

# In Brief



May 2016

A Quarterly Publication of the McHenry County Bar Association

# **Law Day 2016**



2016 Distinguished Service Award Recipient, Hon. Maureen McIntyre, receives her award from Hon. Mary Nader



2016 Liberty Bell Award Recipients, Deputy Aimee Knopp and Deputy Tim Creighton, receive their awards from Melissa Cooney



Rhonda Rosenthal introducing the Essay Contest winners



Hon. Mark Gerhardt introducing Umberto Davi



Umberto Davi, President of the ISBA

### 2014-15

#### **Board of Governors**

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### **Board of Governors Meeting Highlights**

#### February 16, 2016

#### LAW DAY:

March 7, 2016 is the deadline for the Liberty Bell and Distinguished Service award nominees. The speaker for the Law Day luncheon will be Justice O'Malley.

#### **LEGAL AID:**

The Bar membership donated \$11,486 during the 2015 campaign.

#### SOCIAL:

The first meeting for this years golf outing will be in mid March.

#### March 15, 2016

#### PRESIDENT'S REPORT:

J. Wombacher proposed a resolution for Jeffrey Rouhandeh which was passed by the Board. J. Wombacher brought to the Board an email sent by the IL State Historic Society asking the Bar to be put on the application applying for historically recognizing the old Courthouse. The Board approved this in name only with no financial support.

**CIVIL PRACTICE:** J. Schwemler reported that a meeting was held to discuss revisions to the Local Rules.

#### **LEGAL AID:**

Lester Munson will be the speaker at the PSLS Award luncheon on May 24, 2016

#### April 19, 2016

#### PRESIDENT'S REPORT:

J. Wombacher proposed a resolution for Vette Kell which was passed by the Board. The Bar was approached by a company that would do a composite of the members at no cost to the Bar and was approved to be done in July.

#### LAW DAY:

One hundred and fifty students attended our Law Day Program that was held at MCC on April 15, 2016.

#### YOUNG/NEW LAWYERS:

The committee is planning a bags tournament that will take place in the near future.

#### **New Members**

Jaclyn McCaffery James Dunlop Marie Sarantakis Colleen O'Keefe Scott Summers Elizabeth Vonau Tara Duffy

### President's Page

#### Jamie Wombacher

#### 2015/16 MCBA President

Three years ago McHenry County first began e-filing in its civil courts. In October 2015, e-filing became available for criminal and traffic matters as well. Even though it has been offered since June 2013, it is not uncommon to see a long line outside the Civil Clerk's office during the morning court rush. With the Illinois Supreme Court's recent announcement of mandatory e-filing beginning in 2017 and 2018 those lines may be a thing of the past. As Bar Association President I feel it is my duty to warn you that times are changing and you better be prepared!

American author Robert C. Gallagher once said, "Change is inevitable except from a vending machine." That could not be truer about the new electronic filing rules – change is coming whether you like it or not. On January 22, 2016, the Illinois Supreme Court adopted MR 18368 which makes e-filing mandatory in civil cases in the Supreme Court and Illinois Appellate Courts on July 1, 2017, and in the circuits courts effective January 1, 2018. The order specifically provides

Once a court is subject to mandatory e-filing under this Order, attorneys and self-represented litigants must e-file all documents in civil cases, except documents exempted by rules adopted by this Court. Attorneys and self-represented litigants may not file documents through any alternative filing method, except in the event of emergency. Courts may not accept, file or docket any document filed by an attorney or self-represented litigant in a civil case that is not filed in compliance with this Order, except in the event of an emergency.

You can read the full text of the order at

http://www.illinoiscourts.gov/SUPREMECOURT/Announce/2016/012216.pdf

Here in McHenry County, the electronic filing system is user friendly. If you have not already registered and tried it out, I encourage you to do so now. The McHenry County Circuit Clerk's office also has a free program available for attorneys with cases in McHenry County called Attorney Access Portal. The portal allows access to case information and documents in cases where the attorney or firm has filed an appearance. For sole practitioners, small firms, or firms not regularly practicing in McHenry County this is a great free asset.

As my term comes to an end in June, I want to take this opportunity to thank the entire bar association for your support this year. To the Board of Governors: you are each invaluable to the process. Thank you for giving of your time and efforts to make the McHenry County Bar Association one of the best bar associations in the State of Illinois. It was truly a pleasure to serve as your President.

#### **Clearly Erroneous**

#### by: Scott Jacobson

Early in my career, I was taught that "void" is a four-letter word and should be used in court with the same frequency as other four-letter words, which is to say rarely and only if you really, really have to. So you could say "void", but if and only if the court *truly* lacked jurisdiction or, in a criminal case, made a sentencing error. Over the years, however, in both criminal and civil cases, the word "void" was applied by reviewing courts with all the carefulness that I used to smush/apply decals to some of the first die-cast model cars and planes that I built with my dad. I can only imagine my father's disappointment, though he never showed it. To this day, if asked, he just smiles and acts like he didn't hear the question. What a guy. Anyway, back to voidness.

I'll spare you a laundry list of "jurisdiction" and "voidness" cases gone awry because Judge Nader would prefer I generally keep my articles to around a page and because, frankly, we don't have that kind of time on our hands. As early as 1993 though, our supreme court was at least aware of the problem, commenting: "The term 'void' is so frequently employed interchangeably with the term 'voidable' as to have lost its primary significance." *People v. Davis*, 156 Ill. 2d 149, 155 (1993). The *Davis* court then explained that a circuit court derives its subject-matter jurisdiction over general matters from article VI, section 9 of the 1970 Illinois Constitution. Thus, if the court erred by improperly applying a statute, its mistake would not affect its jurisdiction because its jurisdiction flowed from the constitution; thus, the resulting order, while erroneous, would not be *truly* void. *Davis*, 156 Ill. 2d at 156. Put differently, an order is not void so long as there was (1) personal jurisdiction and (2) subject-matter jurisdiction; nothing else was required.

The real issue at work was that a number of post-1970 jurisdictional cases relied on outmoded boilerplate about void orders from pre-1970 jurisdictional cases. See, *e.g.*, *In re Andrew B.*, 386 Ill. App. 3d 337 (2008) (tracing misstatements about void orders in a 1987 mental-health case to statements, which were correct at the time, from a 1967 case about fire-protection districts). But for me, as a jurisdictional purist and a lover of '80s film references, *Davis* represents our supreme court's Inigo Montoya moment concerning the word "void"—Dear Illinois reviewing courts, since 1970, "[y]ou keep using that word. I do not think it means what you think it means." *The Princess Bride* (1987). It's also the "Marvin Berry phone call" moment from *Back to the Future* (1985), giving us the "new sound" of subject-matter jurisdiction in Illinois. (Editor's note: Failing to choose between '80s film references is a sin on par with mixing metaphors.)

Sadly, the precision adhered to in *Davis* would not last. Just a few years after *Davis*, the court reverted to a view of voidness that ventured beyond personal jurisdiction and subject-matter jurisdiction exclusively and included a nebulous third category, fairly labeled as "other statutory stuff." In criminal cases, "other statutory stuff" became the failure to comply with a sentencing statute, which resulted in the void-sentence rule. See *People v. Arna*, 168 Ill. 2d 107 (1995). In civil cases not much changed, and the failure to comply with statutory conditions continued to operate to divest the circuit court of jurisdiction. See, *e.g.*, *In re M.M.*, 156 Ill. 2d 53 (1993).

With respect to civil cases, statutory voidness largely remained the case until the early 2000s with the Illinois Supreme Court's decision in *Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514 (2001), the first in a series of cases concerning the constitutional derivation of subject-matter jurisdiction. (*Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325 (2002), which fol-

lowed *Steinbrecher*, usually gets the attention in this regard, but like Marvin Berry, *Steinbrecher* was there first.) Recent civil cases have adhered to the *Steinbrecher* approach. Thus, in a typical civil case, with the exception of administrative review, a circuit court's order is not void so long as it has personal jurisdiction over the parties; it has subject-matter jurisdiction so long as the matter is "justiciable," which it pretty much always is. See *Illinois State Treasurer v. Illinois Workers' Compensation Comm'n*, 2015 IL 117418; *LVNV Funding, LLC v. Trice*, 2015 IL 116129; *In re Luis R.*, 239 Ill. 2d 295 (2010); *cf. In re Dar. C.*, 2011 IL 111083 (circuit court had subject-matter jurisdiction but had not acquired personal jurisdiction over father in termination proceedings because he was not properly served).

And now with respect to criminal law, all of this has a happy ending, at least from a consistency standpoint. Recently, in *People v. Castleberry*, 2015 IL 116916, the Illinois Supreme Court scrapped the void-sentence rule. Accordingly, now, in both criminal *and* civil cases, so long as the circuit court has personal jurisdiction over the parties, presuming that the matter is "justiciable," its order will not be "void" for "lack of jurisdiction."

Scott Jacobson is a judicial clerk for the Honorable Susan F. Hutchinson of the Illinois Appellate Court, Second District. He was formerly an assistant state's attorney with the Illinois State's Attorneys Appellate Prosecutor and of counsel to the Illinois State's Attorneys Association. He lives in Woodstock, Illinois.



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# The Many Faces of Lawyer Stress—Part 1 Submitted by the Illinois Lawyers' Assistance Program

Take a moment right now and think of stress. There is not a day that goes by that we don't hear, read or use the word. Stress has become a normal part of everyday life for everyone, and most especially for those in the legal profession. This is the first of a three part series on stress and lawyers.

#### Stress and the Body

Stress affects the body like stress affects metal. The measurement of stress on metal helps determine how much pressure can be put on a piece of metal before it bends or breaks. It is the same for the human body. Stress does some intense things to us. Let's scan the body under stress:

- Flight or fight response increased blood pressure, blood to the internal organs so the extremities get cold (hands and feet), body perspires, adrenaline pumps vision and hearing become more acute, on edge
- Tight shoulders, neck, back and chest
- Upset stomach heartburn
- Diarrhea and tight bladder

Here are suggestions for dealing with the physical aspects of stress:

- Take deep breaths to get the oxygen flowing through the blood (inhale for 4 seconds, hold for 4 seconds, exhale for 4 seconds, hold for 4 seconds.);
- Stretch your arms and legs and shake them to increase circulation;
- Gently move your neck in circles to release tightness;
- Get 7-8 hours of sleep a night (and reduce late night screen time);
- Eat three balanced meals a day plus healthy snacks;
- Exercise at least three times a week for half an hour minimum;
- Cut out or down on caffeine and nicotine;
- Drink plenty of water to hydrate yourself;

Take vitamins:

Future installments will cover: Stress and the Emotions and Stress and the Spirit.

# SAVE THE DATE

### TUESDAY, MAY 24TH @ NOON

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For 25 years, Mr. Munson has reported on money, celebrity, violence, sex, drugs, race, gender, greed, court decisions, falls from grace, and government actions in the sports industry. Mr. Munson is a graduate of Princeton University and the University of Chicago Law School and a lawyer licensed to practice in Illinois. He is sure to provide a most interesting afternoon for all in attendance!

RESERVATIONS ARE REQUIRED

#### PLEASE RSVP TO ERIN AT THE BAR

by e-mail: mchenrycountybar@sbcglobal.net by phone: 815-338-9559 or through the McHenry County Bar website: www.mchenrycountybarassoc.org/calendar

RSVP ASAP please! See you there!

#### Prairie State 2015 Accomplishments

#### By: Steven Greeley

As usual, Prairie State has obtained great results for its poverty-stricken clients. It is a great organization that I am proud to help as board member and local committee chairperson. I encourage everyone to donate time and/or money to help Prairie State continue to achieve such great results as it did in 2015.

In 2015, Prairie State Legal Services completed 14,426 cases for clients with 29,958 persons in these households. Legal representation in court, administrative hearings and negotiations resulted in:

- 500 cases where we obtained protective orders for victims of domestic violence, sexual assault and family abuse. The court orders protected against future abuse, but often resolved issues of child custody, visitation, support, possession of the home as well as prevention of harassment.
- 424 divorce cases that we completed including many for victims of domestic violence victims providing important court orders to finalize custody, support & visitation and terminate the legal relationship with the abuser.
- 365 cases in which we prevented wrongful evictions or stopped illegal lock-outs by landlords. These cases are important to help families avoid imminent homelessness.
- 68 (non-divorce) cases in which we obtained favorable resolution of child custody issues.
- 86 cases where we prevented mortgage foreclosures and enabled household members to retain their homes. 32 additional mortgage foreclosure cases protected the rights of the household and obtained financial settlements desired by the family.
- 45 cases resulted in guardianships of disabled adults. In these cases, the adult did not have the capacity to make decisions needed for their care.
- 80 cases obtained or maintained medical benefits wrongly denied or threatened with termination by the government. Many of these cases involve critical health care or personal care services for persons with severe disabilities.
- **20 cases prevented the involuntary discharge of nursing home residents.** Discharges usually occur when the bill is not paid (often due to financial exploitation by family members) or when the resident's disabilities present difficulties for the nursing home.
- 88 cases enabled low income households to live in affordable housing, overcoming denials of admission to public housing or obtaining/maintaining housing subsidies.
- 100 cases in which we obtained or retained Social Security or SSI benefits for clients with disabilities or obtained/maintained food stamps or TANF (welfare) benefits, to avoid hunger and otherwise meet basic human needs.
- 235 family law cases resulting in court monthly awards of support. Awards exceeded \$1,631,449.
- 10,097 cases in which we provided legal advice as the primary service to help clients understand their legal rights and responsibilities.

Some of the great results in McHenry County last year in 2015 by bar member volunteers and Prairie State staff are as follows:

Bankruptcy Improves Disabled Client's Health By Restoring Electricity To Home During Summer Heat Wave. Our client, a disabled woman in her mid-fifties, was struggling to pay her electric and other bills on her limited income. During a summer heat wave, ComEd cut off her power as she owed them \$1,280 for charges going back three years, and client was unable to meet ComEd's demand for the entire payment. The heat caused some of her disabling physical conditions to worsen. We promptly connected client to volunteer attorney Rebecca Lamm who was willing to help the client pro bono. Lamm quickly filed a bankruptcy and the very next day the electricity was turned back on. Thanks to our dedicated volunteer, and quick action by our office staff, the client was able to have a comfortable home during the summer heat and a fresh financial start as well.

Court Grants our Client Guardianship of His Autistic Adult Child. As the father of a severely autistic son who recently turned 18 (but who speaks like a young child), the client wanted to set up an adult guardianship with himself as guardian. The son has learning disabilities, behavioral issues, and a low IQ. He has been in special schools, some of them residential facilities, for many years. The father's wife has brain cancer. Volunteer attorney Patricia Kraft handled the guardianship case and went the extra mile to file a motion to waive the appointment of the GAL or reduce the fees for the GAL. She completed the case and the guardianship was granted, which will no doubt be a great help to this family.

Courts Issue Separate Two Year Plenary Orders of Protection for Senior Clients. In one case, our 86 year old client complained that her adult son had been physically abusive, including kicking her and threatening her if she did not provide him with money. In the other case, our 79 year old client allowed a much younger homeless person to move into his house. That person abused him by allowing drunken friends to visit and disrupt the household and by threatening, harassing and throwing objects at him causing injury. In both cases, after the senior clients obtained an emergency order of protection, Prairie State successfully represented the clients and obtained two year orders of protection at the plenary hearings.

Stalking No Contact Order Against Neighbor Who Exploited Client's Disabled Adult Son. Client, an 82-year old woman who was guardian of her disabled 59 year old son filed an Emergency Petition for a Stalking No Contact Order. The disabled son was harassed in his independent living placement and threatened by a neighbor there. The neighbor stole the disabled man's money and food and forced him to change the payee on a check which he then cashed and used for his own benefit. The neighbor held parties in the disabled man's apartment inviting his own friends who became drunk and loud. The client guardian learned of these facts only after she was contacted following a fire in the apartment during one of these parties. She warned the abuser to stay away from her son to no avail. PSLS filed suit against the abuser and obtained a two year order no contact order on behalf of the disabled son.

**Court Denies Visitation for Gun-Toting Abuser in Granting Order of Protection**. The client was in a long term relationship with her partner and they had a child together. There was a long history of emotional and physical abuse. The partner not only repeatedly verbally abused her and belittled her in front of their son, but left his guns within reach of the child. Following a plenary hearing, the court entered an 18 month Order of Protection with a denial of all visitation.

PSLS Forces Nursing Home to Withdraw it Involuntary Discharge Notice Based on Its Failure to Process Medicaid Reimbursement. Client had been a Medicaid recipient for ten years. She received an Involuntary Discharge Notice from the nursing home where she had been a resident and receiving care for over one year. During that time, the nursing home had failed to process the Medicaid application for reimbursement for long term care and now sought to discharge client when she could not make payment on the private pay charges. We represented client in the appeal of the involuntary discharge. The investigators found that the Department had never received a claim for reimbursement from the nursing home. Presented with this evidence, the nursing home withdrew the Involuntary Discharge Notice.



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Pictured back row (L to R): Amy McMahon, Steve Elsner, Barbara Burget, Jill Heffron Front row (L to R): Kathy Dixon, Chris Johnson, Mark Weber





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# Buyer Beware By: Amber L. Michlig

As the peak real estate season approaches, it is important for attorneys to make sure they or their clients perform due diligence on a potential purchase of real estate so that there are no surprises later. Preforming proper due diligence is essential to knowing the exact condition and state of the real estate being purchased. Most attorneys or clients may think that due diligence is simply getting a property inspection, but it should include more than this when a contract or addendum excludes or waives standard warranties found in a contract. It should include contacting the municipality that the property is located in to see if there have been any violations that are unrecorded and checking to make sure there isn't any pending litigation in addition to a careful review of the title commitment and a complete inspection.

In today's market, quite a bit of the real estate inventory is held by banks or servicers of loans. When large banks or servicers sell real estate, a common inclusion in a contract is an addendum to the contract. These addendums from large banks and servicers tend to be very long and cumbersome. Not to mention, all inclusive, in favor of the bank or servicer. Many of the provisions of the addendum involve the removing any representation or warranty that is customary to a standard real estate contract. As an example, the addendum typically removes any representation or warranty regarding any notice to the seller of a zoning, building, fire or health code violation that has not been corrected, the presence of any hazardous materials on the property, boundary line disputes, etc. This removal of any representations and warranties makes it important for the buyer to perform careful due diligence as the addendum is designed to protect the seller from any issues that may arise after closing.

Right now, my colleague and I are dealing with a case on behalf of a client who is being sued for a number of different theories. The main issue of the lawsuit is that a real estate purchaser did not do their due diligence and is upset with the seller, our client, for not disclosing code violations. The contract for the sale of the property included an addendum which removed any warranty regarding notice of any code violations. The addendum in this case even made a disclaimer that the seller did not know if there were any code violations and was not going to make any representation or warranty regarding any possible code violations. Assumingly, the buyer's attorney did not advise the buyer to perform any due diligence regarding any potential code violations. Because of this, the code violations were not discovered until the buyer was already the owner of the property and was responsible for correcting the code violation. If the buyer would have done some due diligence regarding code violations, they would have been able to find the violations in advance of closing and raised them as an issue before it was too late. The buyer is upset with the seller, but the real person the buyer should be upset with is their real estate attorney.

Typically, a bank or servicer includes an addendum that removes or waives all representations or warranties as the bank or servicer does not know what the former owner had done or what notices the former owner has gotten. So, attorneys and real estate purchasers need to be careful to not be caught in a trap. They need to perform their due diligence and make sure they are aware of all the provisions included in the addendum. That way, all parties to a real estate transaction walk away happy.

\*Amber L. Michlig is an associate attorney at SmithAmundsen, LLC. Her concentrations include real estate, mortgage foreclosure, general banking operations, secured creditors' rights in bankruptcy, and related matters. She is admitted to practice law in Illinois and United States District Court for the Northern District of Illinois.

#### MCBA WELCOMES NEW MEMBER



Marie Sarantakis is a third year law student at The John Marshall Law School. She is a CALI Award recipient, receiving the highest grades in her class, in White Collar Crime, Evidence, and Constitutional Law. Ms. Sarantakis is a member of The John Marshall Law Review and recently completed a judicial externship with the Honorable Justice Thomas L. Kilbride of the Illinois Supreme Court. In law school, Ms. Sarantakis has served as President of the Justinian Society of Lawyers, Phi Delta Phi Honor Society, and ADR Society. She is an active member of several area bar associations and has been appointed as an Editor of the Illinois State Bar Associa-

tion's Young Lawyers Division Newsletter and Lead Co-Chair of the Communications Committee of the Women's Bar Association of Illinois. Ms. Sarantakis volunteers for Illinois Legal Aid Online and the Illinois Lawyers' Assistance Program. She intends on practicing family and criminal law upon the completion of her studies.



# LAWYERS' ASSISTANCE PROGRAM VOLUNTEER TRAINING

Friday, June 3, 2016 \* 8:30 am to 4:30 pm

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#### **Trial Call**

Case Number: 13LA19

Plaintiff: Tina Parratore (aka Hayes) Defendant: William Ferguson

Third Party Defendant: Matthew Cyrwus

Plaintiff's Attorney: Hans Mast of the Law Office of Thomas Popovich

Defendant's Attorney: Cozzi & Goggin-Ward

Third Party Defendant's Attorney: Jacobson Legal Group

Trial Dates: January 4-5, 2016 Judge: Thomas A. Meyer Verdict: For Plaintiff

 Medical:
 \$12,484.35

 Pain & Suffering:
 1,000.00

 Total Net Verdict:
 \$13,484.35

Allocation: Ferguson 100% Cyrwus 0%

Case Number: 11LA391

Plaintiff: Eric Bjurstrom, Patrice Bjurstrom, Kimberlynn Bjurstrom

Defendant: John Bicknase Counter-Plaintiff: John Bicknase Counter-Defendant: Eric Bjurstrom

Plaintiff's Attorney: Kelly Lancaster of Botto Gilbert Lancaster

Defendant's Attorney: Spyratodavis, LLC

Counter-Defendant's Attorney: Lewis Brisbois Bisgaard & Smith

Trial Dates: January 4-7, 2016 Judge: Michael T. Caldwell

Verdicts: For Plaintiff Eric Bjurstrom
Medical: \$ 2,000.00

Pain & Suffering: 375.00 Gross Verdict: \$ 2,375.00

Plaintiff's Contributory Negligence: 30% Net Verdict: \$ 1,925.00

For Plaintiff Patrice Bjurstrom

Medical: \$ 6,255.04

Pain & Suffering: 2,000.00
Loss of Normal Life: 2,000.00
Gross Verdict: \$10,255.04
Attributable to John Bicknase: 70%
Attributable to Eric Bjurstrom: 30%
For Defendant re: Kimberlynn Bjurstrom

Case Number: 13LA30 Plaintiff: Sean Hammett Defendant: Neal Robbins

Plaintiff's Attorney: Maria Wery of Razovics Law Firm

Defendant's Attorney: Henry Austin of Kopka Pinkus Dolin & Eads,

LLC

Trial Dates: January 11-14, 2016 Judge: Michael T. Caldwell Verdict: For Plaintiff

Medical: \$7,300.00

Plaintiff's Contributory Negligence: 50%

Total Net Verdict: \$2,650.00

Last Demand: \$50,000 Last Offer: \$15,000



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### **MCBA Calendar of Meetings & Events**

Date	Event	Location	Time
May 10, 2016	Family Law Section Meeting	MCBA Office	12:15
May 17, 2016	Board of Governors Meeting	MCBA Office	Noon
May 24, 2016	PSLS Award Luncheon	Loyola	Noon
June 21, 2016	Board of Governors Meeting	MCBA Office	Noon
June 28, 2016	Annual Meeting	Woodstock Country Club	Noon
July 19, 2016	Board of Governors Meeting	MCBA Office	Noon
July 26, 2016	General Meeting	MCBA Office	Noon
August 5, 2016	40th Annual Golf	Turnberry Country 11am Shotgun Start Club	
	Outing		

McHenry County Bar Association 110 South Johnson Street, Suite 210 Woodstock, IL 60098