years with the

ISBA. Yolaine and Annemarie E. Kill were the ISBA coordinators responsible for the CLE course, "Human Trafficking and the Commercial Sexual Exploitation of Children." This program received the award in the Public Interest Category. If you're wondering whether Yolaine is planning to "rest on her laurels," please read further in our newsletter and SAVE THE DATE for November 6, 2015. ■

Patricia Jackowiak is the Chief Administrative Law Judge for the City of Chicago's Department of Administrative Hearings.

ISBA Administrative Law Section's past Chair elected as Vice Chair of the ABA's Judicial Division

Judge Ann Breen-Greco, past chair of the ISBA Administrative Law Section Council, was elected by the ABA's National Conference of the Administrative Law Judiciary, to be its nominee for Vice Chair of the ABA's Judicial Division. At the ABA annual meeting held in Chicago in August 2015. Judge Breen-Greco, in the absence of any opposition, was elected JD Vice

Chair. This means automatic succession to JD Chair Elect and Chair. Judge Breen-Greco is the first state administrative law judge to be elected to this position. She has conducted child abuse and neglect hearings as well as special education hearings. She has also just completed a term as Vice President of Districts for the National Association of Women Judges. ■

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Stage set for November Statewide Symposium on College Sexual Assaults

BY PLANNING COMMITTEE CO-CHAIRS: YOLAINE DAUPHIN AND DIRECTOR OF SALVATION ARMY PROMISE PROGRAM

In partnership with Porchlight Counseling Services, a not-for-profit organization that provides free therapy to survivors of college sexual assaults, and Rape Victim Advocates, a not-for-profit organization that provides advocacy services to survivors of sexual assaults, a group of judicial and bar associations is planning a statewide symposium on the prevalence of sexual assaults on college campuses. The issue is particularly timely for Illinois as Governor Bruce Rauner signed into law the Preventing Sexual Violence in Higher Education Act on August 21, 2015.

The Symposium will open at Columbia College on November 5, 2015, with a reception, a screening of *The Hunting Ground*, and a panel discussion moderated by Marion Brooks, Anchor for NBC Channel 5 News. Sofie Karasek, a survivor of college sexual assault and co-founder of End Rape on Campus, and Kaethe Morris Hoffer, Executive Director of Chicago Alliance Against Sexual Exploitation, are confirmed panelists. The day-long seminar on November 6, 2015, will take place at the School of the Art Institute of Chicago and include presentations on

- * Federal Law: Campus Sexual Violence Elimination Act, Jeanne Clery Act, and Title IX
- * Action Steps in Congress
- * Meeting Current Requirements
- * Understanding Perpetrator and Victim Behavior
- * The Role of Athletics and Greek Life
- * Investigating Allegations of Sexual Assaults: Campus Police v. Local Police
- * College Sanctions v. Prosecution by County State's Attorney

- * The Rights of the Victim and of the Accused
- * The Social Norms Approach to Violence Prevention
- * The New Illinois Law: Preventing Sexual Violence in Higher Education
- * Rebuilding Broken Lives
- * Of College Sexual Assaults and Violence against Women

Attorneys, social workers, school counselors, and psychologists are invited to attend the Symposium, and may be eligible for continuing legal education credits and continuing education units as appropriate. Other interested individuals such as college administrators, and college and professional sports coaching staff are also invited to attend. The Planning Committee for the Symposium believes that bringing individuals of different backgrounds together to discuss and learn about this important topic will benefit all attendees and provide a better educational experience.

The Symposium will also take place, via webinar, at two downstate venues. Attorneys, social workers *et al.*, will gather at Southern Illinois University Carbondale, and University of Illinois at Springfield to learn from the Symposium's stellar faculty. Confirmed speakers to date for November 6, 2015, include:

- * Anita Alvarez, Cook County State's Attorney
- * Anne Bent, Founder of Porchlight Counseling Services
- * Dr. Alan Berkowitz, Consultant, Founding Board Member of End Violence Against Women Int'l
- * Kelli Childress, Kane County Public Defender

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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.

- * Tom Dart, Cook County Sheriff
- * Ashley Knight, Dean of Students, DePaul University
- * Maria Nanos, LCSW, PhD, Porchlight Therapist
- * Mike Nicolai, Vice President for Human Resources, The Art Institute of Chicago and The School of the Art Institute of Chicago
- * Diane Rosenfeld, Lecturer Harvard Law, NCAA Violence Prevention Think Tank
- * Linda McCabe Smith, Title IX Coordinator, Southern Illinois University
- * Dr. Howard Spivak, Deputy Director and Chief of Staff, National Institute of Justice
- * Dr. Gail Stern, Co-owner and Chief Academic Officer, Catharsis Productions LLC
- * Bowen Tucker, ALI project on Sexual & Gender Based Misconduct on College Campuses

A diverse group of judicial and bar organizations is represented on the Planning Committee for the Symposium. The group continues to grow with the addition of the American Bar Association Commission on Domestic & Sexual Violence and the Black Women Lawyers' Association of Greater Chicago. The Planning Committee believes having a broad spectrum of co-sponsoring judicial and bar organizations will highlight both the seriousness of the issue and the resolve of the Illinois legal community to help end the epidemic of college sexual assaults. As college sexual assaults impact students of every race and ethnicity so too should bar and judicial associations representing our very diverse legal community seek to raise awareness about the issue and participate in thoughtful dialogue on ways to make a positive difference.

While the Planning Committee's Bar and Judicial Outreach Subcommittee has been successful in garnering support and partnership from many bar and judicial associations, its work is limited by available manpower and is not yet done. The Subcommittee will persist in its efforts to reach additional bar and judicial associations but also invites interested

associations to contact Subcommittee Chair Amanda Garcia at aygarcia@gmail.com. The Symposium is a unifying force bringing together segments of the legal community to work on an issue of immediate importance and the Planning Committee would like to ensure that all associations have the opportunity to join this work.

According to the White House Task Force to Protect Students from Sexual Assault, college sexual assaults impact **20** percent of female students and **6.1** percent of male students. Sexual violence is an epidemic sweeping our college and university campuses that can lead to broken and truncated lives. The service agencies and judicial and bar associations which make up the Planning Committee hope to raise awareness about college sexual assaults and challenge attorneys, social workers, psychologists and other attendees to make a difference.

Co-Sponsoring Organizations

Porchlight Counseling Services; Rape Victim Advocates; Illinois State Bar Association and its Administrative Law Section Council, General Practice Section Council, Human Rights Section Council, Standing Committee on Government Lawyers, Standing Committee on Racial and Ethnic Minorities & the Law, and Standing Committee on Women & the Law; American Bar Association Commission on Domestic & Sexual Violence; Black Women Lawyers' Association of Greater Chicago; Chicago Bar Association's Alliance for Women; Cook County Bar Association; Decalogue Society of Lawyers; Haitian American Lawyers' Association; Illinois Association of Administrative Law Judges; Jewish Judges Association of Illinois; National Association of Women Judges, District 8; National Bar Association, Judicial Council; National Bar Association, Region VII; Puerto Rican Bar Association; and the Women's Bar Association of Illinois.

The Symposium is hosted by Columbia College, Southern Illinois University Carbondale, The School of the Art Institute of Chicago, and University of Illinois at Springfield.

Continuing Education Units will be provided by Dominican University,

Graduate School of Social Work.

Continuing Legal Education Credits will be provided by Northwestern University School of Law.

The Symposium is supported by Silver Sponsors Chicago Says No More, and Foote, Mielke, Chavez and O'Neil, and Bronze Sponsor Mark and Linda Zaander, Schiff Hardin LLP. Additional support comes from John K. Norris, District IX Justice of Phi Alpha Delta Law Fraternity International.

For additional information please visit porchlightcounseling.org. ■

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Every article published by the ISBA in the last 15 years is available on the ISBA's Web site!

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*Sorry, if you're a licensed Illinois lawyer you must be an ISBA member to order.



SAVE THE DATE

Statewide Symposium on Sexual Assaults on College Campuses

Columbia College, Chicago, Illinois - November 5, 2015
The School of the Art Institute of Chicago - November 6, 2015

Southern Illinois University Carbondale (Webcast)
Carbondale, Illinois - November 6, 2015

University of Illinois at Springfield (Webcast)
Springfield, Illinois - November 6, 2015

Co-Sponsoring Organizations

Porchlight Counseling Services; Rape Victim Advocates; Illinois State Bar Association and its Administrative Law Section Council, General Practice Section Council, Human Rights Section Council, Standing Committee on Government Lawyers, Standing Committee on Racial and Ethnic Minorities & the Law, and Standing Committee on Women & the Law; American Bar Association Commission on Domestic & Sexual Violence; Black Women Lawyers' Association of Greater Chicago; Chicago Bar Association's Alliance for Women; Cook County Bar Association; Decalogue Society of Lawyers; Haitian American Lawyers' Association; Illinois Association of Administrative Law Judges; Jewish Judges Association of Illinois; National Association of Women Judges, District 8; National Bar Association, Judicial Council; National Bar Association, Region VII; Puerto Rican Bar Association; and Women's Bar Association of Illinois

Generously supported by Columbia College, Dominican University, Graduate School of Social Work, Southern Illinois University Carbondale, Northwestern University School of Law, The School of the Art Institute of Chicago, and University of Illinois at Springfield

Silver Sponsors: Chicago Says No More; Foote, Mielke, Chavez and O'Neil

Bronze Sponsor: Mark and Linda Zaander, Schiff Hardin LLP

For more information visit: porchlightcounseling.org

NAALJ national conference coming to Portland Oct. 11-14

BY JUDY PARKER AND CAMELA GARDNER, PLANNING COMMITTEE CO-CHAIRS

Portland is gearing up to welcome the National Association of Administrative Law Judiciary (NAALJ) this autumn, one of the most beautiful times to experience the city.

On October 11-14, 2015, NAALJ will present its 41st Annual Conference and Meeting. Portlanders are pleased to host our colleagues from around the country for what promises to be one of the most interesting conferences yet. NAALJ has selected, the Embassy Suites in downtown Portland, conveniently located near some of Portland's best restaurants, historical sites and transportation, as the venue for this year's event. Guests staying at the Embassy Suites will receive a greatly discounted conference rate that includes the hotel's traditional amenities, such as the full buffet breakfast and Manager's cocktail reception daily.

The conference will feature an exciting, informative program - of timely and interesting topics. It kicks off with a Welcome Reception on Sunday, followed by a private dinner at Coppia Wine Bar or, for those who prefer Portland's renowned craft beer, the Deschutes Brewery & Public House.

The first day of programming, Monday, October 12, begins with two panels on the controversial topic of legalization of recreational marijuana use. The first panel, comprised of assistant attorneys generals from three states in the forefront of legalizing recreational marijuana (Oregon, Washington, and Alaska) will describe their experiences; including successes and pitfalls. A second panel of experts from the private sector will provide their perspective in legalizing recreational and medical marijuana. Two of the presenters, Bear Wilner-Nugent and Paul Loney, have over thirty years of combined expertise in the administrative, corporate, and criminal aspects of recreational and medical marijuana. The third presenter, Dave Kopilak is one of the drafters of Oregon's Measure

91 legislation, legalizing recreational use of marijuana.

Conference attendees will dine together for lunch at Monday's Challenge Grant-Fellows Luncheon where the 2015 NAALJ Challenge Grant Fellow will share his or her research and scholarship on administrative justice. After lunch, Jana Habegger, Assistant Chief Administrative Law Judge for Washington's Office of Administrative Hearings and presiding Administrative Law Judge John Mann of the Oregon Office of Administrative Hearings will discuss recent developments concerning final decision authority among central panel states.

Following this discussion, Oregon State Bar Association, Administrative Law Section Chair, Janice Krem will report on Oregon's groundbreaking electronic publishing of administrative opinions program, Fastcase. Chair Krem will describe the Section's experience with Fastcase and how it obtained a statutory mandate to roll out the pilot program Monday's programming will conclude with the Mary Margaret Anderson, Administrative Law Judge II of the California Office of Administrative Hearings workshop on "The Anatomy of an Administrative Law Judge Decision".

Following Monday's presentations attendees are invited to join us for a little quirkiness and the great food for which Portland is known. For those who would like to explore Portland's rich culture, we offer a Kindle-assisted walking tour of Portland's Old Town, Chinatown, and the Pearl District, including ghost stories, photo-ops, and inside tips on restaurants and nightlife. The tour is free, but participants are encouraged to support the entertaining young guides who work for tips. Powell's City of Books is another option. The largest used and new bookstore in the world, open 365 days a year, Powell's is a book lover's paradise. It occupies an entire city block and stocks more than a million new and used books.

Participants can finish up the evening with a hearty, delicious Northwest meal at Jake's Famous Crawfish. Jake's has been a downtown Portland landmark for more than 110 years and is considered one of the top ten seafood restaurants in the nation.

Tuesday features equally stimulating and timely programming. The program begins with a debate between former Oregon Supreme Court Justice, Mick Gillette and Oregon Assistant Attorney General, Denise Fjordbeck as they examine recent trends in administrative hearings. Bill Funk, Professor at Law at Lewis and Clark Law School, will join them to discuss federal developments. Immediately following this panel, Erik Garvin, Law Professor at the University of Oregon Law School, will present his insights on Inherent Bias in Judicial Decision-making.

For lunch, we encourage participants to try out the diverse and sometimes unusual fare of Portland's nearby food carts, followed by a free walking tour of the Pioneer Courthouse located a just few blocks from the Embassy Suites. Built in 1875, and now home for the United States Court of Appeals Ninth Circuit, the historic building is the second, oldest federal courthouse west of the Mississippi River. Those on the tour will learn about the architecture and history of the building from 1875 through its seismic upgrade in 2003,

The educational program for Tuesday concludes with an interactive program on legal ethics. City of Portland Chief Legal Counsel Simon Whang, Professor Yvonne Tamayo of Willamette University College of Law, and recent lawyer Logan Leightman will field questions submitted in advance from the audience. To ensure that your legal ethics questions will be discussed, please email them to judy@winemakerslawyer.com.

In addition to ghosts, Portland's history has its share of other unsavory characters. For a nominal fee, participants can explore

Portland's Old Town and Chinatown's wicked past in the Underground Portland Walking Tour. You can descend a ladder into the remains of the "Shanghai Tunnels" to learn about the city's sordid history and the myths and legends surrounding the haunted passageways. If you love crime, scandals, and sinister characters, register for this event. You'll never be the same again!

The final day of programming begins with family law attorney Sonya Fischer speaking on the role of inclusion in the administrative courtroom and working with litigants with disabilities. Then Lieutenant Steve Duvall from the Oregon State Police and Deputy Marshal Bryan Flanner from the Oregon Office of Security and Emergency

Preparedness will describe security concerns and safety measures for the Administrative Law Judge. All NAALJ members are encouraged to attend the member meeting before lunch on your own. Members will vote for officers and board members,

The Wednesday afternoon program continues with topics on important skills for administrative law judges, Kyra Hazilla, of the Oregon Attorney Assistance Program, will describe how to recognize and manage stress. Rebekah Hanley, Assistant Dean, University of Oregon School of Law, will give tips on legal writing for administrative law judges. Former NAALJ President Steven Wise wraps up with a presentation on the importance of independence in ALJ decision

making.

The conference concludes as always with the traditional silent auction to benefit NAALJ's Foundation and the Banquet, at which new officers and board members are installed. You won't want to miss the opportunity to scarf up some bargains at the auction, touch base with old friends, and get acquainted with new friends.

To learn more about the conference, visit the NAALJ Web site at www.naalj.org. Early Bird Conference and hotel registration are now open. If you want to volunteer to help with the conference, e-mail judy@winemakerslawyer.com. ■

Case summaries

BY HON. EDWARD J. SCHOENBAUM

ILLINOIS SUPREME COURT / CIVIL

Driver's License | 1st Dist.

McElwain v. Office of the Secretary of State, 2015 IL 117170 (September 24, 2015) Cook Co. (THOMAS) Circuit court affirmed.

Police requested that Plaintiff submit to chemical testing for impairment nearly 48 hours after Plaintiff's vehicle collided with oncoming motor bike, seriously injuring motor bike driver and killing bike's passenger. Court properly found Section 11-501.6 of Illinois Vehicle Code unconstitutional as applied to Plaintiff. While there is essential nexus between the State's interest in protecting the public from intoxicated drivers and requiring a driver's consent to a chemical test when he is arrested for a moving violation shortly after his involvement in a serious accident, there is clearly not such a nexus between that legitimate state interest and a chemical test remote in time from the accident. (GARMAN, FREEMAN, KILBRIDE, KARMEIER, BURKE, and THEIS, concurring.)

ILLINOIS APPELLATE COURT

Administrative Review

Palos Bank and Trust Company, as Trustee Under Trust No. 1-15530 v. Illinois Property Tax Appeal Bd. and Cook County Board of Review, 2015 IL App (1st) 143324 (Sept. 30, 2015) Cook Co. (MASON) Circuit court affirmed.

Palos Bank and Trust Company filed a complaint for administrative review of the decision of the Defendant ("PTAB") concerning the property tax assessed value for each of three years for Plaintiff's property, seeking a reduction in the valuation of property assessed by the Cook County Board of Review ("CCBOR") for tax years 2008, 2009, and 2010. PTAB found no change in the CCBOR's assessment was warranted. Palos filed three separate complaints in the circuit court seeking judicial review of the PTAB's administrative decisions. In all three complaints, Palos named the PTAB and the CCBOR as defendants but filed a summons form with a copy of the summons to be issued to PTAB and to the State's Attorney. The State's Attorney was not a party to the proceedings

before PTAB, nor represented the CCBOR at those proceedings, and the circuit court dismissed the judicial review due to Palos' failure to effect service upon the CCBOR as required by the ARL. The appellate court highlighted that joinder of necessary parties and service of summons upon those parties is mandatory, interlocking and nonwaivable. Palos never actually served the CCBOR with summons, and there is no indication that Palos took any steps to correct the errors in service. IN addition, the appellate court stated that service requirements cannot be waived.

Slepicka v. State of Illinois, 2015 IL App (4th) 121103-B (July 7, 2015) Sangamon Co. (APPLETON) Affirmed.

(Modified upon denial of rehearing 9/14/15.) Nursing home served upon Plaintiff resident a notice of involuntary transfer or discharge on ground of nonpayment. After evidentiary hearing, IDPH approved notice; court upheld administrative decision. It is not clearly evidence from administrative record that for 8-month period when Plaintiff occupied a certain room in nursing home she could not be charged private-pay rates, after her

Medicare days ran out; or that nursing home breached duty of good faith and fair dealing by refraining from assigned Plaintiff to a Medicaid-certified bed sooner than it did. Decision of IDPH is not against manifest weight of evidence. (HOLDER WHITE and STEIGMANN, concurring.)

Danigeles v. Illinois Department of Financial & Professional Regulation, 2015 IL App (1st) 142622 (September 25, 2015) Cook Co., 5th Div. (REYES) Affirmed.

Plaintiff appealed order denying complaint for administrative review and affirming decision of Defendant Department to revoke her dental license for at least 5 years and imposing \$125,000 fine. Plaintiff was charged and found in violation of 19 counts of fraudulent billing practices as to family of 4 patients. Sanction was not overly harsh, and was not unreasonable nor arbitrary. Plaintiff's dental license had been suspended or reprimanded 3 times

previously for similar allegations. Evidence at hearing was sufficient to support findings of violations of Dental Practice Act. (GORDON and PALMER, concurring.)

FEDERAL COURT

7TH CIRCUIT

Labor Law

AutoNation, Inc. v. N.L.R.B., Nos. 14-2991 & 14-3361 Cons. (September 4, 2015) Petition for Review, Order of N.L.R.B. Petition denied

Record contained sufficient evidence to support NLRB finding that employer committed unfair labor practices by terminating employee because of his union activity and by making threatening statements to employees during meeting with employees. Record contained transcript of meeting in which official of employer: (1) warned employees of possibility of

losing benefits/wage rates if union were to negotiate on their behalf; and (2) made implied promise of wage increase to deter employees from supporting union. Fact that official did not directly threaten employees or that official relayed possible negative outcomes to unionization that had occurred in other cases did not require different result. Moreover, record contained sufficient circumstantial evidence that employer's anti-union views played role in employee's termination, where: (1) one official from employer had previously received voicemail accusing said employee of pro-union activity and of having driving infraction; (2) supervisor of said official, who had previously displayed hostility toward union, played consulting role in employee's termination; and (3) employer's explanation for employee's termination, i.e., job abandonment, was not supported by record. ■

Upcoming CLE programs

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November

Tuesday, 11/03/15- Teleseminar—
Indemnification & Hold Harmless
Agreements in Business & Real Estate.

Wednesday, 11/04/15- Teleseminar—
Estate & Income Tax Planning Issues in
Divorce.

**Thursday, 11/05/15- ISBA Regional
Office—**Hot Topics in Criminal Law
in Illinois- 2015. Presented by the ISBA
Criminal Justice Section Council. 9:00 am-
5:00 pm.

Thursday, 11/05/15- Teleseminar—2015
Religion in the Workplace: Discrimination
& Accommodation Update.

Friday, 11/06/15- Teleseminar—Ethics
& Tribunals: Communicating With the
Courts & Government Agencies.

Tuesday, 11/10/15- Teleseminar—
Advanced Planning for Like-Kind
Exchanges of Real Estate, Part 1.

Wednesday, 11/11/15- Teleseminar—
Advanced Planning for Like-Kind
Exchanges of Real Estate, Part 2.

Tuesday, 11/10/15- Webinar—
Introduction to Legal Research on
Fastcase. Presented by the Illinois State
Bar Association – Complimentary to ISBA
Members Only. 1-2.

Thursday, 11/12/15- Webinar—
Advanced Tips for Enhanced Legal Research
on Fastcase. Presented by the Illinois State
Bar Association – Complimentary to ISBA
Members Only. 1-2.

Thursday, 11/12/15- Teleseminar—
Settlement Agreements in Estate & Probate

Disputes.

Friday, 11/13/2015- CRO—Preparation
and Trial of Cases Involving Governmental
Entities, Medical Malpractice, Construction
and Transportation Accidents [working
title]. Presented by the ISBA Civil Practice
Section Council. 8:50 am - 1:15 pm.

Tuesday, 11/17/15- Teleseminar—Role
of Trust Protectors & Trust Advisers in
Estate Planning.

Wednesday, 11/18/15- Webinar—
Fastcase Boolean (Keyword) Search for
Lawyers. Presented by the Illinois State
Bar Association – Complimentary to ISBA
Members Only. 1-2.

Wednesday, 11/18/15- Teleseminar—
Choice of Entity for Nonprofits & Obtaining
Tax Exempt Status ■

ADMINISTRATIVE LAW

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