

# Senior Lawyers

The newsletter of the Illinois State Bar Association's Senior Lawyers Section

## A few words from the Chair

BY FRANK V. ARIANO

**At the outset, I would be remiss in not acknowledging the leadership** and hard work of our outgoing Chair, Hon. Ed Schoenbaum (ret.). Ed's organization and knowledgeable participation at all levels was exceptional.

As we commence the 2016/2017 Council year, I hope you will bear with me while I tell you a little about the make-up of the Senior Lawyers Section Council. Its mission is to provide service to and create service opportunities for ISBA members who have reached age 55 or have practiced law for at least 25 years. That Section which the Council serves is the largest of the ISBA (approx. 12,500 members and growing),

and it's free.

In the 10th year since its creation, the current 22 member Council, (with the exception of this Chair) is composed of an impressive roster, including seven past ISBA presidents, two retired Judges and both practicing and retired lawyers from most areas of the law and the State, with decades of bar leadership and service experience. As this year's Chair, I am honored (and a little intimidated) to be part of this distinguished and important group.

The Council utilizes 8 committees (Strategic Planning, CLE, Technology for Seniors, Mentoring, Member Benefits,

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## October CLE riches

BY EUGENIA C. HUNTER

**The month of October overflows with live CLE programs** specially designed for senior lawyers, presented by the Senior Lawyers Section Council.

The first is a repeat of the successful basic computer skills seminar: *Computer Basics 2016: Is This Thing On?* This presentation will be in the morning of Friday, October 14, 2016, at the College of DuPage, Glen Ellyn. Since this program is hands-on in the Seaton Computer Center, space is limited to 24 attendees so that each attendee will have a computer

to use. Included topics: familiarization with hardware and Windows 10, basic typing and word processing, basics of email, accessing the internet and a panel discussion on scanning and converting documents to PDF. If you miss this program, look for it in the future at a location near you.

On the following Wednesday afternoon, October 19, 2016, *From Legal Practice to What's Next: The Boomer Lawyers Guide to a Smooth Career Transition* will be

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**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](mailto:aboucher@isba.org)**

## A few words from the Chair

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Social, Website and Legislation) to conduct its work and present proposals and programs for approval and incorporation by the Council. As we hope you know, we have an active Listserv covering topics of interest to Section members, ranging from substantive legal issues to novel advice, such as vehicle storage in humid climates! We also produce at least three newsletters each year with diverse articles covering technology specifically related to senior lawyers (e.g. Leonard Amari's article "Cyber Fraud and Cyber Security — What's this all about and is this something as a practicing lawyer I have to worry about and to further complicate my life?" in this issue), relevant CLE, all aspects of retirement issues, book reviews (e.g. Gary Rafool's review of "Those Angry Days" in this issue) and insights from practitioners who have "been there and done that." Governed by our Long Range Plan (prepared using the input of those who participated in last year's section member survey), we continue to search for ways we can be of further benefit to senior lawyers.

Our technology CLE targets the "seasoned" attorney who most often is not readily comfortable with the regular use of computers, smart phones and tablets (e.g. "Computer Basics 2016: Is This thing On?"-10/14/16—Glen Ellyn). As you also hopefully know, at least for practicing lawyers, we no longer have the "luxury" of leaving technology to the youth of our profession. Our substantive CLE programs are usually conducted in cosponsorship with substantive committees or sections (e.g. "From Legal Practice to What's Next: The Boomer Lawyers Guide to Smooth Career Transition"-10/19/16-CRO-Chicago).

The Council meets 4 or 5 times during the year, with its committees meeting in the interim. As Senior Lawyers Section members, you may and are encouraged to stop in and to participate, not only in the meetings of the Council, but also the committee meetings. The dates/times of the various meetings are available from Council members (see the Council roster

on the ISBA website or feel free to contact me at [fariano@comcast.net](mailto:fariano@comcast.net)). I will do my best to get right back to you (after golf, bike riding, hiking, fishing, downhill skiing, cross-country skiing or traveling that I may be doing here in Colorado or elsewhere). Retirement can be so time consuming!

So, now that you know a little more about who we are and what we are doing on behalf of the ISBA senior lawyers, we hope you will be more inclined to participate in our activities and receive/provide benefits to/from those who still believe in and utilize networking and socializing with those who share your life experiences, both professionally and otherwise. Membership in the Senior Lawyer Section has many untapped benefits. Use our Listserv, read our newsletters (better yet, contribute an article) and attend our senior specific CLE programs. Help us add to those benefits by contacting our Council members with your questions, suggestions, proposals and concerns, upon which we will act. There is one thing you hopefully already know as a senior practitioner or retiree: having fun while "working" is OK. We will be happy to assist there, as well. Contact us or come to a meeting and see for yourself. ■

### October CLE riches

CONTINUED FROM PAGE 1

presented live at the ISBA Chicago Regional Office. This information-packed program will include the sale or transitioning of a law practice, transition strategies, malpractice insurance considerations and diminished capacity (which includes understanding the problem, what to do about it and what the ARDC will do about it if you don't). If you miss this live program, look for it online.

Each program will provide 4.5 hours of MCLE credit including 4.5 hours of the professional responsibility credit (subject to approval). Go to the CLE section of [ISBA.org](http://ISBA.org) for complete details and registration information. ■

## Senior Lawyers

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## Book review: *Those Angry Days*

BY GARY T. RAFOOL

My last book review dealt with the United States' and its allies' D-Day Normandy invasion on June 6, 1944, to the end of the Third Reich on May 8, 1945. While the country was totally supportive of President Franklin Roosevelt (FDR) and his war efforts once war was declared during December of 1941, the road leading to this declaration of war was not smooth for the President and this country from 1939 until December of 1941.

This reluctance of our country to enter World War II is described in the book titled *Those Angry Days* by Lynne Olson. It was published in 2013, and it is available in hard cover (461 pages), paperback and electronically.

While the period covered in this book was from 1939 to late 1941, it proved to be the most controversial period in our history after the Civil War, up to and including the present time, according to the author. People on all sides of the issue felt so strongly,

unreasonably and hatefully about their positions that negotiations, mediation and compromise were not even tried.

The controversy revolved around whether the United States should remain neutral and stay out of the European war, which commenced in September of 1939, or intervene with aid and/or boots on the ground, on behalf of Great Britain. Ultimately, that country was the only remaining European democracy fighting Hitler and the Nazi takeover of most other countries in Europe.

On one side of this dispute was Charles Lindbergh, who in 1927 became a national and an international super hero and celebrity after his solo flight across the Atlantic Ocean. He also received the sympathy of the world because of the kidnap and murder of his infant son. However, because of his outspoken opposition to assisting in the European conflict, and his frequent visits to Germany and friendship with Hitler

during this period, Lindbergh's popularity was fast declining, and there were growing accusations that he was a Nazi sympathizer.

Lindbergh's views against the Jewish struggles in Europe, as expressed in several of his national radio addresses and speeches, also gave him the label of being anti Semitic. Actually, his opposition to the settling of Jewish refugees here from other European countries controlled by Nazi Germany was shared by many others in this country. For example, while Great Britain allowed 9,000 Jewish refugee children to enter its country during this period, the United States allowed only 240 of them to enter.

Lindbergh also felt, and openly expressed his opinion, that the United States had been tricked into World War I in 1917, which he felt resulted in the loss of some 50,000 young American lives.

On the other side was FDR, who easily won his second term election in 1936, primarily because of his efforts directing

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**ISBA LAW ED**  
CLE FOR ILLINOIS LAWYERS

SAVE THE DATE

### Computer Basics 2016: Is This Thing On?

October 14, 2016 • 8:30 a.m. - 1:15 p.m. Central

Live program • Glen Ellyn, IL

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the country's recovery from the "Great Depression." His popularity and his work projects were then at an all time high.

This popularity began to subside when FDR attempted to stack the Supreme Court after his re-election. That defeat, together with other issues in this country, caused FDR to start paying closer attention to national polls to better perceive the pulse of the country, especially with respect to Europe's problems both before and after 1939.

There were organizations being formed like "America First" to keep this country neutral as the European problems developed, and there were federal laws such as the "Neutrality Act," which prohibited sending any aid to Great Britain, irrespective of its struggles against Nazi Germany.

There were student revolts and rioting here in opposition to a newly imposed military draft law. In addition, there were newspaper publishers, including Robert McCormick and his *Chicago Tribune*, strongly advocating the continuation of this country's isolation.

Finally, as the election of 1940 was approaching, there was a movement within

the Democratic Party to deny FDR an unprecedented third term.

All of this led FDR to announce before the 1940 Democratic Convention in Chicago that he would not seek a third term. However, after several ballots at the convention without the nomination of a candidate, there came a lone voice over the loud speaker saying "We want Roosevelt." Soon this voice was joined by more and more cries for FDR until the whole convention hall called for his nomination to a third term.

As a side note, this lone voice on the loudspeaker was that of the Chicago Superintendent of Sewers, who was sent to the basement of the convention hall by Mayor Edward J. Kelly to start this chant.

FDR went on to be elected to a third term in 1940 against Wendall Wilkie, who, by the way, was openly in favor of intervention in the European war at that time.

The anger and division in this country came to an abrupt end with the bombing of Pearl Harbor on December 7, 1941. FDR immediately went before Congress requesting a declaration of war, which he easily received, but only against Japan.

However, because of his pact with Japan, Hitler then declared war against the United States on December 11, 1941. Thus, when FDR again went before Congress for a declaration of war against Germany, both Houses of Congress unanimously (with one abstention) voted in favor of war against Germany as well.

With the declaration of war by the United States against both Germany and Japan, New Deal projects and civil liberties and rights took back seats to the war effort.

Because of our defense boom, unemployment dropped from 14% to less than 2% during the war's three and a half years.

FDR was also elected to a fourth term in 1944 but, in 1945, he died in office shortly after his inauguration.

The book's final chapter summarizes Lindbergh's remaining years after 1941 until his death in 1974, and his somewhat public reinstatement. It also discloses his various extra-marital affairs, with three German women, resulting in at least seven children he fathered, all of which was not made public until 2003, some two years after his wife, Anne Morrow Lindbergh's, death. ■

# ISBA LAW ED

CLE FOR ILLINOIS LAWYERS

## SAVE THE DATE

### From Legal Practice to What's Next: The Boomer-Lawyers Guide to Smooth Career Transition

October 19, 2016 • 11:55 a.m. - 4:45 p.m. Central

Live program • ISBA Chicago Regional Office

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**Member Price: \$100.00**



# Cyber Fraud and Cyber Security—What’s this all about?

BY LEONARD F. AMARI

We can hardly pick up a legal publication these days, or even a daily newspaper for that matter, without reading about cyber security and resultant cyber fraud. Today, law firms experience security breaches, cyber fraud and victimization like every other professional endeavor, industry or occupation. When lawyers are victimized by cyber fraud, it rarely is seen in the popular media – but it is and has been reported in legal publications often and extensively. But if the reader is like me, you usually don’t bother reading those articles – especially those of us long in the tooth/from another-generation-practitioner.<sup>1</sup>

This article does not deal with the broad category of potential cyber crimes. Here we are only dealing with the attorney, and therefore his client, whose email address was used to misdirect a wire transfer to or from a client. And please note: this type of victimization is (arguably) not insured against for loss by any of the attorney’s insurance coverages, malpractice, property/casualty, or any other that a law office can purchase. More on this later.

According to a recent report from the National Association of Realtors, cybercrime will cost businesses over \$2 trillion annually by 2019. The IRS annually publishes its list of the “dirty dozen” tax schemes. At the top of the list is “phishing,” which is a process where a targeted individual is contacted by email or telephone by someone posing as a legitimate institution to lure the individual into providing sensitive information such as banking information, credit card details, and passwords, or variations of the internet scheme.

According to the IRS, “taxpayers need to be on guard against fake emails or websites looking to steal personal information.” Other such scams include:

abusive tax shelters, fake charities, refund preparer fraud and hiding income with fake documents. The full list can be found on the IRS website ([www.irs.gov](http://www.irs.gov)).

I have now become acutely aware of these growing criminal activities in my capacity as chairman of the Illinois State Bar Association/Mutual Insurance Company underwriting committee. All the malpractice insurance carriers are now faced with claims and potential claims concerning fraudulent wire transfer instructions conveyed through pirated emails, often to clients. These problems have arisen in real estate closings, for example.

Claim Departments are handling matters such as:

- An insured instructing his or her client to wire money and the email was intercepted and the wiring instructions changed. The client then wires money to the fraudulent account contrary to the insured’s instructions.
- Another situation reported a matter in which the lawyer ended a real estate transaction for his client without “closing”; the seller, after the insured’s client wrongly wired money to a fraudulent account and the appropriate party was not paid.
- Another scheme involved insureds receiving fraudulent checks from “new clients” who contacted the lawyer over the internet, either directly or by referral. The insured deposits the fraudulent check into his or her client funds account and the new “client” instructs the lawyer to wire money to fraudulent accounts, clears the checks, though the deposited checks were never cleared in the lawyer’s account.

Lawyer malpractice insurance underwriting committees are asked to consider the future direction relative

to the availability and level of coverage for claims arising out of certain such (phishing/wiring) schemes that have resulted in potential and actual loss for their policyholders and/or his or her client. These schemes are expected to continue in the future and more claims are anticipated.

It can be argued, as mentioned above, that these wire transfer schemes are not covered by most lawyer malpractice policies. The policy language of most lawyer malpractice insurance requires that a claim arise out of a “Wrongful Act” which is defined in pertinent part as follows:

any actual or alleged negligent act, error, or omission in the rendering of or failure to render Professional Services, including personal injury committed by an Insured in the course of rendering professional services;

Generally, a policy defines “Damages,” “Personal Injury” and “Professional Services” in pertinent part as follows:

Damages mean all sums which an Insured is legally obligated to pay for any Claim to which this Policy applies including judgments, settlements, final arbitration awards, and any taxes, fines, penalties incurred by a third party.

The lawyer malpractice carrier can argue that, in these wire transfer schemes, there was no malfeasance of the insured lawyer, no negligence, no act or admission for which any damage to the client should be indemnified against. Clearly, the lawyer, like the client, was victimized – but without any act or omission on the lawyer’s part.

I think that a strong counter argument can also be made that the “victimized”

attorney did not exercise best practices to prevent the potential of this event occurring, ergo, negligence by omission – malpractice. Of course, this begs the question of what are the best practices to protect against wire transfer/phishing fraud?

To emphasize this point, one of the most respected “coverage” counsel lawyers in our legal community feels, if asked, that he could successfully argue that wire transfer (phishing) frauds are not covered by your typical lawyer malpractice policies. When asked, he offered the following:

A lawyer’s professional liability policy covers professional services, not the operation of a business such as a law firm. A lawyer’s policy, unless endorsed, does not cover non-professional services claims.

The question of whether an attorney’s failure to maintain a secure email account is a “professional service” so as to be covered by a professional liability policy is an untested issue. There may be insurance for such claims on the market but it is not typically purchased by attorneys.

There is a difference between acts which require skills typified by the professional and ordinary activities of running a business. Arguably, tasks performed by lawyers are not considered professional services if they are ordinary activities that can be completed by those lacking legal knowledge and skill. One court, commenting on a lawyer’s billing practices stated that “[w]e are not aware that courses in billing clients appear in law school curricula. The billing function is largely ministerial. There are elements of experience and judgment in billing for legal services, but the same goes for pricing shoes. As billing is not a professional service, it does not come within the coverage of a professional liability policy.” *Continental Casualty Co. v. Bertucci*, 399 Ill.App.3d 775, 786-87 (1st Dist. 2010), quoting *Reliance National Insurance Co. v. Sears, Roebuck & Co.*, 58 Mass. App. 645, 648, 792 N.E.2d 145, 148 (2003).

In closing, it has become crucial that attorneys avoid using email or internet-based communications with clients,

banks, closing agents, and/or opposing counsel in relation to wire transfers and/or funding instructions, regardless of the inconvenience more conventional means of communication might create.

Remember, every time a wire transfer instruction is transmitted via the internet, that wire transfer instruction is subject to being pirated by internet hackers. Computer hackers “phish” the internet for emails containing the terms “wire” and “transfer.”

The use of email wire transfer instructions in connection with real estate closings is too much of a risk. Email communications of wire transfer instructions should be avoided. Best practice: do not email wire transfer instructions.

A suggested protection (best practice?) may be to require your clients to sign an agreement that they will not engage in the use of email in connection with wire transfers of funds. Include a provision stating that you will never email wire transfer instructions to them so, should your clients receive an email purportedly from you instructing them to wire funds, whether the instruction comes in the form of a text in the email or as an attachment, they should not wire funds but instead they should immediately contact you. Perhaps provide your clients with written direction that, when wiring funds, your clients must direct their bank to confirm receipt of the funds by the intended recipient.

Just recently, late June of 2016, all Illinois attorneys received an email from the Illinois Attorney Registration and Disciplinary Commission warning that computer hackers are targeting practitioners using “phishing” so as to invade/breach their systems.

The scam involved an email titled “client complaint,” or such other alarming subject line, sent from the ARDC. Once that item is “clicked on,” the attorney becomes a victim and all his or her computer data, records, etc., are invaded.

Like the *a fortiori* warning to never open an attachment in a spam email, be cautious of these fraudulent “disciplinary warning” emails that are being received by lawyers all over the country.

While real estate transactions continue to be the primary focus of the wire transfer/phishing schemes, it is expanding to all transactions involving the wire transfer of funds. Using the internet to communicate wire transfer instructions is no longer safe even when you believe that your firm’s computer system is secure from hacking or identity theft.

Be vigilant. ■

1. Please note: The views expressed herein are those of the author, only.

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# ABA President-elect Hilarie Bass wants us to embrace technology

BY EDWARD J. SCHOENBAUM, ISBA SENIOR LAWYERS SECTION IMMEDIATE PAST CHAIR

**Hilarie Bass, in her opening speech at the ABA Annual Meeting,** said “Lawyers need to accept and embrace technological innovation, so it can be used to increase access to justice for all.”

“Many of our citizens no longer have the confidence that they will be treated fairly by our justice system, that they will have equal access to our courts or that they will have someone to turn to if they need an attorney,” said Bass, co-president of the 2,000-lawyer firm Greenberg Traurig in Miami.

She has held many positions in ABA leadership, including the Board of Governors and chair of the Section on Litigation. Her work with the litigation section led to the creation of the Implicit Bias Initiative.

She blamed fear of losing work to innovative ways of providing legal services as the reason the legal profession is behind other professions in adopting technological advances.

“But it is clear that the longer our profession refuses to adopt and adapt its practices to new technologies, the more opportunities there are for alternative services providers and web-based platforms that have found ways to use technology to provide legal services in a more efficient and less costly manner—in many cases reaching people previously unserved by traditional providers of legal services,” Bass said.

The practice of law will look very different in the next few years with those competing service providers, and consultants and accountants, continuing to expand into the practice of law.

Bass said the ABA can and must lead in the change, as it has done with the Commission on the Future of Legal Services.

The ABA Commission on the Future of

Legal Services delivered recommendations for how the bar can close the access to justice gap in America. They steered clear of the most contentious issue: whether alternative business structures—non lawyer ownership of law firms—should be permissible.

After two years of work, it released its final report (PDF) during the 2016 ABA Annual Meeting in San Francisco. The underlying message, said ABA President Paulette Brown of Morristown, New Jersey, is that “The future is not going to wait for us. We have got to go with it. We have to not let the future get away from us.”

Citing statistics showing that in some jurisdictions over 80 percent of the civil legal needs of lower-to-middle income individuals were unmet, the Commission called on the legal profession to support the idea that all people should have some form of legal assistance for their civil legal needs. To that end, the Commission found that the legal profession “should support the aspirational goal of 100 percent access to effective assistance for essential civil legal needs.”

In order to reach that standard, the Commission made several recommendations. It stated that courts should be open to innovations in the delivery of legal services and called on courts to adopt the ABA Model Regulatory Objectives for the Provision of Legal Services. States should “explore how legal services are delivered by entities that employ new technologies and internet-based platforms and then assess the benefits and risks to the public.” Courts, meanwhile, should provide automated services for pro se individuals, including online dispute resolution and remote-access self-service kiosks.

The report recommended the ABA open a Center for Innovation that would

be a research and development division for the legal industry. “Industries as diverse as consulting, medicine, and personal finance have invested in research and development laboratories to create new service offerings and substantially improve client relationships,” the report said. “Lawyers must do the same, and the Innovation Center can play an active role in these efforts.”

The Center on Innovation has been approved by the ABA Board of Governors. Its primary tasks include assisting law firms interested in introducing new approaches to their practices, studying innovations in legal services delivery in other countries, and developing training programs for law students interested in innovative law practice. The governing council of the center will be chaired by Andrew M. Perlman, the dean at Suffolk University Law School in Boston. He served as vice chair of the Commission on the Future of Legal Services.

The Commission will go out of existence at the close of the annual meeting, Perlman said, so the center will play a key role in carrying some of the Commission’s recommendations forward. At the same time, the Commission’s recommendations “are just a snapshot in time,” he said, “but legal services continue to evolve, and new ideas will have to be considered.”

It is crucial that the ABA and other elements of the legal profession help lawyers understand how the legal environment is changing, said Commission chair Judy Perry Martinez of New Orleans. “We can help lawyers understand what the public need is,” she said. “If we can help lawyers to be of service to the public, we can be of great service to our members.”

Another area of focus for the Commission was the role of legal technology and its role in bridging the



access-to-justice gap. The Commission recommended that “all members of the legal profession should keep abreast of relevant technologies” and cited the Florida Bar Board of Governors, which recently approved mandatory technology CLE requirements for state lawyers. Additionally, the report stated that the legal profession should partner with other industries to design, develop and create new delivery models and technological tools.

“What is clear, however, is that the solutions will require the efforts of all stakeholders in order to implement the recommendations contained in this report.”

It’s not easy telling an entire state full of colleagues and superiors that they need to move on from a business model that has served their industry for centuries. But that’s exactly what three Florida lawyers did when they began pushing the lawyers in their state to embrace technology and collaboration with non lawyers.

During a plenary session at the ABA Techshow, Florida State Bar President Ramon Abadin, University of Miami law professor and founder of Law Without Walls, Michele DeStefano, and John Stewart of Rossway Swan Tierney

Barry Lacey & Oliver, exchanged war stories while encouraging the lawyers in attendance to demand their respective state bars promote technological competence from their members. Abadin and Stewart admitted that they were recent converts to technology and found it ironic that they were even at the Techshow. Abadin revealed that, as he was preparing to begin his term as bar president, he hadn’t planned on doing anything to promote awareness of technology amongst the bar at large. Instead, he credited panel moderator and Techshow vice-chair Adriana Linares with changing his mind on the importance of technology. “As I journeyed through Florida and spoke with members of the bar, I realized there was a profound lack of understanding of just how much tech drives our professional lives,” he said.

He decided to make technology one of the focal points of his presidency, and even took his office paperless. He got help from another former tech agnostic. Stewart admitted that, as recently as three years ago, he didn’t even have PowerPoint on his computer. Instead, he just had his secretary print out the slides and give them to him on paper. “I knew nothing about technology,” he said. “And it was extremely

daunting to try and learn about it, but there’s nothing you can do except start learning.”

As Stewart realized how important tech was to his practice, he began pushing for the Florida Bar to mandate that its lawyers take several hours of CLE every year relating to legal technology. Abadin wanted 10 hours, but after what he described as “pushback” from the bar, he agreed to three hours and has submitted it to the Supreme Court of Florida for approval.

DeStefano, meanwhile, noted that the legal academic sphere can be even more resistant to change.

“I was pretty frustrated with legal education and the hierarchy and walls that existed, and the lack of embracing, not just technology, but the new globalized world that required interaction with different disciplines and schools of different rank and a connection between practicing lawyers and educators,” said DeStefano. “Technology is one of the ways to do that.”

This frustration caused DeStefano to start Law Without Walls, a multidisciplinary think tank consisting of over 750 lawyers, law and business students, entrepreneurs and business professionals. ■

## The other side of the Power of Attorney coin

BY MIKE MASLANKA

**Most attorneys who do any estate planning work** have represented clients who wanted to prepare a power of attorney for health care and/or a power of attorney for property. From time to time, however, a client may come in to consult with the attorney and relate facts, including that someone else is acting as agent under another person’s power of attorney, and that there may be some misfeasance, malfeasance, or abuse going on. That is the other side of the coin.

Pursuant to Section 2-10 of the Power of Attorney Act, the court can become involved in such a situation and do one

of many things. The court could make an interpretation of a power of attorney and instruct the agent on how to proceed. The court may order a guardian of the principal’s person or estate to exercise any powers under the agency, including the power to revoke it. The court could also leave the power of attorney in place and not appoint a guardian, but enter such orders as necessary to provide for the best interests of the principal. The court could also allow a guardian to be put in place, as well as keep the agent under a power of attorney, with different roles and duties.

All of these things that the court can

do are under the premise that someone believes the principal cannot control or revoke the agency any more, or that an agent is not acting for the benefit of the principal.

Should a client request assistance in this type of case, you could suggest writing to the principal and/or agent and asking for a copy of the power of attorney and some detailed explanation as to the actions taken or not taken by the agent. Should there be no response or, perhaps, an inadequate response, your client may need to consider filing the appropriate petition under the Power of Attorney Act. ■

## The alternatives to registering for the 'active' practice of law

CONTINUED FROM PAGE 12

something that a practicing attorney voluntarily chooses. Under Rule 757, if, because of mental condition, an attorney is judicially declared to be a person under legal disability or in need of mental treatment, or has been involuntarily committed to a hospital on such grounds, the court shall enter an order transferring the attorney to disability inactive status until the further order of the court.

Under Rule 758, if the ARDC Inquiry Board has reason to believe that an attorney is incapacitated from continuing to practice law by reason of mental infirmity, mental disorder, or addiction to drugs or intoxicants, the Administrator shall file a petition with the ARDC Hearing Board requesting a hearing to determine whether the attorney is incapacitated and should be transferred to disability inactive status pending the removal of the disability, or should be permitted to continue to practice law subject to conditions imposed by the court. If the court determines that the attorney is incapacitated from continuing to practice law, the court shall enter an order transferring the attorney to disability inactive status until further order of the court. Any lawyer on inactive disability status is not required to pay an annual fee.

Rule 756(a)(6) provides that an attorney may advise the Administrator of the ARDC in writing that he or she desires to assume "retirement status" and, thereafter, be registered as a retired attorney. Upon such registration, the attorney shall no longer be eligible to practice law or hold himself or herself out as being authorized to practice law in this state, except for providing voluntary *pro bono* legal service pursuant to Rule 756(k).

The first immediate benefit of being a retired attorney is a reduction of the annual registration fee for 2017 from \$385 to zero. Additionally, the retired attorney is relieved thereafter from the annual obligation to register, except, if the retired attorney seeks to provide *pro bono* services under Rule 756(k), he or she must register on an

annual basis, but is not required to pay a registration fee.

If the "retired attorney" changes his or her mind, he or she may advise the Administrator in writing and thereafter register as an active or "inactive status" lawyer. Registration requires payment of the registration fee for an active or "inactive status" attorney and the submission of verification from the Director of MCLE that he or she has complied with MCLE requirements as set forth in Supreme Court Rule 790.

The final option is that of "permanent retirement" under Rule 756(a)(8). An attorney may file a petition with the court requesting that he or she be placed on permanent retirement status. All of the provisions of retirement status enumerated in Rule 756(a)(6) apply, except that an attorney who is granted permanent retirement status may not thereafter change his or her registration designation to active or inactive status, petition for reinstatement pursuant to Rule 767, or provide *pro bono* services as otherwise allowed under

Rule 756(k). The petition for permanent retirement status must be accompanied by a written statement from the Administrator consenting to permanent retirement status.

The Administrator may consent if no prohibitions listed in Rule 756(a)(8)(B) exist. If the petition is not accompanied by a consent from the Administrator, it shall be denied. The conditions are that an attorney shall not be permitted to assume permanent retirement status if there is a pending investigation or proceeding against the attorney as described in the Rule, or if the attorney retains an active license to practice law in any jurisdiction other than the State of Illinois.

Whatever your age, these are your alternatives. The Supreme Court has made a special effort to encourage both retired and inactive status lawyers to provide free *pro bono* legal services under the auspices of a sponsoring entity. For more detail on the procedures for attorneys seeking authorization to provide *pro bono* services see Rule 756(k). ■



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## November

**Wednesday, 11-02-16—Linder Conference Center, Lombard**—Real Estate Law Update 2016. Presented by Real Estate. 8:15 a.m. – 4:45 p.m.

**Thursday, 11-03-2016—Webcast**—Settlement and Severance Agreements: The Non-Pecuniary Terms. Presented by Labor and Employment. 1:00 p.m. – 3:00 p.m.

**Thursday, 11/03/16- Webinar**—Introduction to Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 12:00- 1:00 pm.

**Tuesday, 11-08-16- Webinar**—Practice Toolbox Series. File Retention. 12:00 – 1:00 p.m.

**Wednesday, 11-09-2016—Webcast**—Estate Planning with Digital Assets. Presented by Trusts and Estates. 12:00 – 1:00 p.m.

**Thursday, 11/10/16- Webinar**—Advanced Tips for Enhanced Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 12:00- 1:00 pm.

**Friday, 11-11-16—Chicago, ISBA Regional Office and live Webcast.** Motion Practice from Pretrial through Post Trial. Presented by Civil Practice and Procedure. 8:50 a.m. - 4:00 p.m.

**Wednesday, 11-16-16— Chicago, ISBA Regional Office and live Webcast.** Illinois' Not for Profit Property Tax Issues, Part 2. Presented by SALT. 9:00 a.m. – 1:00 p.m.

**Thursday, 11/17/16- Chicago, ISBA Regional Office**—Family Law Table Clinic Series (Series 2). Presented by Family Law. 8:30 am – 3:10 pm.

**Thursday, 11-17-16—IPHCA, Springfield**—Open Meetings Act: Conducting the Public's Business Properly. Presented by Government Lawyers. 12:30 – 4:00 p.m.

**Thursday, 11/17/16- Webinar**—Introduction to Boolean (Keyword) Searches for Lawyers. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 12:00- 1:00 pm

**Friday, 11-18-16- Chicago, ISBA Regional Office & Live Webcast**—Jury Deselection: The Law and Voir Dire Techniques for Jury Selection. Presented by the ISBA. 9:00 a.m. – 4:00 p.m.

**Wednesday, 11-30-16—Webcast**—Environmental Law for the General Practitioner: Fundamentals on Handling Hazardous Waste at Your Client's Business. Presented by Business Advice & Financial Planning. Co-sponsored by Environmental Law. 11:00 a.m. – 12:00 p.m.

**Wednesday, 11-30-16—Webcast**—Environmental Law for the General Practitioner: A Thumbnail Sketch of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA or Superfund). Presented by Business Advice & Financial Planning. Co-sponsored by Environmental Law. 1:00 a.m. – 2:00 p.m.

## December

**Thursday, 12-01-2016- Webinar**—Using a Blawg to Build and Enhance Your Professional Profile and Your Practice—Presented by LOME. 12:00-1:00 p.m.

**Thursday, 12-01-2016—Webcast**—Written Discovery: Knowing What to Ask for and How to Get It—Part 1. Presented by Labor and Employment. 1:00 p.m. – 3:00 p.m.

**Friday, 12-02-2016—Chicago, ISBA Regional Office and Live Webcast**—Decedent's Trust and Estate Administration. Presented by Trusts and Estates. 9:00 a.m. – 5:00 p.m.

**Friday, 12-09-16- Chicago, Sheraton**—Midyear Meeting—History on Trial: The Alton School Cases (Tentative Title). Presented by the ISBA; co-sponsored by the Illinois Supreme Court Historical Preservation Commission. 1:15-2:45 p.m.

**Friday, 12-09-16- Chicago, Sheraton**—Midyear Meeting—Lessons in Professional Responsibility: From the Law Practice of Abraham Lincoln (Tentative Title). Presented by the ISBA. 3:00 p.m. - 4:30 p.m.

**Tuesday, 12-13-16- Webinar**—Practice Toolbox Series. Microsoft Word Power Hour. 12:00 – 1:00 p.m.

**Thursday, 12-15-16- Webcast**—Senate Bill 100: Sweeping Changes to Student Discipline in Illinois in 2016. Presented by Education Law. 10:00 a.m. – 12:00 p.m.

## January

**Thursday, 01-12-17- Live Webcast**—Immigration Law Update Spring 2017—Changes which Affect Your Practice and Clients. Presented by International and Immigration. 12:00- 1:30 p.m.

**Wednesday, 01-18-17- Live Webcast**—The Nuts and Bolts of Drafting Non-Disclosure Agreements: Tips for the Practicing Lawyer. Presented by Business & Securities. 10:00 a.m. – 11:00 a.m.

**Wednesday, 01-25-17- Live Webcast**—Helping Immigrant Children- Special Immigrant Juveniles. Presented by International and Immigration; co-sponsored by Bench and Bar. 11:00 a.m. – 12:00 p.m. ■

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## The alternatives to registering for the 'active' practice of law

BY TIMOTHY J. HOWARD

**As an aging "baby boomer" myself,** I have noticed that several of my contemporary lawyer colleagues have left or are contemplating leaving the active practice of law. Obviously, this trend will continue as the crest of the baby boomer generation is now reaching the age of 70. For example, George W. Bush, Cher, Bill Clinton, Dolly Parton and even Jimmy Buffett turn 70 this year. (For some boomers, just looking at the number 70 gives one pause.)

If you were considering leaving the full-time practice of law, what are your options in registering with the Attorney Registration and Disciplinary Commission (ARDC)? There are four different alternative statuses described

in the Illinois Supreme Court Rules. They are "inactive status," "disability inactive status," "retirement status" and "permanent retirement status." The place to begin understanding the differences is Supreme Court Rule 756, which is entitled "Registration and Fees."

Rule 756(a)(5) provides that an attorney may advise the Administrator of the ARDC in writing that he or she desires to assume "inactive status" and, thereafter, be registered as an inactive status attorney. Upon such registration, the attorney shall no longer be eligible to practice law or hold himself or herself out as being authorized to practice law in this state, except for providing voluntary *pro bono* legal service pursuant to Rule 756(k). More about this

exception will be described below. The first immediate benefit is a reduction of the annual registration fee for 2017 from \$385 to \$121.

If the attorney on "inactive status" changes his or her mind and desires to resume the practice of law, he or she may advise the Administrator in writing and thereafter register as an active attorney. Registration requires payment of the registration fee for an active attorney and the submission of verification from the Director of MCLE that he or she has complied with MCLE requirements as set forth in Supreme Court Rule 790.

"Disability inactive status" is governed by Rules 757 and 758. This is not

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