NORTH SUBURBAN
BAR ASSOCIATION

N S B A N E W S

Spring 2013

In this Issue:

PRESIDENT'S MESSAGE – MAY 2013

By Anna Krolikowska, President

Dear Friends:

It is such a pleasure and a privilege to serve as your 45th President, and to share with you all the exciting developments at the NSBA! As we go through this season of renewal and re-birth I hope you revisit your New Year's resolutions, which for many of us included reinvigorating our networking and business development goals. I know that we at the NSBA have been very busy doing exactly that. I am proud to report that our efforts in the past few months have brought many new members to our association. We look forward to continuing that trend. You can help by bringing a friend to the next NSBA event. I strongly encourage you to do that! Moreover, we have been working throughout this year to bring our technical capabilities into the 21st century.
Although, there is still more work to be done to at least at this point our website contains our current calendar of events, listing of our Officer and Board of Directors, as well as all of our active members. We have our Secretary, Ray Ricordati, to thank for the improvements to our website. Thank you, Ray! Of course, we will keep you apprised of all future developments as they become available.

Alas, there is more to report. On April 16, 2013 we hosted our annual Ethics CLE at the Second Municipal District Courthouse, in Skokie, Illinois. What a wonderful educational opportunity!

We heard from Michele Jochner, of Schiller DuCanto & Fleck, about recent changes to the Illinois Supreme Court Rules; Brian Clauss, Director of Veterans Legal Support Center & Clinic at John Marshall Law School, about ethical issues in using social media; David Pasulka, of Pasulka &

Associates, P.C., about ethics in family law; Scott Renfroe, ARDC, Chief, Supreme Court Practice, about recent cases and developments at the ARDC; and finally Cliff Scott Rudnick, Assistant Professor and Director of CLE and Professionalism at John Marshall Law School, regarding the Drew Peterson case and ethical issues . All participants received 6 hours of Professional Responsibility MCLE credits.

We would like to thank the Honorable Shelley Sutker-Dermer, Presiding Judge, Second Municipal District, all of our speakers, and Jan Weinstein, NSBA 1st Vice-President, for contributing to the success of our 2013 Ethics CLE.

In addition, on March 12, 2013 we hosted another successful Gary Wild Dinner. As you may recall, during our annual Gary Wild Dinner, named in the honor of a past NSBA president, we raise funds to support worthwhile local causes. This year we honored the John Marshall Law School's Veterans Legal Support Center and Clinic. We donated the raised funds to a John Marshall Law School's scholarship fund created in honor of another of our illustrious past presidents, Gerald Schur. The scholarships will be awarded to clinical students working at the John Marshall Law School's Veterans Legal Support Center & Clinic, or John Marshall Law School students who are veterans of the armed forces. We were able to help both the scholarship recipients, but also all the clients of the Veteran Legal Support Center & Clinic who will benefit from the work of the scholarship recipients! We could not have done it without your generous support. Thank you!

Of course, we would not have been able to celebrate our 13th annual Gary Wild Dinner without the steadfast support of the Honorable Allen S. Goldberg, of the Law Division, Trial Section, of the Circuit Court of Cook County. Judge Goldberg has been a long-time member, and supporter of the North Suburban Bar Association. He was instrumental in creation, and continuation of our annual Gary Wild Fundraiser Dinner. Therefore, as President of the North Suburban Bar Association, it is my pleasure to announce that we will honor the Honorable Allen S. Goldberg for his contributions to the North Suburban Bar Association and the legal community during our upcoming Judges' Night. I hope that you will be able to join us for this wonderful event!

The North Suburban Bar Association's Judges' Night will take place on May 14, 2013, from 6:00 p.m. to 8:00 p.m., at the North Shore Country Club, located at 1340 Glenview Road, Glenview, IL 60025. Judges will be guests of the North Suburban Bar Association. Tickets to this event are available at $85.00 per person for NSBA members, and $100.00 per person for non-members. Please mail any checks c/o the NSBA at, P.O. Box 731, Glenview, IL 60026. For additional information, to reserve a ticket, or to discuss available sponsorship options please contact Anna Krolikowska at least 2 days prior to the event at either anna@kandrfamilylaw.com, or (847) 715-9328.

Also please don't forget to add to your calendars our upcoming Annual Meeting, which will take place on June 11, 2013 at 6:00 p.m. at the Happ Inn, 305 Happ Road, Northfield, IL 60093. We encourage all NSBA members to attend this meeting and participate in our 2013-2014 election. Every vote counts!

I look forward to seeing all of you at our wonderful future events!

Anna Krolikowska

From the Editor's Desk:

Please be sure to submit any articles, stories or upcoming events for the next NSBA Newsletter!

Thanks to all members (and new members) able to attend the February 12, 2013 CLE on Practice Pointers from the Bench by Hon. Martin Paul Moltz. We hope you can join us at Judges Night on May 14, 2013.

As the NSBA website is still being re-designed/reconstructed, please send any updated contact information to anna@amrlawgroup.com or raymond.ricordati@huschblackwell.com.

Again, thanks!

Anna Morrison-Ricordati



2012-2013 NSBA Officers & Directors:

Officers

Anna Krolikowska, *President*
Jan S. Weinstein, *1st Vice President*
William Herst, *2nd Vice President*
Anna Morrison-Ricordati, *3rd Vice President*
Ray Bartel, *4th Vice President*
Ray Ricordati, *Secretary*
Rosanne Barrett, *Treasurer*
Richard J. Mortell, *Past President*

Directors (2 year term):

Brian Clauss
William Ensing
Keith Goldberg
Burton Grant
Hon. Jesse G. Reyes

Continuing Directors (1 yr term):

Hon. Steven J. Bernstein
Paul Plotnick
Robert Romanoff
John Stimson
Phil Witt

CONGRATULATIONS, JUDGE ALLEN GOLDBERG!

***** 2013 AWARD RECIPIENT - NSBA JUDGES NIGHT *****

As a Legal Aid lawyer (1968-70) and private practitioner (1970-71) and prior to becoming a judge, Judge Allen S. Goldberg was the Chief of the Felony Trial Division of the Cook County Public Defenders' Office.

<u>Judicial Experience</u>: Judge Allen S. Goldberg was elected a full-circuit judge in 1992. His initial assignment was the Juvenile Court. Subsequently, Judge Goldberg was assigned to the Domestic Relations Division presiding over divorce matters. Now he is in the Law Division hearing commercial disputes.

<u>Education</u>: Judge Allen S. Goldberg graduated from Senn High School. Subsequently, he received his B.S. from the University of Illinois. In 1967, Judge Goldberg received his Juris Doctor Degree from DePaul Law School.

<u>Membership</u>: Judge Allen S. Goldberg is chairman of the Civil Litigation Committee of the Illinois State Bar Association. In addition, he is on various boards dealing with "mediation" issues.

Serving as a judge in the Juvenile Court Child Protection Division and in the Domestic Relations Division, made him very concerned about children's issues. He worked toward providing a peaceful resolution of custody matters for the benefit of the children. He has diligently managed the Individual Commercial Calendar. Created new ideas within the court system: (1) Worked on drafting the Child Representative Law while on the ISBA Matrimonial Law Committee, and organized the extensive training program that now exists in the Cook County Domestic Relations Division for Child Representatives; (2) Court-Annexed Mediation Program - with lawyers and judges developed this program during 2003-2004; (3) Started Court-Sponsored C.L.E. programs for both the child representatives and the Court Mediation and Arbitration programs; (4) Helped develop new Rule 900 for mediation of child custody disputes, and (5) Suggested changes to "lemon" law which were adopted by AG office.

ON THE TIP OF YOUR TONGUE,

By Angela Peters

FAMILY LAW

In re Marriage of Putzler, 2013 IL App (2d) 120551, February 11, 2013, Kendall Co., JORGENSEN, Affirmed. Court was within its discretion in modifying father's monthly child support payments based on father's increased income, and mother's credible testimony that children's expenses had increased. Court properly awarded attorney fees, to be paid to her attorney, which were related to mother's pursuit of contempt petitions, even though mother worked as office manager for her attorney's law firm and was not being charged attorney's fees herself. (ZENOFF and SPENCE, concurring.)

In re Marriage of Debra N., 2013 IL App (1st) 122145. Court properly modified terms of parties' joint custody agreement and awarded sole custody of daughter to her father. Court found that mother had engaged in pattern of interference and manipulation of father's relationship with intent to diminish or eliminate father's ability to be fully engaged and active parent. Court was not bound to follow recommendation of court-appointed 604(b) expert that court award mother sole custody; expert did not state that father was an unfit parent, and stated that child was attached to both parents. Although father did not specifically request sole custody, court has broad discretion to alter custody or visitation once issue of custody is placed before court. (LAVIN and FITZGERALD SMITH, concurring.)

In re Marriage of Tomlins, 2013 IL App (3d) 120099, ___ N.E.2d ___, ___ Ill.Dec. ___, the trial court's decision to bifurcate judgment because of the negative effect the marital issues were having on the children was not an abuse of discretion. At the hearing on the grounds for dissolution of marriage, the wife testified to each of the necessary grounds for entry of judgment pursuant to irreconcilable differences. The husband neither impeached the wife nor offered any contradictory evidence. The wife also testified concerning a specific instance in which the minor children saw the husband force her head to the bathroom floor. In its decision, the court relied on *In re Marriage of Wade,* 408 Ill.App.3d 775, 946 N.E.2d 485, 349 Ill.Dec. 291 (1st Dist. 2011), which held that bifurcation could be necessary to protect and promote the emotional and mental well-being of the parties' children.

In re Marriage of Sobieski, 2013 IL App (2d) 111146. Court properly awarded husband to contribute $43,000 toward wife's attorney fees, and properly set his child support obligation, for 4 children, at $4,800 per month, based on determination that his net income was $12,000 per month. Court properly determined husband's net income based on his two finance applications, in higher amounts than his testimony. All relevant circumstances of parties at time of property division are factors to be considered in request for contribution toward attorney fees, not only amount and sources of income with simple formula comparing relative financial situations. Extended time spent with one's children does not require deviation from statutory child support guidelines.

Schultz v. Performance Lighting, Inc., 2013 IL App (2d) 120405. Court properly dismissed with prejudice wife's complaint seeking to recover child support amounts that employer allegedly should have withheld from ex-

husband's pay per Section 35 of Income Withholding for Support Act. Omission of required information, ex-husband's social security number, which was mandatory and subject to strict compliance, invalidated the notice of withholding. (ZENOFF and HUDSON, concurring.)

In re Marriage of Callahan, 2013 IL App (1st) 113751. Two years after judgment of dissolution, wife filed motion to vacate, alleging that MSA was unconscionable and that husband and his counsel had misrepresented MSA's contents. Terms of MSA were unconscionnable, totally one-sided and oppressive; wife, a homemaker after birth of parties' daughter, was awarded $2500/month nonmodifiable maintenance for 14 years, but husband retained entire marital estate (marital residence and his entire pension); husband's assuming liability for $100,000 in marital debts does not offset value of what he received in MSA. (NEVILLE and HYMAN, concurring.)

Banister v. Partridge, 2013 IL App (4th) 120916. Mother filed petition to remove 9-year-old child from Illinois (where child's father resided) to Kentucky, two years after marrying a senior enlisted Army soldier who lived in Kentucky. Court granted petition, but then denied mother's later petition to remove child to Maine, after husband received orders to serve as instructor in Maine. Greater geographic distance between Illinois and Maine, as opposed to distance between Illinois and Kentucky, did not warrant denial of mother's removal petition, given mother's testimony about her options and about impact on child's quality of life if petition were denied. (APPLETON and HARRIS, concurring.)

Visitation and deployment

House Bill 2889
(Brady, Bloomington-Normal) provides that upon a motion by the parent who received orders for deployment, the court may delegate his or her visitation rights, or a portion of those rights, to a family member of that parent who has a substantial relationship with the child if the court determines that delegated visitation is in the best interests of the child. These delegated visitation rights terminate upon: (1) the completion of the parent's deployment, in which case the previous custody or visitation order is reinstated; or (2) a showing that the delegated visitation is no longer in the best interests of the child. Nothing in the new provisions increases the authority of a family member who is delegated visitation rights to seek separate visitation rights of the child. Scheduled for hearing in House Judiciary Committee this Wednesday.

Visitation and babysitting

House Bill 2992
(Harms, R-Mattoon) gives each parent the “right of first refusal” to care for a minor child in lieu of using a babysitter. Provides that the use of baby-sitters, family members, or subsequent spouses is secondary to the right of first refusal. Provides that right of first refusal means that if either parent intends to leave the minor children for a period of four hours or longer, that parent shall first offer the other parent an opportunity for additional time with the children before making other arrangements for the temporary care of the children. Contains provisions concerning the setting of parameters regarding distance, transportation, and time constraints that may make the offering of additional parenting time impractical and therefore not required. Provides that the parent leaving the children with the other parent or with a temporary child care provider shall notify the other parent of the duration of the parenting time or temporary care of the children by other persons. Contains procedural requirements regarding the offering and acceptance of additional parenting time. Provides that the parent exercising additional parenting time shall provide the necessary transportation unless the parties agree otherwise. Provides that the new provisions are enforceable under the Section of the Act concerning visitation abuse. Scheduled for hearing in House Judiciary Committee Wednesday.

CIVIL MISCELLANEOUS LAW

Santiago v. E.W. Bliss Co., 2012 IL 111792, 973 N.E.2d 858, 362 Ill.Dec. 462 (2012). The appellate court held that 1) when an injured plaintiff intentionally filed a complaint using a fictitious name, without leave of

court, the court may exercise its discretion and dismiss the complaint with prejudice as a sanction. Further, the appellate court held that 2) "the circuit court must dismiss the plaintiff's cause of action with prejudice 'because the original complaint is a nullity [because plaintiff used a fictitious name], the limitations period has expired, and the amended complaint cannot relate back to the initial filing. The Ill. Supreme Court affirmed the ruling on the first issue, and reversed the second ruling.

Poris v. Lake Holiday Property Owners Association, 2013 IL 113907 (January 25, 2013) LaSalle Co. (THOMAS) Appellate court reversed in part and affirmed in part; circuit court affirmed.Plaintiff was ticketed, by lake association security officer, for speeding while driving on a road on private lake community grounds. Association was within its authority in establishing and enforcing speed limits on Association property, and security officers were not attempting to unlawfully assert police powers in issuing traffic citations. Officer had probable cause to believe that offense was committed, in clocking Plaintiff's speed at 34 mph in 25 mph private road; and probable cause is absolute bar to claim for false imprisonment. (KILBRIDE, FREEMAN, GARMAN, KARMEIER, BURKE, and THEIS, concurring.)

Wood Dale Electric v. The Illinois Workers Compensation Commission, 2013 IL App (1st) 113394WC (February 11, 2013) WC Commission Div. (HOFFMAN) Affirmed in part and vacated in part.Injured journeyman electrician's pension payments were result of normal pension retirement benefits, and wholly unrelated to the claimant's workers' compensation accident. Thus, those pension payments cannot entitle employer to a credit against its liability under Workers Compensation Act. A wage differential award is determined by comparing claimant's prior earning capacity to amount he is earning or is able to earn in some suitable employment after the accident. A claimant's voluntary decision to remove himself from the workforce does not preclude a wage differential award. (HOLDRIDGE and HUDSON, HARRIS, and STEWART, concurring.)

U.S. Bank National Association v. Prabhakaran, 2013 IL App (1st) 111224 (February 15, 2013) Cook Co., 6th Div. (REYES) Affirmed. In foreclosure action, confirmation of judicial sale was not rendered void by bank accepting additional payments from homeowner after entry of judgment of foreclosure. Defendant failed to appeal confirmation of sale within 30-day period per Rule 303(a)(1), and cannot use Section 2-1401 of Code of Civil Procedure to circumvent Section 15-1509 of Foreclosure Law after court confirms sale. (LAMPKIN and HALL, concurring.)

Water Applications and Systems Corporation v. Bituminous Casualty Corporation, 2013 IL App (1st) 120983 (February 15, 2013) Cook Co.,6th Div. (R. GORDON) Affirmed. Plaintiff filed breach of contract action against insurer for failure to defend Plaintiff under two general liability insurance policies where Plaintiff was not named as an insured, after receiving notice of potential liability from EPA during EPA investigation. Plaintiff claimed that it had assumed the policies by purchasing the assets of named insured. Defendant did not have duty to defend because potential liability described by EPA in PRP letter was regulatory liability under CERCLA, and not for third-party property damage, and thus was not type of action covered by policies. (LAMPKIN and REYES, concurring.)

Lake County Grading Company v. The Village of Antioch, 2013 IL App (2d) 120474 (February 20, 2013) Lake Co. (BURKE) Affirmed. Company entered into two infrastructure agreements with Defendant Village to make public improvements in residential subdivisions, and company provided surety bonds guaranteeing performance for benefit of Village. Bonds did not guarantee payment to subcontractors. Company defaulted on contract with Village and failed to pay Plaintiff grading company, a subcontractor. Section 1 of Bond Act, and provision in contract, made Plaintiff subcontractor a third-party beneficiary with right to sue on contract. As Village did not require company to procure a payment bond, suit on bond is impossible and statute of limitations of Bond Act does not apply. Plaintiff's breach of contract claims are subject to four-year statute of limitations for construction contracts. (McLAREN and HUDSON, concurring.)

Miller v. Harris, 2013 IL App (2d) 120512 (February 21, 2013) Lake Co. (SCHOSTOK) Reversed and remanded. Two founders and shareholders of closely held corporation filed action against other shareholders and corporation's tax accountant, and alleged that accountant breached fiduciary duty. Complaint sufficiently pleads breach of fiduciary duty. Court cannot consider substantive arguments directed to merits of complaint, or matters outside four corners of complaint, in Section 2-615 motion to dismiss. Argument based on principle of unclean hands is an affirmative defense resting on disputed facts, and is not appropriate to resolve within 2-615 motion to dismiss. (McLAREN and ZENOFF, concurring.)

Citibank, N.A. v. Monroe, 2013 IL App (2d) 120593 (February 21, 2013) Kane Co. (ZENOFF) Affirmed. Section 15-1508(b) of Code of Civil Procedure requires that motion to confirm sale must not be made prior to sale; however, this requirement does not apply to notice. Thus, court properly conducted hearing and confirmed sale, even though notice was sent prior to sale, as motion was not made until after sale. (McLAREN and SCHOSTOK, concurring.)

Prough v. Madison County, 2013 IL App (5th) 110146 (February 25, 2013) Madison Co. (WEXSTTEN) Affirmed. Plaintiff sued Defendants, Sherriff's Department and Dispatcher, failing to provide adequate police protection by retaining his grandson in their custody, for failing to prevent him from murdering his father, and/or for releasing him from custody. Plain language of Tort Immunity Act applies to give Defendants absolute immunity, Defendants, including for willful and wanton misconduct. (WELCH and GOLDENHERSH, concurring.)

People v. Shamlodhiya, 2013 IL App (2d) 120065 (February 26, 2013) Du Page Co. (HUDSON) Affirmed. Defendant was convicted, after jury trial, of first-degree murder and residential arson. Defendant's lack of awareness of content of counsel's closing argument is not a constitutional violation cognizable under Post-Conviction Hearing Act. Defense counsel's argument did not amount to functional withdrawal of involuntary-manslaughter instruction; though counsel was not actively arguing for involuntary manslaughter, he was placing the option before the jury in the manner in which, in his professional judgment, the jury would be most receptive to it, while still keeping option for acquittal open. (BURKE and McLAREN, concurring.)

Wells Fargo Bank, NA v. Heritage Bank of Central Illinois, 2013 IL App (3d) 110706 (February 26, 2013) Revival of judgment lien, which must be done within seven years of original judgment, has no effect until lienholder files its memorandum of order of revival. Section 12-101 of Code of Civil Procedure is a statute in derogation of common law, which requires strict compliance by a judgment creditor asserting lien against a person's real property. (McDADE, concurring; LYTTON, specially concurring.)

Hayes v. Adams, 2013 IL App (2d) 120681 (February 28, 2013) Du Page Co. (SCHOSTOK) Affirmed. Dog, which got loose while vet clinic employee was taking it for a walk prior to surgery, bit 8-year-old girl who picked dog up while waiting for school bus, when vet clinic employee called for help to catch dog. Court properly granted summary judgment in favor of dog owner, who was not present and had left dog in care of vet clinic. Animal Control Act does not impose strict liability on dog owner where owner had relinquished care, custody, and control to another, and owner was not in a position to control dog or prevent injury. Strict liability in such case would only impose liability as a pure penalty for dog ownership. (McLAREN and ZENOFF, concurring.)

In re M.W., 2013 IL App (1st) 103334 (March 1, 2013) Cook Co., JJCPD (REYES) Affirmed. Evidence supported court's finding that minor, age 16 at time of offense, who was found guilty of attempted first degree murder, vehicular hijacking, possession of stolen vehicle and aggravated battery, made knowing and intelligent waiver of his Miranda rights. Court was within its discretion in excluding minor's mother from courtroom as a potential witness. Minor's mother did not have the right to a separate attorney, and she lacked standing to challenge minor's motion to dismiss and adjudication of delinquency.(LAMPKIN and GORDON, concurring.)

Onewest Bank v. Topor, 2013 IL App (1st) 120010 (March 4, 2013) Cook Co.,1st Div. (DELORT) Appeal dismissed. Mortgage foreclosure defendants claimed they were never properly served with complaint and summons; and mortgage assignee claimed it was not properly served with Defendants' motion to quash invalid service. As Plaintiff brought both attacks on Defendants' motion simultaneously, it did not forfeit its jurisdictional objection. Becauce circuit court did not rule on merits of Section 2-1401 petition to vacate judgment, but struck it and ordered filing of a second petition, there was no final, appealable order on the petition. (HOFFMAN and ROCHFORD, concurring.)

John Crane Inc. v. Admiral Insurance Company , 2013 IL App (1st) 093240 (March 5, 2013) Cook Co., 2d Div. (HARRIS) Affirmed in part and reversed in part; remanded with directions. (Court opinion corrected 4/1/13.) Manufacturing company had been named as a defendant in over 250,000 asbestos-related bodily injury claims, and its insurer agreed to adopt a no settlement policy based on company's position that their products were not the likely source of disease. Insurer and company then entered into agreement concerning coverage to resolve disputes for asbestos claims. Umbrella and excess policies provide for payment of amount of loss in excess of loss payable by underlying policies, based on language in underlying primary policies which contain the "all sums" language. Where coverage for asbestos claims is triggered by bodily injury or disease, all triggered policies are jointly and severally liable. Coverage is triggered upon proof of exposure, sickness, or disease.(QUINN and CONNORS, concurring.)

Levine v. EBI, LLC, 2012 IL App (1st) 121049 (March 6, 2013) Cook Co., 3d Div. (NEVILLE) Reversed and remanded. Plaintiffs sued for injuries sustained from surgeon not having instruments he needed to complete back surgery. Plaintiff amended complaint to identify a different company which surgeon identified as responsible for bringing missing instruments to surgery. Court properly rejected Plaintiffs' argument that company's dishonest answers to discovery were fraudulent concealment of cause of action, as Section 13-215 of Code of Civil Procedure does not extend limitations period beyond two years. Plaintiffs presented adequate grounds for equitably estopping company from asserting statute of limitations as defense. (STERBA and HYMAN, concurring.)

Curtis v. Illinois Workers Compensation Commission, 2013 IL App (1st) 120976WC (March 11, 2013) (Court opinion corrected 3/26/13.) Claimant, a police officer/paramedic, alleged accidental hand injury sustained when he tripped and fell while chasing a suspect. Under Workers Compensation Act, although permanent injuries can "increase" or "diminish", only temporary disabilities can "recur". Only TTD payments may thus be "re-established".Thus, scope of 19(h) of Act is not limited to permanency benefits, but also covers TTD benefits. (HOLDRIDGE, HOFFMAN, HARRIS, and STEWART, concurring.)

Spears v. The Association of Illinois Electric Cooperatives, 2013 IL App (4th) 120289 (March 13, 2013) Plaintiff sued for personal injuries from a fall during a pole climbing class in an associate degree program to become an electrical lineman. Certified question requires resolution of questions of fact, as to whether exculpatory clause in liability release is enforceable, and thus cannot be answered by appellate court.(TURNER and HARRIS, concurring.)

People v. Gilbert, 2013 IL App (1st) 103055 (March 19, 2013) Cook Co., 2d Div. (HARRIS) Affirmed in part and vacated in part. Attorney facing possible suspension of law license, per recommendation by ARDC, remains a licensed attorney and is qualified to represent clients, and pending disciplinary proceedings does not render attorney incompetent to defend a client on criminal charges. Defense counsel's failure to notify client of pending disciplinary proceedings does not mean client was denied effective assistance of counsel. (QUINN and SIMON, concurring.)

In re A.M., 2013 IL App (3d) 120809 (March 20, 2013) Tazewell Co. (SCHMIDT) Reversed. Court lacked jurisdiction to proceed on merits of guardianship petition of minors filed by minors' maternal aunt, as court did not first hold evidentiary hearing as to respondent mother's willingness and ability to care for her children. A

separate hearing must be held first on parental fitness, and only if the presumption of fitness is rebutted in that hearing does the court have jurisdiction to proceed to determine whether guardianship is in the best interests of the minor. (CARTER and LYTTON, concurring.)

In re Addison R., 2013 IL App (2d) 121318 (March 21, 2013) Winnebago Co. (ZENOFF) Affirmed. Court properly found that mother was unfit and terminated her parental rights as to her three-year-old daughter. State proved depravity, as mother was convicted of three felonies from three-county police chase. The use of three felony convictions alone creates prima facie case of depravity, with no exception for conduct underlying convictions having occurred on the same day; no requirement that depraved acts particular sufficient duration or repetition. (JORGENSEN and SPENCE, concurring.)

Metzger v. Country Mutual Insurance Company, 2013 IL App (2d) 120133 (March 21, 2013) De Kalb Co. (BIRKETT) Reversed and remanded with directions. Plaintiff injured in auto accident filed declaratory judgment action on insurance coverage. Defendant insurer had no duty to indemnify nor duty to defend. Issue of coverage is ripe for consideration as Plaintiff sued insured under business policy. That policy does not potentially cover vehicle involved in accident, as it was not a "non-owned vehicle" under the business policy, and corporation borrowed vehicle, and did not lease or hire it, and thus exclusion of coverage applies. (HUTCHINSON and SCHOSTOK, concurring.)

Hussein v. L.A. Fitness International, LLC, 2013 IL App (1st) 121426 (March 22, 2013) Cook Co., 5th Div. (McBRIDE) Affirmed. Exculpatory clause in fitness club contract barred Plaintiff's negligence suit for injuries sustained and rendering him a quadriplegic while using exercise equipment at club facility in Chicago. Minnesota law applies, given choice-of-law provision in contract, and sufficient relationship with Minnesota as Plaintiff resided there at time of contract. Exculpatory contract is enforceable and not barred by public policy, and Plaintiff thereby agreed to exonerate fitness club from liability for negligence. (HOWSE and PALMER, concurring.)

Solorio v. Rodriguez, 2013 IL App (1st) 121282 (March 22, 2013) Cook Co., 5th Div. (McBRIDE) Affirmed. Plaintiff sued landlord of owner of pit bull, after dog escaped through broken gate and bit Plaintiff at his home. Landlord does not owe a duty to a third person if the landlord does not retain control of the area where the injury occurred. (HOWSE and PALMER, concurring.)

Walker v. Ware, 2013 IL App (1st) 122364 (March 29, 2013) A sheriff's Return of Service that states "reason not served -- deceased" does not constitute knowledge of a person's death, such that Section 13-209(c) of the Illinois Code of Civil Procedure should not apply and not allow a plaintiff to file an action against the representative of the deceased person after the time limited for commencement thereof has expired. (GORDON and REYES, concurring.)

Arteaga v. U.S., No. 12-3189 (April 1, 2013) Dist. Ct. did not err in dismissing as untimely plaintiff's claim under Federal Tort Claims Act, alleging that defendants, certain medical professionals at hospital that received grant money from U.S. Public Health Service, failed to properly diagnose certain symptoms of her pregnancy that resulted in injuries to her child, where instant complaint was filed almost six years after birth of child. Instant claim was governed by 2-year statute of limitations, as opposed to 8-year limitations period under Illinois law for injuries to minors, since plaintiff could only file claim under FTCA. Ct. rejected plaintiff's contention that claim did not accrue until she learned that defendants could be sued in malpractice only under FTCA since: (1) record showed that plaintiff was initially diligent in consulting first lawyer, but let matters lapse for long periods of time before seeking three other attorneys prior to filing her case; and (2) any failure of plaintiff's lawyers to recognize that two-year period applied in instant matter did not serve to equitably toll limitations period, but rather provided plaintiff with potential for legal malpractice action.

CRIMINAL LAW

People v. Lara, 2012 IL 112370 (October 18, 2012) Cook Co. (KILBRIDE) Appellate court reversed; remanded with directions. (Court opinion modified upon denial of rehearing 2/7/13).Corroboration is sufficient to satisfy corpus delicti rule if evidence, or reasonable inferences based on it, tends to support commission of a crime that is at least closely related to the charged offense. Corroboration of only some of the circumstances related in a defendant's confession which tend to connect the defendant with the crime is sufficient. (FREEMAN, GARMAN, KARMEIER, BURKE, and THEIS, concurring; THOMAS, specially concurring.)

People v. Mars , 2012 IL App (2d) 110695 (December 26, 2012) Lake Co. (ZENOFF) Affirmed. (Modified upon denial of rehearing 2/25/13.) Court properly dismissed postconviction petition at first stage. Defendant failed to show that his trial counsel's performance was deficient. Defendant forfeited issues of compulsory joinder and speedy trial, as to alleged deficient performance by appellate counsel, as they were not raised in postconviction petition. Defendant raised failure of trial counsel to bring allegedly faulty indictment to trial court's notice; and Defendant explicitly referred to errors of appellate counsel in complaining of deficiencies in his direct appeal, and was capable of articulating the type of relief sought. (HUDSON and BIRKETT, concurring.)

People v. Wilmington, 2013 IL 112938 (February 7, 2013) Cook Co. (KARMEIER) Affirmed. Defendant was convicted, after jury trial, of first degree murder and concealment of a homicidal death. Court did not err in not asking Defendant if he agreed with tender of second degree murder instruction (requested by defense counsel) and understood its consequences. A defendant can only be found guilty of second degree murder if State has first proven all elements of first degree murder, and thus a defendant is not exposing himself to potential criminal liability which he might otherwise avoid by tendering second degree murder instruction. Court erred in not inquiring as to jury's understanding and acceptance of principle that Defendant's failure to testify could not be held against him, but no plain error as evidence was not closely balanced. That jury sent notes to judge during deliberations, no indication that jury had reached an impasse or that jurors considered this a close case. (KILBRIDE, THOMAS, GARMAN, and THEIS, concurring; BURKE and FREEMAN, dissenting.)

People v. Jackson, 2013 IL 113986 (February 7, 2013) Clinton Co. (KARMEIER) Vacated and remanded. In a trial for violation of Section 6-303 of Vehicle Code, for Class 4 felony of driving while license suspended or revoked, allows court to determine whether Defendant misled authorities into reinstating his driving privileges by purposefully providing incorrect information or concealing information. Court improperly declared that Section 6-303 was unconstitutional, as it was not necessary to reach question of constitutionality of statute to decide question of case. (KILBRIDE, FREEMAN, THOMAS, GARMAN, BURKE, and THEIS, concurring.)

People v. Grant, 2013 IL 112734 (February 7, 2013) Cook Co. (FREEMAN) Appellate court reversed; circuit court affirmed. Officer in unmarked car heard Defendant yelling "dro, dro" to a passing vehicle in front of Chicago Housing Authority building. Officer testified that based on his experience, "dro, dro" is slang for sale of cannabis. Facts known by police at time of arrest were sufficient to constitute probable cause, as police observed Defendant committing offense of solicitation of unlawful business, and location at known narcotics sales spot was one factor contributing to probable cause. (KILBRIDE, THOMAS, GARMAN, KARMEIER, BURKE, and THEIS, concurring.)

People v. Sanders, 2013 IL App (1st) 102696 (February 14, 2013) Cook Co., 4th Div. (EPSTEIN) Affirmed. Officers had reasonable, articulable suspicion to justify Terry stop of Defendant, and thus court properly denied motion to quash arrest and suppress. Woman flagged down officer and told him that she saw a man put a machine gun into the back of a car. Although woman remained unidentified, the more resembles a citizen informant than an anonymous informant, as she engaged in a face-to-face conversation with officer she approached, and she never attempted to hide her identity. Thus, her tip was sufficiently reliable to allow officer to

reasonably infer Defendant's involvement criminal activity, justifying Terry stop. (LAVIN and PUCINSKI, concurring.)

People v. Teague, 2013 IL App (1st) 110349 (February 15, 2013) Cook Co., 6th Div. (R. GORDON) Affirmed. (Court opinion corrected 2/20/13.) Defendant was convicted of first-degree murder of his former employer, and of attempted first-degree murder of three police officers, which occurred while Defendant was trying to evade capture for murder. Evidence was sufficient to support convictions of attempted first-degree murders, as State proved intent to kill, by officers' testimony of Defendant's actions. Defendant was free to argue to jury that his failure to hit officers supported inference of lack of intent, but jury could draw competing inference that Defendant was an unskilled shooter. A defendant's rehabilitative potential is not entitled to greater weight than seriousness of offense. (LAMPKIN and HALL, concurring.)

People v. Gray, 2013 IL App (1st) 101064 (February 15, 2013) Cook Co., 5th Div. (HOWSE) Vacated and remanded with directions. Court abused its discretion when it did not properly consider Defendant's request to proceed pro se on his postconviction petition. Defendant made a timely and unambiguous request to represent himself, and could should first determine whether he has knowingly and intelligently relinquished his statutory right to counsel. Defendant's request was not dilatory, as it was made shortly after he had reason to do so, when defense counsel decisively refused to make or endorse the pro se amendments, and he should not be responsible for his counsel's delays in reviewing record and evaluating potential claims. (EPSTEIN and TAYLOR, concurring.)

People v. Collins, 2013 IL App (2d) 110915 (February 20, 2013) Kane Co. (SCHOSTOK) Affirmed in part and vacated in part; remanded. Defendant was convicted, after bench trial, of delivery of controlled substance within 1000 feet of a park. Court properly barred defense from viewing testifying officer's entire personnel file. Upon in camera inspection, no information other than five pages disclosed was relevant to officer's credibility or suggested motive to testify falsely. Officer Tucker's character is not an element of a charge, claim, or defense, and thus Rule 405 of Illinois Rules of Evidence does not apply. (HUTCHINSON and BIRKETT, concurring.)

People v. Rivera, 2013 IL 112467 (February 22, 2013) Cook Co. (BURKE) Appellate court reversed; remanded. Defendant was convicted, after jury trial, of repeated sexual abuse of his, and did not ask for any specific stepdaughter from age 11 to 14, and of her 13-year-old friend. Defendant did not manifest subjective intent to initiate plea discussion where Defendant never specified terms of his alleged offer to plea bargain, and did not ask for any specific concessions from State, but only for unspecified "guarantees". Thus, statements Defendant made in pretrial custody were independent admissions and fully admissible at trial. Court properly granted State's motion to disqualify counsel, prior to suppression hearing, as defense counsel knew, at time of court's decision, that he would be called as a witness on behalf of his client in pending litigation. (KILBRIDE, FREEMAN, THOMAS, GARMAN, KARMEIER, and THEIS, concurring.)

People v. Fulmer, 2013 IL App (4th) 120747 (February 25, 2013) Pike Co. (STEIGMANN) Affirmed. Defense counsel posted on YouTube and his Facebook page a video he received from State's Attorney prior to preliminary hearing depicting Defendant interacting with undercover police at time of alleged offense of unlawful delivery of a controlled substance. Court properly found that defense counsel had violated Supreme Court Rule 415(c) and as a sanction ordered him to remove video from websites. Defense counsel's use of video was improper use of State's early delivery of discovery materials. Whether video was tendered prior to or after preliminary hearing did not affect applicability of Rule 415(c). (APPLETON and TURNER, concurring.)

People v. Mendez, 2013 IL App (4th) 110107 (March 11, 2013) McLean Co. (HARRIS) Affirmed. Defendant was convicted of first degree murder of his girlfriend's three-year-old son. Despite presentation of conflicting medical opinions as to cause of death and injuries, evidence was sufficient for jury to have found Defendant guilty of murder. Court properly admitted other-crimes evidence as relevant to show motive, in that it

showed Defendant's favor for his own children and showed animosity toward victim. (STEIGMANN and POPE, concurring.)

People v. Jenkins, 2013 IL App (4th) 120628 (March 15, 2013) Champaign Co. (APPLETON) Affirmed. Just prior to jury trial for murder, court granted Defendant's motion in limine to exclude, as hearsay, statements that victim had made to police officers after he was shot. Court properly made factual determination that statement was not within hearsay exception for dying declarations. Victim made statement at the hospital, after coming through surgery, and it was not clear that victim believed that his death was imminent at time of statement. (POPE and HARRIS, concurring.)

People v. Daniel, 2013 IL App (1st) 111876 (March 22, 2013) Cook Co., 6th Div. (GORDON) Reversed and remanded. Initial stop of Defendant's vehicle was a lawful Terry stop, as they obsertved him commit a traffic violation in failing to use turn signal to indicate a lane change. Officers were entitled to order Defendant to exit his vehicle. Officer's handcuffing of Defendant did not transform the stop into an arrest in this case, as under the facts of the case, use of handcuffs was reasonably necessary for safety; officers observed several furtive movements by driver and occupant, including reaching to the floorboard. (LAMPKIN, concurring; HALL, specially concurring.)

People v. Donath, 2013 IL App (3d) 120251 (March 22, 2013) Tazewell Co. (CARTER) Affirmed. Court's decision to deny Respondent's conditional release was not against manifest weight of evidence, as all three of State's experts concluded that he continued to be a sexually dangerous person, and it was more likely than not that he would reoffend if not confined. After 12 years in treatment, Respondent had not successfully addressed his sexual preoccuplation or core problem issues. Respondent was not denied right to speedy trial, as his remaining in custody for three years was not alone prejudicial, and he requested or agreed to most of the continuances. (WRIGHT and LYTTON, concurring.)

People v. Fitzpatrick, 2013 IL 113449 (April 4, 2013) Defendant was stopped by officer for walking down the middle of a street, a petty offense in violation of Motor Vehicle Code and contrary to municipal ordinance. Defendant was arrested and, at police station, was searched for contraband, and cocaine was found in his sock. Defendant was charged with possession of cocaine. Neither U.S. Constitution nor Illinois Constitution prohibits arrests for a minor, fine-only offense, unless any of the narrow exceptions in the Illinois Constitution apply. (KILBRIDE, FREEMAN, GARMAN, KARMEIER, BURKE, and THEIS, concurring.) Filed under: Illinois Supreme Court – Criminal

U.S. v. Meherg, No. 12-1860 (April 8, 2013) Dist. Ct. did not err in imposing 15-year term of incarceration on charge of felon in possession of firearm, after finding that defendant qualified for enhanced sentence under Armed Career Criminal Act (ACCA) based in part on defendant's prior Illinois conviction on charge of aggravated stalking. While crime of aggravated stalking does not have use of force as element of offense, said offense qualified as crime of violence under residual clause of ACCA where said offense requires finding that victim be confined, and where said offense posed serious potential risk of physical injury.

Thank you to ISBA e-clips for these contributions.

***Cop Shoots Dog Equals Constitutional Claim and Possible Cruelty Charge**

By: Ledy VanKavage, Sr. Legislative Attorney for Best Friends Animal Society
and Anna Morrison-Ricordati, AMR Law Group, LLC

In 2002 the Chicago Daily Law Bulletin ran a headline that read, "Dog is slain by police officer; woman wins civil rights claim." The woman's pet was fatally shot when it lunged at a Chicago police officer, and she ultimately was awarded $120,000 for the loss of her dog. *Lucyna Mitchell v. City of Chicago, et. al.*, No. 01 C 458 (February 25, 2002, N.D. Ill.).

Many attorneys don't think of applying 42 U.S.C. Section 1983 when a cop shoots a pet, but the most frequent animal-based 1983 cases occur against police and assert a Fourth Amendment violation of unreasonable seizure. Indeed some mishandled dogs live in areas protected by their owners' rights to privacy, so a Fourth Amendment unreasonable search claim can also arise. *See Kay v. County of Cook, Illinois*, 2006 WL 2509721, *1-4 (Aug. 29, 2006, N.D. Ill.) (precluding dismissal of Fourth Amendment claim where police officer entered residence to perform a well-being check on whoever was inside).

While dog shooting cases have come a long way from early decisions requiring the Courts to determine that a non-fatal shooting amounted to a Fourth Amendment seizure, they are almost always met with the same defenses. Police frequently argue that the dog's actions forced a "split-second" decision or that the officer was in "fear for his safety." *See e.g., Brandon v. Maywood*, 157 F. Supp.2d 917 (2001). However, and even without the incriminating video evidence available in many new cases, where the police officer's "state of mind," "intent" or "motive" is in question, these defenses are best left to the jury. *See Hardin v. Pitney Bowes, Inc.,* 451 U.S. 1008, 1008-1009 (1981) *cert. denied*, *dissent of J. Rehnquist* ("it has long been established that it is inappropriate to resolve issues of credibility, motive, and intent on a motion for summary judgment"). Qualified immunity, when applicable, shields police officers from liability for federal constitutional claims. To pass constitutional muster, that is to allow qualified immunity, the officer's actions must have been reasonable. *See e.g., Andrews v. City of West Branch Iowa*, 454 F.3d 914, 917-918 (8th Cir. 2006) (denying qualified immunity where plain meaning of police ordinance and police animal control policy did not authorize shooting dog that was not at large). Shooting a dog – even one that is off the owner's property – is unreasonable where the dog poses no threat. According to the Seventh Circuit case of *Viilo v. Eyre*, 547 F. 3rd 707, 710 (7th Cir. 2008),

"the use of deadly force against a household pet is reasonable only if the pet poses an immediate danger and the use of force is unavoidable" (emphasis added).

Still, the payout from the *Lucyna* case was modest in comparison to that of the infamous Hell's Angels case, and let's face it- a Hell's Angel might not be a sympathetic plaintiff, but their dogs are. People love their pets and consider them family members.

In *San Jose Charter of Hells Angels Motorcycle Club v. City of San Jose*, 402 F. 3d. 962 (9th Cir. 2005), the court stated, "The emotional attachment to a family's dog is not comparable to a possessory interest in furniture" (emphasis added). The Ninth Circuit affirmed denial of qualified immunity to the officers who executed dogs guarding Hell's Angels members' homes. The court further stated, "A reasonable officer should have known that to create a plan to enter the perimeter of a person's property, knowing all the while about the presence of dogs on the property, without considering a method for subduing the dogs besides killing them, would violate the Fourth Amendment." The grand total for the Hell's Angels cased reached nearly $1.8 million and involved three different local governmental police departments.

Oddly, and although there are an estimated 77.5 million owned dogs in the United States, a vast number of police officers claim to have little or no training in how to gauge a dog's behavior. See, "The Problem of Dog-Related Incidents and Encounters" US DOJ (August 2011). Such claims for "failure to train," among other failures of municipal or county police employers, give rise to *Monell* liability, the cost of which is ultimately borne by the taxpayers. *Monell v. City of New York Department of Social Services*, 436 U.S. 658 (1978). That said, *Monell* claims can complicate issues, add increased costs to discovery and are not always necessary. For example, in the *Russell v. City of Chicago, et. al.,* No. 10 C 525 (August 18, 2011, N.D. Ill.) case, the City of Chicago was on the hook for respondeat superior liability, wherein Chicago police officers raided a south side home and shot a black Laborador dog named Lady. Although the police found no criminal activity in his residence, Russell had cooperated with them.[1] Russell's hands were in the air and he had asked only that he be allowed to lock up his dog, Lady, to ensure she was not harmed. Instead, the officers shot and killed Lady, a dog that had done nothing more than enter the room with her tail wagging. The jury awarded Plaintiffs over $330,000.

Tragically, there is a pending case in Colorado against a Commerce City Police Officer for the killing of Chloe, a short-haired muscular mutt, allegedly a "pit bull terrier" adopted to be a therapy dog. Police responded to a call about a free-roaming dog in a residential neighborhood. Two police officers along with an animal control officer cornered Chloe in a garage. As graphic video footage shows, Chloe sat in the garage apprehensive of the officers. They could have shut the garage door. Instead, one police officer tased Chloe not once, but twice, leaving her momentarily incapacitated lying on her side. Chloe tried to flee when the animal control officer placed a catch pole noose around her neck, at which point the same officer shot her five times, almost hitting the animal control officer.
http://www.youtube.com/watch?v=XMKqwQm4L9Y

After a thorough independent investigation, the Adams County District Attorney's Office charged the officer in Chloe's case with Aggravated Cruelty to Animals pursuant to C.R.S. §18-9-202(1.5)(b).[2]

[1] Chicago Tribune Article, "Family gets $333,000 for 2009 raid in which cops killed dog." David Heinzmann (August 19, 2011).

[2] Official Press Release from Adams County District Attorney Don Quick, Dec. 20 (2012).

These same actions in Illinois would be a crime under the Illinois Humane Care for Animals Act, which does not exempt police, and further gives rise to additional state law civil claims. 510 ILCS 70/3.02, 3.03, 16.3.

Indeed, most 42 U.S.C. Section 1983 dog shooting cases include state law claims, such as conversion, trespass and intentional infliction of emotional distress. *See Kay v. County of Cook, Illinois*, 2006 WL 2509721, *7 (Aug. 29, 2006, N.D. Ill.); *Russell, et al.,* 10-CV-00525 (August 19, 2011, N.D. Ill.). While these claims require "willful and wanton" conduct due to the special protections afforded police officers under the Illinois Tort Immunity Act (745 ILCS 10/ 1–210; 745 ILCS 10/2-202), an officer acting with disregard for the safety of the Plaintiff or his property is not immunized and can be subject to punitive damages. *See e.g.*, IPI 14.04; 7th Cir. JI 7.04. Allowed under both constitutional and state tort claims, punitive damages are intended for the offending officer(s). *See e.g.*, IPI 35.00; 7th Cir. JI 7.24. A municipality can only cover the plaintiff's compensatory damages and is prohibited from paying punitives on behalf of its officers. 745 ILCS 10/2-102.

The emotional impact of a pet shooting devastates not only the pet's human family, but also the community at large. For these reasons, government bodies employing police should take care to train officers in proper responses to dogs and other animals. This relatively small investment in training could avoid costly lawsuits and public mistrust.

*First Published in ISBA, Animal Law Newsletter



ERICA MINCHELLA | Responding to the Chaos, Fear of Foreclosure

by **Paul Dailing**

SKOKIE—Erica Minchella's phone won't stop ringing.

"I tell my clients the best way to reach me is through email, which was fine until my email started to explode," she says.

Minchella, 59, is glad for the work, of course, glad clients are finding the small space in a Skokie industrial park where her practice, **Minchella & Associates Ltd.**, shares offices with her husband's business, a broadcast industry consulting firm.

She's not so glad the calls coming in to her real estate foreclosure practice are from people in danger of losing their homes or businesses. She's not so glad there are enough victims of bad loans to keep her practice booming.

And she's not glad many of the people seeking her help don't know their rights under the law.

"They think they need to pack their bags and move out," she says. "They just have no sense of what the time frames are and what their rights are and what possible remedies they have."

Worse, sometimes people contact her after they moved when they didn't have to.

"They just get scared," she says. "They think the sheriff is going to be at their door, I talked to someone today who hasn't even been served yet and he wanted to know if he should start packing."

It's not just Minchella who is dealing with a glut of cases like this in the wake of the real estate collapse. Minchella also formed and is heavily involved in a new bar association designed to help foreclosure defense attorneys connect and talk about changes in the evolving field.

Although she focuses on foreclosure defense, she also does short sales. Conventional real estate transactions have also started to pop up in her workload again as the economy improves.

"They've crept back up," she says.

The ringing phone and the long list of emails needing replies is a big change from when she first moved into the modest storefront in the Skokie industrial park to work in traditional residential and small commercial real estate transactions. It was 2008, which would turn out to be one of the worst years for the real estate market.

"We moved into this office space and waited for the phone to ring," she says.

As Thomas Edison once said, "Everything comes to him who hustles while he waits." Change the gender and make it about real estate law and Edison could have been talking about Erica Minchella.

Rather than wait for her residential and small commercial real estate work to pick up after the 2008 crash, Minchella started taking foreclosure defense work. Real estate work had already been a career shift from the bankruptcy work with which she had begun her professional life.

"I've now invented myself three different times in three different practices," she says. "My standard line to young attorneys who are

trying to develop their own practice is that it is an 18- to 24-month process to get your credibility, to get a regular flow of business, to be perceived as a real entity and that was pretty much true at that point."

Right About Strength of Team

It was an emergent time in the field, especially after a Maine lawyer named Thomas Cox uncovered the nationwide "robo-signing" scandal, in which document preparation firms were signing thousands of foreclosure affidavits without verifying their accuracy.

"He's a folk hero to me," Minchella says of Cox.

By October 2010, Minchella realized the field of foreclosure defense was developing so quickly and so intricately that she and her peers were having a hard time keeping up as individuals.

"She felt we would be stronger as a team than individually, and she was so right about that," says Rick Rogers of Bannockburn-based Rogers Law Group.

Minchella and seven other foreclosure defense attorneys sat down and started the Association of Foreclosure Defense Attorneys, a mutual aid society for practitioners in this booming area of law.

The group, of which Minchella is president, has meetings to discuss new developments in the field, but also offers a listserv, an electronic mailing list with which practitioners can ask questions, trade tips and talk about their field.

"It's a wonderful place for an exchange of information," says member Steven Bashaw of Lisle-based Steven B. Bashaw, P.C.

Before the association, if Bashaw received a foreclosure affidavit that smelled fishy – he used the example of one signed "Linda Green," a name often seen on documents during the height of the "robo-signing" days—all he could do was look up the person online and hope he got lucky.

"Now instead of going on and Googling, I go on the AFD listserve and post things and see if anyone has affidavits that sound funny," he says.

Cooperation is invaluable.

"In foreclosure defense, the field has mutated in so many ways so often that you've got to keep abreast of it," Rogers says.

The group allows foreclosure defense attorneys to use, some for the first time, the experiences of others in handling their cases.

"A lot of us have the same common problems," Rogers says. "It's like going from a private practice for many to going to a large law firm."

Teaching Her Way Into Law

Erica Minchella was born Erica Crohn in Chicago and was raised in the Rogers Park neighborhood.

She was one of two children and jokes that her sister "made me go to law school."

"The same way she made me read books she wanted to talk about, she made me go to law school," Minchella says, laughing.

Her parents, an accountant and a homemaker, were thrilled.

"Both my parents thought that this was the greatest thing in the world to have two daughters who were lawyers," she says. "We come from a family that believes very strongly in education and getting an education to be the best you can be."

Initially, however, Minchella wasn't headed for law. After college at the University of Illinois, she taught high school English. She was not a fan.

That's when her sister, Linda Crohn, stepped in.

"She said to me, 'Go to law school so we can be partners,'" Minchella says. "I was at a crossroads in my life at that point. I taught high school for a year, spent a year trying to figure out what I wanted to do, because teaching high school was not it."

Her family was supportive of the idea.

"I knew I didn't want to continue teaching. I didn't know what else might be a good place for me," Minchella says. "There was certainly some family encouragement to get an education and to be a professional of some sort. My mother had always instilled in me to make sure that I had something to fall back on, that I could always support myself and could always take care of myself."

Minchella worked her way through Loyola University Chicago School of Law, working during the day and taking classes at night. Her mother never got to see her youngest become a lawyer. She died two months before Minchella graduated in 1981.

During law school, Minchella worked with a bankruptcy firm, administering a pre-paid bankruptcy program. She conducted the interviews, went to bankruptcy trustee hearings and handled creditor calls.

"And I fell in love with the area of law," she says. "There were two things. One was that I could get immediate relief for people who were in pain. And the second was that it pretty much got me into every other area of the law there is, other than, I think, admiralty. I don't think I've ever done anything with admiralty."

Although she still hasn't handled maritime law, Minchella was about to begin a career that would take her many places she never expected.

Too Many Lawyers Might Stifle

On Jan. 1, 1984, the Crohn sisters' dream of working together was born with the firm of Crohn & Crohn. Eventually, Minchella would leave the partnership to go as-counsel to another firm after her first child was born.

It was a good arrangement. She was able to keep doing the work she loved, but the support of a firm allowed her to be home at the end of the day. That allowed her to watch her children, Christopher and Andrea, now 25 and 22, respectively, grow up. She ended up forming a sole proprietorship and working half-time so she could spend more time with her children.

"I needed to be with my kids more," she says.

She was soon looking to get out of bankruptcy law. Real estate seemed a good fit in terms of the hours and the knowledge she had obtained over her years helping her bankruptcy clients sell off their property. Plus, she couldn't be in court in the afternoon.

"You can tell a client when you're going to set their real estate closing, but you can't tell a judge when he can sentence you," she says.

She switched from bankruptcy to real estate in 2000, at about the time she moved her practice to share office space with her husband, Jim. They moved to their current business home in 2008, just in time for the economic crash.

"My husband and I are both very strong personalities, so I don't know how we've survived together sharing office space other than I keep M&Ms on my desk," she says, laughing.

The M&Ms make sure her husband and their son, who works for his dad, drop by to visit her during the day. In return, her husband helps provide her some perspective.

"He really keeps me very grounded," she says.

She says sharing that modest storefront in a Skokie industrial park with a business that has nothing to do with law has been good for her.

Too many lawyers only see lawyers every day, she says. A more traditional office space could be stifling and too insular for Minchella's tastes.

The personal and professional relationships Minchella has developed are a testament to her ability to communicate with and bring people together, Bashaw says. Interviewed in early December, Bashaw says the Association of Foreclosure Defense Attorneys Christmas party was the only one he was looking forward to attending.

"A large part of that is the way she facilitates interactions," he says.

Her career has taken her into three areas of law (although not admiralty) and put her at the forefront of a developing field. Her peers look to her as a mediator and her clients look to her as a defender and resource.

She jokes that she needs a break, but Erica Minchella keeps answering that phone, every time it rings. ■



CALENDAR OF EVENTS

May 14, 2013
6:00-8:30 p.m.

Judges Night, North Shore Country Club,
1340 Glenview Rd., Glenview, Illinois 60025

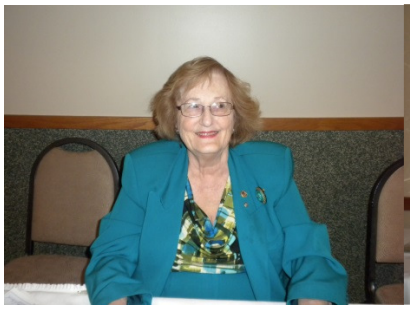
June 11, 2013
6:00-8:00 p.m.

***CLE TBA - Annual Meeting/Elections**

***NSBA CLEs** are held at the Happ Inn, 305 Happ Road, Northfield, Illinois 60093. Cost: $31.00 for dinner and 1 hour CLE credit. Food choices include (1) Vegan/Vegetarian, (2) Fish or (3) Chicken/Beef. RSVP to Anna Krolikowska: akrolik06@gmail.com

NOTE!!! $25.00 cancellation fee will be charged for no-shows, unless you substitute someone else in your place.





NORTH SUBURBAN BAR ASSOCIATION

Please send mail to:

P.O. Box 731, Glenview, IL 60025

Website: www.ilnsba.org
NSBA Lawyer Referral Service: 847/564-4800

ANNA KROLIKOWSKA, Esq., President

ANNA MORRISON-RICORDATI, Editor
ANGELA PETERS, Esq., Staff columnist & Case law contributor

Please send news, announcements and articles to:
Anna, anna@amrlawgroup.com

The John Marshall Law School Presents:

Freedom Award/Distinguished Service Awards (DSA) Luncheon

The 2013 Freedom Award and Distinguished Services Awards Luncheon will take place on Friday, May 10, 2013. The Association has one major fundraiser per year, the Freedom Award/DSA Awards Luncheon. Monies raised from this event are used to fund scholarships for current John Marshall students. Each year, the Association selects one distinguished individual to receive the Freedom Award. The recipient of this award will have made outstanding contributions to freedom in today's society. Those chosen to receive a DSA will have outstanding achievement in a career field or personal endeavor.

This year the luncheon will honor those that serve or have served their country and those who help military causes and veterans affairs.

Presenting the 2013 Freedom Award Recipient,

Urban Miyares

Presenting the 2013 Distinguished Service Award Recipients,

Colonel Eugene Baime '91
Brian Clauss '90
Frank Del Barto '07
Donald T. Rubin '80
Hon. Alexander White '76

**For more information, contact Sherri Berendt, Director of Alumni Relations at 312-427-2737 Ext 343 or sberendt@jmls.edu. **