

Senior Lawyers

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

From the chair

BY PAT LESTON

“Winding down” is always a topic of interest to Senior Lawyer Section members. If you’re a section member because you just turned 55, winding down may just require a 5:30 martini. But if you’re closer to the 70-75 age group, winding down takes on an altogether different meaning.

In our November newsletter, Richard Goodwin presented us with *Death*,

Disability, Disappearance or Disbarment.

The article thoroughly summarized an ABA webinar from 7/11/18, focusing on the voluntary or involuntary closing of a law practice. Goodwin practiced in Maryland and D.C. The ABA presenters were from Michigan, Ohio, and Indiana. Would you like to hear the Illinois take on the subject? We thought so.

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Pro bono opportunities for retired lawyers

BY TIMOTHY J. HOWARD

Before we discuss finding resources for *pro bono* opportunities for retired lawyers, we should be clear on my definition of the term. For this article, “retired lawyers” include anyone not actively engaged in the practice of law regardless if they are registered with the Attorney Registration and Disciplinary Commission as an “active” lawyer or as an “inactive” or “retired” attorney as described in Illinois Supreme Court Rule 756(a)(5) & (a)(6). For a discussion of the different attorney registration statuses under Rule 756, see my article, *The Alternatives to Registering for the “Active” Practice of Law*, Senior

Lawyers Newsletter, Oct. 2016, vol. 8, no. 1.

Obviously, lawyers that are registered as active attorneys do not need to do anything special to perform *pro bono* legal services. For the inactive or retired lawyers, Rule 756(k)(1) explains the procedure for the “Authorization to Provide *Pro Bono* Services” as follows:

An attorney who is registered as inactive or retired under Rule 756(a)(5) or (a)(6), or an attorney who is admitted in another state and is not disbarred or otherwise suspended from practice in any jurisdiction shall be authorized to provide *pro bono* legal services under the following

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circumstances:

(a) without charge or an expectation of a fee by the attorney;

(b) to persons of limited means or to organizations, as defined in paragraph (f) of this rule; and

(c) under the auspices of a sponsoring entity, which must be a not-for-profit legal services organization, governmental entity, law school clinical program, or bar association providing *pro bono* legal services as defined in paragraph (f)(1) of this rule.

Rule 756(k)(2) goes on to explain

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On April 11, 2019, the Senior Lawyer Section Council will present an updated half-day program, “Winding Down the Practice.” Former ISBA presidents Leonard Amari and John O’Brien will moderate the program. Speakers will focus on tail insurance, notice requirements, records/file disposition, etc. What does the ISBA Mutual offer for tail insurance? What does the ARDC look at in regard to the proper disposition of files? What are the Supreme Court Rules relating to the sale of a practice? See you in April.

In the following month, on May 15, 2019, our section council will again present an updated presentation on computer basics for sniors. Don Mateer again chairs the program. However, the program is moving from the College of DuPage to Illinois State University in Bloomington, Illinois. I guess you can only stay at a junior college for so long. But don’t worry. The program will be basic, with personal terminals for hands-on experience. Space is limited by the number of terminals available, so try to register promptly when you see the ISBA notice.

Finally, the Section Council will be cosponsoring Financial Exploitation—Elder Law Boot Camp, part of an extensive program scheduled for April 25-26. The Elder Law Committee is handling the laboring oar for the multi-discipline program. Watch ISBA publications for further details.

Now I’m done with the advertisements, but I want to hit one more topic. ISBA President Jim McCluskey has made wellness a focus of his year. Wellness is a topic near and dear to our Senior Section members. We have new titanium knees, hips and shoulders. We suffer hair loss and hearing loss. What is higher, our blood pressure or our cholesterol? I’ve given some thought to making “wellness” an agenda item at our Senior Lawyer Council meetings. But I can’t risk the meetings going any longer because we have to break after an hour to go to the bathroom.

The wellness issue is why a recent

Time article (12/19/18) caught my eye. *Time* summarizes an article in the *Journal of Neurology*, reporting on a study at Duke University. The study focused on 160 subjects who were around age 60, but tested in thinking skills similar to people in their 90s. The subjects were divided into 4 groups. Not surprisingly, the group assigned “diet and exercise” fared significantly better than the groups assigned “diet” or “exercise” alone. More surprisingly, is the extent of the difference. The “diet and exercise” group improved their cognitive test scores by 9 years, i.e., they scored as if they were 9 years younger.

The next week, my email brought me multiple *PeoplesPharmacy.com* reports on similar subjects. The *British Journal of Sports Medicine* (10/15) reported a French study of 1000 subjects over age 65. Fifteen minutes of daily walking decreased the risk of early death (within the 12 year study) by 22 percent. Moderate and high level exercise lowered the likelihood of early death by 28 and 35 percent, respectively. *JAMA Internal Medicine*, online December 28, 2018, concluded that multi-component training—i.e., aerobic plus strength and balance—dreduced the likelihood of falls, a leading cause of accidents and deaths for those over 65.

Within a few days of January 1, I realized that virtually every newspaper and magazine in the country was running its annual Wellness series. Tai chi, cross training, yoga, apparently there’s even an orange theory of fitness—it’s a wellness information avalanche. But I think it does some good. I can personally attest than on January 2, there were about 7 million people at my health club alone. By April 2, there will be about a dozen of us left.

So where are we going with this? President Jim McCluskey promoted wellness at his June installation. To paraphrase an old saying, the best time to start an exercise program was in June. The second best time is today. Good luck! ■

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This is the newsletter of the ISBA’s Senior Lawyers Section. Section newsletters are free to section members and published at least three times per year.

To subscribe, visit www.isba.org/sections or call 217-525-1760.

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

Pro bono opportunities for retired lawyers

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the duties of sponsoring organizations including, among other things, the duty to provide appropriate training, support and malpractice insurance for volunteers, and the duty to notify the Administrator that the participating attorney has ended his or her participation.

Rule 756(k)(3) sets forth the procedure for an attorney who has registered as inactive or retired, or an attorney who is admitted in another state but not in Illinois, to provide *pro bono* services under Rule 756. The attorney is required to submit a statement to the Administrator indicating a desire to provide *pro bono* services, along with a verification from a sponsoring entity or entities that the attorney will be participating in a *pro bono* program under the auspices of that entity. The authorization continues until the end of the calendar year in which the statement and verification are submitted. Rule 756(k)(4) permits an attorney to renew the authorization on an annual basis by submitting a statement that he or she continues to participate in a qualifying program, along with verification from the sponsoring entity that the attorney continues to participate in such a program under the entity's auspices and that the attorney has taken part in any training required by the program.

In addition to doing a good deed, there is the additional benefit that the provisions

of Rule 791 exempting "inactive or retired" attorneys from MCLE requirements continue to apply to these attorneys who are authorized to provide *pro bono* services under Rule 756, except that these attorneys shall participate in training required by the sponsoring entity. However, a "retired" status attorney must register on an annual basis, but is not required to pay a registration fee.

The need for lawyers to provide *pro bono* services is well documented, such as in *The Need for Pro Bono & How You Can Help* by Michael Bergmann and Karen Munoz in the Elder Law newsletter (Nov. 2015, vol. 21 no. 1). In order to encourage attorneys to volunteer, Illinois Legal Aid Online has created a Virtual Advice Clinic that enables lawyers to provide *pro bono* advice from anywhere they can login. See *Pro Bono Anywhere*, by Nicole Capretta, Senior Lawyers Newsletter, Feb 2018, vol. 9, no.2. Ms. Capretta provides a website for lawyers to search for *pro bono* opportunities, www.IllinoisLegalAid.org. If you are interested in becoming an Online Legal Answers Volunteer send Ms. Capretta an email at ncapretta@illinoislegalaid.org.

Pro bono opportunities are also listed for Chicago and outside of Chicago on the website for the Illinois Courts under "Legal Community" on the left hand side of the first page, www.illinoiscourts.gov. This link will connect you to a *Pro Bono*

Opportunity Guide created by the Chicago Bar Foundation.

An example from my circuit of one of the opportunities listed is the Self-Represented Litigants Help Desk for Peoria and Tazewell Counties. Attorneys can sign-up for a two-hour shift and meet with clients for 30-minute appointments for brief advice or other limited scope representation. There is no ongoing representation beyond the help desk which means no litigation for those who no longer have access to electronic filing. The typical legal issues at the help desk include family law, eviction, mortgage foreclosure and orders of protection.

This program is sponsored by the Public Interest Law Initiative (PILI) which is a statewide organization that connects lawyers with those in need of free legal services. PILI also sponsors in some counties a Conflict of Interest *Pro Bono* Referral Panel and statewide the Armed Forces Legal Aid Network Veteran *Pro Bono* Referral program. For more information on PILI and to sign up for an opportunity near you go to: <http://pili.org/pro-bono/opportunities>

In conclusion, all retired lawyers regardless of their registration status can find a *pro bono* opportunity by checking the above websites. Good luck in finding an opportunity that enables you to continue to contribute to your community. ■

Quick Takes recordings

BY DON MATEER

The purpose of the video series is to provide lawyers with "just-in-time" information to help them in their practice. And with the launch of ISBA's webpages designed specifically for attorneys in the first five years of practice, www.isba.org/newlawyers, we are working to produce more short videos with tips on practice basics.

Formal course materials are not required, however you will be asked to submit a topic title and the top 3 – 5 things an attorney should know about

the topic. Preparation is minimal. For an example of a video in the series visit: <http://iln.isba.org/blog/quick-takes-your-practice>.

Your presentation should only be about 3 – 5 minutes long, but the video recording will require approximately 30 minutes of your time as we may record it multiple times and edit it down in post-production. You will have the opportunity to review the edited video before it is made available on ISBA's website. Additionally, as our way of

thanking you for participating in this new project, ISBA will provide a link to the video for your firm's website.

You may schedule a date and time by calling or emailing Janean Goby, our CLE program coordinator, at 800-252-8908 or quicktakes@isba.org. We will be able to provide you with available times on your chosen date and with more detailed information about how to prepare. Please let us know if you have any questions. ■

Book review: *The Last Day of Night*

BY GARY T. RAFOOL

The book now being reviewed came to mind because of recent news about Elon Musk concerning the smaller Tesla Electric Automobile his company started producing after many years of delays, and his attempt to take his publicly held company private.

It is a 2016 book entitled *The Last Day of Night* by Graham Moore, and it is available in hard cover (366 pages), soft cover and electronically.

The author also wrote the screenplay for the movie *The Imitation Game*, which won an Academy Award Oscar for the best adapted screenplay in 2015.

The characters and events described in the book actually took place in the late 1800s; however, it was written as a historical novel because, according to the author, several characters and events were created for better reading. Some of the characters in the book are Thomas Edison, Alexander Graham Bell, George Westinghouse, J. P. Morgan, Nikola Tesla, and, among the events, is the Chicago World Fair of 1893, as well as Paul Cravath, a 26-year-old attorney fresh out of Columbia Law School.

The book starts in Manhattan in 1888, and it involves and describes the 300 plus lawsuits filed by Thomas Edison and Edison General Electric against George Westinghouse and his companies over the electric light bulb Edison claimed to have invented and Westinghouse's alleged infringements of his patents.

Although Edison maintained his laboratory in New Jersey, his main office was at a more fashionable location on New York's Fifth Avenue. Most of New York City Streets were then lighted by coal gas, but a handful of wealthy business owners outfitted their businesses with electric light bulbs. In addition, just a few New York Streets then contained 99 percent of electricity in the United States, including Wall Street, Madison Avenue, 34th Street and Fifth Avenue.

Paul Cravath was a junior partner in a three man New York law office, and his

name was mentioned at an Ohio dinner party to George Westinghouse, who, after summoning Paul to his home in Pittsburg, hired him to defend all of Edison's lawsuits.

Westinghouse claimed that he did not copy any of Edison's designs for the light bulb, and that he created an improved light bulb. He also claimed that Edison was suing progress because of his inability to invent a better light bulb.

Edison patented the incandescent light bulb. Westinghouse's bulbs were shorter and contained straight unwound filament; not coiled ones like Edison's.

Nikola Tesla, a Serbian immigrant, who formerly worked for Edison, is one of the principal and most interesting characters in this book. Tesla invented a way to make alternating current (AC), a then novel means of electrical distribution and power transmission. It was claimed that AC was better and safer than direct current (DC) for transmission because it runs at a higher voltage, which made it more efficient for running a home or business on electrical current. AC can also be sent greater distances than DC.

Tesla was eccentric to say the least. His accent and English grammar were very difficult to understand, but he, according to the author, was an electrical genius.

Westinghouse gave Tesla a \$50,000 check at a dinner party as an advance payment for Tesla to come to work for him, and Tesla forgot to take the check with him when left the dinner party.

Tesla was very important to Westinghouse, because Edison's direct current could only travel a short distance without passing through booster generators along the way, which Edison sold in abundance. On the other hand, Tesla's alternating current would allow Westinghouse to build just one giant generator in a community and attach many homes and businesses to it.

The book describes in laypersons' terms the differences between DC and AC, and

why Tesla's AC was superior to DC. As a side note, in the book, Tesla also bordered on inventing an x-ray machine and a wireless telephone.

Ironically, the alternating current in Westinghouse's products proved to be safer than direct current when Edison, over Westinghouse's vehement protests, through some strong political connections, convinced the New York Legislature to use alternating current in the first electric chair execution in the State of New York. Unfortunately, after four attempts to electrocute a convicted criminal, the victim did not die and the execution had to be carried out without alternating current.

J. P. Morgan, who owned 60 percent of Edison General Electric, was convinced by Paul Cravath as Westinghouse's attorney that both Westinghouse and Edison and their companies were losing large sums of money and their reputations in these prolonged lawsuits.

This ultimately resulted in the Edison General Electric Company becoming just the General Electric Company.

The book also brought out the fact that it was Westinghouse's electric light bulbs that were used in the Chicago World Fair from May 1, 1893 to October 30, 1893. The lights were so numerous and bright that the fair was known as The White City. ■

Calling senior lawyers

BY TIM HOWARD

A few years ago, the Illinois State Bar Association included in its mission the education of the public and students of all ages about the important role of attorneys and judges in our justice system and the importance of an independent judiciary in the administration of justice. The responsibility of administering this task was given to the Standing Committee on Law Related Education for the Public. The Committee oversees several opportunities for attorneys and judges to volunteer their time in their communities toward the advancement of civics education.

Lawyers in the Classroom is a program that has been around for several years. This program offers a lawyer the chance to go back to school to speak to students on a law-related subject. Schools will generally

request a speaker and will be paired with a volunteer who has indicated a willingness to make a difference in the lives of students in the volunteer's community.

The **Speakers Bureau** is geared toward civic and fraternal organizations who are interested in learning about a specific area of law, such as estate planning. The organization is matched with a volunteer who is knowledgeable in the area requested. Available on the ISBA website is a publication entitled "ISBA Speaker's Bureau: A Guide for Lawyers Invited to Speak" to assist volunteers when making presentations to their local community organizations.

In addition, the **Mock Trial Invitational** is an ISBA sponsored program that provides high school students throughout Illinois

the chance to participate as attorneys and witnesses in a trial from start to finish and to learn the intricacies of the trial process. Volunteers are always needed to serve as judges or evaluators during the Invitational which will be held this year on March 9th and 10th at the UIS Public Affairs Center in Springfield.

As senior lawyers who have spent a good number of years in the justice system, we are exceptionally situated to lend our hard-earned knowledge and experience toward the advancement of these civics-related programs. If you are interested in learning more about these programs or in volunteering your time and talents, please contact Kim Furr at the Illinois Bar Center. ■

What happened to the senior lawyer listserv?

BY DON MATEER

Basically the listserv has gone from being an email-based system to an online web based system. Listserv is now called "discussion posts." Posting can still take place as before; however, the means of access has changed. To begin a post, one can either go online to the website or use email access to the website.

To post online to the website go to central.isba.org and click on the "Sign In" link on the top right corner. Enter the same user name and password you use for the ISBA website. Then click on "post a message" under "Getting Started," and then on the next screen choose ISBA Senior Lawyers. That is all there is to it!

In addition to posting on line, an email access is also available. Send your email to isba-SeniorLawyers@ConnectedCommunity.org. This system is more robust than the old system. There is a library to store relevant information, a member directory, ISBA events, and a place to post blogs.

Welcome to the new world of communicating with your fellow lawyers. ■

Did you know?

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

Want to order a copy of any article?* Just call or e-mail Jean Fenski at 217-525-1760 or jfenski@isba.org

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

Succession planning: The proposed Supreme Court Rule 781

BY JOHN T. PHIPPS

At the June 2018 ISBA Annual Meeting, the ISBA Assembly, based on the recommendation of the ISBA Board of Governors, approved the proposed Illinois Supreme Court Rule 781 drafted by the ISBA Special Committee on Succession and Transition Planning. The proposed rule will require all Illinois lawyers engaged in private practice of law in Illinois to name a “designated representative” on their yearly ARDC registration document, or in the alternative, certify that they have made such a designation in a valid succession plan or other documents. Proposed Supreme Court Rule 781: Designated Attorney Representative in the Event of Death, Disability or Practice Abandonment has now been submitted to the Illinois Supreme Court and awaits review by the Illinois Supreme Court Professionalism and Rules Committee.

Former ISBA President Russell Hartigan spearheaded the effort to address, and provide emergency and transition resources, checklists, and materials for, lawyers who become disabled or unable to provide for his or her clients due to the lawyer’s sudden illness, accident, death or disability. He appointed the Special Committee on Succession and Transition Planning to develop such resources and, as appropriate develop proposed rules to cover these issues to protect clients and lawyers.

The proposed Supreme Court Rule 781 would require each practicing lawyer to name an authorized representative and grant the named representative authority to take limited action in a fiduciary capacity on behalf of the designating lawyer if the designating lawyer dies, becomes disabled, disappears, or otherwise abandons his or her practice and there is no succession plan in place. Often, when such an event occurs, particularly with solo and small practices,

no one is prepared or competent to step in and protect client interests or the disabled lawyers’ business interests. This rule was drafted to address succession issues, and to provide a short-term, temporary safety net for clients and lawyers and to encourage lawyers to have proper succession documents in place. The rule will impose minimal burdens on the practicing bar. Specifically, the proposed rule:

(1) requires all active Illinois lawyers engaged in the private practice law in Illinois to designate a lawyer (or other entity) to carry out certain authorized, but limited, activities in the event of the designating lawyer’s disability *or*, in the alternative, certify that the lawyer has corporate or estate documents in place authorizing someone to carry out those activities; (2) requires lawyers to maintain a readily available list of passwords and security protocols to access the lawyer’s electronic files; (3) identifies a number of limited activities that the designated representative is authorized, but not required, to undertake in the event of the designating lawyer’s inability to continue practicing law; (4) provides legal protections for the designated representative when acting under the limited authority of the rule; (5) makes clear that a lawyer’s existing succession or corporate documents control the disposition of a lawyer’s practice; and (6) makes clear that the activities authorized under the proposed rule are limited, and intended to bridge the gap until a more formal authority can be obtained and clarify that

a designated representative’s role is not intended to require the representative to take over a practice.

In preparing the final draft based on comments from ISBA sections and members, the Special Committee added the emphasis: (1) clarified that the proposed rule should not apply to active lawyers not practicing in Illinois; (2) clarified that the liability protections only apply when a lawyer is exercising his or her duties under the provisions of the rule; (3) clarified that a bar association must have an established program in place to act as a designated representative and that a lawyer cannot simply designate the “X bar association” as his or her designated representative; (4) added, generally, a requirement that absent other formal authority, a court order is necessary before a designated representative can have access to the lawyer’s bank records and accounts; and (5) finally, made it clear that the designated representative is acting as a fiduciary. Further, the committee clarified some issues regarding limited liability for a designated representative to remove major obstacles for attorneys acting as a designated representative.

The Succession and Transition Special Committee looked at other states that have or are developing such rules when formulating its proposed transition rules. Specifically Iowa, Florida, Indiana, and South Carolina have some form of “designated representative” in the event that an attorney becomes disabled, dies, or suddenly discontinues the practice of law. The designated representative is specifically designed to have limited powers, in order to provide a safety net for attorneys and their clients. The majority of Illinois attorneys do not have succession plans in place and powers of attorney for

property expire upon death and the rule is designated address the gap between an attorney's death and the opening of an estate or an administrative process.

Currently, two Illinois Supreme Court rules touch upon succession issues and in *Illinois Rule of Professional Conduct 1.3, Comment [5]* provides:

To prevent neglect of client matters in the event of a sole practitioner's death or disability, the duty of diligence may require that each sole practitioner prepare a plan, in conformity with applicable rules, that designates another competent lawyer to review client files, notify each client of the lawyer's death or disability, and determine whether there is a need for immediate protective action. See Illinois Supreme Court Rule 776, Appointment of Receiver in Certain Cases.

In addition, Supreme Court 776 establishes a procedure whereby a court can appoint a receiver in the event a lawyer can no longer discharge his or her duties to clients. Rule 776 provides that a receiver shall normally serve without compensation. The object of the receiver is to liquidate and close the practice.

ISBA Special Committee on Succession and Transition Planning is committed to providing resources regarding succession planning for its members. Notably, it has developed the website www.isba.org/committees/successionandtransitionplanning which features two (2) ARDC videos by Lisa Nyuli on succession planning; contains links to ISBA and ARDC CLEs; and articles, checklists, and sample forms, including a sample succession plans as a resource for ISBA members. To assist in the succession, sale or transfer of a law practice there are sample forms such as, Sample Succession Plan, Sample Rule 1.3 Succession Planning Checklist, and more. Before the upcoming Midyear Meeting, the committee plans to finish and post the Succession and Transition Planning guide for the young lawyer or purchasing lawyer so it will be available on the website to cover the transition from the young lawyer or purchasing lawyer's perspective.

During this bar year, the committee plans to refine the forms available and

is also working on articles for younger lawyers about what to look for when purchasing or transitioning into a law practice. It hopes to balance the perspective and needs of younger lawyers transitioning into the practice of law with that of a generation of lawyers that will be transitioning out of the practice of law in order to protect both clients and lawyers and help them make a successful transition. Finally, the committee is working on developing hands-on succession planning workshops to work with lawyers to create their own succession plans. ■

John T. Phipps is engaged in the general practice of law in Champaign as John T. Phipps Law Offices, P.C. His primary emphasis is in the areas of family law, general civil litigation, real estate, probate, and business law. He is a past chair of the Senior Lawyers Section Council and of the ISBA General Practice, Solo and Small Firm Section Council; co-editor of the section's newsletter; chair of the ISBA Succession and Transition Special Committee; and a member of the ISBA Assembly.