



# *In Brief*



August 2017

A Quarterly Publication of the McHenry County Bar Association

## **41st Annual Golf Outing** **August 4, 2017**



## 2017-18 Board of Governors

### **Executive Committee**

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*Young/New Lawyers*  
Hon. Mark R. Gerhardt  
*Past President*

## Board of Governors Meeting Highlights

### **May 16, 2017**

#### **EXECUTIVE DIRECTOR:**

E. Frommes reported that the lease is coming up for renewal on July 1, 2017. The rent will be raised to \$690 per month (a \$12/month increase). Decision was made to enter into a 2 year lease.

#### **BYLAWS:**

K. Sloan circulated the final version of the proposed amendment to the bylaws that will be sent to the Bar members 30 days prior to the Annual Meeting to be voted on by the members.

### **June 20, 2017**

#### **OUTREACH:**

The SOLACE program was brought to the attention of the Bar by Drake Shunneson of Diamond & LeSueur. Details of the program were discussed and TJ Clifton will research it and bring more information back to the Board.

### **July 18, 2017**

#### **ADR/MEDIATION:**

Fall Seminar scheduled for September 22, 2017 from 11:30 am to 4 pm.

#### **YOUNG/NEW LAWYERS:**

Annual picnic & softball game scheduled for September 22, 2017 from 5pm to 7pm.

#### **OLD BUSINESS:**

D. Favaro and C. Arevalo attended to discuss the formation of a

### **New Members**

Emily Reyes  
Julia Almeida  
Kyle Bruett  
Tom Cahill  
Michael Combs  
Michelle Courier  
Brette Dunbar  
Sarah Dzurik  
Sharyl Eisenstein  
Victor Escarcida  
Matt Feda  
Randi Freese  
Rita Gara  
John Gibbons  
George Hoffman  
Ken Hudson  
David Johnston  
Robert Ladd  
Brian Miller  
Amber Porter  
Brandy Quance  
Mary Ann Scholl  
Judy Shammo  
Alexandria Spear  
Robert Zalud  
Tiffany Davis  
Catherine Brukalo

**President's Page**  
**Rhonda L. Rosenthal**  
***2017/18 MCBA President***



When it became apparent to me over the last few years that I indeed was going to be president of the McHenry County Bar Association, I started to think about the president's article in the quarterly newsletter. I wanted the articles to be clever, informative, and, most importantly, not make me look stupid. I even had a good gimmick planned that would tie the articles together.

Then, bad things happened to members of the MCBA and my priority was appropriately readjusted. This made me remember why I originally joined the MCBA and the executive committee of the Board of Governors. I wanted to be a part of this unique legal community.

As members of the MCBA we are a community. A small (by other bar standards), but loyal community. We may not always be as involved as we should be, but when push comes to shove, we can be counted on. I have seen members unofficially mentor others, vent, talk shop, and tell tall tales in the attorney's lounge, enjoy each other's company at events such as the recent annual golf outing, arrange food and comfort for those members who mourn, and support those who have fallen.

My first mentor, Benedict Schwarz II, stressed to me the importance of the bar association and being part of the legal community. Knowing your colleagues helps working with them as adversaries and reduces stressful court situations. Of course, we are still zealous advocates for our clients. However, recognizing that we are part of the legal community helps us to see the larger picture and to balance advocacy with professionalism.

Happily, our official community is growing. I am pleased that we can welcome new members from the State's Attorney's office and the Public Defender's office. They have long been members of our legal community and now they will add their ideas, energy, and support to our bar community.

I am honored to serve our community and welcome your ideas on further ways to serve.



Rhonda L. Rosenthal presenting the  
President Plaque to Honorable Mark R.  
Gerhardt

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## **Citation Aggravation: Clarifying Orders Regarding Citations to Discover Assets**

By

Michael G. Cortina, *SmithAmundsen, LLC*

Once a creditor has obtained a judgment, the usual method for collection is the service of a citation to discover assets on the judgment debtor's bank. Once served with the citation to discover assets, the bank is required to hold or "freeze" up to twice the amount of the judgment<sup>1</sup> pending final resolution. The citation also becomes a lien on all of the judgment debtor's property at the bank at the time of service, and all subsequently acquired property, until disposition of the citation.<sup>2</sup> This means that a citation to discover assets is a continuing lien that attaches to the funds in the debtor's account at the bank at the time of service, as well as all amounts deposited into the account after the citation has been served until the citation is disposed. The question then becomes, when is a citation to discover assets disposed?

The Illinois Supreme Court has attempted to provide guidance on this question by rule;<sup>3</sup> unfortunately, the Rule leaves room for interpretation. The Rule states, inter alia:

When Proceeding Terminated. A proceeding under this rule continues until terminated by motion of the judgment creditor, order of the court, or satisfaction of the judgment, but terminates automatically 6 months from the date of (1) the respondent's first personal appearance pursuant to the citation or (2) the respondent's first personal appearance pursuant to subsequent process issued to enforce the citation, whichever is sooner.

Routinely, when a bank responds to a citation served upon it regarding a judgment debtor, the response states whether the debtor has accounts at the bank, the amount in each account, and other information necessary to properly answer the citation. Pursuant to statute, banks also freeze up to double the amount of the judgment on the debtor's account until the citation is disposed. Under Rule 277(f), banks are required to maintain that freeze of double the amount of the judgment for 6 months unless one of the other intervening acts terminates the citation earlier.

What type of court order, however, is required to terminate a citation? Rule 277(f) merely indicates that the citation continues until terminated by 1) motion, 2) order, or 3) satisfaction of the judgment. Is an order from the court to the bank directing a turnover of funds an order of the court that terminates the citation, or does the citation continue for the full 6 months? If the court's order does not specifically state that the citation is terminated, banks could continue to place a hold on the debtor's account for up to 6 months. This author has seen the argument that any court order terminates the citation, as well as the argument that only an order satisfying the citation will terminate it before the full 6 month duration has lapsed.

Attorneys for debtors and creditors alike should be aware of this ambiguity in Rule 277(f) and draft orders that avoid any confusion. When an ambiguity exists, banks generally err on the side of caution and would likely maintain the freeze on the account, which therefore prohibits access by the debtor to funds

which may be earmarked for payment of bills or other matters. If a turnover of funds is meant to satisfy the citation served on the bank, then the order should so state; if the citation is meant to continue after a turnover of funds in order to capture future deposits, then the order should so state.

The attorney drafting the order for the court should clarify if the citation is supposed to continue after the turnover of funds, or be terminated. Such clarity removes any confusion on the part of the bank or the parties to the case. The failure to provide a clear order to the court could result in a bank maintaining a freeze on an account when that was not the intent of the parties, or releasing the freeze on an account prematurely; both situations are equally unacceptable.

1. 735 ILCS 5/2-1402(f)(1)
2. 735 ILCS 5/2-1402(m)(2)
3. IL Sup. Ct. R. 277(f)



## **SAVE THE DATE**

### **MCBA Annual Picnic & Softball Game**

**September 22, 2017**

**Veterans Acres Park**

**Crystal Lake**

**5:00 pm—8:00 pm**



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## 2017 Legal Aid Awards Luncheon



Honorable Michael T. Caldwell,  
*Judge of the 22nd Judicial Circuit*

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Guest speaker, Michael Bergmann,  
*Executive Director, PILI*

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Honorable Mark R. Gerhardt,  
*MCBA Bar President*

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Award winners:

Pictured L to R: Jennifer L. Johnson, Peter Carroll, Joel Weiner, Carol Hill

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# MCBA 2017/18 LEADERSHIP ELECTED AT ANNUAL MEETINGS:

## **2017/18 Criminal Law Section Officers**

At its Annual Meeting on May 25, 2017, the Criminal Law Section of the McHenry County Bar Association elected the following officers for the 2017/18 year:

**President**—Robert V. Deters, *Harter & Schottland, P.C.*

**Vice President**—Patrick D. Kenneally, *McHenry County State's Attorney*

**Secretary/Treasurer**—David Franks, *Franks & Rechenberg*

## **2017/18 MCBA Executive Board**



pictured L to R: Thomas J. Cynor, *Secretary*, Jennifer L. Johnson, *2nd Vice President*, Rhonda L. Rosenthal, *President*, Steven J. Greeley, *1st Vice President*, Jenette M. Schwemler, *Treasurer*

## **2017/18 Family Law Section Officers**

At its Annual Meeting on May 9, 2017, the Family Law Section of the McHenry County Bar Association elected the following officers for the 2017/18 year:

**President**—Paul Zukowski, *Prairie State Legal Services*

**Vice President**—Dawn Roth, *The Law Offices of Dawn M. Roth*

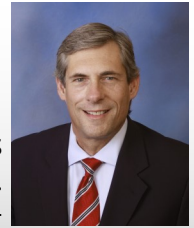
**Secretary/Treasurer**—TJ Clifton, *Zukowski, Rogers, Flood & McArdle*

# Member News

## The College of Labor and Employment Lawyers Announces

### Dennis R. Favaro Inducted as Fellow

**Washington, DC, June 15, 2017** The College of Labor and Employment Lawyers is proud to announce the election of Dennis R. Favaro of Favaro & Gorman, Ltd. as a new Fellow. Election as a Fellow is the highest recognition by one's colleagues of sustained outstanding performance in the profession, exemplifying integrity, dedication and excellence.



The twenty-second installation of Fellows will be held this November in Washington DC.

Dennis R. Favaro is the managing partner of Favaro & Gorman, Ltd., an employment law firm with offices in Chicago, Palatine and Lakewood / Crystal Lake, Illinois.

## Trial Call



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#### Case Number: 16AR22

Plaintiff: Jessica Gajewski  
Defendant: Troy Thomas  
Plaintiff's Attorney: Fiorentino Law Offices  
Defendant's Attorney: Law Office of Steven A. Lihosit  
Trial Date: February 21, 2017  
Judge: Michael J. Chmiel  
Verdict: Plaintiff  
Medical: \$11,260.35  
Pain & Suffering: \$2,500  
Lost Wages: \$154  
Loss of normal life: \$2,500  
Gross Verdict: \$16,414.35  
Plaintiff's last demand: \$20,000  
Defendant's last offer: \$17,000

#### Case Number: 13LA78

Plaintiff: Robert Frenz  
Defendant: McHenry Area Chamber of Commerce  
Plaintiff's Attorney: Steve Greeley, Franks Gerkin & McKenna  
Defendant's Attorney: George E. Riseborough  
Trial Date: March 17, 2017  
Judge: Michael T. Caldwell  
Verdict: Defendant



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## **Child Support in Illinois: The Income Shares Model**

**by: Jenette M. Schwemler**

As of July 1, 2017, Illinois became the 40th state to adopt the income shares model to calculate child support (750 ILCS 5/505). Child support is no longer calculated by simply applying a percentage to the “net income” of the supporting parent. The idea behind the income shares model is that when parents are together, both contribute to the support of the children, and the same should be the case when the parents separate. The income shares model tries to reflect a family’s actual expenses and how they were shared when the parties were married, and applies a new calculation considering all income of the family. The case law stating that both parties have an obligation to support the children is now given additional support by this new statute.

### Calculation Under the Income Shares Model

First, the net income of each party is calculated. There are two ways to determine net income: 1) standardized tax amount and 2) individualized tax amount.

The standardized tax amount is the total of federal and state income taxes for a single person claiming the standard deduction, one personal exemption and the applicable number of dependency exemptions for the minor child(ren), and the Social Security and Medicare tax calculated at the Federal Insurance Contributions Act rate (750 ILCS 5/505(3)(C)). The standardized tax amount is taken from the HFS Gross to Net Income Conversion Table Using Standardized Tax Amounts which can be found at <https://www.illinois.gov/hfs/ChildSupport/parents/Pages/IncomeShares.aspx>. This formula is best used when: 1) there is a standard tax deduction for a single payor (no head of household), 2) there is one personal exemption (self), 3) there are no itemized deductions, 4) the parties have no capital gains income, and 5) the parties live in the same state.

The individualized tax amount is the aggregate of the following: 1) federal income tax (properly calculated withholding or estimated payments), 2) state income tax (properly calculated withholding or estimated payments), and 3) social security or self employment tax, if applicable (or, if none, mandatory retirement contributions required by law or as a condition of employment) and Medicare tax calculated at the Federal Insurance Contribution Act rate (750 ILCS 5/505(a)(3)(D)). The individualized tax amount can be calculated differently when the parties agree (750 ILCS 5/505(a)(3)(E)(I)), when the court determines child support in a summary hearing and either party “opts-in” to use the individualized tax amount after submission of a financial affidavit and supporting documentation (750 ILCS 5/505(a)(3)(E)(II)) or if there is an evidentiary hearing, it will be calculated based upon the record established (750 ILCS 5/505(a)(3)(E)(III)). Individualized net income is best used when: 1) a party is remarried and files jointly, 2) a party is head of household, 3) a party uses itemized deductions, 4) a party has capital gains income and 5) a party lives in a different state.

The net incomes of both parents (whether using the standardized tax amount or individualized tax amount) are added together to determine the combined income (750 ILCS 5/505(a)(1.5)(B)).

Second, the combined income is compared to a table published by the State of Illinois which estimates the economics of an average intact family (750 ILCS 5/505(a)(1.5)(C)).

Illinois has distributed the Income Shares Schedule Based on Net Income which can be found at <https://www.illinois.gov/hfs/ChildSupport/parents/Pages/IncomeShares.aspx>.



Then, calculate each parent's percentage share of the basic child support obligation by dividing each parent's net income by the combined income of the family.

Third, additional expenses, which may be included (at the court's discretion) are child care expenses (750 ILCS 5/505(a)(3.7)), extra curricular activities and school expenses (750 ILCS 5/505(a) (3.6)), and health insurance (750 ILCS 5/505(a)(4)). Child care expenses, medical insurance premiums attributable to the child are pro-rated and added to the basic child support calculation. Extra curricular activities are not automatically pro-rated and added to the basic child support calculation.

When maintenance is part of the equation, the maintenance paid must be subtracted from the payor's income and included in the payee's income prior to calculating child support under the income shares model (750 ILCS 5/505(a)(3)(A)). The maintenance amounts should be made from gross income before determining the tax amounts because maintenance is tax deductible for the payor and included in the payee's income. Maintenance received from a prior spouse also must be included as income by the payee.

#### Offset Based on Shared or Split Parenting Time

An adjustment or "offset" is available if a parent has the physical care of a child for at least 146 overnights a year (shared parenting, which calculates to overnight parenting time for 40% of the year) (750 ILCS 5/505(a)(3.8)). First the basic child support obligation is multiplied by 1.5 to calculate the "shared care child support obligation." Second, each parent's child support obligation is determined by multiplying each parent's portion of the "shared care child support obligation" by the percentage of time the parent is allocated parenting time with the child(ren). The parent owing more pays the difference between the two amounts.

In split care (cases where there is more than one child and each parent has physical care of at least one but not all of the children, i.e. mom has residential custody of two children and dad has residential custody of one child) the calculation must be done twice (750 ILCS 5/505(a)(3.9)). In this case, first, calculate the support of Parent 1 by assuming the child(ren) in the care of Parent 1 is the only child(ren) of the marriage. Second, calculate the support of Parent 2 by assuming the child(ren) in the care of Parent 2 is the only child(ren) of the marriage. Third, subtract the lesser support obligation from the greater support obligation. The parent owing the the greater obligation is ordered to pay the difference in support to the other parent, unless the court deviates from the guidelines.

#### Unemployment

What happens when a spouse is intentionally unemployed or underemployed? If a parent is voluntarily unemployed, under 750 ILCS 5/505(a)(3.2), child support is calculated based on a determination of "potential" income. "Potential" income is determined by employment, potential and probable earnings level based on the obligor's work history, occupational qualifications, prevailing job opportunities, ownership by an obligor of a substantial non-income producing asset and earnings levels in the community.

The drafters of the income shares statute believe that calculating child support in this way increases the perception of "fairness" between the parents. The hope is that with this new perception of "fairness," compliance with child support orders will increase and the parties will be more inclined to enter into settlement agreements.

# 41st Annual MCBA Golf Outing

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### **Registration Sponsor: Home State Bank Trust & Asset Management**

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**Hole 6: Frank A. Quatrino & Associates, LLC**

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**Hole 7: Tiffany Davis**

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**Hole 10: Fidelity National Title**

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**Golf Outing Committee**

Vonda Vaughn, Chairperson

Jennifer Johnson

Hon. Mark Gerhardt

Steve Greeley

Rhonda Rosenthal

Keith Sloan

# Congratulations to our winners!

**1st Place Foursome** -David Waggoner, Luke Waggoner, Lisa Waggoner & George Retzlaff

### Closest to the Pin -Men -Ben Ross

**-Women -Ashley Wilson**

### Longest Drive - Men - Kyle Kunz

**- Women -Ashley Wilson**

## Straightest Drive -Men -Scott Taylor

**-Women -Jennifer Gibson**

**Grand Prize Raffle Winner - Todd Benison**

**Cubs Tickets courtesy of Heritage Title –Mrs. Justen**

**White Sox Tickets *courtesy of Heritage Title* –Jim Campion**

**White Sox Tickets courtesy of Fidelity Title - Dan Johnson.**

**Turnberry Foursome** *courtesy of Turnberry* –Michael Poper

**Trader Joes GC & Basket *courtesy of Joe Canevello* –Thomas O'Meara**

## Bag Lady - Linda Kuziel

## A Day at the Beach - Sam McNicholas

## Wine Time –Jim Fitzgerald

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## A Night on the Town – Dan Johnson

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**Pinecrest Golf Outing *courtesy of Pinecrest* –Rob Fetzner**

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

<b>Date</b>	<b>Event</b>	<b>Location</b>	<b>Time</b>
August 15, 2017	Board of Governors Meeting	MCBA Office	Noon
August 22, 2017	General Meeting	Woodstock Country Club	Noon
September 7, 2017	Criminal Law Section Meeting	MCBA Office	Noon
September 12, 2017	Family Law Section Meeting	MCBA Office	Noon
September 19, 2017	Board of Governors Meeting	MCBA Office	Noon
September 22, 2017	Fall Mediation Seminar	Home State Bank, Woodstock	11:30 am—4:00 pm
September 22, 2017	Annual Picnic & Softball Game	Veterans Acres Park, Crystal Lake	5:00 pm—8:00 pm
September 26, 2017	General Meeting	Woodstock Country Club	Noon
October 5, 2017	Criminal Law Section Meeting	MCBA Office	Noon
October 10, 2017	Family Law Section Meeting	MCBA Office	Noon
October 17, 2017	Board of Governors Meeting	MCBA Office	Noon
October 24, 2017	General Meeting	Woodstock Country Club	Noon

McHenry County Bar Association  
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 Woodstock, IL 60098