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ILLINOIS STATE BAR ASSOCIATION

THE CATALYST

The newsletter of the ISBA's Standing Committee on Women and the Law

(Notice to librarians: The following issues were published in Volume 13 of this newsletter during the fiscal year ending June 30, 2007: October, No. 1; January, No. 2; March, No. 3; May, No. 4).

Welcome to a new year

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By Sharon L. Eiseman; Chair, Women and the Law Standing Committee

IN THIS ISSUE

It has been my privilege to serve as a member and supporting officer of the Women and the Law Standing Committee for several years; this bar year, the privilege of service has extended to my chairing of the Committee. I consider this office much like the Super Bowl Trophy or the Olympic Torch, passed on to me by my elite and accomplished predecessors, to be protected and carried the distance as I am accompanied on the journey by my Committee members, and then to be lovingly and carefully handed to the next person waiting patiently to take and carry forward the still lighted torch. Next year, the torch bearer will be Lynn Grayson for a lucky group of Committee members.

Sharon L. Eiseman

This sense of individual responsibility and team work over a continuum corresponds to the way I feel about the strong, smart, energetic, dedicated, and often hilarious women who make up this year's Committee, some of whom are long-serving and many of whom are new, but all of whom have formed a cohesive, hard-working and fun-loving group—as we have done every year. They drive far to attend our sometimes raucous but always interesting meetings; plan and participate in the service and educational programs of the Women Everywhere Project; co-edit our superb Newsletter, The Catalyst, and write insightful and provocative articles for it; propose, organize, prepare for, and moderate or speak at one of our several CLE programs awaiting production; evaluate legislation relevant to the women lawyers and the state's female citizenry; and successfully promote women leaders for honors that recognize their value to the ISBA and the broader legal and social communities.

SO WHAT ARE WE DOING THIS YEAR? Among many other things:

- By the time you read this, we will have hosted, on October 4, an all day CLE Conference on Girls in the Juvenile Justice System, which will present a series of multi-disciplinary panel discussions about girls who get into trouble with the law, the juvenile justice system and affiliated support services they must confront, and the impact of the process on the girls, their families, and their communities. The Conference will also look at interventions that can help these girls stay out of trouble and be successful in avoiding a repeat experience in the system. Our co-sponsors in this endeavor were the Standing Committee on Minority and Women Participation and the Child Law and Criminal Justice Section Councils. The theme of this program is both pertinent to our mission of advocating for the legal rights of women and girls, and inspired by the programs on 'Kids in a Jam' and 'Balanced and Restorative Justice' created, respectively, by Past Presidents Bob Downs and Irene Bahr—showing in another way the force of the Torch.
- Joined by our co-sponsors, the Standing Committees on Minority and Women Participation and Sexual Orientation and Gender

Identity, the Human Rights Section Council, and the Task Force on Diversity, we will present a CLE program on "Legal Implications of Effective Representation of Unmarried Couples," scheduled for the afternoon of December 6, 2007, at the ISBA Mid-Year Meeting. An impressive array of judges, lawyers, civil rights and community leaders, and legislators will discuss the legal challenges faced by unmarried couples, how they fare in our courts, and how legislative remedies might offer solutions to the difficulties of ordinary life situations that these individuals will continue to face without statutory protection.

- In keeping with the theme of 'going the distance', in April we will travel FAR (for most of us) downstate for perhaps the first time in our Committee's history to co-host a reception at the Southern Illinois University Law School in Carbondale with our long-time friend and partner, Dean Peter Alexander. Our intent is to recognize, and better acquaint ourselves with, the women judges and practitioners in that region who tend to be the ones traveling FAR to meet with those of us who practice 'upstate.' We are excited about partnering with the Law School students and its faculty, including Professor Alice Noble-Allgire, in planning a program on legal issues relevant to women and female practitioners for that festive spring weekend.
- We will spend several meetings reviewing and redefining our Scope Statement, evaluating our past accomplishments, and setting goals and objectives for the future, consistent with the purposes for which our Committee was established and continues to grow. PLEASE NOTE THE LIST OF GOALS/OBJECTIVES IN THIS NEWSLETTER ON WHICH WE'D APPRECIATE YOUR INPUT. WE NEED YOUR VOICES TO HELP US DECIDE HOW TO GIVE VOICE TO WOMEN AND WOMEN LAWYERS AND HOW TO HELP KEEP THE ISBA STRONG AND RELEVANT TO WOMEN AND WOMEN OF COLOR. PLEASE GIVE US YOUR INPUT!

I think this is enough for now! We thank you for your continued support and encouragement in the work that we do, and we are always open to comments and recommendations. We also invite you to attend any of our regular business meetings, and hope you might be able to join us for the April 11, 2008 celebratory weekend in Carbondale!

Spotlight on women in ISBA leadership:
A conversation with ISBA Board Member Michele Jochner

By Sandra Crawford

One of the goals of the Women and the Law Committee, through its quarterly newsletter, is to share with our readers information about women in leadership positions within and outside of the ISBA. We wish to "spotlight" the contributions women make to the organization, the profession and the community at large. In furtherance of that goal, *Catalyst* Co-Editor, Sandra Crawford, sat down with ISBA's Board of Governors' member, Michele Jochner, to chat about Michele's unique contribution to the Bar. The conversation focused upon Michele's leadership over the past several years in establishing the annual Solo and Small Firm Conference (SSFC) as a major event on the ISBA calendar.

Catalyst (Sandra Crawford): Wow, Michele, what a great event (the 3rd Annual SSFC held September 6th- 8th at the Pheasant Run Resort, St. Charles, Illinois). Tell us a little about your involvement with this ISBA conference.

Michele: Well, my involvement dates back to 2003 when I was serving as the Chair of the ISBA General Practice Section Council. At that time, together with Bob Downs (ISBA Past President 2005-2006) and others, we established a sub-committee within that Section Council to explore presenting a multi-track educational conference for ISBA core membership. We had heard about a similar conference hosted by the Missouri Bar for its members, so we started with an exploration of that model. Understand, Missouri's Bar differs from Illinois' in that membership in its Bar is mandatory where membership in our state bar is voluntary. But the General Practice Section Council was intrigued by the model and began asking questions about how we could host a similar educational opportunity here in Illinois.

Participants in the 2007 SSFC panel on ADR: (from left) Speakers Sheila Maloney, Sandra Crawford and Fred Lane, ISBA Past President, and Panel Moderator, Michele Jochner, ISBA Board of Governors.

Catalyst: Help us understand what you mean by "ISBA core membership."

Michele: The majority of the ISBA members are either solo practitioners, like yourself Sandra, or small firm practitioners. This conference was organized to speak to the needs of that specific group within the larger membership. Total membership in ISBA is around 34,000. Solo and small firm lawyers make up a large percentage of those members. From the beginning, it was essential to the planning committee that we understand and address the needs of those solo and small firm members. It was also essential that we have diversity on the planning committee. Over half of the Committee was comprised of women members. It was important to have diversity within the Committee so that we could be sure we would be informed about and could address the diverse interests of the conference attendees, particularly those who work alone or in small firm settings—our core membership.

Catalyst: Got it. What happened after that?

Michele: By 2004, our vision of what the conference would look like became clear. We worked with the ISBA Executive Director and staff to make the event happen. Lots of time went into the logistics and planning. The first SSFC was held in September, 2005. The response was so great from the core membership that we had to close the registration that first year so we could accommodate all the attendees. We were also very successful in obtaining sponsorships from various local bar associations and vendors. It was amazing. I then went on to head the SSFC planning committee for the next two years. In 2005, the conference had 200 attendees. In 2006, it had 300. This year we had 400. The growth and acceptance of this conference format, as I said, has been amazing. It is likely to continue to grow.

Catalyst: Tell us about the current SSFC planning committee and how our readers who might be interested can volunteer and get involved.

Michele: The SSFC is now a stand alone committee of the Bar with about 25 members from all practice areas and regions of Illinois. As I said before, diversity of the membership on the SSFC Committee is very important. Members of the SSFC are appointed, like other committee members, by the Bar President. Those interested in serving should make their interest known either to the ISBA President or to ISBA Executive Director, Bob Craghead. The Committee's appointment cycle may run a little bit differently than other Bar Committees because the focus of the SSFC Committee's work is the planning and hosting of the conference which takes place in September. The planning for 2008 will be getting underway now that the 2007 Conference is over.

Catalyst: You also served as moderator for various panel discussions at this year's SSFC. (See photo insert—Michele moderated a panel discussion on developments in the Alternative Dispute Resolution field which included the interviewer). Tell us a little about the different panels and other aspects of the conference.

Michele: Again, diversity in the panels and the programs is essential to the planning committee. The SSFC Committee is committed to presenting a wide range of topics. This year we had three distinct tracks: Effective and Ethical Practice; 21st Century Law Practice; and substantive law. The Missouri conference model upon which we are based has grown to eight different tracks from which participants can choose SSFC attendees can pick and choose the different educational sections they wish to attend. They can pick topics that meet the particular needs of their own practices and can get CLE credits as well. Also, as you know Sandra, in addition to the educational and credit aspects of the SSFC, there are the social and networking aspects. The three day event includes exhibits, receptions and group breakfasts and luncheons, which feature speakers on more general topics of interest to the profession. These social components give the attendees from around the state opportunities to meet and to get to know each other and to develop new friendships and see old friends. It is just an amazing opportunity and a wonderful thing to be part of, and I have really enjoyed my involvement with the SSFC since its inception.

Catalyst: Thank you, Michele, for sharing with us and for all your volunteer work over the past several years in making this conference happen for ISBA core members.

Michele: You are welcome. Looking forward to seeing everyone at the 2008 ISBA SSFC, which will take place next September.

The Catalyst

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Answering the call of our changing society: The "Illinois Religious Freedom Protection and Civil Unions Act" (House Bill 1826)

By Annemarie E. Kill, Avery Camerlingo Kill, LLC

On June 23, 2007, the 201 member ISBA Assembly voted to support the "Illinois Religious Freedom Protection and Civil Unions Act" (HB 1826). If the bill becomes law, Illinois would join Connecticut, Vermont, California, and New Jersey as states which have recognized forms of civil unions. Another, Massachusetts, has specifically legalized gay marriage. Though Chicago and some surrounding suburbs have "domestic-partner" registries, inclusion on the registries does not generally provide substantive rights. HB 1826 confers substantive rights and responsibilities on partners who are joined in a "civil union," which generally parallel the rights and responsibilities of married persons.

The Illinois Religious Freedom Protection and Civil Unions Act was passed by the House Human Services Committee by a 5-4 vote on March 21, 2007. The next step is consideration by the entire House. The stated purpose of the Act is to allow "committed, adult, same-sex and different sex couples the opportunity to obtain the same obligations, responsibilities, protections, and benefits afforded or recognized by the law of Illinois to spouses." HB 1826, as introduced, presented three reasons for its introduction. First, it recognized that "marriage" is generally "the exclusive source of numerous protections and responsibilities under the laws of Illinois for parties to a marriage and their children" and therefore same sex couples are denied these rights since they may not legally marry. Second, HB 1826 recognized that many same sex couples have formed "lasting, committed, caring and faithful relationships" which involve living together, serving their communities, and rearing children, without the protections and responsibilities associated with marriage. Third, HB 1826 stated that the Act would support Illinois' "long tradition of respect for individual rights and responsibilities… and equal protection of the laws."

The Act generally provides that partners who choose to obtain a civil union would be treated as spouses for purposes of state substantive laws. The original Act included a non-exclusive list of the legal protections which would be offered to partners in civil unions. These included protections under probate law, trust law, property law, adoption law, and family law, including domestic violence. Further, the Act would allow partners to bring lawsuits dependent on spousal status (including wrongful death, emotional distress, and loss of consortium claims). Partners in civil unions would also be protected against discrimination based on marital status under the Illinois Human Rights Act. The Act would provide partners with spousal status as to health insurance, worker's compensation, public assistance, and health care decision-making. A partner would also be afforded the privilege for marital communications contained in the Code of Criminal Procedure.

Formation of a civil union would be similar to the formation of a marriage. The Act provides that two persons may form a civil union if they 1) are not related by adoption or blood as specified in the Act, 2) are not in another civil union or marriage, and 3) are at least eighteen years of age. Similar to persons who seek to marry, partners seeking a civil union must obtain a license and participate in a ceremony officiated by a judge, clerk, or a religious officiant. A certificate of the civil union must then be filed with the appropriate clerk of court. The Act also provides that a religious body "is free to choose whether or not to solemnize or not to officiate civil unions."

Significantly, the Act also provides that a civil union may only be dissolved pursuant to the Illinois Marriage and Dissolution of Marriage Act (IMDMA), 750 ILCS 5/501 et. seq. The IMDMA provides the statutory authority for the dissolution of marriage, including the determination of issues such as spousal support, property division, child support and child custody. Thus, partners in a civil union must be "divorced" just as a married couple.

HB 1826 addresses many concerns. Now, absent such legislative protection, unmarried couples in committed relationships are often left to provide for a partner by constructing a mosaic of protection. They may use reciprocal powers of attorney for property, powers of attorney for health care, trust agreements, and wills. They may exercise great care in the manner in which they hold property, and may also have contractual agreements which specifically govern the each partner's rights and responsibilities. Those couples with children must consider formal adoptions, guardianships and parenting agreements. Unlike married persons, there are no rights which automatically flow to them simply by virtue of their status as a partner in a committed relationship.

Without the benefit of any state recognition, when a committed relationship ends, there can be unjust results. Unmarried couples who have lived together and joined finances have advanced theories of implied contract, constructive trust and unjust enrichment in order to recover a share of property accumulated during a relationship. Courts have not been sympathetic to such arguments. Rather, courts have invited, and perhaps encouraged, the legislature to address such situations. For instance, in *Hewitt v. Hewitt*, 77 Ill.2d 49 (1979), a woman argued that she was "living as" a married couple with a man, and was therefore entitled to an equal share of property which was accumulated by him during the relationship. However, they never were married. The Illinois Supreme Court explained that since common law marriage was abolished in Illinois, the myriad of theories she advanced could not overcome the fact that she was attempting to gain recognition for a common

law marriage. The Court relied on an 1882 case holding that "an agreement in consideration of future illicit cohabitation" was void and held that:

> The real thrust of plaintiff's argument here is that we should abandon the rule of illegality because of certain changes in societal norms and attitudes. It is urged that social mores have changed radically in recent years, rendering this principle of law archaic. It is said that because there are so many unmarried cohabitants today the courts must confer a legal status on such relationships. .. Even if we were to assume some modification of the rule of illegality is appropriate, we return to the fundamental question earlier alluded to: If resolution of this issue rests ultimately on grounds of public policy, by what body should that policy be determined?. . . The issue, realistically, is whether it is appropriate for this court to grant a legal status to a private arrangement substituting for the institution of marriage sanctioned by the State. The question whether change is needed in the law governing the rights of parties in this delicate area of marriage-like relationships involves evaluations of sociological data and alternatives we believe best suited to the superior investigative and fact-finding facilities of the legislative branch in the exercise of its traditional authority to declare public policy in the domestic relations field.

More recently, in *Costa v. Oliven*, 365 Ill.App.3d 244 (2nd Dist. 2006), an unmarried man who lived with a partner for twenty-four years and cared for the parties' child sought a constructive trust over all of his partner's property. The trial court dismissed the complaint, which was affirmed by the appellate court. The plaintiff attempted to overcome the effect of *Hewitt* by arguing that there had been "subsequent legislative activity and changes in social and judicial attitudes" since the time of the *Hewitt* decision. The appellate court rejected the argument and relied on a directive from *Hewitt*: "These questions are appropriately within the province of the legislature, and . . . if there is to be a change in the law of this State on this matter, it is for the legislature and not the courts to bring about that change."

Upon the end of a relationship, same-sex couples face additional hurdles, particularly when children are involved. While the law generally provides a means for biological parents to obtain rights to their children, same-sex couples raising children do not necessarily have the same protections. In the case of *In re Visitation with C.B.L.*, 309 Ill. App. 3d 888 (1st Dist. 1999), a lesbian couple who decided to have a child by artificial insemination ended their relationship. The partner who did not carry the child was denied all visitation with the child, despite the fact that she had participated in the preparation for the child's birth and in raising the child. The court found she lacked standing, but noted that "this court is not unmindful of the fact that our evolving social structures have created non-traditional relationships. This court, however, has no authority to ignore the manifest intent of our General Assembly." In another case, *In re Marriage of Simmons*, 355 Ill. App. 3d 942 (1st Dist. 2005), appeal denied, 216 Ill. 2d 734 (2005), a person who was born a female who suffered from "gender identity disorder" began a course of hormone treatments which resulted in achieving the physical appearance of a man. In 1985, he legally married a woman. The couple decided that the wife would undergo artificial insemination. She gave birth to a child, and the husband was listed as the father on the child's birth certificate. The parties lived together as husband and wife until the child was six years old, when the husband filed for divorce. The court found that the husband lacked standing to seek custody since "same sex marriages" were not legal and the marriage was void ab initio. The court also found that he lacked any parental rights to the child.

HB 1826 is perhaps the first response to the invitation pointedly made by the *Hewitt* court. It may be that changes in social mores and current sociological findings have rendered some laws archaic. As discussed in *Hewitt*, our state legislature, as in other states, has been compelled to address the "delicate area of marriage-like relationships." So often, laws provide a set of rules to follow when we have disputes with others. Whether a car accident, a leaky roof, or a failed marriage, we look to the law to provide the tools to resolve our dispute in a fair and dignified manner. The current laws fail to provide a suitable framework to govern the most significant of relationships for many members of our society. Perhaps we are well-served to remember the words of William O. Douglas, the longest-serving U.S. Supreme Court Justice: "The search for static security—in the law and elsewhere—is misguided. The fact is security can only be achieved through constant change, adapting old ideas that have outlived their usefulness to current facts."

As of this writing, HB1826 remains pending. For a further discussion of the rights of unmarried couples, the Women and the Law Committee invites you to attend its program entitled "Legal Implications of Effective Representation of Unmarried Couples." The program is currently scheduled for the afternoon of Thursday, December 6, 2007 at the ISBA Mid-Year meeting at the Sheraton Hotel in Chicago. The program is co-sponsored by the Minority and Women Participation Committee and the Sexual Orientation and Gender Identity Committee.

For copies of bills, amendments, veto messages and public acts, contact the ISBA Department of Legislative Affairs in Springfield at 800-252-8908

Committee Member Spotlight on our very own 2007 Young Lawyer of the Year, Heather M. Fritsch

By Mary F. Petruchius, Schmack & Petruchius, Sycamore*

It was with great pleasure that I nominated Heather M. Fritsch for the 2007 ISBA Young Lawyer of the Year Award because I firmly believe that Heather possesses all the attributes of a "lawyer of the year." She rightly deserved that distinction. Although Heather and I have both practiced in De Kalb County for several years, I met her only a couple of years ago when she was Sandra Crawford's mentee. At that time, Heather was just setting into motion the process of establishing her own solo practice firm. We have grown closer working together as members of this Committee.

Heather Fritsch was born and raised on a farm approximately one and one half hours west of Chicago near Shabbona, Illinois. She attended and graduated from her local rural grade and high schools. Upon graduating with honors from the University of Illinois at Champaign-Urbana, Heather attended the Chicago-Kent College of Law. While at Chicago-Kent, she was employed by the law school as a Serving Our Society volunteer placement counselor and enjoyed many leadership roles in several student organizations, including serving as President of both the Society of Women in the Law and the Kent Justice Foundation and as acting as Co-Chair of the Foundation's Auction.

Heather began her legal career as a general practitioner in 2000 with the firm of Dreyer, Foote, Streit, Furgason & Slocum in Aurora, Illinois. During that time, she served on the Rebuilding Together/Christmas in April Board of Directors for two years and was the Board's President in her second year. After two and one half years, Heather became an associate with the Foster & Buick Law Group in De Kalb, Illinois, also a general practice firm.

In August of 2006, Heather launched her own solo general practice firm in Sycamore, Illinois. Heather fervently believes in providing what she terms "honest, down-to-earth representation" of her clients, no matter what the situation. To Heather, the legal profession is one of service, and an attorney's main purpose is to help those individuals in need. She is of the opinion that an attorney's role is not only to be a strong advocate who zealously protects and pursues her clients' rights, but to always be mindful that she is dealing with the lives of people, not just theoretical situations or sets of facts.

A large portion of Heather's practice is in the area of family law, including contested divorce and custody cases. Heather focuses on the fact that the individuals involved in these matters are experiencing what may likely be the worst time of their lives and deserve to be treated with compassion and understanding. To this end, Heather seeks to minimize conflict in a way that will achieve a positive outcome, while avoiding costly and lengthy litigation in the representation of her clients. Heather also accepts a substantial number of Guardian Ad Litem appointments in dissolution and adoption proceedings. She is a volunteer attorney with Prairie State Legal Services, providing pro bono representation to individuals in divorce and family law cases. Additionally, Heather is the pro bono attorney for The B.E.S.T. for Women, Inc., a not-for-profit organization offering annual conferences that encourage women to grow personally and professionally.

Heather Fritsch's decision to establish her own firm was made, in part, because she wanted to be able to devote more time to farming with her father and to increase her participation in volunteer and pro bono work and in the ISBA.

As a member of the ISBA's Young Lawyers Division and the Standing Committee on Women and the Law, Heather has committed to several activities and projects. She has authored numerous articles for both committees' newsletters and has two regular columns in the Young Lawyers Division newsletter.

Heather was Co-Chair of the March 30, 2007 "Women of the West" outreach reception at the Northern Illinois University College of Law, hosted by this Committee along with the Standing Committee on Minority and Women Participation. She was a speaker on the subject of starting your own firm at the Young Lawyers Division's seminar "Nuts and Bolts for the Young Lawyer" on April 17, 2007 in Chicago. Heather was a member of the 2007 Solo and Small Firm Conference Planning Committee, held in early September.

Within her own community, Heather serves on the Board of Directors for Opportunity House in Sycamore, a charitable, not-for-profit rehabilitation center serving persons with physical and mental disabilities by assisting them in obtaining employment, housing, and enjoying community life. She is a Board member of the Kishwaukee United Way and serves as its Campaign Vice-Chair and Chair of the annual Taste of the Vine silent auction and wine-tasting fundraiser, which was an unprecedented success last year. If that isn't enough, Heather makes cookies for the guests at the Pay-It-Forward House in Sycamore. The Pay-It-Forward House is a Ronald McDonald-type residence for persons who have loved ones at Kindred Hospital.

Heather's enthusiasm and passion for every venture she undertakes, whether professionally or in her personal life in the community, is impressive. She is an extraordinary asset to this bar association and a devoted advocate to her clients. Not only do I consider Heather to be an esteemed colleague, I am truly proud to call her my friend. I urge you all to re-read Heather's article in the May 2007 Catalyst, entitled "Ground Yourself." Our Very Own 2007 Young Lawyer of the Year is an inspiration to us all!

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*Mary F. Petruchius is a partner in the general practice law firm of Schmack & Petruchius, 584 W. State St., Sycamore, Illinois 60178. Her areas of concentration include criminal and juvenile law. Mary may be reached at marypetlaw@tbc.net.

Your Opinion Needed! ISBA's Standing Committee on Women and the Law Examines Committee Goals—and we need your help!

By Amie Simpson

Why are we here? What is our purpose? It's an age-old question that has puzzled great thinkers for centuries… But now, YOU can help provide an answer! The ISBA Standing Committee on Women and the Law is re-examining its goals. At a meeting in April of last year, our members created a list of what they believed to be areas of primary focus for our committee. In no particular order, these action items, expressing our purpose and mission as a Standing Committee, are as follows:

1. giving voice to women within the organized bar;
2. promoting women in the legal community into leadership positions and supporting effective women leaders;
3. promoting women within the ISBA membership for positions on committees and for positions or inclusion in other important ISBA groups or projects by writing letters of support to the incoming President, all as part of a clear and well-articulated STRATEGY for increasing the representation of women in such positions of influence and leadership;
4. encouraging awareness of our leaders and the issues they are addressing or should be addressing;
5. articulating a policy for successful integration of women and our issues into the ISBA mainstream thinking about the profession;
6. responding to proposed legislation and proposing legislation from a perspective consistent with our mission and purpose;
7. creating a network, and also creating networking opportunities and providing guidance on how to network effectively by, among other things, holding receptions throughout the State, involving and profiling state and federal women judges (e.g., Rebecca Pallmeyer) to show other women that they can get there too;
8. giving voice and incentive to women lawyers who need a place to talk about issues of importance to them;
9. finding ways to find out HOW to determine what issues are of importance to women attorneys;
10. reaching out through our Newsletter, for example, to get more members, especially men;
11. promoting each other;
12. finding out what happens to the women who "term off" this Committee, the Women and Minority Participation Committee, and the YLS;
13. engaging in outreach efforts (not as an official policy but 'under the radar') to help find and promote women in office and on the bench; and
14. being a credible authority on the issues of importance and relevance to women so people will listen and HEAR US when we speak, give voice to, educate, and inform on these issues.

We are asking members to rate, revise and otherwise re-think these items so that we can have a productive discussion on the topic at our October meeting. To that end, please go to your computer and type in the following link: <http://www.surveymonkey.com/s.aspx?sm=FwgZhWsIT6lw_2fMYaCJyYwQ_3d_3d>

There you will find a VERY BRIEF survey on this issue. We need as many responses as possible to ensure that we get accurate feedback, so please take a moment and give us your two-cents' worth today!

Grandparents' visitation rights are still in limbo in Illinois

By Judge Laninya A. Cason; Associate Circuit Judge, 20th Judicial Circuit

In this ever-changing society, more and more grandparents are called upon to perform the duties and responsibilities of parents. Grandparents provide emotional as well as financial support in helping to raise their grandchildren. Whether it is mere babysitting their grandchildren, or outright providing a home and shelter for them, grandparents have a unique bond with their grandchildren that only the parents and the law can hinder or dissolve. Courts recognize that parents have ultimate and generally, unrivaled authority in making decisions concerning the well-being of their children. The 14th Amendments Due Process Clause guarantees protection of a parent's fundamental liberty interest to make decisions concerning the care, custody and control of their children.[1] With a stalwart deck of cards stacked against them, more and more grandparents have been asking the question, "What about us"? Well, unfortunately in Illinois, there just is not a clear cut and absolute answer to that question just yet.

Prior to the enactment of the Illinois Marriage and Dissolution of Marriage Act (IMDMA) which took effect in 1977, the Divorce Act was the controlling statute as it pertained to visitation of minor children.[2] That statute gave discretion to the trial court to decide what was reasonable and proper and in the best interest of the children when determining visitation rights of parents and grandparents. As a result, Illinois established its own common law regarding visitation rights of grandparents which was solemnized in *Chodzco v. Chodzco*.[3] In *Chodzco*, the Illinois Supreme Court held that the superior right of a natural parent to make decisions concerning the care, custody and control of their children will not be undermined absent a showing of "special circumstances." *Chodzco* essentially left it up to the trial court to determine what it deemed "special circumstances." There were no set boundaries or specific guidelines in which to adhere, and thus no way to gauge exactly what the prevailing school of thought was in deciding what set of facts would be prominent enough to be called 'special.' Consequently, there were some instances where grandparents were not granted visitation rights and others where they were.[4]

Although the U.S. Supreme Court had already established precedent regarding the superiority of parental rights, it eventually rendered a decision in *Troxel v. Granville,* which accorded some much-needed guidance to lower courts in deciding grandparent visitation cases.[5] *Troxel* sets the reigning benchmark for reaffirming that a fit parents' decision regarding the care custody and management of their children will not be undermined by a third party, including the courts. In *Troxel*, the paternal grandparents petitioned the Washington trial court for increased visitation time with their grandchild over the objection of the mother.[6] The Washington statute pertaining to third party visitation of children allowed any person to petition for visitation rights at any time and authorized the trial courts to grant those rights if it served the best interest of the child.[7] The trial court granted the petition and the decision was appealed by the mother to the Washington State Court of Appeals where it was reversed. The grandparents then appealed to the Washington State Supreme Court where the reversal was affirmed due to the breadth of the language in the statute and the infringement on the parent's due process rights.[8] The case was then appealed to the U.S. Supreme Court which granted certiorari and held that the Washington statute was indeed overly broad due to the fact that any person, related or not, could petition for visitation and it also permitted the trial courts to have unfettered discretion to determine, in lieu of the parents, what was in the best interest of the child.[9] The court held that this was a violation of the Due Process Clause of the Fourteenth Amendment which guarantees a liberty interest of parents in making decisions concerning the well being, custody and control of their children.[10]

750 ILCS 5/607 of the IMDMA, is the Illinois statute pertaining to parent and third party visitation of minor children. The statute, as it pertains to grandparents, states in part:

> … (a-3) Grandparents, great-grandparents, and siblings of a minor child, who is one year old or older, have standing to bring an action in circuit court by petition…(a-5)(1) Except as otherwise provided…any grandparent, great-grandparent, or sibling may file a petition for visitation rights to a minor child if there is an **unreasonable** denial of visitation by a parent and at least one of the following conditions exists…. (emphasis added).

The statute goes on to cite the various familial compositions that must be present before filing a petition which include situations where the parents are divorced or legally separated, where one of the parents is deceased, incompetent or incarcerated and where the child is born out of wedlock and the parents are not living together.[11] Although the supremacy of parental rights in making childrearing decisions is well grounded in law, there is also a competing, inveterate recognition that state interference with these rights can most certainly be justified when the health, safety, and welfare of the child is jeopardized.[12] Thus, the statute also states that there is a rebuttable presumption that a fit parent's actions regarding the prescribed third party visitation are not harmful to the child's mental, physical or emotional health and places the burden on the party filing the petition to prove that the denial of visitation is harmful to the child's mental, physical or emotional health.[13] The statute further delineates several particulars for the court to consider in making its best interest determination including the length and quality of the prior relationship between the child and the grandparents. With such prudent language and forethought, is this enough to pass constitutional muster?

Twice now, has the Illinois statute that pertains to grandparent visitation been held to be unconstitutional by the Illinois Supreme Court either as applied to the facts of a particular case or on its face.[14] Although the Supreme Court was again confronted with the issue of the constitutionality of the visitation statute in *Mulay et al. v. Mulay*, it declined to address the issue because there were other nonconstitutional grounds in which the case could be disposed.[15] The court ruled that if there are other nonconstitutional issues that could be addressed in deciding whether to dismiss a case, then those issues should be entertained before resorting to a dismissal based on constitutional grounds.[16] The statute in its present form has yet to be rendered unconstitutional in any context. It appears though that the legislature has recognized a possible glitch in the language of the statute which may call into question its constitutionality and is currently attempting to cure the questionable defect.

At the time of this article, there was an Amendment to House Bill 3010 pending in the legislature. This amendment proposes to delete the word "unreasonable" from the language of the statute as it pertains to a denial of visitation by a parent. Interestingly enough, the word 'reasonable' is mentioned further in the text of the statute as it relates to the access of the child granted to the prescribed third party after visitation is awarded, although this use of the word 'reasonable' is not subject to deletion by the amendment. In any event, enforcement of the amendment has been stayed to allow the Supreme Court to first decide the cases currently pending on its docket challenging the constitutionality of the statute in its current form. Be that as it may, if precedent is the legal barometer of the future outcome of cases, this amendment may be a wise move by the legislature. Allowing prescribed third parties to petition for visitation of minor children if there has been an 'unreasonable' denial of visitation by a parent no doubt gives wide latitude to the trial court to determine what it deems is or is not reasonable.

This presumably is the kind of unfettered discretion accorded to the courts that is exactly the type that *Troxel* and *Wickham* purported to contain. As was stated in *Wickham*, "parents have the constitutionally protected latitude to raise their children as they decide, even if these decisions are perceived by some to be for arbitrary or wrong reasons."[17] Moreover, deleting the word 'unreasonable' allows courts to more expeditiously arrive at the heart of the statute which is rebutting a fit parent's decision to determine the well being of their child which undoubtedly encompasses an element of reasonableness.

It is well settled that statutes carry a strong presumption of constitutionality, and will not be held to be facially invalid unless there is no set of circumstances that exists under which the statute would be valid.[18] Because neither *Troxel* nor *Wickham* indicate that the presumption that a fit parent acts in the best interest of their child is irrefutable, it follows that there is ultimately some discretion to the courts to make a best interest determination based on factors it deems vital. For example, the Supreme Court of Ohio has upheld the constitutionality of its grandparent visitation statute which contains language similar to the Illinois statute. The Ohio non-parental visitation statutes allow grandparents or other relatives of minor children reasonable companionship or visitation rights if the court determines that the granting of the companionship is in the best interest of the child.[19] The parents' wishes as well as certain other factors are considered, just as in Illinois, which the court utilizes in making its determination of best interest. The Ohio Supreme Court held that its statute was narrowly tailored to serve a compelling interest in protecting the child's best interest and held its statute to be constitutional.[20]

One of the cases currently pending before the Illinois Supreme Court concerning grandparent visitation is *Flynn v. Henkel*.[21] In *Flynn*, the Second District Appellate Court affirmed the trial courts decision to grant grandparent visitation over the objection of the mother.[22] The court ruled that the denial of visitation by the mother was retaliatory in nature because of the fathers' request for paternity.[23] As such, the court deemed the visitation denial unreasonable.[24] Turning to the heart of the statute, the court affirmed the trial court's finding that although there was no direct emotional harm done to the child by denying visitation rights to the grandparent, the grandchild would be harmed by never knowing a grandparent who loved him and who did not undermine the child's relationship with his mother.[25] Is this reasoning in alignment with the intent of the statute?

There are a plethora of cases holding that the liberty interest of parents in raising their children is a protected fundamental constitutional right. The specific holdings in *Wickham* and *Troxel*, that courts will not substitute its reasoning and judgment for that of the parents in determining the best interests of their children, coupled with the long standing recognition that state interference with parental rights is only justified to protect the welfare of the child, the reasoning in *Flynn* may not be of the type intended to be elicited from the statute.[26] Allowing courts to make subjective determinations as to the intent of the parents when determining whether visitation is reasonable, in conjunction with portraying an inchoate and indefinite illustration of emotional harm to the child, *Flynn* may not embrace the type of analysis contemplated by the statute to sufficiently comply with the mandates of the law. Indeed, the court in *Troxel* acknowledged that the constitutionality of any standard awarding visitation turns on the specific manner in which that standard is applied and that the constitutional protections in this area are best elaborated with care.[27] Thus, careful and distinct analysis must be displayed when interpreting and applying the statute.

The proclivity of the Supreme Court is uncertain at this juncture. The fact that a statute might operate unconstitutionally under some plausible set of circumstances is insufficient to render it wholly invalid.[28] However, given the long standing debates concerning the legitimacy of grandparent visitation rights, the Supreme Court must make it clear the manner in which the visitation standards are to be applied to avoid continuing controversy over the constitutionality of the statute. Until the court makes its ruling, unfortunately, grandparent visitation rights are still in limbo in Illinois.

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1. USCA Const. Amend. 14, *Stanley v. Illinois*, 405 US 645(1972)
2. Ill. Rev.Stat. 1975, ch 40,par 19
3. 66 Ill.2d 28, 4 Ill.Dec.313,360 N.E.2d 60.
4. See, *Boyles v. Boyles*, 14 Ill.Ap.3d.602, 302 N.E.2d 199 (1973)
5. 530 U.S. 57, S.Ct. 2054 (2000)
6. Id.
7. Id.
8. Id.
9. Id.
10. Id. Citing, *Pierce v. Society of Sisters*, 268 U.S. 510, 45 S.Ct.571 (1925), see also, *Meyer v. Nebraska*, 262 U.S.390 43 S.Ct. 625 (1923)
11. Id.
12. See, *Prince v. Massachusetts*, 321 U.S. 158 (1944), see also, *Wickham v. Byrne*, 199 Ill.2d 309 (2002)
13. Id.
14. See, *Lulay v. Lulay*, 193 Ill.2d.455 (2000), see also, *Wickam v. Byrne*, id.
15. *Mulay et.al. v. Mulay*, S.Ct. Docket No. 102619 (March 22, 2007)
16. Id.
17. See, *Wickham* id. at 316
18. *People ex rel. Ryan v. World Church of the Creator*, 260 Ill.Dec.180, 760 N.E.2d 953, see also, *In re. C.E.*, 204 Ill.Dec. 121, 641 N.E.2d 345 (1994).
19. R.C. 3109.11,3109.12,3109.051
20. *Harrold v. Collier,* 107 Ohio St. 3d 44, 2005-Ohio-5334
21. 367 Ill.App.3d 328,859 N.E. 2d 1063 (2006)
22. Id.
23. Id.
24. Id.
25. Id.
26. See, *Prince v. Massachusetts*, 321 U.S. 158, 64 S.Ct. 438 (1944)
27. See, *Troxel* at 2063 and 2064
28. 481 U.S. 739,745, 107 S.Ct. 2095 (1987).

Things you should know:

The 18th Annual Chicago Humanities Festival will be held October 27 – November 11, 2007.

This year's focus is "The Climate of Concern," with 120 different programs addressing important long-term issues facing civilization today such as global environmental and ecological disruption. For more information and a program guide, please visit the Chicago Humanities Festival Web site at www.chfestival.org.

Mark your calendars for the most electrifying series of programs this bar year!

By Michele M. Jochner

The Women's Bar Association of Illinois (WBAI), in conjunction with both the ISBA Standing Committee on Women and the Law and the Standing Committee on Minority and Women Participation, is very pleased to announce the development of a series of exciting and informative programs designed to spotlight various leadership issues which provide the strong foundation for a thriving, fulfilling and successful legal career. These groups have joined forces to co-sponsor the "Leadership Training Series," which will consist of programs - held alternatively at the lunch hour and after work - on a monthly basis throughout the coming bar year. The best part is that these programs will be free of charge to both WBAI and ISBA members!

The sensational kickoff session for this electrifying series of programs will take place on Wednesday, December 12th at Noon at the ISBA Chicago Regional Office, 20 S. Clark Street - 9th Floor. Vicki Kunkel, a nationally-acclaimed speaker, author and expert on mass appeal and persuasiveness, will present "Too Stupid," "Too Emotional," and "Too Uncommitted": How to Overcome Stereotypes of Professional Women and Dance on Top of the Glass Ceiling Instead of Gazing Through it! This session will offer a provocative, how-to guide for overcoming the misperceptions which still plague women in the legal profession. Ms. Kunkel received the WBAI's prestigious "Women With Vision" award in 2005 for her breakthrough research on the 12 primal factors of mass appeal, which she has used to teach lawyers how to win high-stakes cases. She has been quoted on over 200 media outlets such as AP Network News, CNBC, "Entrepreneur" Magazine and MSNBC as an expert on everything from what makes a persuasive courtroom appeal to what makes a song a hit. Her new book, "The Velcro Effect: How to Master Mass Appeal," published by AMACOM, will be out in early 2008.

This is only the first session of what we know will be a ground-breaking series of programs. Future programs plan to address effective networking, successful negotiating skills, career development, and promotion of diversity. Watch the WBAI website at www.wbaillinois.org and the ISBA website at www.isba.org for further details on these upcoming sessions!

If you are interested in attending our kickoff program on December 12th, please RSVP with your contact information and bar association affiliation to the WBAI at wbai@wbaillinois.org. Lunch will be provided to all attendees compliments of our kickoff sponsor, the law firm of Corboy & Demetrio, P.C. Space is limited, so be sure to RSVP early!

If you have any questions, comments or suggestions with respect to the Leadership Training Series of programs, please contact the Ledership Training Series coordinator, Michele Jochner, at mjochner@rcn.com. We look forward to seeing you on December 12th!

SAVE THE DATE!

Thursday, December 6, 2007

Legal Implications of Effective Representation of Unmarried Couples

2:30 – 5:00 p.m.

ISBA Mid-Year Meeting

Chicago, Illinois

More details to follow later for this CLE program.

Middle East Partnership Initiative

By E. Lynn Grayson

The Middle East Partnership Initiative ("MEPI"), sponsored by the U.S. State Department, recently invited 39 young professional women from the Middle East and North Africa to the U.S. for six months. The purpose of the MEPI is to create links and partnerships with Arab and U.S. civil society as well as governments to jointly achieve sustainable reform. Under this special initiative, these women professionals participated in a six month internship program which included work for U.S. companies and law firms as well as academic study. Seven U.S. cities participated in this initiative including Chicago.

Nine MEPI women professionals were hosted in Chicago through the International Visitors Center of Chicago. Prior to arriving in Chicago in late April, these women professionals attended a four week MBA-level or LLM-level academic program at the Wharton School at the University of Pennsylvania. The following Chicago area businesses and law firms hosted the MEPI fellows: Motorola; WW Grainger; Wildman Harrold; Blue Cross Blue Shield; Kraft; Baker & McKenzie; and, Jenner & Block.

Jenner & Block hosted Nuha Al Bashir, a lawyer from Jordan. Ms. Al Bashir received her Bachelor's of Law in 2005 from the University of Jordan and her Master's of Law in Public International Law from the University of Nottingham, United Kingdom in 2006. Her professional interests included international commerce, international law, human rights, corporate law and human resources. While at Jenner & Block, Ms. Al Bashir worked on a number of legal matters including: Guantanamo Bay detainee cases; an asylum case; United Nations investigation; and, a U.S. corporate M&A. In addition, she worked with the Firm's Women's Forum, attended internal and external CLE

programs and participated in the 2007 summer program.

Upon getting ready to return to Jordan, Ms. Al Bashir provided the following insight into her fellowship experience and observations about U.S. lawyers:

1. What did you enjoy most about your MEPI internship?

I can't specify one particular thing that I enjoyed most. All I can say is that the experience as a whole was a very enjoyable one. Starting with meeting different women from different countries in the Middle East and learning about each other, and about other cultures and traditions, and then going back to school, learning new topics, new talents and new skills. The internship was an experience in itself, meeting new people, learning new methods and techniques about how those huge well known and multi-national firms function, challenging yourself to take and grasp as much as you can of everything you are learning and seeing. Now, I go back and remember how I used to wake up every day and wonder, how this day is going to be more enjoyable than the day before it.

2. Are there significant differences between law practice in Jordan versus what you experienced in the U.S.?

There isn't that huge difference between practicing law in Jordan and what I experienced here in the U.S. I think the main difference is that in Jordan because law firms are smaller in size than the ones in the U.S., you rarely can find that a lawyer is practicing one field of the law. For example a civil litigator can also do corporate or commercial practice. But here in the U.S., lawyers are usually specialized in a particular practice which I think make them more efficient and competent in what they do.

3. Is the practice of law different for U.S. women attorneys than for Jordanian women attorneys? If so, what are the differences?

I believe women attorneys in the U.S. face the same difficulties Jordanian women attorneys may face, which could include for example discrimination in getting higher manager positions. But I believe that, in Jordan, less women are preferring to practice law (although the percentage of females in law schools is higher than 50 percent) or a particular area of the law (ex. criminal law), for reasons that may include, preferring to be a house wife and raising children since being a lawyer is a tough job and requires long working hours, or preferring office work than going to courts and dealing with criminals and so on. So it's a personal decision that women take, although sometimes traditions and cultural values may influence this decision.

4. Do you and your fellow interns hope to return to the U.S. for business and/or pleasure?

We all hope that we can return back to the U.S. either for pleasure, education or business. We all loved the U.S., the cities we lived in and visited. We made a lot of good friends here in the U.S. and we are hoping to keep in touch with them and come see them again and they visit us in our countries. Personally, I really hope to come back to the U.S. for education after I finish my two years home residency, as I always wanted to finish my PhD from a well-respected American University, (Harvard Law School has always been my dream), and I'm sure I will be back for pleasure sometime soon, as my fellow interns and I, joke around and say "We might come back in Christmas for a Reunion."

5. Would you recommend other women professionals participate in the MEPI program?

I will definitely recommend the MEPI program for other women. I will also help them to avoid some of the difficulties my fellow interns and I faced, and try to encourage them to make the best of their time in the U.S. Actually, five of my fellow interns and I have been asked to speak in the Capital Hall to the Senate's Foreign Relationships Committee, who usually sponsor the MEPI program, and try to influence their views of the MEPI program and to keep sponsoring it in future, to allow and give as much women as possible the opportunity to take advantage of such a great program.

Before returning to Jordan, Ms. Al Bashir was reunited with her fellow MEPI interns in DC. They attended a special closing reception hosted by the U.S. State Department and also appeared before the U.S. Senate's Foreign Relations Committee to encourage continued support of the MEPI program.

Lawyers "lawgh" about ethics at MCLE forum

By Sandra Crawford

"Lawghter" was the keyword for the morning on September 7, 2007, at the ISBA's 3rd Annual Solo and Small Firm Forum held in St. Charles, Illinois. Legal Humorist, Sean Carter (see www.lawhumurist.com), a frequent contributor to the ABA's on-line journal and other publications, took the stage at the conference as the keynote speaker and as a section presenter. Mr. Carter spoke on the issues of ethics and of how to handle stress in the profession. His well considered and sage advice to the 300-plus lawyers in attendance (about a third of which were women lawyers) was: (1) "get a clue"; (2) "get a grip"; and, (3) "get a life." By the end of his keynote address Mr. Carter had his audience chanting these tips like a new-age mantra for the practice of law in Illinois.

For *Catalyst* readers who are not already acquainted with the ISBA's Solo and Small Firm Conference, it is being billed as the yearly "one-stop shopping forum" for all things C.L.E. and a resource for all things innovative to the practice of law. Mr. Carter's referred to his C.L.E. presentation as "Comedic Legal Education." However, his area of concentration was the very serious subject of ethics and the relationship of stress to breaches in ethical conduct by practitioners. Although he presented this topic in a way that was funny and entertaining, he still evoked fear and an appreciation for the fact that no matter how careful we might attempt to be in our daily practices we may still inadvertently cross that imaginary line into unethical territory if we are unable to manage stress. He reminded those present that "the law is not what we are, but what we do to make a living and support our families" and that we should not

take ourselves so seriously as a profession. He left his audience to ponder that "lawghter" may be one of our greatest untapped resources and a good tool for surviving the stress inherent in helping clients, dealing with other professionals and navigating the legal system.

This year's conference offered three tracks from which participants could choose: (1) a substantive law track; (2) a technology and office management track; and (3) the ethics track. The author personally concentrated her course selections in the ethics track. As you may know the recent Illinois continuing legal education rules require a minimum of four hours per reporting period in the area of professionalism, diversity, mental illness and addiction, civility or legal ethics. This yearly venue is a good resource for getting those credits and other credits at one time in one place.

In his hilarious ethic track presentation, "A Funny Thing Happened on the Way to the Disciplinary Hearing," Mr. Carter explored some of the more outrageous disciplinary cases that have come before various state disciplinary committees and opined on how one could avoid finding herself in like situations. He also imparted his version of the "10 Commandments" and related those to the applicable ABA Model Rule(s). The Illinois Rules of Professional Conduct mirror the ABA rules. Mr. Carter's "10 Commandments" are as follows:

1. THOU SHALT NOT KILL

a. Rule 8.4 - Misconduct

2. THOU SHALT NOT BEAR FALSE WITNESS

a. Rule 3.3 - Candor Before a Tribunal
b. Rule 4.1 - Truthfulness in Statements to Others
c. Rule 7.1 - Communications Concerning a Lawyer's Service
d. Rule 8.1 - Bar Admission and Disciplinary Matters

3. THOU SHALT NOT STEAL

a. Rule 1.15- Safekeeping Property

4. THOU SHALT NOT DISCRIMINATE

a. Rule 8.4- Misconduct

5. THOU SHALT NOT GOSSIP

a. Rule 1.6- Confidentiality of Information

6. THOU SHALT KNOW THY SELF

a. Rule 1.1- Competence

7. THOU SHALT " JUST DO IT"

a. Rule 1.3- Diligence

8. THOU SHALT CALL THY CLIENT BACKETH

a. Rule 1.4 – Communication

9. THOU SHALT TAKE CARE OF THYSELF

a. Rule 1.16 - Declining or Termination Representation

10. THOU SHALT UPHOLD THE DIGNITY OF THE PROFESSION

a. Preamble

Next year's Solo and Small Firm Conference is scheduled to take place again in early September. In addition to the opportunity to hear wonderful speakers and leaders in the profession, like Mr. Carter, this three-day event offers opportunities to network with lawyers from around the state and to learn about new trends in the law and in practice management. Even if you are not a solo or consider yourself a small firm practitioner, there are opportunities available to all ISBA members to speak and present at this forum. Sitting on a panel and speaking at conferences like this is another way which one can receive CLE credit hours. So until next year—please remember a key to success in the practice of law is—"getting a clue, getting a grip and getting a life."

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