



FAMILY LAW

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

Chair's column

By Pamela J. Kuzniar

Part of a Section Council's work includes review of state legislation important to the profession and the public. The Legislative Affairs Department sends proposed bills to the appropriate ISBA section or committee for recommendations to the Legislative Committee. The Family Law Section Council analyzed the complete review and overhaul of both the Illinois Marriage and Dissolution of Marriage Act ("IMDMA") [HB 1452] and the Parentage Act ("PA") [HB 6192] as proposed by the Illinois Family Law Study Committee. After review, our section council's collective position was that we did not approve HB 1452 as written. Thereafter, each of our subcommittees reviewed specific

sections of proposed HB 1452. We provided Jim Covington, the Director of the ISBA Legislative Affairs Department, with the subcommittee's comments and analysis. Jim requested "volunteers" assist him in his next steps. Assuming Jim wanted competent individuals capable of pithy articulate legal analysis and sage drafting, as chair I appointed Rory Weiler of St. Charles, William Scott Jr. of Lisle and Morris Lane Harvey of Mt. Vernon to work with Jim at his direction as needed.

Please be aware that the bills will most likely move during the fall veto session. Now would

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Unbundling family law

By Lisa M. Nyuli

With all the talk about limited scope representation, I recently took on a case, or should I say, a PORTION of a case, to try to help a client.

Why would I do such a thing? First, the client had no money. Second, the client really did have a fairly succinct need and issue. Third, as I talked to her, I found myself giving her the outline of what she needed to do, saw the panic on her face, and thought, "Hey, why don't I just help her with this one task?"

The Illinois Rules of Professional Conduct, RPC 1.2(c) provide: "A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent."

Limited scope representation, or "unbundling" has been around for years, and continues

to be all the rage. As Helen Gunnarsson observed in the October, 2010, *Illinois Bar Journal*, the reasons that this type of representation is such a hot topic are, "First, courts are seeing more self-represented litigants, requiring them to expend additional resources in assisting those individuals. Second, lawyers are seeing their business diminish as fewer people are able to afford full representation. Third, legal services organizations are finding themselves overwhelmed by demand while, at the same time, their funding is being cut. Finally, many consumers of legal services are resorting to the Internet for legal education and advice, where they are finding information that may not be accurate and/or may not be suitable for their needs. Without consulting a lawyer, those consumers may not be able to recognize

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Chair's column

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be the time to review the bills and form your own opinion. If you do have an opinion, the only place to voice it would be through your legislative representative.

In that light, I would like to personally comment on HB 1452. The proposed bill (under section 750 ILCS 5/601.2) defines standing to provide that equitable parents may seek an "allocation of parenting time." If you routinely practice family law, you are familiar with the Illinois Supreme Court's decision in *Wickham v. Byrne* and the U.S. Supreme Court's decision in *Troxel v. Granville*. As you know, both cases hold that the right of a parent to make decisions concerning their children is a fundamental right. At this point as you read along you are probably thinking Kuzniar is going to state that the statute as written is not constitutional. Nope, not going to say it, you are lawyers you decide. I will note that, although HB 1452 expands the definition of parent, and changes parenting allocation—HB 1452 did not modify the existing child support section. I am not saying that they punted; rather the proponents left the redrafting of the child support section to the Child Support Advisory Committee. The proponents clearly missed an opportunity to draft the most kinder-centric statute in the nation. How you may ask? Think about it and live in my head for a moment. (It is a place I am most comfortable in and it is a great deal more fun than the real world.) And so begins your foray into my world. Consider the following: If you increase the opportunity for third-parties to contest parents for custody and demand parenting time, why not give them the pleasure of paying support as well? If our guidelines remain in effect and HB 1452 is adopted as drafted then I envision a custody case where the child care providers, long-term-live-in-lovers, step-parents, live-in grandparents, and significant others all participate in contested litigation. (Note—We will need more counsel tables.) If guidelines are in place 20% of the net income of five parents will provide the child opportunities that were not affordable in the past. Perhaps the child could be cross covered on everyone's insurance as well. So, if a condition to equitable parenting is equitable support, then maybe it will work itself out, as the only individuals who will participate in litigation

would be those who want to take care of the child including providing monetary support—whether or not they can afford it. You know kind of like a parent.

I would also like to give you a heads-up on two creative approaches to CLE that will be presented in October one on trial practice and in November on settlement.

On October 10th and 11th we will present a Child Custody Trial, in Galena, Illinois. William Scott and Kelli Gordon will represent the father. Morris Lane Harvey and Rory Weiler will represent the mother. No one knows how the case will turn out, not even me. The trial judge will be the Hon. Arnold Blackman. This may be a CLE but the participants are taking it seriously and truly want to win. Although we all know that no one really wins in a custody case, in this case we do know the real winners will be the attendees. The Guardian Ad Litem and 604(b) have each tendered their reports, and based upon the reports it will be an uphill battle for one parent. The cast includes attorneys, and mental health professionals playing clients and experts. Mother's counsel has filed a motion in limine to bar the Guardian Ad Litem. During the CLE we will discuss the testimony after each witness, and judges from different counties will comment on the Court's ruling and the handling of the witness. More importantly, the Court will rule immediately after the close of proofs. There will be no delay and nothing will be taken under advisement.

On November 14, 2013 we will present "Settle-It." Although the majority of cases settle, too many settle on the eve of trial that could have settled long before. Perhaps an impediment to settlement is the inability of counsel to value the case. This CLE will be taught by valuation experts, attorneys, an arbitration panel and judicial panel. Using valuation reports as a fact pattern the panelists will analyze settlement opportunities regarding asset division and maintenance when the major asset is a business (including a small corporation, real estate development company, law practice, medical practice and dental practice) and when the major asset is executive compensation and benefits. ■

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Unbundling family law

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the unsuitability of the information they obtain and may not realize what alternatives exist for their unique matters.” (Ill.Bar. Journal, Vol. 98, No.10, P.512 (Oct., 2010)).

The most visible example of unbundling in the family law arena is collaborative law, which is when a lawyer agrees to provide all the necessary legal services incident to the goal of settlement, but excludes services for contested litigation. Other examples are ghostwriting; drafting pleadings, briefs, declarations or orders; reviewing documents; doing legal research; advising on court procedures; organizing discovery materials and preparing exhibits; and drafting contracts and agreements. Limited scope representation of debtors has been a staple in bankruptcy proceedings for years.

Unbundling services in a transactional setting seems easy and even logical, but in a litigation setting, may not be as easy to implement. In 2010, the ISBA, along with the Chicago Bar Association and the Illinois Judges Association, formed a joint task force which issued a Final Report with Findings, on May 19, 2011, addressing its findings and recommendations regarding limited scope representation. The entire report may be viewed on the ISBA Web site at <<http://www.isba.org/sites/default/files/committees/limited-scopelegalrepresentation/limitedscopelegalrepfinalreport.pdf>>.

As a result of these recommendations, on July 1, 2013, Supreme Court Rules 11 and 13 were amended to set out the requirements for unbundled representation.

Supreme Court Rule 11 was modified to add the following language:

(e) Limited Scope Appearance. After an attorney files a Notice of Limited Scope Appearance in accordance with Rule 13(c)(6), service of all documents shall be made on both the attorney and the party represented on a limited scope basis until: (1) the court enters an order allowing the attorney to withdraw under Rule 13(c) or (2) the attorney’s representation automatically terminates under Rule 13(c)(7)(ii). (Effective July 1, 2013)

Supreme Court Rule 13 was modified to add the following language:

(6) Limited Scope Appearance. An attorney may make a limited scope appearance on behalf of a party in a civil proceeding pursuant to Rule of Professional Conduct 1.2(c) when the attorney has entered into a written agreement with that party to provide limited scope representation. The attorney shall file a Notice of Limited Scope Appearance in the form attached to this rule, identifying each aspect of the proceeding to which the limited scope appearance pertains.

An attorney may file a Notice of Limited Scope Appearance more than once in a case. An attorney must file a new Notice of Limited Scope Appearance before any additional aspect of the proceeding in which the attorney intends to appear. A party shall not be required to pay more than one appearance fee in a case.

(7) Withdrawal Following Completion of Limited Scope Representation. Upon completing the representation specified in the Notice of Limited Scope Appearance filed pursuant to paragraph (6), the attorney shall withdraw by oral motion or written notice as provided in parts (i)–(ii) of this paragraph. A withdrawal for any reason other than completion of the representation shall be requested by motion under paragraphs (c)(2) and (c)(3).

(i) If the attorney completes the representation at or before a court hearing attended by the party the attorney represents, the attorney may make an oral motion for withdrawal without prior notice to the party the attorney represents or to other parties. The court must grant the motion unless the party objects on the ground that the attorney has not completed the representation. The order granting the withdrawal may require the attorney to give written no-

tice of the order to parties who were neither present nor represented at the hearing. If the party objects that the attorney has not completed the representation, the court must hold an evidentiary hearing on the objection, either immediately or on a specified later date. After hearing the evidence, the court must grant the motion to withdraw unless the court expressly finds that the attorney has not completed the representation specified in the Notice of Limited Scope Appearance.

(ii) An attorney also may withdraw by filing a Notice of Withdrawal of Limited Scope Appearance in the form attached to this rule. The attorney must serve the Notice on the party the attorney represents and must also serve it on other counsel of record and other parties not represented by counsel, unless the court by order excuses service on other counsel and other parties. The attorney must also serve the Notice on the judge then presiding over the case. The attorney must file proof of service in compliance with this paragraph. Within 21 days after the service of the Notice, the party may file an Objection to Withdrawal of Limited Scope Appearance in the form attached to this rule. The party must serve the Objection on the attorney and must also serve it on other counsel of record and other parties not represented by counsel unless the court by order excuses service on other counsel and other parties. If no timely Objection is filed, the attorney’s limited scope appearance automatically terminates, without entry of a court order when the 21-day period expires. If a timely Objection is filed, however, the attorney must notice a hearing

on the Objection. If the ground for the Objection is that the attorney has not completed the representation specified in the Notice of Limited Scope Appearance, the court must hold an evidentiary hearing. After the requisite hearing, the court must enter an order allowing the attorney to withdraw unless the court expressly finds that the attorney has not completed the representation specified in the Notice of Limited Scope Appearance. Effective July 1, 2013.

Supreme Court Rule 13 also provides a form Notice of Limited Scope Appearance and a form Limited Scope Appearance.

So back to my case. The client needed a motion to clarify a written decision by the court. There were three main "problems" with the written decision that I believed warranted another look by the Court. So, first the client and I agreed that my sole purpose would be to represent her to draft and argue this motion. We agreed on a price. She paid

the retainer, and I prepared the motion and filed my appearance. And then, all hell broke loose! (I do have to admit that I did not use the Forms referenced in Supreme Court Rule 13, as this was pre-enactment, and I didn't anticipate what followed.)

Opposing counsel objected to my appearance and filed a motion to strike both my appearance, and my pleadings. The judge wanted a written response from me as to the motion to strike. So on the first court date, the matter was continued. The client was in tears, and now I was already in for more work than I had bargained for. I prepared written responses, and was allowed to stay in the case. We then held a hearing on the motions. They were ruled on, which completed my task for the client. Subsequently, I did file my motion to withdraw, and opposing counsel objected to my withdrawal. Opposing counsel accused me of "pulling a fast one" on the court by getting in the case and then getting back out. My client was not objecting, having understood and agreed to the limited tasks. Finally, after a contested hearing, I was given leave to withdraw.

So, as of now, I'm not a fan of unbundling in a divorce case. I certainly lost money on the deal. Yet, I see more and more articles about the merits of unbundling.

Plus, with the enactment of the new Rule provisions, this really should be easier, and encouraged. The entire Fall, 2012, issue of the Family Advocate, published by the ABA Section of Family Law addresses unbundling of legal services in the family law context. (Fam. Law Advocate, Fall, 2012, Vol. 35, No. 2). This leads me to believe that maybe we just need to educate ourselves, our clients, and our courts on this concept. The Supreme Court Rule 13 Forms should be reviewed and used (that's my lesson!). While I did have a written agreement with my client, perhaps a model agreement would also be helpful.

Limited scope representation is sure to be with us as the practice of law continues to change. Family law practitioners need to be proactive in defining what that means for us, and for our clients, so that we can provide high quality services to our clients, regardless of the task. ■

Child support income withholding notices not just an afterthought

By Jennifer A. Shaw, Managing Partner, and Barry T. Underwood, Associate Attorney, The Shaw Law Group, P.C., Edwardsville, IL

For many practitioners, sending an Income Withholding Notice/Order (IWO) after obtaining a child support order is nothing more than a perfunctory step in closing a file. Secretaries or legal assistants often prepare the documents from forms that have been in use for many years. Other times, lawyers rely upon the forms provided by their local clerks' offices. Within the last eighteen months, significant changes have been made to both Federal and State laws governing IWOs. These changes require implementation of new procedures and the creation of new forms. Failure to recognize the latest protocols could result in complaints to the ARDC or charges of malpractice as the penalties attributable to employers who fail to withhold are substantial.

42 USC §666(b)(6)(A)(ii) requires all IWOs to comport with the standard form as prescribed by the Secretary of the U.S. Department of Health and Human Services. A new standard form became effective on May 31, 2012. The form, OMB 0970-0154, can be

downloaded at <www.acf.hhs.gov/sites/default/files/ocse/omb_0970_0154.pdf>.

Pursuant to Federal Law, an IWO must be rejected and returned to the sender in the following instances:

1. The form is not standard on its face;
2. The IWO instructs the employer/withholder to send payments to any entity other than a State Disbursement Unit, unless the notice was issued before 1994;
3. The form does not contain the necessary information for the employer to comply with the withholding;
4. The form is altered or contains invalid information;
5. The amount to withhold is not a dollar amount;
6. The sender has not used the OMB-approved form (referenced above);
7. A copy of the underlying support order is not included and the IWO is promulgated by someone other than a state or tribal support agency or a court.

Illinois' Income Withholding for Support Act, located at 750 ILCS 28/1 *et seq.*, has also undergone significant changes over the past several years. Reviewing the statute as a whole is strongly recommended, particularly if you prosecute failure to withhold matters.

Although not a change in the law, savvy practitioners note that 750 ILCS 28/20 mandates all child support orders entered after July 1, 1997 to:

1. Require an IWO to be prepared and served either by the obligee or public office unless a written agreement is reached and signed by both parties. The agreement must provide for an alternative arrangement. Such an alternative arrangement must be approved by the Court and provide a means for serving an IWO if the obligor becomes delinquent in support.
2. Contain a dollar amount for current support. If an arrearage has accrued, the payments on the delinquency shall be paid at a rate no less than 20% of the current

support obligation. Percentage orders are not enforceable through an IWO.

3. Include the obligor's Social Security Number. For a non-citizen, the order must include the alien registration number, passport number and home country's social security or national health number.

750 ILCS 28/20 also enumerates the state requirements for an effective IWO. Under Illinois Law an IWO shall:

1. Be in the standard format prescribed by the Federal Department of Health and Human Services;
2. State the date of entry of the order for support upon which the IWO is based;
3. Direct the payor to withhold the dollar amount for current support;
4. Direct the payor to withhold the arrears as delineated in the underlying support order;
5. Direct the payor, labor union or trade union to enroll children in health insurance plans as provided in the underlying order;
6. State the amount of the Payor Income Withholding Fee, if applicable;
7. State that the amount withheld from the obligor cannot exceed the maximum amount permitted under the Federal Consumer Credit Protection Act;
8. In bold face type, the size of which equals the largest type on the notice, state the duties of the payor and the fines and penalties for failure to withhold and pay over income and for discharging, disciplining, refusing to hire, or otherwise penalizing the obligor because of the duty to withhold and pay over income;
9. State the rights, remedies and duties of the obligor;
10. Include the Social Security Number of the obligor;
11. Direct any payor to pay over any amounts withheld to the State Disbursement Unit.

The most substantial addition to Illinois' IWO form requirements is enumerated in Section 8. All IWOs must clearly identify the duties, penalties and fines Illinois imposes on payors. The language regarding the typeface, font and size is new to Illinois and distinguishable from Federal requirements. Notably, the requirements for an Illinois IWO are mandatory and strict compliance with the terms is required in order for them to be enforceable. See *Jennifer Schultz v. Performance Lighting, Inc.*, 2013 IL App (2d), 120405

(Ill. App., 2013) and *In re Marriage of Chen*, 820 N.E.2d 1136, 2-03-0824 (Ill. App., 1996).

An attorney's failure to properly format and serve an IWO can result in significant implications. Deficiencies in an IWO compromise an obligee's ability to successfully sue for damages stemming from an employer's failure to properly withhold and/or pay child support. In *The Marriage of Chen*, the Court held that an obligee could not enforce the \$100/day penalty for failure to withhold support when the IWO failed to specifically delineate those penalties within the four corners of the document. In *re Marriage of Chen*, 820 N.E.2d 1136, 2-03-0824 (Ill. App., 1996). Moreover, in *Schultz v. Performance Lighting*, the obligee was estopped from enforcing the same penalty for failure to include the obligor's Social Security Number on the IWO. *Schultz v. Performance Lighting*, 2013 IL App (2d), 120405 (Ill. App., 2013).

In order to ensure that your IWO complies with Federal and State Law, modify your form to comport with OMB 0970-0154 and always attach a copy of the underlying support order. Serve the IWO by certified mail and file a copy of the return receipt with the Clerk of the Court. Whenever possible, also serve an additional copy of the IWO by facsimile or e-mail.

Best practices dictate that a separate Uniform Child Support Order be entered, particularly when the underlying orders address issues other than support. Remember, your client's custodial schedule can be sensitive information. Tread lightly upon the information you disclose about minor children's

schedules and activities.

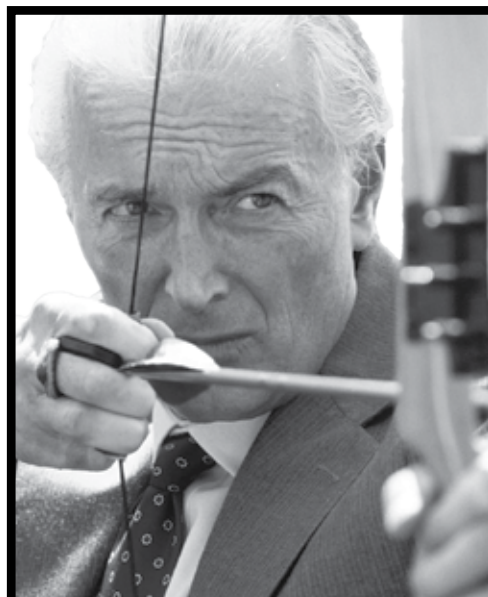
Changes to Illinois Supreme Court Rule 138 will soon prohibit the use of Social Security Numbers in pleadings and orders. Thus, in order to satisfy both Federal and State Law, a Notice of Confidential Information Within a Court Filing must be filed with the IWO. In addition, as the Illinois requirements for a proper IWO exceed those prescribed by Federal Law, in order to satisfy both, attach an Illinois Supplement to the Federally mandated form. The supplement should include all the requirements delineated in 750 ILCS 28/20, in the appropriate type and size.

If an IWO is returned, contact the employer to determine the issues they have with the document. After making the changes, serve the new IWO by facsimile/email and by certified mail. This will not only allow withholding to begin more quickly, but will preserve your client's right to sue if the employer fails to properly withhold support.

Maintain the original return of service in your file. Do not destroy the withholding notice or the return of service until all arrearages have been paid and the children are no longer entitled to receive support.

Preparation and service of a proper IWO should never be an afterthought. Given the strict enforcement of Federal and State requirements, neither you nor your client can afford to be anything but precise. ■

The Shaw Law Group offers Practical Solutions for All Aspects of Family Law, including prosecution of Failure to Withhold Actions. Located in the Metro-East, we strive to provide high quality legal services throughout the State of Illinois.




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October

Thursday, 10/3/13 - Saturday, 10/5/13 - Itasca, Westin Hotel—9th Annual Solo and Small Firm Conference. Presented by the Illinois State Bar Association. Thur 9-8:30; Fri 8:30-8:00; Sat 8:30-12:05.

Tuesday, 10/8/13 - Webinar—Intro to Legal Research on Fastcase. Presented by the Illinois State Bar Association - Complimentary to ISBA Members Only. 3:00 - 4:00 p.m. CST.

Tuesday, 10/8/13- Teleseminar—Ground Leases: Structuring and Drafting Issues. Presented by the Illinois State Bar Association. 12-1.

Thursday, 10/10/13-Friday, 10/11/13-Galena, Eagle Ridge Resort and Spa—A Child Custody Trial. Presented by the ISBA Family Law Section. 8-5 both days.

Thursday, 10/10/13- Chicago, ISBA Regional Office—Estate Planning: Hot Topics. Presented by the ISBA Trust and Estates Section. 9-4:30.

Thursday, 10/10/13- Live Webcast—Estate Planning: Hot Topics. Presented by the ISBA Trust and Estates Section. 9-4:30.

Thursday, 10/10/13 - Webinar—Advanced Tips for Enhanced Legal Research on Fastcase. Presented by the Illinois State Bar Association - Complimentary to ISBA Members Only. 3:00 - 4:00 p.m. CST.

Friday, 10/11/13- Chicago, ISBA Regional Office—Insurance and Surety Bond Issues For Construction Projects. Presented jointly by the ISBA Commercial Banking, Collections and Bankruptcy Section, ISBA Construction Law Section and the ISBA Insurance Law Section. 8:30-4:30.

Monday, 10/14/13- Chicago, ISBA Regional Office—Advanced Workers' Compensation. Presented by the ISBA Workers' Compensation Section. 9-4.

Monday, 10/14/13- Fairview Heights, Four Points Sheraton—Advanced Workers' Compensation. Presented by the ISBA Work-

ers' Compensation Section. 9-4.

Tuesday, 10/15/13- Teleseminar—Planning with Family Limited Partnerships/Family LLCs, Part 1. Presented by the Illinois State Bar Association. 12-1.

Wednesday, 10/16/13- Teleseminar—Planning with Family Limited Partnerships/Family LLCs, Part 2. Presented by the Illinois State Bar Association. 12-1.

Thursday, 10/17/13- Bloomington-Normal, Marriott Hotel and Conference Center—Real Estate Law Update-2013. Presented by the ISBA Real Estate Law Section. 8:50-4:45.

Friday, 10/18/13- Chicago, ISBA Regional Office—Advising Providers- The Future of Healthcare Reimbursement. Presented by the ISBA Health Care Section. 8:30-12:30.

Friday, 10/18/13- Live Webcast—Advising Providers- The Future of Healthcare Reimbursement. Presented by the ISBA Health Care Section. 8:30-12:30.

Tuesday, 10/22/13- Teleseminar—2013 American with Disabilities Act Update. Presented by the Illinois State Bar Association. 12-1.

Wednesday, 10/23/13 - Webinar—Introduction to Boolean (Keyword) Search. Presented by the Illinois State Bar Association - Complimentary to ISBA Members Only. 3:00 - 4:00 p.m. CST.

Wednesday, 10/23/13- Bloomington, Holiday Inn and Suites—Estate Administration Boot Camp. Presented by the ISBA Trusts and Estates Section. 9-4:30.

Friday, 10/25/13- Chicago, ISBA Regional Office—Estate Administration Boot Camp. Presented by the ISBA Trusts and Estates Section. 9-4:30

Friday, 10/25/13- Rockford, Northwestern Illinois Area Agency on Aging—Family and Consumer Law Pro Bono Bootcamp. 9-5.

Tuesday, 10/29/13- Teleseminar—Planning to Avoid Probate. Presented by the Illinois State Bar Association. 12-1.

Thursday, 10/31/13- Lombard, Lindner Conference Center—Real Estate Law Update- 2013. Presented by the ISBA Real Estate Law Section.

Thursday, 10/31/13- Teleseminar—Attorney Ethics and ADR. Presented by the Illinois State Bar Association. 12-1.

November

Friday, 11/1/13- Chicago, ISBA Regional Office—Everything a Lawyer Needs to Know about Representing a Firefighter or a Police Officer Before A Pension Board. Presented by the ISBA Administrative Law Section; co-sponsored by the ISBA Standing Committee on Racial and Ethnic Minorities and the Law. 9-12:30.

Friday, 11/1/13- Live Webcast—Everything a Lawyer Needs to Know about Representing a Firefighter or a Police Officer Before A Pension Board. Presented by the ISBA Administrative Law Section; co-sponsored by the ISBA Standing Committee on Racial and Ethnic Minorities and the Law—9-12:30.

Tuesday, 11/5/13 - Webinar—Intro to Legal Research on Fastcase. Presented by the Illinois State Bar Association - Complimentary to ISBA Members Only. 1:30 - 2:30 p.m. CST.

Tuesday, 11/5/13- Live Webcast, ISBA Studio—Children and Trauma; A Guide for Attorneys. Presented by the ISBA Child Law Section. 11-12.

Tuesday, 11/5/13- Live Webcast, ISBA Studio—2013 Immigration Law Update-Changes which Affect Your Practice & Clients. Presented by the ISBA International & Immigration Law Section, ISBA Young Lawyers Division and the ISBA General Practice, Solo and Small Firm Section. 1:00-2:00.

Thursday, 11/7/13 - Webinar—Advanced Tips for Enhanced Legal Research on Fastcase. Presented by the Illinois State Bar Association - Complimentary to ISBA Members Only. 1:30 - 2:30 p.m. CST. ■

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