

August 2018

McHenry County Bar Association

▶ A Quarterly Publication

In Brief

42nd Annual Golf Outing
August 3, 2018

Upcoming Events

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2017/18

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Date	Event	Location	Time
August 21	Board of Governors Meeting	MCBA Office	Noon
August 28	General Meeting	McHenry County Admin. Building	Noon
September 6	Criminal Law Section Meeting	MCBA Office	Noon
September 11	Family Law Section Meeting	MCBA Office	Noon
September 13	Civil Law Section Meeting	MCBA Office	Noon
September 18	Board of Governors Meeting	MCBA Office	Noon
September 25	General Meeting	TBD	Noon
September 28	Mediation Seminar	MCBA Office	Noon-4pm
October 4	Criminal Law Section Meeting	MCBA Office	Noon
October 9	Family Law Section Meeting	MCBA Office	Noon
October 16	Board of Governors Meeting	MCBA Office	Noon
October 19	Murder Mystery Party	Dole Mansion	6:30pm—9pm
October 23	General Meeting	TBD	Noon

Board Meeting Minutes

[April Meeting Minutes](#)

[May Meeting Minutes](#)

[June Meeting Minutes](#)

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President's Page

By Steven J. Greeley, Jr.

2018/19 MCBA President



Thank you for allowing me to guide our bar through June of next year. For those of you who do not know me I look forward to conversing with you in the near future.

Whether we know each other or not, I would like to hear from all the bar members about what the bar does well and what could be improved. Please call me at 815-923-2107 and leave a message if you do not catch me. You can also email me at sgreeley@fgmlaw.com.

Your input is important as evidenced by the survey of the membership that went out earlier this year that identified that people want many different kinds of offerings. About half of those surveyed want more social events on weekday nights and we will start those at local establishments soon. People also largely enjoy our picnic, softball game and holiday party. We also just had another great golf outing and I hope to see those interested at these events going forward.

For those interested in the educational side of the bar, we will also continue to provide quality CLE for little or no cost at monthly general meetings, section meetings and other events. We will also be trying new venues and food for general meetings so please come out and get those credits to avoid the last minute scramble before your reporting period ends.

We will also continue to further our community outreach with new events while still supporting charitable causes at our major social functions and while further educating the public during our Law Day activities. Our support of Prairie State is also a major function of our bar and I also serve as our local bar appointed board member to help fundraise for them and to guide them. The time and money you donate will go right to McHenry County residents in need.

Whether we are donating, educating, learning or socializing, we will do these things to further our mission of being better so we can better serve the community. I am proud to be at the head of such a great group of people and I look forward to our future activities.

2018-19 Executive Board Members



Real Lawyers Know How to Ask for Help

By: Allison L. Wood



When we read about lawyers being sanctioned by the ARDC, we *never* think that we would do the things they did. Since we think we are honest and ethical, it is easy to believe that the lawyers who get sanctioned must be dishonest and unethical. Admittedly, there are a few lawyers who commit truly reprehensible acts; hurt their clients; and bring the legal profession into disrepute. However, there are a few honest and ethical lawyers who were sanctioned by the ARDC because: (1) they made a poor choice; (2) they were overwhelmed by the demands of the practice of law; or (3) they were facing life challenges without support. Let's take a closer look at each of these categories and see if you can spot the common theme.

In the poor choices category, these are the lawyers who made an error in judgment in relation to a single occurrence that will likely never happen again. I'm going to give you a few examples, but I'm not going to provide you with case names or numbers, because these lawyers have moved on from the occurrences and my point is not to embarrass them further even if it is a matter of public record. My point is just to illustrate how even the most honest and ethical lawyer can make an error of judgment that results in an ARDC investigation and/or sanction. Here are a few noteworthy examples: the lawyer who blogged about the intelligence level of her clients and the judge; the lawyer who disclosed confidential client emails to defend himself against an attack on his integrity; the lawyer who didn't know that she couldn't share fees with a non-lawyer; the lawyer who thought he could represent the buyer and the seller because they were friends and agreed to it; the lawyer who signed his name on the personal injury settlement check without the client's consent; the lawyer who failed to communicate with his clients or explain his fees; the lawyer who didn't make a timely deposit to the IOLTA account; and the lawyer who failed to timely register and continued to practice

law. How many of these situations resonated with you?

Then there are the lawyers who are overwhelmed by the demands of a law practice; and their mismanagement can result in a disciplinary complaint. Here, I will cite one case, just the number (not the name) because the analysis of the Hearing Board is worth quoting in full. In *Case No. 92 CH 319 (Hearing Board June 5, 1995)*, *approved and confirmed*, *No. M.R. 11563 (Sept. 29, 1995)* it was noted that the attorney who neglected two criminal appeals, failed to communicate with his clients, failed to refund unearned fees to two clients, and converted one client's funds, "*repeatedly took on more clients and cases than he could handle and had poor office management skills, but did not act out of dishonest motives or callous disregard for his client's interests.*" The attorney was suspended for two years, with all but five months stayed and placed on probation subject to his participation in a law office management program. Not surprisingly, lawyers who fail to manage their practice well are also at risk for a malpractice claim.

In the final category, we are referring to lawyers who committed misconduct during a time they were facing an illness, a divorce, the loss of a loved one, the implosion of their law firm, the care of elderly parents, the burden of unexpected expenses, or burn-out from the never ending challenge to bill more hours. While most of us can recover from life challenges and continue to provide quality legal services to our clients; some lawyers struggle harder because they have limited resources or support. For example, a solo practitioner who needs hospitalization often does not have someone else to watch the store until they return. Likewise, an attorney with a substance abuse issue or a mental condition that is not being managed may begin to neglect client matters or convert funds. Notably,

29% of the disciplined lawyers in 2017 reported a substance abuse or mental health issue.

Every sanctioned lawyer is not a bad person and everybody makes mistakes. The common theme of these sanctioned lawyers was their failure to ask for help when they needed it. Lawyers who are uncomfortable with being the client or the patient need to adjust their lens to the bigger picture. If the lawyer had sought the advice of ethics counsel before making a poor choice, or sought advice from other lawyers to better manage their practice, or sat down with a clinical professional at Lawyers' Assistance Program to discuss their personal challenges, many of these cases could have been minimized their disciplinary risk or avoided it completely. Lawyers who

ask for help when they need it will be able to save their reputations, protect their clients, and maybe even save their own lives.

For more information, visit the LAP website at www.illinoislap.org, or contact the Chicago LAP office at 20 South Clark St, Suite 450, 312-726-6607 or 800-527-1233. You may also send a totally confidential email to gethelp@illinoislap.org. No problem or concern is too big or too small. You have the ability to affect the future of our profession for the better.



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Civil Trial Call

Case Number: 17AR275

Plaintiff: State Farm a/s/o Martin Rodriguez

Defendant: Yolanda Ochoa & Fernando Bonilla

Plaintiff's Attorney: Oltman Law Group, P.C.

Defendant's Attorney: Giamanco Law Partners

Trial Date: June 11, 2018

Judge: Michael J. Chmiel

Verdict: Jury selected, opening statements presented, then

settled with dismissal order entered

Case Number: 14LA32

Plaintiff: Melissa Ann Giblin

Defendant: Michael Samakouris

Plaintiff's Attorney: Law Office of Daniel E. Goodman, LLC

Defendant's Attorney: Lucas Olness & Associates

Trial Dates: June 25– June 27, 2018

Judge: Kevin G. Costello

Verdict: Plaintiff

Medical: \$8474.25

Pain & Suffering: \$2000

Loss of Normal Life: \$500

Net Total Verdict: \$10,974.25

Last Demand: \$100,000

Last Offer: \$20,000

Case Number: 17AR70

Plaintiff: Auto Owners Insurance Association, a/s/o Timothy Gronke

Defendant: Rosalino Rios Jr.

Plaintiff's Attorney: Barrick, Switzer, Long, Balsley & Van Evera P.C.

Defendant's Attorney: Wein & Associates

Trial Date: July 16, 2018

Judge: Michael J. Chmiel

Verdict: Plaintiff

Medical: \$4,449.09

Property Damage: \$14,943.02

Net Total Verdict: \$19,392.11

Last Demand: \$19,000

Last Offer: \$12,000

Case Number: 14LA182

Plaintiff: Gustavo Alanis, Rosalinda Gutierrez and Yesenia Estrada

Defendant: Gerald D. Kray Jr.

Plaintiff's Attorney: Kugia & Forte

Defendant's Attorney: Robert S. Wilson

Trial Dates: July 16-July 18, 2018

Judge: Thomas A. Meyer

Verdict: Plaintiff

Medical: \$12,789.71

Pain & Suffering: \$1,500

Loss of Normal Life: \$1000

Gross Verdict: \$15,289.71

Last Demand: \$90,000

Last Offer: \$40,000



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Jason Montemayor

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CIVIL PRACTICE UPDATE

By, Hon. Michael J. Chmiel

Through the remaining days of Summer, civil practice in McHenry County is moving along through continued work on cases, projects designed to improve the handling of cases, and new or renewed points of consideration.

In the Civil Division of the Twenty-Second Judicial Circuit of the State of Illinois, the five judges who are handling cases have worked on publishing *Standing Orders* which cover various procedures in their courtrooms. These are also being made available in the respective courtrooms and posted at the Circuit website, <https://www.mchenrycountyil.gov/county-government/courts/22nd-judicial-circuit/judiciary-judicial-assignments>, along with, in some cases, a calendar for the respective judge. These items will be updated periodically, so please visit the site when you can. Also published at the beginning of July, 2018, are updated lists of the Guardians Ad Litem which are used in probate, and Mediators which are used in handling civil cases. These lists will be scheduled to be updated at least annually. Those who might be interested in being listed should contact Presiding Judge Michael Chmiel. Lastly, the 2019 list for arbitration hearings was recently approved and is being published in Courtroom 202 of the McHenry Government Center, and through the Circuit's website.

Also in the Civil Division, work on the ***Civil Injustice Improvement Project*** continues through the efforts of the twenty-nine members of the Advisory Council for the Project. Since April 1, 2018, all cases filed in the Division have been placed on a track. The tracks were designed through a review of recent historical data on the handling of cases, and will remain a work in progress and designed to anticipate the typical time it takes to handle respective causes of action. The tracks will be reviewed periodically and may be adjusted, but will serve to help the Court gauge to what extent cases are moving appropriately through the system. The tracks have been reported to the Administrative Office of the Illinois Courts and the National Center for State Courts, and are being relayed to and used in other jurisdictions throughout the State on country.

In the new ***Civil Practice Section*** of the McHenry County Bar Association, about half of the Members of the new Section recently attended the second meeting of the new section on July 12, 2018, at Nicolino's Tracks in McHenry. Thanks to Heritage Title Company for sponsoring lunch. Following a short business meeting for the Section, Catherine R. Brukalo and Guy R. Youman provided an hour-long presentation on *Handling Emergencies in Civil Litigation, including TROs and Preliminary Injunctions*, which was well-received through interactive comments and questions. As for the work of the section, it is being engaged through interest groups, including those focused on ADR (chaired by Philip Glick), Rule of Law (chaired by Scott Jacobson), Case Management (chaired by Hon. Thomas A. Meyer), Elder Law (chaired by Melissa Wick), Outreach and Strategic Planning (chaired by Catherine R. Brukalo), and Probate (chaired by Guy R. Youman). Those wishing to participate in the work of an interest group should contact the respective chair.

Comments or questions about any of these items are welcome. Enjoy Summer!



L to R: Guy Youman, Catherine Brukalo, Judge Chmiel, Judge Mangiamale and Steven Greeley

Practical Advice in Transforming a Law Firm from Paper Files to Electronic: a Two-Step Process for Organizing Electronic Files

By: Drake W. Shunneson, JD, LLM (Diamond & Lesueur, PC)

As of January 1, 2018, the new Supreme Court Rules, specifically Rule 11, mandates that all lawyers provide an email address where service can be sent. Further, Rule 11 mandates that all lawyers serve notice on other parties, with some limited exceptions, by electronic mail. Of course, the new Rule can create obstacles for established firms in McHenry County attempting to transition from a paper record to electronic files.

Nothing will make your electronic files more unwieldy than not knowing just how you are going to organize your files. Before the experienced practitioner begins to save all the records to an electronic file, it is essential that you have an organizational plan. Fortunately, most electronic file headaches can be alleviated through a two-step process.

First, a law firm must identify what systems it will be utilizing to store your records. If you are utilizing a cloud based system, make sure that you can organize your documents within that file in a way that does not create more problems than it solves and fits your practice needs. Law firms must identify and use systems that allow for organization of the files. It is not enough, and probably improper, to simply save every electronic email, document, and filing that comes in the designated case file. Such sloppy practices will lead to an electronic file that is unwieldy and impossible for the practitioner to control. Worse, you could find yourself in a situation where you are looking at a file with hundreds of electronic documents and you cannot tell the difference between a draft document and a document that has actually been sent out of the office. Accordingly, whatever systems you utilize, be sure that they fit your practice needs and the organizational needs of the case files to properly serve your clients.

Second, although organization is key, be wary of overly complex organizational schemes and practices. This may seem like a no-brainer to some, but, as lawyers, we have to remember that our profession has a tendency to want to create complex systems that precisely identify every document so that it fits in the case. While this may work for the handling attorney, I can assure you from working at several law firms over the years that anyone else that touches the overly complex electronic file will be unable to understand anything at all when they pick it up. Although every system, and practice area, is different, it is important that you try to create a uniform system in your law firm that everyone can utilize with ease. My suggested starting point for all practitioners is to start with an office wide policy for all files to be limited to five simple folders: 1. Court Documents for file-stamped documents in the case; 2. Discovery for any formal discovery issued or received (this folder can have additional folders as common sense dictates); 3. Drafts for any documents that are not file stamped or are a work in progress (generally consisting of word documents and non-.PDF documents or proposed settlements. Basically anything that has not been filed or has not left the office or is simply a proposal from one side or the other); 4. Letters for any documents that go out or come in through the mail; and 5. The remainder of the file (or the last folder as you prefer) is reserved for any other documents that do not fit in folders 1 through 4 and also contains a word document with the label "file memo" for any notes to help assist someone looking at the file.

Hopefully this article is of some assistance to anyone struggling with the new Supreme Court Rules.



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strategic

(strə-tē jĭk) *adj.*

1. Carefully designed or planned to serve a particular purpose or advantage.
2. Decisions or plans designed to impact favorably the key factors on which the desired outcome of an organization, game, system, venture, or war, depends.
3. A cleverly chosen action or position, that is set up to be most useful or have the greatest effect.
4. Able to operate in an uncertain environment where complex problems and external events may impact the success of the venture.

[*syn.* judicious, prudent, deliberate, advantageous]

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McHenry County Bar Hosts Prairie State Legal Services Legal Aid Awards Event

Contributed by Dori Michaels



On Tuesday May 22, 2018, at the beautiful Loyola Retreat Campus in Woodstock, before an audience that included judges, attorneys, paralegals and others, Prairie State Legal Services recognized three attorneys and one law firm for their outstanding contributions to legal aid efforts in McHenry County.

While the group enjoyed fresh greens and roasted vegetable salads, Bar Association president Rhonda Rosenthal opened the event by thanking Bar members for the time they spend on pro bono cases. Judge Caldwell (retired) then took the reins, quoting the likes of George W. Bush and Barack Obama. He spoke of the pro bono work of the McHenry County Bar as a “longstanding endeavor”, and introduced our speaker for the event, Mr. John Lupton, Executive Director at the Illinois Supreme Court Historic Preservation Commission.

A historian, Mr. Lupton studies the law through the lens of history. While the main course of roasted chicken on the bone, rice pilaf and steamed broccolini was served, the audience learned about how, in 1942, parking meters (which at the time took a nickel) were found to be constitutional under Illinois municipal law, despite some public outcry. That decision was later upheld by the Illinois Supreme Court. Mr. Lupton introduced us to John Rice Jones, who in 1794 was the first attorney to practice in Illinois, and Edward Coles, who ran for governor of Illinois in 1822 and was pivotal in ending slavery in Illinois.



Mr. Lupton tipped his hat to Abraham Lincoln by speaking of some of the myths surrounding the man, and told us about Myra Bradwell, whose petition to become an attorney in the 1800s was denied - because she was a woman. The audience thoroughly enjoyed the perspective that Mr. Lupton provided, illustrating how the history of the law parallels the history of society. We thank him for his presentation.

Afterwards, with an able assist from Judge Caldwell, awards were presented to attorneys Heather Kroencke, Karen Lavin, and the firm of Zanck, Coen, Wright & Saladin. Ms. Kroencke and Ms. Lavin both spoke about the satisfaction that comes from helping their legal aid clients – how it is well worth the time. Mr. Zanck took a moment to read a touching thank-you card his firm received from a grateful pro bono client. Finally, as a beautiful berry-sauced dessert with ice cream was set before the guests, a special lifetime award went to attorney William Caldwell for his many years of pro bono service.

So once again, a fine time was had by all – and we look forward to working together with our dedicated volunteer attorneys during the rest of 2018 and beyond.



Award Winners L to R: Karen Lavin, Heather Kroencke and William Caldwell



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Hole 3: NLT Title

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Holes 5 & 18: Salvi, Schostok & Pritchard

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Hole 7: Taradash Law Office

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Hole 8: Chicago Title

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Hole 10: Fidelity National Title

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Hole 13: Land Surveying Services, Inc.

Land Surveying Services, Inc. (LSSI) can provide your firm with any surveying needs you may require. Commercial, Residential and ALTA/NSPS Survey to name a few. LSSI would like to be your surveying company of choice. Once you place your request with LSSI you can rest assured your survey will be at your closing on time and accurately.

Hole 14: Miller Verchota, Inc.

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Hole 15: Canon Solutions America

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Ten Cross Examination Tips

compiled by Hon. Mark R. Facchini

Cross examination is the most important skill for a trial attorney. I take no credit for the origin of these tips as they are derived from my observations of some of McHenry County's finest trial attorneys and my experience. I refer all readers to Irving Younger's *Ten Commandments for Cross Examination* available on YouTube. It is a great video tutorial on cross examination. So, without further ado, here are ten cross examination tips of which I take no credit for . . .

1. **Cross examination serves a limited purpose.** The purpose of cross examination is to establish facts to support your closing argument. That is it. Period. Cross has no further purpose. You cross examine a witness to establish facts or reasonable inferences from facts to support your theory of the case to use in your closing argument. Do not repeat the direct examination in a leading question format. That is not cross examination. That is simply letting the trier of fact hear your opponent's case twice. So don't do it. Ever.
2. **Only ask questions you know (and can prove) the answer to.** No exceptions! Cross is about being in control of the witness to establish facts for your closing argument. You accomplish such by only asking questions you know, and can prove, the answer to. You know the weaknesses/strengths of the case. You know your theory of the case. You know what you want to argue. Now, ask questions you know the answer to in order to establish facts for your closing argument.
3. **Only ask leading questions.** Never ask an open ended question. Period. No exceptions. If you ask an open ended question on cross examination, you are doing it wrong. Reason? You are in control on cross. You have a specific goal. You know the answer to the question you are asking. You simply seek the witness to agree with the answer contained in your leading question. By leading, you maintain control and prevent the witness from explaining. If a witness tries to explain, interrupt the witness and ask the Judge to instruct the witness to answer the question asked, nothing more and nothing less. When you ask a non-leading question, you allow the witness to explain and thus lose control. You do not want that. It will be bad for your case. So just lead.
4. **Write your cross before trial and stick to the script:** I close my eyes and I can hear Dan Hofmann's mantra, "stick to the script pal." And he's right. Because you are only asking questions you know the answer to, you can write the cross examination before trial. And stick to the script. A well outlined cross will also serve as

your closing argument script/outline, especially in a one or two witness trial. Any exceptions? This time, yes. See tip number 5 below for the exception to sticking to the script, but you still stick to the rules of cross.

5. **Listen carefully to the witness's answers.** Although you prepared the cross examination before trial and you're going to stick to the script, you still must listen to direct and cross examination answers carefully because other areas of cross will develop, especially impeachment by inconsistency or omission. A witness may not only give you the answer you already know, but even more. These answers could lead to further cross topics or magnificent facts for your closing. So always listen. But still follow all the rules of cross examination – only ask leading questions that you know the answer to, etc. You just simply are adding cross examination topics to further your closing arguments.
6. **No cross is better than a bad cross.** Do not be afraid to not cross examine a witness. You will not cross examine a witness in two situations. First: the witness did not testify to important material facts in opposition to your case. If your opponent failed to ask the witness the important questions or elicit important facts beneficial to your opponent's case, do not cross examine the witness. However, if you cannot help yourself and cannot resist cross examination, do not ask questions even remotely close to those missed areas. You do not want your cross to point out your opponent's errors or worse, give your opponent an opportunity to correct the error of their ways on redirect. Second: when the witness gives you nothing for close. Often in cases involving chain of custody or certain processes, you may hear from witnesses that are simply a cog in the case. Do not waste time crossing a witness that provides you nothing for your closing argument. No one will think less of you and everyone will appreciate your efficiency.
7. **Never argue with the witness.** A proper cross will never lead to an argument with a witness (unless you are Pat Walsh, in which case every cross is an argument). Why? If a witness gives you an answer to a question that you did not expect, you must have the ability to disprove that answer. Remember, you are only asking questions you know the answer to. That answer came from somewhere: a written report, written or oral statement (either directly or by omission), a deposition or prior testimony. Instead of arguing with the witness, commit the witness to the incorrect answer, commit


them to their prior report, statement or testimony and impeach away. But be careful to not ask one question too many and give the witness an opportunity to explain the inconsistency (see Tip 10 below). An inconsistency or error is much more effective than an argument with a witness. And honestly, you will get more out of the inconsistency or error in closing than you would if the witness actually gave you the answer you wanted. So you got that going for you, which is nice.

8. **Less is more.** This may be accomplished in two ways. First, asking a limited number of questions focused on a limited number of facts. However, not all witnesses are conducive to a limited cross. So with those witnesses, you can accomplish “less is more” by directing the witness (and the trier of fact) to topics and compartmentalizing your cross into easy to understand and digestible chunks for the cross examination.
9. **It’s cross examination, not a Quentin Tarantino film.** The trier of fact does not know the case as well as you do. So it’s important for cross to have a chronological or topical order. Chronological is easy, cross the witness following the chronology of testimony or events. However, when dealing with a witness covering a wide span of time and topic, you must compart-


mentalize. In many areas of law, a variety of the issues are governed by a multitude of statutory factors. When crafting a cross, stay within the particular topic and use the statutory factors as an outline or guide for your cross. This will allow the trier of fact to follow along and absorb the facts elicited in the proper context.

10. **Save your best question for argument:** I have never achieved the “Colombo” moment during a cross examination, nor have I ever seen one. Rather, I’ve experienced and seen effective cross examinations crumble because one question too many was asked and the witness got a chance to explain. Rather than going for a “kill shot” on cross examination, take your questioning up to the edge and save your final point for argument. Do not be greedy. Be effective. With a solid foundation of cross examination facts and the ability to argue reasonable inferences from those facts, you are best suited to save your best question for closing argument, where it cannot be crumbled by a witness’s explanation.

In closing, always remember the three goals of trial practice: win, have fun and don’t embarrass yourself. Achieving two out of three is a victory.

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Female—Ashley Wilson



Closest to the Pin:

Male—David Ludwig

Female—Ali Gerstad



