



# *In Brief*



November 2016

A Quarterly Publication of the McHenry County Bar Association

## 22nd Judicial Circuit Court 10th Anniversary



*Photos Courtesy of Karen Fleck*

**2014-15**  
**Board of Governors**

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

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*Young/New Lawyers*  
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**August 16, 2016**

**CIVIL PRACTICE:**

The committee has put together a time line for the rules revision:

9/15/16: rough drafts into committee.

10/10/16: revised draft done and ready to be presented to the Board at the 10/18/16 meeting.

10/25/16: Final draft presented to members at the October General Meeting.

11/15/16: BOG gives final draft to Judicial Rules Committee.

**LAW DAY:**

R. Rosenthal reported that the 2017 theme has been announced: 14th Amendment-Transforming American Democracy.

**LEGISLATIVE:**

S. Jacobson reported that he has been looking into getting a children's center at the courthouse. Discussion was had on different ways to fund this and the issue of limited space in the courthouse.

**OUTREACH:**

T. Clifton reported that he's working on a clothing drive. The clothes would be donated to the Work Force Center in Woodstock.

**September 20, 2016**

**LEGAL AID:**

Prairie State Legal Services is looking at putting together a 40th Anniversary Gala in 2017.

**SOCIAL:**

K. Vaclavek reported that there will be a retirement luncheon for Judge McIntyre on December 2,

2016 and reminded everyone about the Holiday Party on December 1, 2016

**YOUNG/NEW LAWYER:**

A. Michlig reported that the annual picnic/softball game was a success and \$45 plus 4 bags of food were collected which will be donated to a local food pantry.

**October 18, 2016**

**JUDICIARY/COURT RULES:**

Judge Meyer reported that the Civil Judges are putting together new standing orders.

**NEW BUSINESS:**

The Bar will be looking into getting updated equipment, i.e. new laptop & large screen tv to replace the current projector.

**New Members**

Jennifer Holloway  
Kristin Good

## *President's Page*

**Honorable Mark R. Gerhardt**

**2016/17 MCBA President**

By the time you've read this newsletter, most of you will have already cast your ballot for the next president of these United States. It bears noting that 25<sup>1</sup> of the 44 presidents have been lawyers. Likewise, 160 members of the U.S. House of Representatives and 53 U.S. Senators have law degrees.<sup>2</sup> On the state level, 14.4 percent of legislators nationwide are lawyers.

"The first thing we do, let's kill all the lawyers." (Dick the Butcher in *Henry VI, part 2, Act 4, scene 2, line 73*.) Although there is no consensus as to whether Shakespeare meant this in derision or in praise of lawyers, the popular interpretation is that this is a complement to our profession. The thought goes, as Dick the Butcher was an aide to Jack Cade who sought to overtake the throne of England, that eliminating lawyers would make the path to Cade's unjust usurpation of power easier without the protection of laws. As such, this indeed would be a compliment to those of us who have undertaken the task to preserve the rule of law.

My attention turned recently, due to an article in the Chicago Tribune,<sup>3</sup> to retired Judge George Leighton. Judge Leighton is a highly esteemed, retired, state and federal jurist, which the Criminal Courts Building at 26<sup>th</sup> and California was named after. Judge Leighton, who just turned 104, is a man who championed the rights of underdogs and the downtrodden to the point where he himself was held in jail in the 1950s connected to his representation of a minority who wished to lease an apartment in an otherwise unwelcoming neighborhood. No less than Thurgood Marshall represented Judge Leighton in securing his freedom from jail.

Although Judge Leighton is one example in a sea of many, it is up to each of us to decide how we treat our role as lawyers in society. Are we here because it is a job? Are we here because we enjoy the give and take of collegial combat in the courtroom? Is it because it is something we found ourselves drawn to or talented in that also provides a means of support for us and our families? All of these are noble purposes. However, do we want to be those who protect the rule of law; who protect those who need us the most; to take that extra effort to ensure that we are a nation governed by laws? Or, do we just want a paycheck and comfort? It is up to each of us to decide.

- 
1. Walter Olson, *Lawyer Presidents*, Overlawyered (Nov. 5, 2008), <http://www.overlawyered.co/2008/11/lawyer-presidents/>.
  2. Debra Cassens Weiss, *How Many JDs are in Congress?*, ABA Journal (online) (Dec. 23, 2014), [http://www.ABAJournal.com/news/article/how\\_many\\_JD\\_are\\_in\\_congress/](http://www.ABAJournal.com/news/article/how_many_JD_are_in_congress/).
  3. Steve Schmadeke, *George Leighton, Pioneering African-American Judge, Lawyer turns 104* (Oct. 22, 2016), <http://www.chicagotribune.com/news/Ct-George-Leighton-Judge-civil-rights-Oct-2016,022-story.html>.

## *Call to Action: the Legal Community's Plea Against Substance Abuse and Mental Illness*

By: Daniela Velez, Lawyers' Assistance Program Volunteer

On Friday, September 9, 2016, the Lawyer's Assistance Program, a non-profit organization that helps lawyers, judges, and law students address addiction and mental health issues such as stress and anxiety, in partnership with the Kennedy Forum, hosted an event entitled Attorney Mental Health and Substance Abuse: A Call to Action. The purpose of the event, attended by leaders in both the legal and the mental health professions, was to discuss substance abuse and depression among legal professionals. It illuminated the alarming issues of depression and alcoholism among legal professionals as well as the efforts of organizations and people working towards solutions. Organizers emphasized that a critical motivation behind the event was to help spread the word that legal professionals are battling dangerous and deadly illnesses. Of particular note during the event was the alarming fact that very few people are even talking about these issues. Lawyers, people who are expert problem solvers, struggle to address mental health and addiction issues, and rarely reach out for help because they fear the stigma that could result. If more people were to talk about it, they would realize so many others are dealing with the same issues. Destigmatization and awareness are pivotal in the fight against substance abuse and mental illness. One of the themes of the event centered around cultivating more open conversation about such struggles as a way of encouraging those who need help to come forward.

Patrick Krill, a presenter at the Call to Action event, Founder of Krill Strategies, and Public Affairs and Policy Adviser to Hazelden Betty Ford Foundation, recently published a study on his findings regarding mental health and addiction in the legal profession. The study, presented at the event, surveyed 12,825 licensed, employed attorneys between 2014 and 2015. Between 20.6% and 36.4% of lawyers reported they were "problem drinkers." This is approximately three times the national average. The lawyers surveyed also revealed a higher rate of mental illness: 28% of the lawyers surveyed reported symptoms of clinical depression, 19% reported symptoms of clinical anxiety, 2% reported chronic stress, 11.5% reported suicidal ideation, and 3% reported self-harm; all alarmingly high numbers.

Supreme Court Justice Anne M. Burke also spoke at this Call to Action event. In her speech she noted that the stigma around alcoholism and mental illness has enabled the legal community to keep these problems behind closed doors, emphasizing that "ignoring the problem is not going to make it go away." Tony Pacione, Clinical Director for the Illinois Lawyers' Assistance Program, added that education is a key element to encouraging open communication. He recommended educating the entire workforce on the signs of depression and alcoholism.

The main take away from this Call to Action event was that more open communication and awareness will help reduce the stigma of addiction and mental health issues in the legal profession, encouraging more attorneys to seek help and to seek it early. It will take a village of clinicians, lawyers, and the people who care about them to make such a cultural change take effect, but it can start today.





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@ 6pm

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# CLEARLY ERRONEOUS

by: Scott Jacobson

## “Shooting the (Procedural) Moon”

The legal maxim *ubi jus ibi remedium* is commonly taken to mean “where there is a right (or a wrong of that right), there must be a remedy.” Implicit in that concept is that the “remedy,” whatever it is, ought to be attainable. As we’ll see, that may not always be the case in post-conviction proceedings in Illinois state court.

In 2008, the United States Supreme Court definitively held in *District of Columbia v. Heller*, 554 U.S. 570 (2008), that the Second Amendment protects an individual right to possess “arms”—as in firearms—unconnected with service in a militia, and to use that “arm” for traditionally lawful purposes, such as self-defense within the home. (I say “definitively” because there is some question as to whether the individual-rights view of the Second Amendment had been implicitly held in prior cases. But no matter, *Heller* settled that question at least.) Then, two years later, the Supreme Court held that *Heller* was applicable to the states through the Fourteenth Amendment. See *McDonald v. City of Chicago*, 561 U.S. 742 (2010). In 2012, writing for the Seventh Circuit Court of Appeals, a bemused Judge Posner authored *Moore v. Madigan*, 702 F.3d 933 (7th Cir. 2012), which held that the thrust of *Heller* and *McDonald* dictated that the right to lawful, armed self-defense extended outside the home as well.

These decisions sent shockwaves through Illinois’s legal system. They indirectly invalidated a number of Illinois’s criminal prohibitions on the carrying of firearms, known as unlawful use of a weapon (“UUW”) (720 ILCS 5/24-1) and aggravated unlawful use of a weapon (“Aggravated UUW”) (720 ILCS 5/24-1.6). The decisions also generated a spate of new arguments in direct appeals from weapons-related convictions, as well as a glut of post-conviction litigation.

On the heels of *Moore*, the Illinois Supreme Court got to work. In *People v. Aguilar*, 2013 IL 112116, the court held that the provisions of the Aggravated UUW statute that prohibited the carrying of an uncased, loaded, and immediately accessible firearm outside the home (720 ILCS 5/24-1.6(a)(1), (a)(3)(A)) were facially unconstitutional under *Heller*, *McDonald*, and *Moore*. And since those provisions were held facially unconstitutional, they were void “*ab initio*,” meaning that a conviction under those subsections was unenforceable. (For a discussion concerning post-*Aguilar* amendments to the Aggravated UUW statute in conjunction with the newly enacted Firearm Concealed Carry Act (430 ILCS 66/1 et seq.), see Jill Ausdenmoore, *Weapons Restrictions and the Second Amendment: Illinois Law After Aguilar*, 104 Ill. B.J. 34, 38 (2016).)

The Aggravated UUW statute has had a mixed scorecard in post-*Aguilar* cases before the Illinois Supreme Court. For example, Aggravated UUW based on possession of a handgun while either on a public way or in a vehicle (720 ILCS 5/24-1.6(a)(2), (a)(3)(A)) are now invalid charges (see *People v. Mosley*, 2015 IL 115872, and *People v. Burns*, 2015 IL 117387); however, Aggravated UUW based on possession by a person who does not hold a valid FOID card, or possession of a handgun by a person under the age of 21 (720 ILCS 5/24-1.6(a)(1), (a)(2), (a)(3)(C), (a)(3)(I)) remain valid felony offenses (see *Mosley*, 2015 IL 115872, and *In re Jordan G.*, 2015 IL 116834).

As the landscape of Aggravated UUW cases was charted, however, one persistent question remained: What does one “do” with a prior conviction when the crime of which one has been convicted is now declared unconstitutional? If the conviction is void *ab initio*, can I get a FOID card now? Better yet, can I go out and just possess a gun as though I had no prior conviction?

Well, to that last question the answer is obviously no. In June, in *People v. McFadden*, 2016 IL 117424, the supreme court held that “a defendant must clear his felon status before obtaining a firearm;” a defendant may not resort to “self help” by first obtaining and possessing a firearm, and thereafter trying to attack his prior conviction when he is facing prosecution as a felon in possession of a weapon. *Id.* ¶¶ 29-30. That much makes sense, but the better question is how does one “clear” his or her felon status based on an unconstitutional offense? *Aguilar* itself is now three years old, so an offender’s Aggravated UUW conviction is apt to be too old for an initial post conviction petition. In *McFadden* for example, the defendant was trying to challenge his Aggravated UUW conviction from 2002.

So then how does one collaterally attack an unconstitutional conviction as unconstitutional in Illinois state courts?

The answer might be something of a procedural snare. Of course, Aguilar and its progeny would apply in all cases then pending on direct review (see *People v. Erickson*, 117 Ill. 2d 271, 288 (1987) (adopting *Griffith v. Kentucky*, 479 U.S. 314 (1987)), and Aguilar et al. would seemingly satisfy the test for retroactivity; they are decisions that appear to constitute a new rule which places “ ‘certain kinds of primary, private individual conduct beyond the power of the criminal law-making authority to proscribe’ ” (*People v. Smith*, 2015 IL 116572, ¶ 31 (quoting *Teague v. Lane*, 489 U.S. 288, 307 (1989))). But again, how does one raise the attack?

This used to be the type of thing that would be considered void, and could be easily remedied through a post-conviction petition or a section 2-1401 petition (735 ILCS 5/2-1401) brought at any time. But as the Second District Appellate Court recently noted (see *People v. Smith*, 2016 IL App (2d) 130997, ¶ 19 n.1, and *People v. McGuire*, 2015 IL App (2d) 131266, ¶ 13), it is possible that under the Illinois Supreme Court’s decision abolishing the void-sentence rule in *People v. Castleberry*, 2015 IL 116916, these convictions would no longer be considered void. The result is that defendants who stand convicted of crimes now declared unconstitutional may be forced to rely on the prosecution’s willingness to both accede to jurisdiction in Illinois state court and to set aside the prior conviction (see *People v. Bailey*, 2014 IL 115459, ¶ 12, and *People v. Buffkin*, 2016 IL App (2d) 140792, ¶ 12), or otherwise to waive certain procedural requirements, such as timeliness (see *People v. Pinkonsly*, 207 Ill.2d 555, 563 (2003), and *People v. Bocclair*, 202 Ill. 2d 89, 101 (2002)). Else, such defendants will have suffered a wrong which no Illinois statute or court rule is designed to remedy. At least not collaterally.

*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 Attorney Appellate Prosecutor and of counsel to the Illinois State’s Attorneys Association. He lives in Woodstock, Illinois.*




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## News from the 22nd Judicial Circuit, State of Illinois

On August 1, 2016, the 22nd Judicial Circuit, Circuit Clerk of the Court and other judicial partners will take the next evolutionary step in technology and begin allowing the use of electronic signatures.

Local Court Rule 21 was recently amended and ratified by the Circuit Judges authorizing the filing of electronic documents and use of electronic signatures. The impact will be profound. All practitioners should familiarize themselves with these new rules – which can be found at: <https://www.co.mchenry.il.us/home/showdocument?id=62951>. Written hard copies of all local rules are also available at the McHenry County Circuit Court Library located on the third floor of the courthouse at 2200 N. Seminary Avenue, Woodstock, IL.

The 22nd Judicial Circuit is one of a few judicial circuits which has been approved for e-Record by the Illinois Supreme Court. This designation allows the 22nd Judicial Circuit to rely on the electronic record as the official record of the court, rather than relying upon paper files.

The use of electronic signatures will allow court users and judicial officers the ability to create electronic documents and then sign the documents electronically, without the need to print the document for signature.

While the authorization of electronic signatures is a rather easy process to complete, the implementation process will be complex. There are many processes in place in our courts and each one will need to be examined and evaluated to determine how best to utilize electronic signatures and move documents electronically. The court does have the ability within the judges' aiSmartBench application to sign documents and move them electronically within the system, as well as emailing documents. Additionally, Kathy Keefe, the Circuit Clerk of the Court, is working with her case management vendor to further the use of electronic signatures within her environment.

Presently documents created in aiSmartBench cannot be returned to the Clerk's case management system, so documents will still be printed and scanned. However, there will be an initiative to begin evaluating that process as soon as practical.

Additionally, the Court in conjunction with the Circuit Clerk and the McHenry County State's Attorney's Office will begin to evaluate the implementation of electronic search warrants which will allow officers to submit warrants to judges electronically for review. Once reviewed the judge will sign the warrant electronically.

Overall the initiative will create greater system wide efficiencies and reduce costs.

Reprinted with permission from:

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# MEMBER NEWS



Jennifer S. Holloway has recently relocated her sole practice to the City of McHenry after practicing at firms in Cook County. Attorney Holloway graduated from The University of Iowa Law School and became litigation associate position at McDermott, Will & Emery in Chicago. She later joined the AV-rated firm of Clark & DeGrand working as an associate, then as a partner, before the firm amicably dissolved in 2004. Attorney Holloway continues to practice law at the Law Office of Jennifer S. Holloway which moved this summer from Mount Prospect to the City of McHenry. Attorney Holloway concentrates her practice in employment law and personal injury, appellate law, and libel and slander torts. Attorney Holloway is available to her fellow attorneys for consultation and related services. She may be reached by calling 847-804-2266 or e-mailing: lawjsholloway@sbcglobal.net.

## LAP Annual Dinner—November 3, 2016

The University Club of Chicago, 76 E. Monroe, Chicago, IL

Keynote Speakers WGN Anchor Mark Suppelsa & Musician Ava Suppelsa

Come out to show your support for your colleagues, this year's award winners are:

Judge of the Year: **Judge Robert J. Anderson, 18th Judicial Circuit Court**

Volunteers of the Year: **Robert Kelleher, Michelle Owen and Ruta Stropus**

Michael J. Howlett Jr. Award: **Illinois Bar Foundation**

Executive Director's Award: **Michael Cortina**

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# MCBA ANNUAL SOFTBALL GAME AND PICNIC

BY: AMBER MICHLIG

THANK YOU TO OUR SPONSOR FRED ROEDIGER AND HERITAGE TITLE

The MCBA Annual Softball Game and Picnic sponsored by Heritage Title and put on by the Young/New Lawyer Group was held on September 16, 2016. Luckily the rain held out and it was a beautiful night for the picnic and game. The Young Guns took on the Experienced Team and came out victorious with a score of 13-3. Congratulations to the Young Guns! As expected, there was some taunting going on between the teams, but it was all in good fun. The picnic and game were also used as a fundraiser/donation opportunity for a local food pantry. The group was able to raise \$45.00 plus four bags of food as a donation. Thank you to all those who participated in the game and came out to enjoy! The group looks forward to another great game and picnic next year.

Harvard Comm. Food Pantry  
P.O. Box 578  
Harvard, IL  
60033

Presented To: \_\_\_\_\_

Received From: *MCBA Young/New Lawyers Group*

Amount: *\$45.00 and 4 bags of food.*

Date: *9/29/16*

With Sincere Appreciation,  
*Jeanette M. Kruckenberg*  
Jeanette M. Kruckenberg  
Harvard Community Food Pantry, Inc.

*Thank you for this generous gift to the food pantry. Your generosity is greatly appreciated!*

# JUDGE MAUREEN P. MCINTYRE

BY: DAWN ROTH

As many of you are aware the Honorable Judge Maureen McIntyre is retiring at the end of this year. I had an opportunity to meet with her and discuss her time as a judge here in McHenry County. It is greatly appreciated that she took time out of her day to meet with me, so I can share what I learned about her with all of you.

Judge McIntyre, the daughter of two Irish immigrants, was born in New York. After obtaining her bachelor's degree she moved to Illinois where she initially sought to obtain a Master's Degree in History from the University of Illinois Chicago. However, prior to finishing her Master's Degree, she changed course and instead went to law school, attending night school at IIT Chicago Kent College of Law, while working at a publishing company and then a law firm during the day.

Judge McIntyre spent 20 years in private practice as a litigator before becoming a judge in December of 1996. At that time, she was the third woman to be appointed as a judge in McHenry County. During her time as a judge, she tried cases in virtually every area of the law (other than felony trials), and was the first judge in McHenry County to become a Special Assignment Judge.

Judge McIntyre considers juvenile court to be the most rewarding area of the law over which she has presided on account of the opportunity afforded to her in helping children to know that there are people who care about them. She hopes she has made a difference in each child's life and considers it vital that each child knows that she never gave up on them, no matter their circumstances.

Judge McIntyre believes that the most difficult aspect of being a judge is making the right decision, particularly when people's lives are significantly impacted by her decisions. Perhaps the best part of being a judge is no longer spending her days billing clients.

After 20 years spent on the bench, there are many aspects of the job that Judge McIntyre will miss, but most of all, she will miss the people she works with each day. On the other hand, she will not miss getting up early or the 45-minute drive to the courthouse each morning. She has extensive travel plans as well as quality time planned with her 4 children and 3 adorable grandchildren.

Judge McIntyre will be greatly missed. I am sure I speak for us all, when I wish her nothing but the best in all her future endeavors.

## MCHENRY COUNTY FAMILY MEDIATION ADVISORY COUNCIL

BY: MICHELLE GEHRIS

On October 7th, the McHenry County Family Mediation Advisory Council put on their Fall Mediation Seminar. The event, held at Home State Bank on the Woodstock Square, was well attended and lunch was provided by Brunch Café.

With the addition of Dawn Koch, from Turning Point to the Council this year, the group was able to present a session titled “Dynamics of Power and Control and How It May Affect Mediation.” Dawn brings her experience and knowledge of dealing with victims of domestic violence to the Council and is able to offer insight on how to deal with the effects of mediation on an abused spouse. The seminar touched on the signs of abuse and the cycle of power and control that takes place in an abusive relationship.

Judge Maureen McIntyre presented the New Mediation Forms & New Terminology and Statistics for the Volunteer Mediation Program during the seminar. The 22nd Judicial Circuit has adopted a new form Mediator Report to be used for both interim and final reports of mediation. Since the start of the volunteer mediation program less than two years ago, the group has helped to resolve 30-40 family law cases per year. A sign-up sheet for mediators to volunteer their time to the program was passed around at the seminar and is available in Court Administration, Room 355.

Joe Canevello, from Connections Counseling & Consulting Services, Inc., presented on Mandatory Reporting, Rules of Professional Conduct & Local Rules of the 22nd Judicial Circuit. One specific topic, mandatory reporting, gave way to a lot of discussion during the seminar. Mental health professionals are subject to the mandated reporting requirement of the Abused and Neglected Child Reporting Act. In the State of Illinois, Attorneys are not mandated reporters. However, in section 18.05 of our Local Rules, the mandated reporting requirements of the Abused and Neglected Child Reporting Act as applied to mental health professionals shall also apply to all mediator attorneys acting in their capacity as mediators under this program.

The mandatory reporting topic carried over into the final presentation in the seminar, Ethics Scenarios, led by Michelle Gehris, of Gehris & Associates, LLC. The group went through several fact scenarios from mediations and discussed whether there was anything that they would need to report to DCFS as abuse or neglect. The group also discussed how they would report such an incident, what their requirements were after the reporting, whether a conflict arose, and how to then communicate with the parties and their attorneys after reporting.

McHenry County Family Mediation Advisory Council wants to thank everyone for their participation at the seminar and looks forward to seeing all of you at the next one.

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## MCBA Calendar of Meetings & Events

<b>Date</b>	<b>Event</b>	<b>Location</b>	<b>Time</b>
November 3, 2016	Criminal Law Section Meeting	MCBA Office	Noon
November 8, 2016	Family Law Section Meeting	MCBA Office	Noon
November 15, 2016	Board of Governors Meeting	MCBA Office	Noon
December 1, 2016	Criminal Law Section Meeting	MCBA Office	Noon
December 1, 2016	Annual Holiday Party	Woodstock Country Club	5:00pm
December 2, 2016	Judge McIntyre Retirement Luncheon	Bull Valley Golf Club	Noon
December 13, 2016	Family Law Section Meeting	MCBA Office	Noon
December 20, 2016	Board of Governors Meeting	MCBA Office	Noon
January 5, 2017	Criminal Law Section Meeting	MCBA Office	Noon
January 10, 2017	Family Law Section Meeting	MCBA Office	Noon
January 17, 2017	Board of Governors Meeting	MCBA Office	Noon
January 24, 2017	General Meeting	Home State Bank, Woodstock	Noon

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