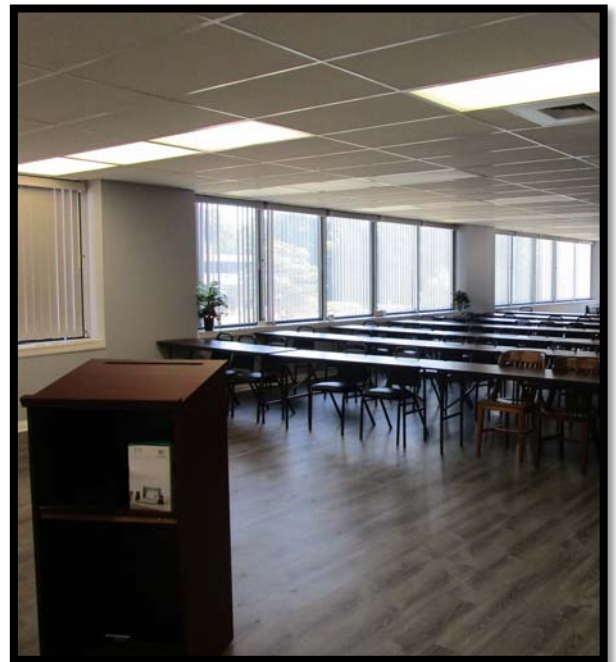


In Brief

A Quarterly Publication of the McHenry County Bar Association

August 2019

MCBA Office moved!



New address:

666 Russel Court, Unit 201

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Upcoming Events

Board of Governors

2018/19

Executive Committee

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Continuing Legal Ed.

Brian Stevens

Criminal Law Section

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Hon. Mark Fachinni

Judiciary/Court Rules

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Law Day

Steven Greeley

Legal Aid

Scott Jacobson

Legislative

Hon. Robert Baderstadt

(Ret.)

Membership/Directory

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Newsletter

T.J. Clifton

Outreach

Doreen T. Paluch

Real Estate

Vonda Vaughn

Social

Drake Shunneson

Technology

Amber Bishop

Young/New Lawyers

Steven Greeley, Jr.

Past President

Date	Event	Location	Time
August 20	Board of Governors Meeting	MCBA Office	Noon
August 27	General Meeting	MCBA Office	Noon
September 5	Criminal Law Section Meeting	MCBA Office	Noon
September 10	Family Law Section Meeting	MCBA Office	Noon
September 12	Civil Law Section Meeting	MCBA Office	Noon
September 17	Board of Governors Meeting	MCBA Office	Noon
September 24	General Meeting	MCBA Office	Noon
October 3	Criminal Law Section Meeting	MCBA Office	Noon
October 8	Family Law Section Meeting	MCBA Office	Noon
October 15	Board of Governors Meeting	MCBA Office	Noon
October 22	General Meeting	MCBA Office	Noon

Board Meeting Minutes

[April](#) Meeting Minutes

[May](#) Meeting Minutes

[June](#) Meeting Minutes

Inside this issue:

Presidents Page	3
Judges Gerhardt Swearing In	4
Member News	5
Trial Call	6
Understanding & Avoiding Parental Alienation	9
Notice of Emergency Order of Protection	13
LAP Press Release	14

President's Page

By Jennifer L. Johnson

2019/20 MCBA President



It is a great honor to be in a position to write this article. I am grateful for the trust that members of the McHenry County Bar Association and its Executive Board have put in me to serve as its President for the 2019-2020 term. While serving on the Board of Governors for nearly 10 years, joining as Social Committee Chairperson, and eventually joining the Executive Board in 2014, I have witnessed firsthand the great strides the MCBA has made towards making our legal community the best it can be and a useful tool for the community it serves. I have also witnessed the pride that the MCBA's members have in the success of the programs initiated by the Association and its members. As President, I look forward to the opportunity to continue the great traditions established by the MCBA.

For those of you who don't know me, I will give you a quick background. I am a Partner with the law firm of Zanck, Coen, Wright & Saladin, P.C. in Crystal Lake, IL. I joined the firm in 2005, and have concentrated my practice in general civil litigation, real estate, construction/mechanics liens and adult guardianships during my tenure at our firm. Prior to joining Zanck, Coen, Wright & Saladin, P.C., I was a law clerk for the City of Chicago Department of Law, handling police ticket and vehicle impound prosecutions at the municipal level. I reside in McHenry County with my husband, Nick, who is also an attorney, and our three children. When we have spare time, we enjoy watching our kids' many sporting activities, camping and cheering on the Milwaukee Brewers.

Having practiced law in McHenry County for nearly fifteen years, and having spent several of those years visiting numerous courthouses from the collar counties as well as far west and south of us, I can honestly say there is no other place I would rather practice law than in McHenry Coun-

ty. The comradery, professionalism and excellent standard of practice set by my colleagues in this county are second to none. We have a wonderful judiciary in our circuit as well. As so many of you know, either of these qualities alone, let alone both, are extremely rare.

As I will have the opportunity to address the Bar four times throughout my presidency, I would like to start with my initial article reminding us all of how lucky we are to practice in McHenry County. To those of you who are just starting your careers, or are early in your careers (although I am sure that to some I fall in that category as well!), let me take the chance to impart upon you how important the qualities of professionalism and ethical practice are. There are deadlines, there are stresses, there are good clients, unruly clients, but at the end of each day, the constant that we have in our practice, generally speaking, are the members of our Bar. The deadlines will be met or will pass, the clients will come and go, the stress will rise and fall, but while those things change, the constant remains that we will be working with the attorneys that we see regularly in this tight-knit legal community of ours. The reliance on the members of MCBA to always be fair cannot be overstated. Our professionalism and ethics are what will often define us, and what others will remember about us. These traits are some of the most important that an attorney can have, and we are lucky enough to see this exhibited on a daily basis in our colleagues here in the McHenry County Bar Association.

Thank you for allowing me to serve as your President for the upcoming year. I am always open to suggestions, concerns, complaints and any other sentiments that anyone would like to express. I am looking forward to another fun year in the McHenry County Bar Association!

The Swearing In of Judge Gerhardt



Member News

Botto Gilbert Lancaster, P.C.

We are pleased to announce the addition of criminal law attorney, Brian K. Stevens, and family / corporate law attorney, Andrew A. Machoney.

Brian K. Stevens is a senior trial attorney with over 25 years of experience handling criminal and felony cases such as murder, robbery, class X and super X drug offenses, kidnapping and arson. Mr. Stevens has first-chaired over 1000 trials and evidentiary hearings and has appeared in virtually every courthouse in the Chicago and metropolitan judicial districts. Attorney Stevens is a graduate of DePaul University Law School and the University of Illinois-Chicago.

Andrew A. Machoney has over 25 years of experience as a trial attorney and transactional attorney. He has successfully prosecuted civil cases ranging from multi-million-dollar contests over contract enforcement and employment law, to family law, to probate, to appeals. Attorney Machoney is a graduate of DePaul University College of Law and Northern Illinois University.

New Members

Welcome to the MCBA!

Andrew Muchoney

Erik B. Diggs

Jourdan Gardner

Brian Stevens

Catherine Bird

Susanne Groebner

Tyler Wilkie

Civil Trial Call

Case Number: 17AR389

Plaintiff: Hanna Thomas

Defendant: Kathleen Grogan

Plaintiff's Attorney: Donald Stinespring & Assoc.

Defendant's Attorney: Momkus, LLC

Trial Dates: June 3—June 4, 2019

Judge: Michael J. Chmiel

Verdict: Plaintiff

Gross Verdict: \$2,000 (emotional distress)

Last Demand: \$7,500

Last Offer: \$11,500

Case Number: 18SC1636

Plaintiff: State Farm Mutual

Defendant: Pedro Garcia-Pozadas

Plaintiff's Attorney: Barrick Switzer Long Balseley & Vanevera

Defendant's Attorney: Panek Law

Trial Date: June 24, 2019

Judge: Kevin G. Costello

Verdict: Settled

Case Number: 14LA4

Plaintiff: Kristine Croft

Defendant: Kathryn May

Plaintiff's Attorney: Kralovec Jambois & Schwartz

Defendant's Attorney: Richard E. Foss

Trial Date: July 8, 2019

Judge: Thomas A. Meyer

Verdict: Settled and Dismissed

Case Number: 18AR136

Plaintiff: Zoran Zivkovic

Defendant: Ignatius Guzzo

Plaintiff's Attorney: David Earl

Defendant's Attorney: Law Office of Steven Lihosit

Trial Date: July 22, 2019

Judge: Thomas A. Meyer

Verdict: Settled & Dismissed

Case Number: 17LA317

Plaintiff: Kathleen Hettermann

Defendant: Donna Schaefer

Plaintiff's Attorney: Tutaj Freeman, LLC

Defendant's Attorney: Charles W. Busse

Trial Dates: July 29— August 1, 2019

Judge: Thomas A. Meyer

Verdict: Plaintiff

Last Offer: \$180,868.31



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Understanding and Avoiding Parental Alienation

By: Tiffany M. Newton, *Gehris & Associates*

Going through a divorce is hard enough for most people, but parents with children often have it even harder. It may seem almost impossible to get through the divorce process without having a negative impact on the children. However, when one parent is purposely turning the children against the other parent and discouraging a relationship with the other parent, the children may be at risk for more than just confused feelings and being caught in the middle. In extreme cases, the behaviors of one parent may seek to drive away the other parent in an attempt to abolish the relationship between the children and the other parent.

Parental alienation encompasses extreme behaviors. In fact, a New York Appellate Court recently stated that in order for parental alienation to occur the alienating parent has to intentionally damage the reputation of the other parent in the eyes of the children and the alienated parent must demonstrate no “legitimate justification” for those actions. *J.F. v. D.F.*, 61 Misc.3d 1226(A), 2018 N.Y.Slip.Op. 51829(U). Parental alienation involves behaviors by parents that are intended to diminish the interest of the children in spending time with the other parent or refusing to have contact with the other parent.

It is important that parents not discuss the litigation process, cost of litigation, or other issues between mother and father in the presence of their children. Discussions with the children by one parent which attempt to convince the children that they do not have a good time with the other parent or that they do not enjoy spending time with the other parent can foster negative feelings toward that other parent. Engaging in a course of conduct designed to alienate the child from the other parent does not serve the best interest of the children. In situations where the children historically had a good relationship with both parents and are now demonstrating extreme hatred toward one parent, an examination of both parents may be necessary to determine whether the change in how the children are feeling is due to the actions of one of the parents.

The Illinois Marriage and Dissolution of Marriage Act requires that the Court consider all relevant factors in determining the best interests of the minor children in allocating parenting time. One of the many factors to be considered is the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child. 750 ILCS 5/602.7(b)(13). In a recent unpublished opinion, *In Re Marriage of Moore*, the Appellate Court upheld the decision of the lower court after it considered parental alienation and stated that a circuit court may suspend a parent’s visitation or eliminate a parent’s parenting time if the Court finds by a preponderance of the evidence that the parent engaged in conduct that seriously endangered the child’s mental, moral or physical health or that significantly impaired the child’s emotional development. 2018 IL App (3d) 170279-U.

What can family law practitioners do with regard to parental alienation? Family law practitioners have an obligation to consider the best interests of this children while still advocating for their clients. This can be a difficult road to navigate when one parent is engaging in parental alienation behaviors. Clients should be guided to deal with these behaviors and correct the situation before things rise to the level of parental alienation. This can be done by addressing the issue of parental alienation right away with clients. It is important to advise parents that their children should not be involved in the litigation and the litigation should not be discussed with the kids. Parents may not understand the unintended consequences that these behaviors may have on their children. Clients should keep track of the other parent’s actions that interfere with their parenting time. Allocation Judgments and Parenting Plans should include provisions that limit the behaviors generally associated with parental alienation and provide guidelines for effective co-parenting. It may also be necessary to employ the assistance of a third party such as a counselor, therapist, *guardian ad litem*, or law enforcement depending on the severity of the parental alienation behaviors. Most importantly, family law practitioners should encourage parents to co-parent and consider the best interests of the children even when this is difficult and relationships are strained. Parents need to be made aware of the impact that their conduct has on the children’s relationship with the other parent.



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NOTICE OF EMERGENCY ORDER OF PROTECTION IN A PENDING CASE

By: Martin Coonen

The question addressed here is what, if any, notice must be given or should be given when seeking an Emergency Order of Protection in a pending family law case in which the other party has appeared by counsel.

Typically, Emergency Orders of Protection are entered *ex parte*. The remedies allowed on an *ex parte* basis are set out in the Illinois Domestic Violence Act, 750 ILCS 60/217(a). (Citations to the Act hereafter are by section number only.) Attorneys sometimes wonder what, if any, notice they must give to opposing counsel when appearing for an Emergency Order of Protection.

Section 217(b) of the Domestic Violence Act contemplates that a Respondent may appear for a hearing on an emergency order. (Note: If a Respondent appears, the resulting order may either be an emergency order or a 30 day interim order. The order may not be a plenary order. Service of summons is, of course, not necessary, since the Respondent in such a case is present for the hearing. Section 222(c) provides that the Order of Protection need not be personally served with the order when the Respondent was in court at the time the order was issued. This is why judges direct respondents to remain until the order is prepared and signed.)

Section 217(a)(3) describes the conditions for granting certain remedies in an *ex parte* Emergency Order of Protection. As to each described remedy available in an emergency order, the statute requires a showing that the harm the remedy is intended to prevent would be likely to occur “if the Respondent were given any prior notice, or greater notice than was actually given.” Therefore, the Domestic Violence Act requires that some notice be given, if that notice would not cause the harm sought to be prevented to be likely to occur. Notice is contemplated and required by the statute.

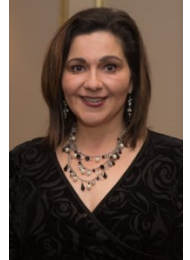
This is consistent with Local Rule 11.10 of the 22nd Circuit, governing emergency motions in family law cases. An emergency motion is to be heard only if the court determines “that reasonable attempts at notice have been made.”

The Rules of Professional Conduct provide guidance, as well. Rule 3.4(c) prohibits a lawyer from knowingly disobeying an obligation under the rules of a tribunal. Rule 3.5(b) forbids a lawyer from communicating *ex parte* with a judge “unless authorized to do so by law or court order.” Appearing in a pending case *ex parte* when the conditions under the Domestic Violence Act and local rules do not justify the *ex parte* appearance could be considered a violation of Rule 3.5(b).

The conclusion is that for any Emergency Order of Protection sought in a pending case, the moving party’s attorney should give the best notice possible which is not likely to cause the harm the Order of Protection is intended to prevent. The way these matters typically arise for family law attorneys is that an incident occurs overnight or during a weekend. The client speaks with counsel, and describes the incident. Counsel concludes that an Emergency Order of Protection is the appropriate remedy. If counsel then determines that they will meet the client at the courthouse to seek an Order of Protection, and the client is not otherwise in a place or situation where they are at risk of further abuse, then counsel must notify opposing counsel by telephone, email, or other means most likely to give the best possible notice. For example, if I determine with my client by telephone at 10:00 o’clock in the morning that we will seek an Emergency Order of Protection, I may have the client immediately proceed to the courthouse, telling them I will meet them there. I will contact opposing counsel as I am preparing to leave the office to go to court to seek the Order of Protection, letting them know my intentions.



PRESS RELEASE: LAP Board of Directors Announces Executive Director: Diana Uchiyama, JD, PsyD



The Illinois Lawyers' Assistance Program (LAP) proudly announces that Diana Uchiyama, JD, PsyD has been named Executive Director by our Board of Directors. Diana possesses impressive experience as both a practicing attorney and a Clinical Psychologist. LAP is most fortunate to have Diana at the helm.

LAP Board President, Appellate Judge Mary K. O'Brien, said "Dr. Uchiyama was selected from a number of talented candidates because her qualifications as an attorney, psychologist, and program administrator demonstrated to our board that she will be successful in increasing the reach of LAP to every part of Illinois. We are looking forward to working with Dr. Uchiyama in her new role as Executive Director and offer her our sincere congratulations."

Dr. Uchiyama joined LAP in 2018 as a Clinical Associate and shortly thereafter earned her promotion to Assistant Deputy Director. Prior to joining LAP, Diana was the Administrator of Psychological Services for DuPage County where she oversaw a State licensed substance use treatment program, including a MISA program, and DHS Domestic Batterer Intervention Program for a court mandated population of clients. Dr. Uchiyama has also worked for the Kane County Diagnostic Center, as both a Staff Psychologist and Juvenile Drug Court Coordinator, and has an extensive background doing court ordered psychological, sanity, fitness, and sex offender evaluations and therapy. She has implemented numerous changes to court ordered programs both in Kane and DuPage County and is a certified trauma informed care trainer. Prior to obtaining her masters and doctorate in Clinical Psychology, Dr. Uchiyama was an Assistant Public Defender in Cook County working in various felony courtrooms. She obtained her law degree from Pepperdine University School of Law.

In response to the mounting and evolving needs of the legal community, LAP is launching into action and thrilled to have Dr. Uchiyama lead our mission to HELP, PROTECT, and EDUCATE the legal community about addiction, mental health and wellbeing.

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Hole 5: Committee to Elect Judge Justin Hansen

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Hole 14: Chicago Title

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Hole 15: Committee to Elect Mark R. Gerhardt

Judge Gerhardt is a candidate for the 22nd Circuit McHenry County Republican Party primary in March 2020. Judge Gerhardt was appointed as an Associate Judge in 2011 and as a Circuit Judge for the Fourth Judicial Sub-circuit effective July 15, 2019 and brings 23 years of legal service to the bench spending most of his career fighting to protect the community against crime. Judge Gerhardt has worked tirelessly to achieve impartiality, integrity and equality in the administration of justice here in McHenry County.

Hole 16: North American Title Company

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Hole 18: NLT Title

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