

North Suburban Bar Association

NSBA News

Winter 2017-18

President's Message

Richard Pullano, Esq.

I want to thank the North Suburban Bar Association members for giving me the opportunity to lead this great organization. I plan to build on all the wonderful work my predecessors have done for this association. I also want to thank everyone who attended our Installation and Awards Dinner on September 13th. We had over 230 people in attendance. There were many individuals that made this evening special, but I especially want to thank Judge Jeanne Reynolds, Pamela Menaker and Moria Bernstein. (Cont. Page 2)



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Save the Date *

January 25	High School Mock Trial Competition
February 27	CLE Seminar (Service of Process)
March 20	Gary Wild Dinner
April 24	CLE Seminar (Ethics)
May 8	NSBA Judges Night
June 19	CLE Seminar (I/P & Trade Secrets)

*Please check the NSBA website (ilnsba.org) for details about event venues and starting times.

I was particularly honored and privileged to be able to present the L. Sanford Blustin Award at the Installation Dinner to my mentor and colleague Bob Clifford. Bob has participated in a wide array of bar associations. He has always placed a strong emphasis on mentoring young lawyers and providing a voice for the underserved, underprivileged and under-protected. I will take my lead from Bob Clifford in implementing my agenda this year for our organization.

The NSBA CLE programs are off to a great start this year because of the outstanding work of John Stimson, our First Vice President. Marvin Mendez, an NSBA board member, spoke at our first CLE program on the topic of “Changes to the Illinois Marriage and Dissolution of Marriage Act.” Justice Jesse G. Reyes, also an NSBA board member, spoke at our second CLE program on the topic of “Illinois Supreme Court Rules and Civility.” I was pleased to see a lot of interaction between the audience and our presenters at both seminars. If you are interested in speaking, please contact John Stimson (john@stimson-law.com).

On January 25, 2018, the NSBA will again co-sponsor the 5th Annual High School Mock Trial Invitational. The event will be held at the Skokie courthouse. This year the field is being expanded from 12 to 16 teams. Consequently, we will need the participation of more volunteer attorneys to act as evaluators. If you are interested in volunteering, please contact me (rlp@pullanolaw.com). I am sure that you will find it a very rewarding experience. Your membership and participation in NSBA events is critical to the success of this organization. I encourage you to review our annual calendar contained within this newsletter and attend as many of our events as possible. Also, please reach out to your friends and colleagues and invite them to join our organization. My best wishes to you and your family for a happy and healthy new year.



State of Illinois
Circuit Court of Cook County
Second Municipal District

Shelley Sutker-Dermer
Presiding Judge

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Dear NSBA Members

I have always enjoyed working with the North Suburban Bar Association. I'm very pleased with the support you have given us and I'm delighted to host your CLE Programs. I have seen our affiliation grow through the years that I've been Presiding Judge. I am anticipating a great year working with your President, Rick Pullano.

One of the things I find myself looking forward to in January is the North Suburban Mock Trial Invitational. I have watched this wonderful program mature and flourish over the past several years. It is so exciting to have a preview of the next generation of lawyers and judges. In fact, the 2017 winner at the Skokie Courthouse, St. Charles North High School, went on to win the Illinois State Bar Association Mock Trial Competition in Champaign, Illinois. I hear that 2018's Invitational may grow from 11 schools to 16.

Aside from the fact that this is an invaluable learning experience for all of the students involved, it is also a unique partnership opportunity for all of us. The collaboration includes Judges, Assistant State's Attorneys, private attorneys, School District 219 personnel, coaches, and of course NSBA Members. In addition to being an outstanding community event, it's fun! If you haven't yet taken the opportunity to participate or to attend, I urge you to try it this year. The event will be held at the Skokie Courthouse on January 25, 2018. Mark your Calendars! You will be so impressed by these teens.

I hope to see you there!

Sincerely,

A handwritten signature in cursive script that reads "Shelley Sutker-Dermer".
Shelley Sutker-Dermer

2017 Installation & Awards Dinner







L. Sanford Blustin Award

The North Suburban Bar Association's L. Sanford Blustin Award honors an individual who has made a significant contribution to the legal community. At our September 2017 Installation and Awards Dinner, the NSBA was proud to name Bob Clifford of the Clifford Law Offices as its 2017 L. Sanford Blustin Award recipient.

In addition to his storied legal career, Bob is well known for his profound and lasting contributions to the legal system and to the people served by the system. We were especially honored to highlight Bob's longstanding commitment to justice, his work on behalf of underrepresented litigants, and his leadership of various bar associations and civic and charitable organizations. Bob's efforts, leadership, and commitment to justice serve as an example to us all.



2017-2018 NSBA Officers & Directors:**Officers:**

Richard Pullano, <i>President</i>	Ann Pantoga, <i>4th Vice President</i>
John Stimson, <i>1st Vice President</i>	Barbara Lusky, <i>Secretary</i>
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Hon. Patrick Heneghan, <i>3rd Vice President</i>	Molly Caesar, <i>Immediate Past President</i>

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A special Thank You to our 2017 NSBA Installation & Awards Dinner Sponsors

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Law Offices of Richard Pullano

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Top 10 Things You Need to Know About Trade Secrets

January 2018

By *Charles B. Brown, Esq.* *

Your business client is more likely to possess trade secrets assets than any of the other branches of Intellectual Property - patents, trademarks, and copyrights. Trade secrets are likely your client's most valuable and protectable intangible asset. They are essential to your clients' businesses. American businesses own an estimated \$5 trillion of trade secrets according to the United States Chamber of Commerce. Through carelessness, trade secrets can be lost permanently.

Here are the 10 most important things to understand about trade secrets so that your clients retain their valuable property.

1. **Definition.** A trade secret is information including technical and non-technical data, a formula, pattern, compilation, drawing or other information that is sufficiently secret by being not generally known to other persons, having economic value, and is the subject of reasonable efforts to maintain its secrecy. See section 2(d) of the Illinois Trade Secrets Act. 765 ILCS 1065 *et. seq.* The Illinois Trade Secrets Act is the plenary source of Illinois trade secret law and has replaced common law. However, Illinois courts might nonetheless look to common law and the Restatement of Torts for guidance from time to time. See Restatement (First) of Torts § 757 (1939).

*Charles "Charlie" Brown concentrates his practice in intellectual property law. These issues include patent management, trademarks, trade secrets (confidential information protection), copyrights, registration, maintenance, privacy, unfair competition, branding, licensing, infringements, software, domain, e-commerce, and the internet. In addition, the firm has successfully enforced its clients' IP rights through cease-and-desist actions and performed IP audits. His firm identifies, protects, and strengthens private, confidential, proprietary, and exclusive data, inventions, and methods. Charlie has thirty-five years of experience as an accomplished attorney for businesses in diverse industries nationally and internationally. For more information about Charlie Brown, view his website (www.corplaw.com) or contact Charlie at (847) 784-1300.

2. **Every Business Owns Trade Secrets.** Common trade secrets are: methods, formulas, plans, databases, information, forecasts, customer lists, data, customer feedback, financial information, ingredients, manufacturing methods, marketing techniques, customer – specific practices, research and development data, negative results (something that did not work), vendor pricing, vendor identity, employee information, and surveys. As you can see from this sampling, every business has trade secrets, even a hot dog stand. High-profile examples are the formula for Coca-Cola and the Google search algorithm. Trade secrets are the most common and ubiquitous intellectual property.

3. **Unless an Owner Takes Reasonable Precautions, a Trade Secret May Be Lost Forever.** The most important criterion in protecting trade secrets is to take reasonable precautions to protect the secrecy of the trade secret because, after all, the word “secret” is in the name. The failure to follow these requirements will result in irreversible abandonment of the exclusive rights to use the trade secret asset. You have now provided your competition with your hard won and expensive asset. If a trade secret creates premium pricing or revenue, shouldn’t a prudent business owner undertake cost-effective measures to protect this intangible asset?

Illinois courts have created five categories of reasonable measures: (1) employee nondisclosure agreements and training; (2) third party use precautions; (3) confidentiality notices and disclaimers; (4) access limits (physical and digital) including monitoring and safeguarding; and (5) other steps.

The most common method of trade secret loss or misappropriation is employee misuse or theft, so the business should begin any new trade secret program by ensuring compliance by their employees. Employees should sign a Confidentiality Agreement. Do not confuse a noncompete

agreement with an Employee Confidentiality Agreement. Employee Confidentiality Agreements are rocksolid and protectable if drafted properly. Only employees with a “need to know” should be granted access to trade secrets. Be sure to train employees who receive trade secrets. If a trade secret is transmitted by email without protection then protection is likely lost.

Next, create a Trade Secrets Policy. As in other areas, the business must create proper workplace policy rules using legal guidance. A Trade Secrets Policy is considered a best practice for good businesses which do not want to lose their valuable and costly trade secrets.

Small Businesses May Be Held to a More Lenient Standard. Illinois courts have held that the reasonableness of protective measures can be analyzed in light of the resources of the company and the nature of the trade secret. The law allows the owner to balance the cost and benefits of the reasonable steps taken. The law holds smaller businesses to a more lenient standard and larger businesses to a higher standard.

If the owner places the secret information on its website or gives it to its customers without an understanding of secrecy, the owner has revealed the secrets to others without an expectation of exclusive ownership and thus the trade secret likely no longer will be the exclusive property of the original owner. The owner may continue to use its information but now the owner cannot stop others from using it – and the recipient parties can redistribute it without restriction. In short, the owner’s title to the property has lapsed and its ownership claim is invalid. The owner no longer has proper chain of title.

For hard copy trade secrets, segregate trade secrets from other business assets in a separate physical location, preferably in a locked cabinet or secure area. Traditional physical security methods have also included security personnel, security cameras, identification badges,

and employee access cards. Trade secrets today are usually stored in a digitized form. Implement proper firewalls, passwords, and security to protect against misappropriation and distribution to unauthorized third parties.

What if the trade secret owner uses a disclaimer in a document such as “CONFIDENTIAL” or the like? The answer to this question is based on the facts. If the owner presented the trade secret from an auditorium stage at a trade industry program, then this disclaimer likely would not be deemed a reasonable precaution to protect secrecy. However, if the business owner presented it to one customer and buttressed it with some verbal understanding of confidentiality, then the owner might be able to preserve the confidentiality in this situation.

4. **Creature of Contract.** The optimal method to protect trade secrets is through contracts. A mandatory federal examination/registration system protects patents and an elective federal registration system protects trademarks and copyrights. There is no registration system for trade secrets. Trade secrets are a private right and protected through private, civil methods.

Trade secret owners need to have a written understanding of confidentiality with every party that touches or has access to their trade secrets – employees, customers, vendors, independent contractors, developers, partners, and even (if desired) other shareholders or LLC members.

5. **Inbound Rights.** Under a bedrock principle of copyright law, the independent contractor/author owns intellectual property developed by her for the business owner customer, unless the independent contractor/author assigns in writing the intellectual property to the business owner customer. This is the "work for hire" doctrine. The distinction here is ownership. The business owner with an unassigned right will always have a right to use the work product.

But, if the business owner paid for something, why should not the business owner own it? The business owner should require an ownership right, not a license. This inbound intellectual property can often be a trade secret and a properly drafted Services Agreement confirms the ownership rights in the business.

6. **Central Management of Trade Secrets is Best.** Best practices require that a business owner appoint a centralized manager of the trade secrets to be responsible for stewardship and curating of the valuable trade secrets. At any organization, many hands may need to touch a trade secret in order to properly utilize it for the benefit of the business. Most of these hands do not appreciate the importance of following the Trade Secrets Policy and taking reasonable precautions. It is advisable to name one person to be responsible for supervising trade secrets in accordance with the Trade Secrets Policy.

7. **Federal Defend Trade Secrets Act of 2016.** The U.S. Congress enacted the first federal trade secrets law in May 2016 entitled the "Defend Trade Secrets Act of 2016" ("DTSA"). 18 U.S.C. Section 1836 *et seq.* For the first time, a US business owner of a trade secret can bring a trade secret action in federal court without diversity jurisdiction. The available remedies include injunctive relief, damages (actual damages, unjust enrichment, and a reasonable royalty), and under the appropriate circumstances, enhanced punitive damages (up to double) and attorneys fees (in the event of bad faith prosecution or defense of the action) to the successful party. The most dramatic new part of the law is an *ex parte* Seizure Order issuable without notice to the misappropriating party. Such Orders can be granted "...to prevent the propagation or dissemination of the trade secret". DTSA Section 2(b)(2)(A)(i). Perhaps the Courts will draw from trademark counterfeit cases' injunction principles in deciding whether to grant *ex parte* relief under the DTSA.

Inevitable Disclosure. The DTSA does not adopt the "inevitable disclosure" doctrine but inevitable disclosure is still good Illinois law. Under this doctrine, a former employee under Illinois law can be prevented from working in a certain job with the new employer even without evidence of actual disclosure. This law is predicated on a prediction of future injury because the ex-employee was granted access to key information and surely would use or reveal it in the execution of her new duties with the new employer.

To take advantage of the punitive damages and attorney's fees available under the DTSA, employers must notify their employees that the employees have immunity for disclosure of trade secrets to government officials for the sole purpose of reporting violations. Employers must give notice to employees of this immunity in any contract or agreement with the employee that governs the use of a trade secret. See DTSA section 1833(b)(3)(a).

The DTSA does not preempt state trade secret laws though the DTSA is modeled on the Uniform Trade Secrets Act, which is the model for most trade secret statutes including Illinois.

8. **Trade Secrets Reside in Varied Media and Locations.** Trade secrets may reside anywhere, unlike patents, trademarks, and copyright which over time are primarily presented in the same form in chosen media. Trade secrets can be distributed to smart phones, social media, PowerPoint presentations, thumb drives, PC's, servers, iPads, printers, software programs, the cloud (does the business owner still own it in the cloud?), in "analog form" such as paper, and in human biologic forms such as the employees' minds. The first iPhone was released only ten years ago and now digital forensics is a field to unearth misappropriation of trade secret, personal, and sensitive information in all different media. In addition, this digital information

resides with the app providers (for example Facebook) and the service providers (for example AT&T).

9. **Comparing Trade Secrets to Patents.** Inventors are required to disclose everything about the invention in the patent, including the best embodiment of the invention. Inventors failing to follow this requirement might lose their patent rights and they might face patent fraud claims in a lawsuit. Thus, the patent owner must tell the world everything about her invention in minute detail, including how to make it and how it works. The patent owner gives the world a roadmap to her invention so that after the 20-year exclusive-use patent term expires, anyone else can legally use and sell the invention. However, even before the 20-year term expires, an unscrupulous competitor may use this detailed description in the patent to create a competitive copy -perhaps by just modifying some of the patent attributes. Or, if the patent rights do not extend to countries outside the United States, the unscrupulous competitor outside the U.S. may make, copy and sell the patented invention outside the US without paying compensation to U.S. inventor.

So where does that leave the trade secret owner? She has a choice between pursuing trade secret or patent protection. If the trade secret is difficult to reverse engineer, it might be more advantageous to rely solely on trade secret protection and not pursue a patent. If the trade secret owner relies only on trade secret protection, she keeps all the details secret and permanently protected (presuming she follows the rules laid out above). Trade secret owners should also consider that patents are very expensive (\$20,000-\$30,000 at a minimum for a utility patent), they can take three to four years to obtain in the U.S., each country has its own patent system and costs and maintenance fees will be due throughout the life of the patent.

10. **Trade Secrets Policies Are a Must.** How does a business owner begin the process?

Create a Trade Secrets Policy. First, the owner should take an inventory of its trade secrets.

Then, analyze if the trade secrets have been subject to appropriate reasonable measures of protection. Implement any new steps which are necessary to fence your incoming and outgoing trade secrets. Draft a cost-effective Trade Secrets Policy in light of business resources and in light of useful, reasonable measure to protect the trade secrets. This process can be undertaken for a surprisingly cost-effective amount

2017 NSBA Holiday Party





On The Tip of Your Tongue

January 2018

By Angela Peters, Esq.

1. Family Law Update

First District Recent Opinion on the Proper Timing of Post Judgment Appeals in Domestic Relations Cases.

In re Marriage of Teymour, 2017 IL App (1st) 161091, the former husband appealed from the trial court's orders resolving several post judgment matters while some issues remained pending in the trial court. The First District held that despite its previous holdings, the progeny of Supreme Court cases speaking to when an appellate court has proper jurisdiction over post judgment appeals required it to depart from its prior rulings and apply the language of Supreme Court Rule 304(a). Because there were claims for attorneys' fees still pending in the trial court and the trial court did not enter the finding required to confer jurisdiction on the appellate court, the appeal was dismissed for lack of jurisdiction. Rule 304(a) applies when the parties present multiple claims, the trial court enters a judgment on at least one of those claims, and that judgment on the claim is final. The court analyzed the Supreme Court cases In re Marriage of Leopando, 96 Ill.2d 114, 449 N.E.2d 137, 70 Ill.Dec. 263 (1983), In re Custody of Purdy, 112 Ill.2d 1, 490 N.E.2d 1278, 96 Ill.Dec. 73 (1986), and In re Marriage of Gutman, 232 Ill.2d 145, 902 N.E.2d 631, 327 Ill.Dec. 510 (2009), and acknowledged the split in authority among the districts regarding whether multiple post judgment claims are part of one overall claim or are separate claims in and of themselves. Prior to this case, the First District generally had held that no Rule 304(a) finding was required to appeal from an order disposing of one of several post

judgment matters as long as the matters still pending below were unrelated to the matter on appeal. However, in dicta the court stated that when a party files one post judgment petition, several more are likely to follow and allowing parties to appeal after each claim is resolved would put great strain on the appellate court's docket and impose an unnecessary burden on the litigants. Therefore, a final order disposing of one of several pending post judgment claims may not be appealed without an express finding from the trial court that there is no just cause for delay. This holding also comports with the authority in the Second and Fourth Districts.

Companion Animal Amendments Took Effect January 1, 2018

Sections 452, 501, 502, and 503 of the Illinois Marriage and Dissolution of Marriage Act, 750 ILCS 5/101, et seq., have been amended effective January 1, 2018, to include provisions for the temporary and permanent allocation or possession of a companion animal by P.A. 100-422. The amendments specifically exclude "service animals" as defined by §2.01c of the Humane Care for Animals Act, 510 ILCS 70/1, et seq. 750 ILCS 5/452(k), 5/501(f), 5/502(a), 5/503(n). The amendments also provide that the parties may enter into an agreement allocating the sole or joint ownership of or responsibility for a companion animal. 750 ILCS 5/452(k), 5/502(a). If the court finds that the companion animal of the parties is a marital asset, it shall allocate the sole or joint ownership of and responsibility for the animal. 750 ILCS 5/503(n). The court is simply to take into account the well-being of the companion animal when issuing such an order. Id. A full copy of P.A. 100-422 can be found on the General Assembly's website at www.ilga.gov/legislation/publicacts/100/pdf/100-0422.pdf.

Collaborative Process Act Took Effect January 1, 2018

The Collaborative Process Act, 750 ILCS 0/1, et seq., enacted by P.A. 100-205 (eff. Jan. 1, 2018), formally recognizes the use of the collaborative law model specifically for family law cases. The statute states that the collaborative process will occur after the parties sign a collaborative process participation agreement that provides in pertinent part that the parties who sign the agreement agree to discharge their collaborative lawyers (including the entire law firm) in the event the collaborative process fails. The Act specifically states that it applies to the following cases: marriage; divorce; dissolution; annulment; legal separation; property distribution; significant decision-making and parenting time of children; maintenance and child support; adoption; parentage; and premarital, marital, and post marital agreements. The full statute can be found on the General Assembly's website at www.ilga.gov/legislation/publicacts/100/pdf/100-0205.pdf.

HFS Website Includes Child Support Estimator with Mobile Phone Capabilities

In order to assist attorneys and litigants with the calculation of child support based on Illinois' new income shares model, the Illinois Department of Healthcare and Family Services (HFS) website now includes a child support estimator at www.illinois.gov/hfs/childsupport/parents/pages/childsupportestimator.aspx. The estimator provides two options: (1) an estimator for parents and (2) an estimator for attorneys or other professionals. The estimator designed for attorneys allows you to input certain facts and figures to help calculate child support. Also, there is a link in the attorneys' version that allows a professional to use a QR code reader to download a simplified version on a mobile phone for quick calculations in court.

Family Law Case Update

Thank you to Family Law FLASHPOINTS, Donald C. Schiller & Michelle A. Lawless, Schiller DuCanto & Fleck LLP for the following contributions.

Ammar v. Schiller, DuCanto & Fleck, LLP, 2017 IL App (1st) 162931, December 22, 2017, 5th Div., Appeal dismissed. HALL. Court properly dismissed with prejudice pro se Plaintiff's fourth amended complaint against his ex-wife, Ameritrade, and the attorneys and law firms that had represented Plaintiff or his ex-wife during dissolution proceedings. Appeal, which is Plaintiff's third appeal, dismissed because Plaintiff's opening brief contains multiple violations of Supreme Court Rules 341 and 342, as did his two prior appeals. Violations include citations to volumes of record that are not part of record on appeal, appendix lacks table of contents and notice of appeal, and facts stated lack citation to record. (REYES and ROCHFORD, concurring.)

Goldwater v. Greenburg, Illinois Appellate Court, 2017 IL App (1st) 163003, December 15, 2017, 6th Div., Affirmed in part and reversed in part. HOFFMAN. Court dismissed complaint of Plaintiff, an Illinois attorney, against Defendants for breach of a contract to pay legal fees for their son in Plaintiff's representation of him in dissolution matter. Plaintiff's full performance precludes the use of the statute of frauds as a defense to enforcement. As complaint contains no allegations that client's mother made any agreement that she would pay all legal fees and costs for Plaintiff's representation of son, court properly dismissed her as a party defendant. (CUNNINGHAM and CONNORS, concurring.)

In re Marriage of Adams, 2017 IL App (3d) 170472, December 14, 2017, Grundy Co., Affirmed. O'BRIEN. In post-dissolution matter, court granted father's motion to modify parenting time and granted father the majority of the parenting time. MSA provided that parents had joint legal custody of their two children, with mother having primary physical and residential

custody, and with father to have secondary physical custody (or visitation). Father's petition alleged that mother moved children 324 miles away without notice or consent of father. For purposes of Section 610.5 of Marriage and Dissolution of Marriage Act, a parent's relocation is a substantial change in circumstances. Court's decision that relocation was not in the children's best interests, and that the father met his burden of showing that relocation was a change in circumstances that necessitated modification of parenting time to serve children's best interest was not against manifest weight of evidence. (HOLDRIDGE and LYTTON, concurring.)

In re Marriage of Watkins, 2017 IL App (3d) 160645, December 14, 2017, Marshall Co., Reversed and remanded with directions. CARTER. In post-dissolution proceeding, appeal arising from trial court's interpretation of agreed order entered by trial court in November 2015 as to whether husband or wife had right to claim parties' two children as tax exemptions for 2015 on tax returns filed in 2016. Parties intended for agreed order to allow husband to claim tax exemptions for children for 2015 tax year on his 2016 tax returns. (McDADE and O'BRIEN, concurring.)

In re Marriage of Campbell, 2017 IL App (2d) 170171, October 27, 2017, DuPage Co., Reversed and remanded. McLAREN. Petitioner placed a lien for unpaid child support on property that was held in land trust for benefit of her ex-husband, and notified him about the lien. After his death, court granted motion of subsequent beneficiary of the trust to release the lien. Section 505(d) of Dissolution Act provides that a lien arises by operation of law against the real and personal property of the noncustodial parent for each installment of overdue support owed by noncustodial parent. Thus, the lien arose against all of ex-husband's property. No further action, including notification of a third party, such as the trustee, was required to impose lien on ex-husband's personal and real property. Court erred in granting motion to release lien, as lien

was still valid when subsequent trustee tried to sell the property. Remanded for determination of amount to which Petitioner would be entitled if lien were found to be valid. (BURKE and SCHOSTOK, concurring.)

2. Miscellaneous Civil Law Update

Barrett v. FA Group, LLC, 2017 IL App (1st) 170168, September 29, 2017, Cook Co., 4th Div., Reversed. GORDON. (Court opinion modified 11/2/17.) Plaintiff was injured when she stepped in a pothole in a parking lot and fell. Plaintiff filed a suit against several businesses, alleging they negligently maintained the parking lot and failed to warn of a dangerous condition. Pothole was of depth somewhere between half an inch and two inches, and Plaintiff stated (at deposition and in an affidavit) that she stepped in the pothole and her shoe became stuck in either broken pavement or broken asphalt within the pothole, which caused her to jolt forward and fall. Defect was not so minor as to be considered de minimis as a matter of law. Surrounding circumstances are relevant to determination of whether defect was de minimis. Summary judgment should not have been granted, as there is a question of fact as to size and depth of pothole and as to whether Defendants owed a duty, to Plaintiff and other users of the parking lot, to repair pothole. (McBRIDE and ELLIS, concurring.)

Illinois Neurospine Institute, P.C. v. Carson, 2017 IL App (1st) 163386, September 21, 2017, Cook Co., 4th Div. GORDON, Reversed. Court abused its discretion in granting Defendant's Section 2-1401 petition to vacate default judgment entered against him in breach of contract suit. Defendant did not present extraordinary circumstances warranting relaxation of requirement that a petition to vacate default must allege due diligence. Asserting a meritorious defense, without more, does not warrant relaxation of due diligence requirement. Nothing in the

record shows due-diligence by Defendant, either in responding to suit initially or in filing his Section 2-1401 petition. (McBRIDE and ELLIS, concurring.)

City of Chicago v. City of Kankakee, 2017 IL App (1st) 153531, September 29, 2017, Cook Co., 1st Div., Reversed and remanded with directions. PIERCE. (Court opinion corrected 11/1/17.) Plaintiffs, a city and village, sued another city and village and brokerage companies to recover tax revenue that allegedly was unjustly retained by Defendant city and Defendant village. Plaintiffs alleged that Defendants, with aid of brokers, entered into sales tax rebate agreements whereby retailers would report to State that situs of certain online sales occurred within the Defendant county or village, when in fact sales occurred outside of Illinois. The Illinois Department of Revenue does not have exclusive jurisdiction over unjust enrichment claims in Plaintiff's pending and proposed amended complaints, wherein Plaintiffs stated valid claims of unjust enrichment against Defendant city and village and others. (HARRIS and SIMON, concurring.)

Boyd v. Steve's Key City Auto, 2017 IL App (3d) 160614, October 26, 2017, Kankakee Co., Reversed. CARTER. Plaintiff filed a small claims case against a used car lot, after she bought a used car "as is" for \$2,600, but the car broke down and was inoperable a few days later. Court erred in awarding Plaintiff \$1,500. Defendant's use of the term "as is" was sufficient to disclaim implied warranty of merchantability. Plaintiff has no claim for breach of contract based on a violation of an implied warranty where any such implied warranty was disclaimed. There can be no claim for revocation of acceptance based on a "nonconformity" that substantially impaired the value of vehicle to Plaintiff where Defendant sold car "as is", and a used car in "as is" condition did conform with parties' agreement. (HOLDRIDGE and McDADE, concurring.)

DeMeester's Flower Shop & Greenhouse, Inc. v. Florists' Mutual Insurance Co., 2017 IL App (2d) 161001, October 26, 2017, Stephenson Co., Affirmed. SCHOSTOK. Insurance-coverage action, wherein Policyholder/ Plaintiff sought declaration that its insurer had a duty to indemnify it for amounts it spent to replace 26 customers' lawns that were damaged due to the negligence of its employee, who mixed Roundup instead of a selective broadleaf herbicide in a lawn sprayer. Court properly found that property-damage exclusions in policy applied and granted insurer's section 2-615 motion to dismiss. Policy exclusions are not contrary to Pesticide Act, which is intended to protect persons who suffer personal injury or property damage as result of pesticide application. Policyholder/ Plaintiff did not suffer property damage, but instead it caused property damage. (McLAREN and BURKE, concurring.)

3. Criminal Law Update

People v. Gray, 2017 IL 120958, September 21, 2017, Cook Co., FREEMAN, Appellate court reversed; case remanded. After jury trial, Defendant was convicted of, inter alia, aggravated domestic battery. Fifteen years prior to incident, Defendant and victim (who had known each other for 20 years) dated for two years and, at the time of the incident, were friends. After a night of drinking together, and having sex, victim slept over at Defendant's home, and Defendant stabbed and strangled the victim the next morning. Legislature's decision not to include a time limit on former dating relationships, when applied to facts of this case, was reasonable and rationally related to statutory purpose of curbing domestic violence. Definition of family or household members in Section 12-0.9 of Criminal Code did not violate substantive due process as applied to Defendant. It was reasonable to place victim within protection of aggravated domestic battery statute. (KARMEIER, THOMAS, KILBRIDE, GARMAN, BURKE, and THEIS, concurring.)

People v. Clark, 2017 IL App (3d) 140987, October 5, 2017, Whiteside Co., Reversed and remanded. O'BRIEN. (Modified upon denial of rehearing 11/1/17.) After a stipulated bench trial, Defendant was convicted of escape for her failure to report to the county jail immediately after her discharge from a halfway house, as ordered as a bond condition. As State could not establish that Defendant was "in custody," a requirement inherent in the offense of escape, it could not prove Defendant was guilty of escape beyond a reasonable doubt. (HOLDRIDGE and McDADE, concurring.)

People v. Holman, 2017 IL 120655, September 21, 2017, 5th Dist., Madison Co., THEIS, Affirmed. Defendant received sentence of life without parole for a murder he committed at age 17. Defendant's original sentencing hearing complied with U.S. Supreme Court's 2012 holding in Miller v. Alabama, as court considered Defendant's youth and its attendant characteristics, including specific factors. Defendant advised his attorney that he did not want to offer any mitigating evidence, and thus court had no evidence to consider on any statutory factors in mitigation. Circuit court properly denied Defendant's motion for leave to file successive post-conviction petitions. (KARMEIER, FREEMAN, THOMAS, KILBRIDE, GARMAN, and BURKE, concurring.)

People v. Patterson, 2017 IL App (3d) 150062, Wednesday, September 6, 2017, Peoria Co., Affirmed. O'BRIEN. (Modified upon denial of petition for rehearing 10/27/17.) After a jury trial, Defendant was convicted of burglary of an Arby's and was sentenced to 21 years. Trial court did not abuse its discretion in denying Defendant's request for continuance on the basis that the defense witness, who Defendant said was not available to testify, was not expected to offer any information as to an application on Defendant's cell phone. Court did not abuse its discretion

in giving accomplice-witness jury instruction, as answer of Defendant's girlfriend, as to whether she was the lookout, was evasive. (LYTTON and SCHMIDT, concurring.)

U.S. v. Fadden, No. 17-1400, November 1, 2017, Federal District: W.D. Wisc., Affirmed.

In prosecution on bankruptcy fraud charge, district court did not err in rejecting defendant's proposed theory-of-defense instruction under circumstances where defendant was charged with failure to report in certain bankruptcy pleadings that he had an interest in real estate and in proceeds of life insurance policies. While last sentence of proposed instruction that informed jury that it must acquit defendant if it found that his omissions were not made with intent to deceive was accurate statement of law, said sentence did not add any new information beyond the district court's other instructions to jury. Moreover, remaining portion of proposed instructions that informed jury that defendant's omissions were part of his continued failure to abide by particulars demanded in bankruptcy filings, which was inconsistent with intent to deceive, was misstatement of law, and thus was properly rejected.

U.S. v. Shorter, No. 16-2053, November 1, 2017, Federal District: N.D. Ind., S. Bend Div., Affirmed. Record supported jury's guilty verdict on Medicaid fraud charges arising out of defendant's submission of invoices for either (a) medical transportation services that did not occur or (b) for services during the transportation of patients that did not occur. Government presented witnesses who stated that certain services did not occur during their transportation by defendant's company or that they did not use said company's services at times asserted in invoices. Fact that defendant claimed that there was no direct evidence that, as owner of said transportation company, she personally submitted fraudulent invoices did not require different result. Other circumstantial evidence indicated that defendant either used identities of third-parties when submitting said invoices or directed/trained others to do so on behalf of her

company. The court further rejected defendant's claim that the instant indictment, which used only initials to identify third-parties whose names were used when submitting fraudulent invoices, provided defendant with inadequate notice of charged offenses, since record showed that defendant was aware of actual identity of said third-parties at time of trial.

U.S. v. Johnson, No. 15-1366, October 27, 2017, Federal District: E.D. Wisc., Affirmed. In prosecution on charge of unlawful possession of firearm, district court did not err in denying defendant's motion to suppress the gun that was found on floor of back seat of car in which defendant was passenger. The police approached car and observed defendant attempting to hide something after they had observed said car stopped in road within fifteen feet of crosswalk in violation of the Wisconsin statute. Defendant conceded that car was stopped seven to eight feet from crosswalk, and the district court could properly conclude that police had probable cause to issue ticket that would allow them to briefly seize the car and its occupants. The court rejected defendant's claim that police could not approach the car, because the statute would allow the car to be in the prohibited zone to receive or discharge cargo or passengers, since: (1) all four doors of car were shut and no one was standing nearby, such that exemption did not apply; (2) police, who had probable cause to issue ticket, could approach car (and observe defendant's actions) before resolving any statutory exemption; and (3) police could issue instant ticket and then leave to judicial process issue as to whether any exemption applied. Also, under Wren, 517 U.S. 806, police can stop and arrest individuals where there is probable cause to believe that those individuals violated parking statutes. (Dissent filed.)

People v. Parrott, 2017 IL App (3d) 150545, Thursday, October 5, 2017, Mercer Co., Affirmed. O'BRIEN. After a bench trial, Defendant was convicted of domestic battery for whipping a 6-year-old child with a belt which other children stated was because child had eaten

Defendant's biscuit. Defendant raised affirmative defense of reasonable parental discipline. Court need not expressly consider each factor when determining reasonableness of discipline. Factor of degree of physical injury (two red welts on upper portion of back of legs) weighed heavily against any finding of reasonableness. It was rational for court to determine that discipline was unreasonable here. (HOLDRIDGE and LYTTON, concurring.)

People v. Bridges, 2017 IL App (2d) 150718, Friday, October 6, 2017, 2d Dist., Lake Co., Vacated and remanded. JORGENSEN. Defendant entered negotiated plea of guilty to single count of aggravated battery with a firearm. In exchange for the plea, Defendant was sentenced to an 18-year prison term. Court denied Defendant's pro se motion to withdraw his guilty plea. Trial court appointed counsel, who filed amended motion, which court denied. To fulfill her duty to amend Defendant's motion, defense counsel had to attach an affidavit substantiating the new allegations. Under Rule 604(d), facts that do not appear of record must be supported by an affidavit. Hearing on Defendant's motion was inadequate to satisfy Rule 604(d)'s strict-compliance standard. (McLAREN and ZENOFF, concurring.)

McGee v. Kelley, 2017 IL App (3d) 160324, December 14, 2017, Will Co., HOLDRIDGE, Plaintiff filed complaint for injunctive or declaratory relief against county sheriff, seeking disclosure of records under FOIA. Plaintiff sought all documents prepared in connection with his indictment that led to his conviction for aggravated criminal sexual assault and aggravated battery. Court properly found in Defendant's favor, as requested records contain detailed, personal statements as to the offenses. Release of unredacted police reports would be an unwarranted invasion of personal privacy and are thus exempt from FOIA disclosure. (McDADE and WRIGHT, concurring.)

From the Editor's Desk:

We extend our thanks to all who attended the NSBA events this past year and for willingly participating in the photos used in the Newsletter. If you have any recent articles or information that you would like to include in the newsletter, please forward them to us. We can always use more articles!

We also have had several new members join our ranks. We invite all new members to submit a short biographical statement (and photo) for inclusion in the newsletter to introduce yourself to the organization. In addition, please send any suggestions for the newsletter to our newsletter editor, the Hon. Patrick Heneghan at heneghanpj@gmail.com.

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