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As attorneys, our jobs are not physically tolling *per se*. We don’t labor in the field like service workers (sorry friends, hauling a banker’s box into the courthouse doesn’t count). But our jobs are mentally exhausting.

First, our profession demands intellectual excellence. We need to constantly learn and research.

Next, our clients demand much of us. Too many times, clients expect attorneys to be saviors, not just legal counselors. We are responsible for rectifying the wrongs of a failed marriage. We are responsible for obtaining money to compensate someone for suffering a personal injury. We are responsible for mitigating a loss to a business. We are responsible for defending a professional accused of malpractice. We are responsible for protecting the constitutional rights of the wrongfully accused. We are responsible for prosecuting the rightfully accused and making sure that justice is served.

They don’t teach you about “responsibility” in law school. It is just something that we are saddled with after graduation. They don’t teach you how all of this responsibility will drain you. They also don’t teach you how to deal with it. Which is probably why so many people in our profession turn to drugs and alcohol — and the suicide rate is still far too high.

If the intellectual challenges and weighted responsibility of our jobs wasn’t enough, we also have to deal with the fact that someone is telling us that we are *wrong* every day. Ours is not a collaborative environment. When was the last time opposing counsel gave you a high five and said, “Hey, great work on that motion for summary judgment! I think you really nailed it.” Doesn’t happen. And it is always nice to go to court and get publicly shamed by a judge in front of your peers. Then of course there is that inevitable fear of losing. Losing a motion. Losing at trial. Losing a client. Losing money. It really is enough to make someone go bonkers. How about the lawyer jokes? Those are always awesome. Nothing thrills me more than when someone finds out what I do for a living and tells me unabashedly that they “hate” lawyers. I usually respond by saying, “I totally understand. I hate baby animals and sunshine.” You never see “I love my lawyer” coffee cups tucked in with the “I love my teacher” merchandise at Hallmark. Salt in the wound my friends, salt in the wound.

As this month’s issue of *Bar Briefs* explores mental health and the legal system, I thought it was important to remind our readership to focus on attorney mental health too. When you start to feel drained, take a break. Sometimes leaving the office for a half hour and grabbing a coffee can help. And please, leave the cell phone behind. You don’t need to have your face buried in that thing constantly. The emails can wait two minutes.

Practice setting boundaries with clients and remember: their problems are *not* your problems. You are merely providing them with legal solutions.

Don’t take litigation so personally. The law is the law and it is your job to argue it. The same goes for your opponent. We are just each doing our job.

When a judge gets cranky with you, try not to be offended. They are probably just trying to get through a long call.

While the fear of losing is a legitimate one – don’t let it cripple you. Even great trial lawyers lose. It is more important that you did your job well. And when all else fails, find comfort in the fraternity of your attorney peers at the Kane County Bar Association. Trust me, we’ve all been there.
This November, “Bar Briefs” is dedicating an entire issue to veterans. We are looking to identify current members of our organization who served in the U.S. Military. If you are interested in being honored for your service in the November issue of “Bar Briefs,” please email your name, branch of service, rank upon discharge, years of service, any wars served in, any awards/honors received, and, if available, your formal headshot in uniform to cat@argentolaw.com.

All information must be received by no later than OCTOBER 1, 2014 for inclusion in the November issue.
I recently heard someone attempt to use this statement as an aphorism for the proposition that lawyers have always been held in low regard, and that even Shakespeare proposed that the first step towards an orderly society would be elimination of attorneys. In the coming months, I will take a few occasions to talk about commonly held beliefs about attorneys that are misunderstood—and it seemed appropriate to start with the grandparent of them all. First, let’s kill all the lawyers.

This phrase (properly quoted in the title to the column) was stated by a character known as Dick the Butcher in Shakespeare’s play Henry VI, Part II, Act IV, Scene II, Line 73. Dick the Butcher was not espousing that the lawyers of the realm be killed to advance social justice or to undo some wrong that they were perpetrating upon the people of England.

In the play, there is a revolutionary known as the rebel Jack Cade. Jack is a comedic figure, who is roundly skewered as he makes boasts about his courage and conquests. Comedic figure or not, he views himself as a challenger to the King, and wishes to bring upon a violent revolution. His revolutionary ideals focus on providing more for less—with some very specific proposals. He believes that the citizenry should get three and a half times more bread for the same price. He believes that beer should be sold only in large containers. In fact, he espouses the end of all money, proposing that all in his kingdom would eat and drink as his personal benefactors.

If you view the play in totality, you come to understand that Jack Cade is not nearly as magnanimous as his commentary comes off as. In fact, he is a hoodlum (and as Shakespeare would point out, a hoodlum of poor lineage), who engages in his promises of grandeur purely to drum up support for himself, and with no intention of carrying through on his promises. That point leads to the reason why Jack Cade proposes to kill all of the lawyers.

He does not propose to kill all the lawyers because it will provide some social good. He does not propose to kill all the lawyers because they in some way impede an orderly society. He does not propose to kill all the lawyers because lawyers were held in the same contempt that they are dealt in today’s society. Quite to the contrary, Jack Cade proposes to kill all the lawyers because he recognizes that they are the guardians of society. He knows that if he undertakes his revolution, it is the lawyers who will see through his false promises, who will question his motives, and who will defend liberty, justice and the law. He speaks the word “lawyers”, but in reality, he is proposing a violent overthrow of the whole legal system, judges and lawyers alike, as he sees them as the greatest impediment to his revolutionary thoughts. More so than armies or the populace as a whole, the rebel Jack Cade sees lawyers as the guardians of civil society and of the laws which govern it.

Jack Cade sees the pen as being mightier than the sword. He talks about how legal documents (parchment sealed with bee’s wax) have rendered him not his own man and have limited what he can do. There is no full explanation of the documents that he is referencing, but given Shakespeare’s implied message regarding Jack Cade’s checkered past, there is little doubt that the legal documents of which Cade complains are the result of his own poor choices.

Truth be told, Shakespeare was not a great champion of lawyers—the soliloquy in Hamlet, where the namesake of the play questions why the skull in his hand cannot be the skull of a lawyer, speaks to the fact that lawyer jokes have always had their place in society—even in Shakespeare’s days. But notwithstanding his willingness to skewer lawyers from time to time as a convenient punchline, the commentary in Henry VI does not represent an attack on the legal profession. It represents Shakespeare’s revelation that the first step to overthrowing a society is to rid it of those who protect, enforce and live the law. Killing all the lawyers is not a means of advancing society, but a means of tearing it apart.

In that recent instance where I heard someone suggest that killing all the lawyers would be a promising action—something that would benefit society—I must confess I did not launch into a lengthy dissertation on Shakespeare. I did ask if the speaker knew of the context of that quote, and somewhat predictably, he did not. I took it as an opportunity to shift the conversation to discussing the good that those in the legal profession can do—and the good that we actually accomplish. I indicated my
belief that a world without those who champion the law is not a world that I’d like to be a part of, and I went back to my law school days to channel my first year Criminal Law professor who talked about all of the cases in which an attorney, defending someone who was “obviously guilty” based upon the standard of the day, incontrovertibly demonstrated his or her client’s innocence.

When next you hear someone suggesting that killing all of the lawyers would be a good thing, consider what your response should be. I am not proposing that a soapbox response is always appropriate, but as a core responsibility of a practicing legal professional, I would suggest that a part of our public outreach professional responsibility has to include correcting misconceptions about attorneys—and I would suggest that is core to the Kane County Bar Association’s mission as well.

Jack Cade was correct—if you want to overthrow a government and install a self-serving dictatorship, eliminating the laws and killing the defenders of the laws would be a good place to start. On the very first day that we stood in an auditorium and took the oath to be sworn in as attorneys, we undertook a pledge to oppose such action, and to protect and enforce the laws. Long before people take up arms, those in the legal profession fight the frontline battles to protect liberties, in many different contexts. There should be no shame in reminding those you speak with of that duty which we all share.
**Plan Ahead**

**PLEASE NOTE:** Registration for the seminars below begins approximately 6 weeks before the actual date of the seminar. Not all of the seminars and events listed below are open for registration. This is not a registration page. Registration deadlines are one week before the date of the seminar and are noted on the registration page next to the seminar information. Please mark down the dates & check the KCBA website and/or Bar Briefs registration page to confirm seminar locations.

### 2014 Seminar & Events Schedule

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**IMPORTANT NOTE:**

Please register for seminars in a timely fashion so that we have time to accurately produce the correct amount of seminar materials. Unfortunately we are unable to guarantee materials for late registrants and “walk-ins”. We appreciate your consideration!

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**Register for KCBA Seminars & Events Online at**

[www.kanecountybar.org](http://www.kanecountybar.org)

You must be logged in to register for seminars & events! Scan our QR Code to access our website!
Seniors who are prospective or current clients can present a challenge. Rule 1.14 charges us with determining if a client’s mental capacity falls within one of the following categories:

1. Mental capacity intact and able to understand, appreciate, and make legal decisions.
2. Mental capacity suspect to the degree that additional inquiry by the attorney should be made of medical professionals.
3. Lack of capacity, such that the client may be in danger either physically or financially, which may justify taking protective action.

What’s a lawyer to do? We are not trained in mental health examinations.

While developing the content for the book Alzheimer’s and the Law: Counseling Clients with Dementia and Their Families, published by the American Bar Association in 2013, co-author Kerry Peck and I had the privilege of interviewing Dr. William Thies, Senior Scientist in Residence and Chief Medical officer for the Alzheimer’s Association. We asked him what lawyers need to know about discerning if someone is suffering from Alzheimer’s or another type of dementia. He said that the biggest thing to look for is a change in characteristic behavior:

“For example, losing interest in hobbies—the guy who always got the newspaper first thing in the morning so he could do the crossword, and now he doesn’t anymore. Changes in sleeping patterns—a person that was always up early and busy all day, and now he or she is sleeping a lot during the day. Drinking—whether that is a cause or an effect is open to debate—somebody who never drank, now is drinking a significant amount. Those sorts of changes are markers of something going on.”

When attorneys meet with clients, we need to search for cues and clues regarding the level of mental cognition of the person in front of us. If you are seeking a more thorough insight into this topic, please obtain a copy of the book Alzheimer’s and the Law published by the ABA. If you have questions regarding a loved one or client, please feel free to contact us at Law ElderLaw.

Sincerely,

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Involuntary commitment and medication proceedings involve a high-level liberty interest. Namely, the freedom of an individual to make their own decisions regarding their healthcare and medical treatment, is removed in a legal proceeding and replaced by the will of a movant or petitioner. In order to best treat the medically ill and still provide them with their rights under the Mental Health and Developmental Disabilities Code, 405 ILCS 5/1-100 et seq. (“Code”), there are requirements in the Code that mental health facilities need to follow in order to involuntary commit or involuntary medicate a patient suffering from a severe mental illness.

Section 5/2-102(a-5) of the Code states that a respondent who is being brought to court in order to be involuntarily medicated by his treating psychiatrist must be provided, in writing, the risks, benefits and alternative treatment options of the proposed medications listed in the movant’s petition. Over the past couple of years, Illinois Appellate Courts have become increasingly strict in their interpretation of compliance with that requirement in the Code. A summary of recent appellate decisions is set forth below:

**In Re David M. - 2013 IL App (4th) 121004**

**At Issue:** Respondent was committed involuntarily and also a petition was granted for administration of psychotropic medication by the trial court. Among other issues, Respondent argued on appeal that he was not provided with written materials in regard to the risks and benefits of the medication and could not therefore be found to have lacked the capacity to make a reasoned decision in regard to his choosing to take or not to take the medication he was prescribed.

**Reviewing Court’s Holding:** The reviewing court held that the involuntary medication order be reversed based on lack of strict compliance with the Code.

First, the reviewing court noted that it is clear in the Code that the involuntary commitment petition and involuntary administration of psychotropic medication must be two separate proceedings as cited under Section 5/2-107.1(a-5) (2) of the Code. The Court noted in its ruling that it was clear based on the record presented, that there was only one single hearing on both petitions.

Second, the reviewing court held that the trial court’s granting of the involuntary administration of psychotropic medication order was in error as there was no evidence indicating that the respondent ever received written materials of the risks, intended benefits and alternative treatment methods of the medications proposed in the petition.

**In re Tiffany W. - 2012 II. App (1st) 102492-B**

**At Issue:** Before a patient can make a reasoned decision about involuntary admission of psychotropic medication, must she first be advised of the risks and benefits of that treatment?

**Reviewing Court’s Holding:** Before a patient can make a reasoned decision about his or her medication, written materials regarding the risks and benefits of each medication and the alternative treatment methods must be tendered to the respondent. The reviewing court noted in its decision that these requirements are necessary not only to ensure that the he or she is fully informed, but also that the patient’s due process rights are protected.

**In Re Katarazyna G. - 2013 IL App (2d) 120807**

**At Issue:** Respondent was not given written notice about the psychotropic medication in Polish, which is the language she understands, however, a Polish-speaking interpreter translated them to her. Could the State still prove that the patient lacked the capacity to make a reasoned decision about whether to take the proposed medications or not?

**Reviewing Court’s Holding:** The reviewing court strictly construed that requirement in the Code regarding how written materials be given to a patient regarding the risks and benefits of the proposed medications and the alternative treatment methods. Although the facility used the services of a Polish interpreter to translate the written materials to Polish for the patient, the materials were given to her in English, and the reviewing court held that those materials needed to be given in a language that the patient understands.
In Re Donald L. – 2014 IL App (2d) 130044

At Issue: Did the petitioner comply with the Code, when the treating psychiatrist requested permission to administer unspecified tests in order to ensure that the medications were to be administered safely and effectively to the patient?

Reviewing Court’s Holding: The reviewing court held that same logic applies as to the administration of medical tests that it does to the administration of medication. Without specific evidence as to each test, the court is unable to determine which tests are essential to better ensure the safe and effective administration of medication under the Code.

Christopher Geocaris

Chris Geocaris is an assistant state’s attorney in Kane County. Chris graduated from Thomas M. Cooley Law school and from Augustana College. He can be contacted at geocarischristopher@co.kane.il.us
**APPELLATE PRACTICE COMMITTEE**

The Appellate Practice Committee hit the ground running in its first meeting of the year, held on July 1. New Chair Paul Glaser offered some of his goals for the Committee: Since the Committee would not be presenting a “major” seminar this coming year, it will be offering a number of “mini-CLE” meetings, at which attendees might earn an hour or half-hour of continuing legal education credits on the subject of appellate practice. Possible subjects mentioned included study of reviewing court mandates and civility in reviewing court decisions. The Committee also discussed the possibility of having some of these mini-seminar/meetings video-recorded for the KCBA website.

The Committee will be continuing its recent practice of offering a “Lunch with a Justice,” at which attorneys can enjoy a lunch and collegial conversation with a reviewing court Justice, at a local restaurant. A date in September, with Second District Appellate Justice Mary Schostok, is in the final planning stages.

The Committee also discussed the particular difficulties in compiling court transcripts in Kane County civil cases and misdemeanor prosecutions. It was observed that almost every other county in the Second District allows for the electronic recording of all cases, and a discussion ensued about strategies to bring the practice to Kane County. It was decided that research will be conducted into the expense and logistics of the practice and the Committee can move forward from there.

The Committee’s next meeting will be held sometime in October, depending on the organization of a mini-CLE presentation. It’s possible that the meeting might be held at a location other than at the KCBA Office, so stay tuned.

**DIVERSITY COMMITTEE**

For the first time an entire edition of Bar Briefs (April 2014) was devoted to Diversity articles and the practice of law. This was a great accomplishment for the committee. Thanks to all our contributing authors, members, mentors and supporters to make this possible. A special thanks to Bar Briefs Editor-in-Chief Catherine Battista for her vision and encouragement to make this happen.

The Illinois State Bar Association’s Task Force on Diversity took note of our Diversity issue and articles and asked if they could re-publish ALL of the articles in their annual newsletter. We said yes, and all the articles on Diversity were reprinted in the ISBA’s June 2014 Newsletter ‘Diversity Matters’. A copy of the Newsletter was distributed at the annual meeting in June to all members of the ISBA Task Force on Diversity. This is truly a great milestone for the committee. You can read the articles on line at www.isba.org/diversity.

Our next meeting is scheduled for Tuesday, July 29 at 12:00 Noon at the Kane County State’s Attorney’s Office.

**ESTATE, PROBATE & ELDER LAW COMMITTEE**

The Estate, Probate and Elder Law Committee met at 12:00 noon on Wednesday, June 11, 2014, at the KCBA offices.

A lively discussion was had on the benefits and consequences of three bills recently passed by the Illinois legislature: SB 2985 with changes to the Small Estate Affidavit, SB 3228 with a substantial re-write of the Illinois Statutory Short Form power of Attorney for Health Care, and SB 1048 on presumptively void transfers involving a caretaker.

The relatively new POLST form (physician orders for life-sustaining treatment) was discussed and referred to the Collegium’s June 18 meeting for more detailed discussion.

Topics for the March 4, 2015 Seminar were also shared and discussed. Suggestions for future seminars will be forwarded to John Matejcak, who will chair the 2015 seminar.

The Committee will meet during the summer at the KCBA offices, on Wednesday, July 9, 2014, and on Wednesday, August 13, both at 12:00 noon.
Divorce: 7 Cases Where Mental Health and Justice Shake Hands

by Maureen McKane, LCSW

The Mental Health System has the potential to create as much anxiety as the Justice System. We both have, likewise, the possibility to set people on course for a better, more satisfying life. Sometimes it takes both systems to get the job done.

When do you steer a party in a divorce to a psychotherapist? Not every time. Many people go through emotional whiplash in the short term and come out relatively okay, if not better. Some come to therapy on their own because they want to get life right. It is the more difficult situations that need the nudge from counsel to get the client where they need to be. Consider referring a client to a therapist in these 7 cases:

1. **When the client who has filed is not ready for the legal divorce.** Your client may say file, but your experience says she is not convicted to the idea. To be able to pull the marital trigger one must first find a level of psychological disengagement from the spouse. No small task. Instead this client lives with the constant question, what if my partner suddenly decides to change? What if I do this and nothing is better? A therapist is midwife to the process of getting to good judgment decisions.

2. **When the client is responder and refuses to accept that divorce is happening.** It might be a husband who is desperately trying to court the leaving wife. Maybe it is a foot-dragger who believes the spouse is going to have a change of mind: I'm not like that anymore, I'm different, call it off. Therapy becomes the place to believe in a life after the unthinkable trauma. If you never tee off, you can’t play the course.

3. **When relatives are calling the shots and the client is failing to think for his or herself.** Well-meaning people deliver enthusiastic advice. Good or bad, it says more about the advisor's life story than the advisee's. When the divorcing spouse has lost confidence, he or she finds comfort in a strong-willed confidante. Therapy is a place to build confidence, to discover one’s own best judgment and to set boundaries with others.

4. **When the client cannot appropriately control the emotional reaction to divorce issues.** There are many versions of emotional extremism, but usually you will recognize that this person moves from crisis to crisis. Often this is a client using the lawyer for therapy. Don’t be seduced into thinking you are helping by listening well. They need change, not hand holding. The best help you can give is referral to a seasoned therapist.

5. **When the client is using poor judgment and doesn’t respond to your counsel.** It might be the guilt-ridden husband who offers up everything. It might be the wife who is still giving in to a controlling man and thinks this makes her a good person. It might be a parent who is contributing to a tug of war with the children and believes self to be innocent and the other parent guilty. Blind spots predominate when people try to pull out of years-long relationship patterns.

6. **When they respond to provocation with more provocation.** Seeking justice does not always mean a desire for wise counsel. For many there is an automatic urge to want vengeance and call it justice. Everything and everyone becomes road kill for these couples until one of them wakes up and wants actual improvement. We would like to help them sooner rather than later.

7. **When they are endangering the children.** Listen for the stories of children in trouble: changing their peer group, getting bad grades, acting out, regressive behaviors, signs of anxiety. Sometimes a parent wants to protect the child from the bad traits of the other parent and blindly poisons the air around them. Sometimes a parent’s poor judgment causes real danger, sometimes emotional wounds. Chances are the parent does not see the effects of their own behavior. Therapy is the place to re-establish sound parenting in a time of turmoil.

When you present your recommendation, you can tell them what therapy does is put them back in command of their lives. A therapist can help them sort out the confusion and come to wise decisions. Where legal counsel helps them maneuver through the sometimes harsh realities of the justice system, a therapist helps them maneuver through the emotional system that comes with upheaval.
changes in life. In both cases the truth, upsetting as it might be, becomes the road to a more satisfying outcome.

I often talk with clients who fear that being in therapy somehow compromises them in divorce court. You are in a better position than I to put that into its proper perspective. Therapy is not a sign of insanity. It is a tool.

Maureen McKane

Maureen McKane is a Licensed Clinical Social Worker, practicing with McKane & Associates, PC, where she is President. She received her MSW from Jane Addams College of Social Work at University of Illinois Chicago and completed the post-graduate 2 Year Training Program in Family Therapy at Northwestern University Family Institute. She has practiced psychotherapy and family therapy in St. Charles for 30 years. She can be reached at 630-377-7226 or by email at mlmckane2702@sbcglobal.net

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GENERAL ORDERS

All General Orders are available in their original format at
http://www.cic.co.kane.il.us/generalorders.html
Our gift back to our policyholders has grown to $14.7 Million.

For the ninth year in a row, ISBA Mutual has declared a policyholder dividend. The Board of Directors of ISBA Mutual Insurance Company voted to declare a dividend in the amount of ten percent (10%) of each policyholder’s earned premium for 2013.

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August 2014

The Kane County Bar Association was honored in late June as a recipient of the ISBA’s John C. McAndrews Pro Bono Service Award. This award is named in memory of Rock Island attorney, John McAndrews, who chaired the ISBA Committee on Delivery of Legal Services and is awarded to individual lawyers, law firms, corporate law departments, and bar associations. Prairie State Legal Services nominated the KCBA for this award, and I was proud to be able to represent the KCBA at the ISBA's Annual Awards Luncheon held on June 20, 2014 at the Grand Geneva Resort and Conference Center in Wisconsin.

I would like to take a minute to highlight our Pro Bono Projects. For many years, the KCBA participated in the ISBA’s statewide “Ask a Lawyer Day” held annually around Law Day. As you know, in 2008, we celebrated our 150th Anniversary and we conducted many special projects and events that year to commemorate the occasion. One of our projects was to make “Ask a Lawyer Day” a monthly event during that year. The program was very well received by both the public and by the KCBA members who volunteered. One of them suggested that we just keep offering the service monthly once our celebration was over. So, since 2008, we have offered a monthly “Ask a Lawyer Day” thanks to the dedication of the KCBA members. A corps of about 20 people volunteer regularly, some even volunteer each month, and during the tenure of the program, another 75 people have helped out over the years. We average about 25 calls each month during the 3 hours volunteers are staffing the phones.

In 2011, a group of KCBA members worked with the Judiciary, Court Services, and both Prairie State Legal Services and Administer Justice, to establish our weekly “Lawyer in the Lobby” program. Each Friday court is in session, two KCBA members volunteer to help pro se litigants through court procedures. No attorney-client relationship is established. Our members are there to simply provide guidance to people who are trying to navigate the courts on their own. We have about 25 people who regularly take turns each Friday morning for a couple of hours, while court is in session and they help perhaps 10 - 15 people each day.

KCBA members also support the “Lawyer in the Library” program which is administered by the staff of the Kane County Law Library and Self Help Legal Services and Administer Justice. I am grateful that Halle Cox, our Law Librarian, was able to attend the luncheon with me, because people who live in Kane County should thank her for her tireless efforts to provide “Access to Legal Services” which co-incidentally is the KCBA Committee that Halle chairs.

I would be remiss if I did not mention Prairie State Legal Services and Administer Justice. Administer Justice is a 501(c)3 charitable organization that serves the needs of low-income and no-income individuals. Prairie State Legal Services offers free legal services for low income persons and those over 60 who have serious civil legal problems and need legal help to solve them. KCBA members are regular volunteers with both organizations and our community is richer for having such dedicated leadership that works so diligently to provide help to those who most need it.

I was very proud to be able to accept this award on behalf of all of the Kane County Bar Association members who make the time to share their talent, skill, education and compassion with the residents of Kane County. If you have an interest in volunteering for one of these programs, please contact me, or one of the agencies. Volunteers are always needed!

Jan Wade has served as the Executive Director of the Kane County Bar Association since 2001. She can be reached at director@kanecountybar.org or by phone at 630-762-1915.
KCBA Board of Managers Meeting Minutes

June 19, 2014

OFFICERS AND DIRECTORS PRESENT: Carolyn Jansons, Dan Whiston, Greg Maksimuk, Larry Lobb, Dean Frieders, Bill Engerman, Honorable René Cruz

ALSO PRESENT: Josh Rosenzweig, General Counsel; Craig Hasenbalg, Finance Committee Chair; Jan Wade, Executive Director

The consent agenda was approved.

Executive Director Report / Items:

Publish Membership Directory in Fall: Jan outlined the pros and cons of moving the publication of the Annual Membership Directory from the spring to the fall. After discussion, it was decided to not make any change at this time.

CLE Hours for Members: Jan provided an update on the distribution status of CLE certificates to members.

Long Range Planning Meeting Date: After discussion, the board selected October 17th for the Annual Long Range Planning Meeting.

Memorial Service Date and Location: Jan reported that Judge Brawka had inquired about the date so that she could coordinate this with the Judges and set aside the meeting space. There is a concern that the service is outgrowing the KCJC but after discussion, the board preferred that we continue to maximize the space available at the KCJC. Jan will work with Judge Brawka and her office to hold the event on either May 13 or 14, 2015.

Staff Reviews: Jan asked how the board would like to conduct staff reviews. Dean Frieders and Greg Maksimuk will work with Jan to coordinate and conduct the reviews.

NIU Reception Date: Greg Anderson from NIU College of Law Career Development suggested either September 4th or 11th. The board prefers September 4th and Jan will confirm the date with IICLE since they will co-sponsor the reception with us this year.

Items for Discussion

Finance Committee Report: Craig Hasenbalg reviewed the end of the year finances and a tentative budget with the board. After discussion, the board requested that Craig and Jan make a few revisions and report back in July. Craig will also research investment options.

MCLE - Online CLE Update: Jan reported that four seminars are posted and the Bench Bar will go up in the next couple of days, for a total of 13.25 hours. The members seem to be happy to have this available to them and over 100 people have completed seminars online.

Memorial Plaques: Bill Engerman will present this to Judge Brawka. The board recommended that the individual plates be pre-sold before ordering the large plaque.

Judicial Evaluation: Dean led a discussion on the rules and asked Jan to email a copy to all of the board members. This will be reviewed at the July meeting, as well as the committee assignments.

Pre-paid Legal Services: Bill will check with Joe McMahon to see if the SA’s office had been contacted about this matter.

Mentorship and Social Mentorship: Dean presented a proposal that would encourage KCBA members to bring a new member to social events at no or low cost. After discussion, the board approved subsidizing Steer Roast attendance for new members. The staff will work to cover the extra expense.
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YEARS OF PRACTICE AWARDS

ATTENTION:

Congratulations to the following KCBA Members for their years of service.
If you were unable to attend the dinner, plaques may be picked up at the Kane County Bar Office. **PLAQUES MUST BE PICKED UP BY SEPTEMBER 1, 2014** (certificates will then be removed from the plaques and mailed to you).

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**60 YEARS (1954)**
- Thomas G. McCracken*
- Honorable Lewis V. Morgan, Jr.*

**55 YEARS (1959)**
- John J. Caulfield*
- Richard I. Marblestone*

**50 YEARS (1964)**
- Ronald B. Burststein
- Fred H. Dickson*
- Douglas C. Hancock
- Wayne M. Jensen

**45 YEARS (1969)**
- William F. Bochte*
- Leo M. Flanagan, Jr.
- Loren S. Golden*
- Richard D. Larson*
- Thomas A. McClow*
- Robert J. O'Connor
- Bernard Z. Paul*

**40 YEARS (1974)**
- Charles H. Atwell
- Honorable William P. Brady*
- James R. Buck
- Charles E. Cronauer
- Peter M. Donat
- Richard M. Fugerson*
- Frank J. Giampoli*
- Alfred Y. Kirkland, Jr.
- Theodore L. Kuzniar*
- Thomas O. McCulloch*
- Gary G. Piccony*
- Charles A. Radvich*
- Ronald E. Rasmussen
- John E. Regan*
- Gary L. Shilts
- Stephen C. Wilson

* Indicates that your plaque was either presented to you at the annual dinner or you have picked it up at the KCBA office.
Increased Protections under the ADA: The Amendments to the ADA Impacting rights for those with Physical and Mental Disabilities

by Michael D. Wong, Esq.

In 1990, Congress enacted the Americans with Disabilities Act of 1990 ("ADA") based on the determination that many people with physical or mental disabilities had been historically isolated, segregated and discriminated against in employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting and even access to public services.²

The ADA provides legal protection and recourse to individuals who have been discriminated against based on a disability or perception of a disability. Much like Title VII, the Equal Employment Opportunity Commission ("EEOC") is the initial gatekeeper to disability discrimination and harassment claims under the ADA.

In 2008, Congress significantly increased the protection provided to individuals under the ADA by implementing the ADA Amendments Act of 2008 ("ADAAA"), which expanded who and what is covered by the ADA. In doing so, Congress noted that courts should interpret the ADA to provide "broad coverage" instead of limiting the scope of protection.² Specifically, Congress noted that recent Supreme Court decisions, as well as the EEOC's ADA regulations, had limited the protection provided by the ADA by narrowly interpreting the definition of "disability" as individuals that must have an impairment that prevents or severely restricts the individual from doing activities that are of central importance to most people's daily lives.³ Additionally, Congress instructed that individuals who have been perceived as disabled may pursue claims, regardless of whether the impairment limits or is perceived to limit a major life activity.⁴ Lastly, Congress noted that "mitigating measures" such as medication, hearing aids, mobility devices, and assistive technology that ameliorate an individual's condition should no longer be considered in determining whether an individual has a disability.⁵

In making these changes, Congress eviscerated years of case law that had provided insight and instruction to employers on who qualified to receive a reasonable accommodation under the ADA. However, recent cases have started to apply these changes to provide more clarity. Courts in the Seventh Circuit have recently issued three rulings that have provided some guidance as to what way courts may interpret the changes to the ADA and also serve as a reminder to employers as to the complexity and expectations of the ADA.

In Spurling v. C & M Fine Pack, Inc., the plaintiff had been fired after repeatedly falling asleep while on the job. After the District Court granted summary judgment, the Appellate Court for the Seventh Circuit reversed the decision finding that the employer had notice that the employee had a condition that could have caused the conduct the employee was being terminated based on.⁸

The Court in Spurling further determined that the employer had not sufficiently engaged in an interactive process with the employee to determine whether there was a reasonable accommodation under the circumstances.⁹ While the Court recognized that the employee had not provided sufficient information regarding his condition, it held that a reasonable accommodation can include seeking additional information from the employee's doctor and providing additional time for the employee to be medically evaluated.¹¹ The effect of Spurling is that employers must now be more cognizant and careful when dealing with employees who report that a medical condition is impacting their ability to work.

While the decision in Spurling requires employers to be more careful when a condition is reported to them, the decision in Gogos v. AMS Mech. Sys., Inc., shows how far the door has been opened as to what qualifies as a disability under the current ADA.¹² The ADAAA amendments broadened the ADA to recognize for the first
time that an impairment could rise to the level of a protected “disability” even if it was transitory, minor or temporary in nature. Indeed, a condition that is episodic, in remission, or managed by medicine may rise to the level of a disability under the current ADA if the condition substantially limits a major life activity when active. In Gogos, the court held that the employee’s single incident of a blood pressure spike and intermittent blindness was covered by the ADA as a disability.13 In doing so, the Court stated that the relevant issue is not the duration of the occurrence or incident, but rather did the condition substantially impair a major life activity when it occurred.14 Thus, an employer could be required to provide a reasonable accommodation to an employee for a single incident, even if it didn’t know the employee had a medical condition or was on medication to manage a medical condition prior to the incident.

The Spurling and Gogos decisions make clear that in light of the 2008 ADAAA amendment, employers must be even more careful when making determinations as to whether a condition is a disability or not, and what, if any, employment actions may be taken. As demonstrated by Gogos, duration is no longer a strong measure of whether a condition is a disability. Similarly, as illustrated by Spurling, employers must be careful not to jump to conclusions or make employment decisions before allowing an individual with a medical condition to provide clear documentation of the condition and whether it is a disability under the ADA. Indeed, Spurling could be interpreted as requiring employers to be pro-active in seeking additional information from an employee who has refused or failed to provide information regarding an alleged condition before taking any adverse employment action. Unfortunately, the ADA and its amendments do not provide a bright-line test for employers to follow. Instead, employers must make sure that their policies and procedures for addressing issues relating to an employee’s claim of a medical condition and request for an accommodation are up to date, follow current case law, and that supervisors and management are trained on how to respond to the issues as they arise.

However, in instituting or reviewing policies and procedures to ensure compliance with the ADA, employers must be just as equally careful. As the EEOC addressed in its February 25, 2014 Advisory Letter the use of sample or form ADA policies and forms can be extremely dangerous.15 In fact, the EEOC Advisory Letter identified several significant parts of a sample policy and forms posted by a state agency on its website that would violate the ADA. Similarly, in Equal Employment Opportunity Comm’n v. United Parcel Serv., Inc., the District Court for the Northern District of Illinois, Eastern Division, held that an employer’s policy that employees will be “administratively separated from employment” after twelve months of leave violated the ADA.16 The Court in United Parcel Serv., Inc. determined that the employer’s policy was an inflexible medical requirement that employees were required to meet in order to maintain their positions with the company, much like a policy that an employee must be 100% healed before being allowed to return to work.17 In reaching its decision, the Court rejected the employer’s argument that the twelve months of leave policy was an essential job requirement, much like attendance.18 By rejecting the employer’s argument, the Court muddied the proverbial waters of what is an essential job requirement that would not violate the ADA and what would be considered a medical requirement set by the employer that could violate the ADA.19 However, what was made clear by the Court’s decision in the United Parcel Serv., Inc. case and the EEOC’s February 25, 2014 Advisory Letter is that employer’s must make sure that they are familiar with the evolving case law interpreting the ADA in order to ensure their policies and procedures are in compliance with the ADA and that they should be wary of having set inflexible policies that do not apply to a case-by-case evaluation of the situation.

1 42 U.S.C. §12101(a).
3 Id.
4 Id.
5 Id.
7 Id.
8 Id.
9 Id.
10 Id.
11 Id.
12 737 F.3d 1170 (7th Cir. 2013).
13 Id.
14 Id.
17 Id.
18 Id.
19 Id.

Michael D. Wong

Michael Wong is an attorney with SmithAmundsen, LLC in its St. Charles, Illinois office. He is a member of the firm’s Labor & Employment Practice Group and focuses his practice on advising and representing employers in labor and employment law matters. He is on the KCBA Employment & Labor law committee and a contributor to SmithAmundsen’s Labor & Employment law update blog, www.laborandemploymentlawupdate.com. Michael can be reached at (630) 587-7972 or by email at mwong@SALawUS.com.
In 2008, Donald C. Hudson was appointed to the Second District Illinois Appellate Court after serving over a decade as a judge in the Kane County Circuit Courts. Prior to his appellate appointment, in 2004, Justice Hudson served as Kane County’s Chief Judge.

During his tenure as Chief Judge of Kane County, and as a result of his many years of service on the bench, Justice Hudson was aware that a high percentage of people either incarcerated or entangled with the criminal justice system suffered from mental illness.

Statistically, a nationwide study conducted in 2003 revealed that sixteen percent of the incarcerated population suffers from mental illness, compared to an estimated five percent of similarly situated people who are not incarcerated. Considering studies such as these, Justice Hudson recognized that in order to reduce recidivism within the criminal justice system, the underlying cause of the criminal behavior, i.e. substance abuse or mental illness, needed to be treated.

While at the time Justice Hudson took the bench as Chief Judge, a specialty court already existed in Kane County to assist non-violent criminal offenders struggling with substance abuse problems, he recognized that Kane County needed to take it one step further by creating an initiative that concentrated on treating individuals with mental illness.

With hopes of reducing recidivism effectively and treating those suffering from mental illness who encounter the criminal justice system, Justice Hudson convened a task force to review mental health services and programs in Kane County and to assist in developing a protocol to improve the Court’s response to offenders with serious mental illness. The task force consisted of Chief Judge Hudson, the Kane County States Attorney’s Office and Public Defender’s Office, Dr. Timothy Brown, Psy.D., the Kane County Diagnostic Center, the probation department, the Association for Individual Development, community counseling center, Gateway, the Ecker Center for Mental Health, Jim McNish and Lynda Rivers of NAMI, and an evaluator. This well-developed task force initiated planning for the Kane County Treatment Alternative Court (“TAC Court”), also known as Kane County’s “Mental Health Court.”

Initial funding for setting up the TAC Court and other mental health services was required and Justice Hudson reached out to then House Speaker J. Dennis Hastert who assisted in providing a generous grant to enable TAC Court to begin operating. In 2006, the Kane County Board passed a resolution that permitted Kane County to assess a $10.00 fee on criminal convictions and supervisions and this made subsequent funding available for mental health treatment.

The TAC Court went into operation in February 2006 and has been serving the needs of mentally ill defendants in Kane County for the last eight years. It meets once a week and currently Judge Clint Hull presides over the TAC Court. Its goals are outlined as follows: “Reduce recidivism of participants, improve public safety, provide increased access to mental health services for the participants, expedite case processing, create effective interactions between mental health service providers and the criminal justice system, reduce the length of confinement of mentally ill offenders, and to bring together community based agencies to address a participant’s mental health needs.”

In June 2008, the Illinois General Assembly took notice of Kane County’s initiative and development of the TAC Court which led to the passing of the Mental Health Court Treatment Act 730 ILCS 168/10. In 2012, the General Assembly amended the Act adding a section to the statute especially directed towards Kane County 730 ILCS 168/40.

In March of 2014, the National Alliance on Mental Illness (NAMI) recognized Justice Hudson with an award for his initiative and dedication in starting Kane County’s mental health court. In accepting the award, Justice Hudson noted “Due to the efforts of the NAMI organization and many other dedicated individuals, we can now see the tide beginning to shift as public officials and policy makers work together to address the needs of these individuals.”
milers finally recognize that mental illness is a serious matter that deserves and requires public action. While everyone here can take pride in what has been accomplished so far, at the same time dedicated advocates need to continue to work toward the goal of instilling in the public consciousness the fact that everyone matters, everyone counts, in our society.”

In addition to his work developing the TAC Court, Justice Hudson served as the chair of the Illinois Supreme Court’s Special Committee on the Illinois Rules of Evidence which wrote the new Illinois Rules of Evidence in 2011. He has served as the chairperson of the Judicial Inquiry Board ("JIB") since 2008 and has also served on an advisory group for the National Center for State Courts regarding the implementation of evidence based practices in criminal sentence hearings.

2 § 40. Mental Health Court; Kane County.
(a) The mental health court currently operating in Kane County is directed to demonstrate the impact of alternative treatment court, crisis intervention training for first responders, and assisted outpatient treatment in reducing the number of mentally ill people admitted into the correctional system. The mental health court in Kane County is authorized to cooperate with one or more accredited mental health service providers to provide services to defendants as directed by the mental health court. The mental health court in Kane County is authorized to cooperate with one or more institutions of higher education to publish peer-reviewed studies of the outcomes generated by the mental health court.
(b) In this Section, “accredited mental health service provider” refers to a provider of community mental health services as authorized by subsection (d-5) of Section 3 of the Community Services Act.
3 NAMI is an organization that provides ‘support, education, awareness, advocacy and research’ for mental illness.

Divya Sarang

Divya Sarang is an Assistant State’s Attorney in Kane County. She has served in that position since 1993. In addition to her practice she serves as the Diversity Coordinator for the office and is responsible for administering professional development and training for the office. Divya also has a L.L.B from India where she practiced law from 1983-85. She currently serves as the Chairperson for the Diversity Committee of the KCBA.

| THANK YOU |

The Kane County Bar Association would like to thank FONA International and their staff for donating their time and the FONA Center Meeting Room for the following events:

Intellectual Property Seminar - June 11, 2014
11th Hour Seminar - June 19, 2014

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Mental Health Law: Past and Present

by Inez Toledo, Esq.

On May 21, 2014 at the Eagle Brook Country Club, a unique continuing legal education ethics seminar was presented by the Kane County Bar Association and the Elder Care, Disability and Mental Health Committee that examined mental health law, past and present.

Bill Briska was the first presenter. Bill, a retired administrator from the Elgin Mental Health Center, earned his Bachelor’s Degree in history, a Masters Degree in Social Work and authored the 1997 award winning book, The History of Elgin Mental Health Center: Evolution of a State Hospital.

Bill discussed the history of social welfare policy and legal innovations for the mentally ill in Illinois from 1863 to 1963 as “One Step Forward One Step Back.” In the 1800’s, Illinois was a national leader building stately facilities to house the mentally ill and creating innovative programs to treat them. As Illinois moved into the end of the 20th century, it began the process of decreasing the number of beds as patients were discharged to obtain treatment in community based agencies. With historical photos of the Elgin Mental Health Center, Bill showed the attendees the original splendor of the facilities and the changes that took place through the decades as treatment options placed an increasing emphasis on psychotropic medications and shorter hospital stays. Attendees were left to wonder if Illinois has indeed taken many steps backwards over the years.

The second speaker was Kerry P. Peck, the managing partner of the Chicago law firm Peck Bloom, LLC. Kerry concentrates in all aspects of probate, elder law, estate planning and mental health law. He teaches attorneys and healthcare professionals across the country and is an adjunct professor at John Marshall Law School’s Elder Law Studies program. In 2012, Kerry was on the Trial Committee of the Illinois Supreme Court Historic Preservation Commission and assisted in the production of the Insanity Retrial of Mary Todd Lincoln.

Kerry discussed the trial of Mary Todd Lincoln which occurred in 1875 and resulted in Mrs. Lincoln’s commitment to the Bellevue Sanatorium in Batavia, Illinois. Although Mrs. Lincoln was, most likely, railroaded by her eldest son and a complicit judge she did, by most accounts, receive caring and compassionate treatment during her stay in Batavia.

Kerry explained how Mrs. Lincoln’s son, Robert, felt that her spending sprees, distorted view of her finances and fears for her own safety, including a prescient fear of Chicago burning to the ground, were signs of mental illness. When Mrs. Lincoln arrived at the old Cook County Court house on West Hubbard and North Dearborn she was met with a jury that was impaneled in her absence and a Democratic judge who was a political enemy of her slain husband. Mrs. Lincoln’s defense counsel did not bother to contest the case and she was quickly found insane and committed to the Sanatorium.

The story of Mary Todd Lincoln demonstrates how the perception of her has changed over time from a lunatic to a sympathetic victim of injustice. Both the law and medicine of mental health have progressed over the decades. This provided a nice transition to the third and final presentation discussing the current state of mental health law.

Mark Epstein confronted us with the scenario of Robert Lincoln walking into your office today concerned that
his mother was a danger to herself and in need of treatment. Mark is a partner with the Chicago firm of Epstein and Epstein where he concentrates his practice in the areas of mental health, guardianship and elder law. He is an adjunct professor at the Northwestern Law School, chair of the ISBA Mental Health Law Committee and a member of various legislative and executive task forces involving mental health law issues.

Mark discussed the nuts and bolts of private practice in mental health law. He explained the statutory framework, the role of the courts and, most importantly, the role of the private practitioner in representing family members of the mentally ill. Mark walked us thru the process of interviewing the family, preparing the paperwork and proceeding to hearing before the court. Mark also lectured on using Declarations for Mental Health Treatment, an advance directive that is tailored for mental health, and outpatient commitment orders as legal tools that allow consumers of mental health services and their families to manage the illness proactively and avoid the trauma and expense of the judicial process.

The attendee handouts included a brief bibliography of the Kane County Law Library’s holdings on mental health and the Kane County Mental Health Intervention Resource Guide, a brochure developed to assist the individuals and families managing mental health issues with the justice system.

In summary, the afternoon was an eye opening examination of the mental health system and the evolution of treatment and resources for those impacted by it with an emphasis on the history and law relevant to our state and county. If you are interested in learning more about the evolution of mental health in Illinois, please attend the next committee meeting of the Elder Care, Disability and Mental Health Committee.

Inez Toledo is an attorney with Legal Advocacy Service, a division of the Illinois Guardianship and Advocacy Commission, where she concentrates in mental health and related laws. She provides legal counsel on behalf of recipients in involuntary admission and involuntary treatment trial court hearings in Cook County and on appeals throughout the State. Ms. Toledo is currently the Chairperson for the Elder Care, Disability and Mental Health Committee and a board member of the KCBF.
 KCBA REGISTRATION FORM

Title: Kane County Bar Foundation Pig Roast Fundraiser
Date: Friday, September 26, 2014
Time: 6:00 p.m.
Location: Hickory Knolls Discovery Center, 3795 Campton Hills Road, St. Charles
Cost: $50.00 (Includes Pig Roast Buffet, Beer, Wine & Soft Drinks)

Title: Annual Technology in Practice Seminar
Date: Thursday, October 2, 2014
Time: 1:00 p.m. to 4:30 p.m.
Location: Eagle Brook Country Club, 2288 Fargo Boulevard, Geneva
Cost: FREE to KCBA Members

Title: Solo Small Firm/Practice Management Seminar
Date: Wednesday, October 8, 2014
Time: To be determined.
Location: Eagle Brook Country Club, 2288 Fargo Boulevard, Geneva
Cost: FREE to KCBA Members

KCBA 2014-2015 Membership Directory
Directories are FREE to members and can be picked up at the KCBA office during business hours.
If you would like a directory mailed to you, there is a $7.00 charge per directory.

REGISTRATION AND PAYMENT

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The Insanity Defense: Its Evolution and Application

by Ronald B. Kowalczyk, Esq.

Introduction
The insanity defense may be one of the most misunderstood aspects of criminal law. High profile cases like those of James Holmes, the alleged Aurora, Colorado, movie theater shooter, and John Hinckley, Jr., have polarized American society and caused many people to believe the defense is a means of escaping culpability. However, a major study commissioned by the National Institute of Mental Health found that less than 1 percent of county court cases involved the insanity defense. Of the cases in which the insanity defense was invoked, the defendant was successful in being found not guilty by reason of insanity (NGRI) approximately twenty-five percent of the time. About half of the individuals raising the defense had been indicted for violent crimes and only fifteen percent of those were murder cases.¹

This article will attempt to dispel some of the myths surrounding the insanity defense. First, the article will briefly examine the differences between legal insanity and medical insanity. Next, the article will explore the history of the defense in the United States. The article will conclude with an examination of the insanity defense in Illinois.

Legal Insanity – What It Is and What It Isn’t

It is a common misconception that insanity is the same as a mental illness. This could not be further from the truth. Legal insanity is not the same as medical insanity. As one might expect, legal insanity is based on statutes and court decisions. While most jurisdictions allow a defendant to offer proof of a mental disease or defect through an expert witness, this alone is insufficient to establish legal insanity. Instead, defendants must offer proof to show that at the time they committed the crime, they were legally insane.

It is important to note that the insanity defense is different than a defendant’s current mental status or competency to stand trial. An incompetent defendant cannot stand trial. In contrast, a defendant claiming legal insanity stands trial and the trier of fact evaluates their mental state at the time of the offense, not their mental state at trial.

In a criminal trial, defendants employ the insanity defense to attack intent or mens rea. The insanity defense is included in a class of defenses known as “excuse defenses”. Put simply, when a defendant alleges legal insanity, he is claiming he lacked the capacity to appreciate the criminality of his conduct. In most states, it is a complete defense and must result in a not guilty finding. Since the 1980’s and the attempted assignation of President Reagan, defendants usually have the burden of proving the insanity defense requirements.² These requirements, however, vary by state.³

Not Guilty by Reason of Insanity: A Brief History

The modern insanity defenses derived from a case The Queen against Daniel M’Naghten in Glasgow, Scotland. The case involved a psychotic person who killed the assistant prime minister of England because he believed he was being persecuted. The jury found M’Naghten not guilty on the grounds of insanity and committed him to a mental institution where he remained until his death.

In 1851, the federal courts and most of the state courts in the United States adopted what became known as the M’Naghten rule. Under this standard, regularly referred to as the “right-wrong test,” a person could not be convicted if, at the time the criminal act was committed, the defendant was suffering from a disease of the mind such that he did not know the nature and quality of the act he was doing, or, if that person did know it, he didn’t know the act was wrong.

The Durham rule - “Irresistible Impulse test”

In the years following, only New Hampshire adopted a rule not in line with M’Naghten. The New Hampshire rule was later adopted and modified as the Durham rule. Monte Durham was a 23-year-old convicted for housebreaking in 1953, and he appealed. Although the district court had ruled that Durham failed to prove he didn’t know the difference between right and wrong, the federal appellate judge chose not to apply the M’Naghten rule. Instead, the court overturned Durham’s conviction and established a new rule. The Durham rule states “that an accused is not criminally responsible if his unlawful act was the product of mental disease or mental defect.”⁴ The Durham rule was eventually rejected by the federal courts, because it was deemed too broad, specifically the general definitions of “disease” and “defect” as they could be found to include such things as various forms of neurosis, personality defects, and other relatively minor disorders. Indeed, alcoholics and drug abusers had successfully used the defense to escape culpability for a wide variety of crimes.
The American Law Institute – “Substantial Capacity test”

The American Law Institute (ALI) developed a new rule for insanity as part of the Model Penal Code. By the early 1970’s, every federal court with the exception of the First Circuit and the District of Columbia had adopted the ALI test. Under this rule, a defendant is not responsible for criminal conduct where he, as a result of mental disease or defect, did not possess “substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law.”6 Basically, this rule was a combination of the M’Naghten and Irresistible Impulse tests.

The Federal Rule: The Insanity Defense Reform Act of 1984

In 1984, John Hinckley, Jr. attempted to assassinate President Ronald Reagan. At trial, the jury found Hinckley not guilty by reason of insanity under the ALI substantial capacity test. This sparked an intense debate over the defense. In response, Congress passed the Insanity Defense Reform Act of 1984 (IDRA).7 It was the first federal codification of the insanity defense, and thus is only applicable to defendants in federal court. The federal insanity defense now requires the defendant to prove, by “clear and convincing evidence,” that “at the time of the commission of the acts constituting the offense, the defendant, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of his acts.”8 As can be seen, this new test was much stricter than the previous ALI test. Approximately 30 states adopted a version of the IDRA. In most states, defendants are now required to show a “severe” mental defect or disease. Montana, Utah, Kansas and Idaho have abolished the insanity defense altogether.9

Guilty but Mentally Ill: An Alternative Defense

Although somewhat outside the scope of this article, the guilty but mentally ill (GBMI) defense is an important concept. Many state legislatures that reformed the insanity defense after Hinckley also adopted the GBMI verdict. Put simply, a defendant found GBMI is convicted of the crime, but his mental illness is considered and treated while incarcerated. As one commentator observed, GBMI verdicts recognize “the right of society to have wrongdoers punished and be protected from crime, while protecting the rights of the mentally ill and insane to receive some type of treatment for their medical mental disease.”10

The Insanity Defense in Illinois

Illinois recognizes both NGRI and GBMI verdicts. In Illinois, “[a] person is not criminally responsible for conduct if at the time of such conduct, as a result of mental disease or mental defect, he lacks substantial capacity to appreciate the criminality of his conduct.”11 The Illinois Supreme Court has held an NGRI finding is equivalent to an acquittal.12 As such, it is not subject to appellate review.13

At trial, a defendant must prove mental illness. “[M]ental illness” or “mentally ill” means a substantial disorder of thought, mood, or behavior which afflicted a person at the time of the commission of the offense and which impaired that person’s judgment, but not to the extent that he is unable to appreciate the wrongfulness of his behavior.”14 The defendant must prove the defense by clear and convincing evidence.15 “However, the burden of proof remains on the State to prove beyond a reasonable doubt each of the elements of each of the offenses charged.....”16 If the matter is heard by a jury, “the jury must be instructed that it may not consider whether the defendant has met his burden of proving that he is not guilty by reason of insanity until and unless it has first determined that the State has proven the defendant guilty beyond a reasonable doubt of the offense with which he is charged.17

The Illinois Criminal Code provides that “when the affirmative defense of insanity has been presented during the trial and acquittal is based solely upon the defense of insanity, the court shall enter a finding of not guilty by reason of insanity.”18 In addition, the Code provides for a discharge hearing to be held prior to trial to determine the sufficiency of the evidence against a person involuntarily committed for mental-health treatment who is unlikely to be fit to stand trial within one year.19 If the court finds the defendant NGRI at the discharge hearing, it “shall enter a judgment of acquittal.”20

Once an NGRI verdict is rendered either at the discharge hearing or at trial, certain procedures must be followed.21 First, the court must determine whether the Department of Human Services will evaluate the defendant’s mental health on either an inpatient or outpatient basis.22 A court determining whether a defendant requires mental-health services on an inpatient or outpatient basis must consider whether the defendant is one “who due to mental illness is reasonably expected to inflict serious physical harm upon himself or another and who would benefit from inpatient care or is in need of inpatient care.”23 In making this determination, the trial court may consider, among other things, “whether the defendant appreciates the harm caused by the defendant to others and the community by his or her prior conduct that resulted in the finding of not guilty by reason of insanity.”24 A defendant found NGRI must be discharged from custody if the trial court determines there is no need for mental-health services.25 This is important in that the defendant found NGRI could end up serving more or less time than his sentence would have been had he been convicted for the crime.26 In other words, since the defendant was found not guilty (by reason of insanity), the length of his
would-have-been sentence is irrelevant.

Like other states, Illinois also has the defense of guilty but mentally ill. Here, the defendant is found guilty of the crime, but also deemed to suffer from a mental illness. Specifically, the Illinois statute provides that “[a] person who, at the time of the commission of a criminal offense, was not insane but was suffering from a mental illness, is not relieved of criminal responsibility for his conduct and may be found guilty but mentally ill.”

A defendant can either plead guilty but mentally ill, or be found GBMI after failing to prove he is not guilty by reason of insanity.28

A finding of GBMI is substantively different from a finding of NGRI. A defendant found GBMI is “no less guilty than one who is guilty and not mentally ill; unlike insanity, a GBMI finding or plea does not relieve an offender of criminal responsibility for his conduct.”29 Indeed, a person found GBMI is “no less different from a finding of NGRI. A defendant who has been found guilty but mentally ill 27, or be found GBMI after failing to prove he is not guilty by reason of insanity.28

A finding of GBMI is substantively different from a finding of NGRI. A defendant found GBMI is “no less guilty than one who is guilty and not mentally ill; unlike insanity, a GBMI finding or plea does not relieve an offender of criminal responsibility for his conduct.”29 Indeed, a person found GBMI is still sentenced as if found guilty, but receives treatment while incarcerated. Specifically, the law states that “[i]f the court imposes a sentence of imprisonment upon a defendant who has been found guilty but mentally ill, the defendant shall be committed to the Department of Corrections, which shall cause periodic inquiry and examination to be made concerning the nature, extent, continuance, and treatment of the defendant’s mental illness. The Department of Corrections shall provide such psychiatric, psychological, or other counseling and treatment for the defendant as it determines necessary.”30 Defendants found GBMI are not released if they are “cured” while incarcerated, but rather serve the remainder of their sentence.

Conclusion

In conclusion, the insanity defense has been and likely will remain a controversial, misunderstood aspect of our jurisprudence. Due to high profile cases and media sensationalism, the American public perceives this defense as a means of escaping culpability. Although it will likely never change, our laws in this area have evolved and afford at least some protections for those who suffer from mental illness.

6 Model Penal Code, Section 4.01
7 18 U.S.C. § 17 “It is an affirmative defense to a prosecution under any federal statute that, at the time of the commission of the acts constituting the offense, the defendant as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of his acts. Mental disease or defect does not otherwise constitute a defense.”
8 Id.
11 720 ICS 5/6-2(a)
12 People v. Harrison, 226 Ill. 2d 427, 439, 877 N.E.2d 432, 438 (2007). A person found NGRI cannot be incarcerated in a mental institution indefinitely. Foucah v. Louisiana, 504 U.S. 71 (1992). The facility must periodically review the patient and there must be showing that the person is dangerous and remains mentally ill under the medical definition of insanity. If there is no such finding, the person must be released.
13 Harrison, 226 Ill. 2d at 441, 877 N.E.2d at 440.
14 720 ICS 5/6-2(d)
15 720 ICS 5/6-2(c)
16 Id.
17 Id.
18 725 ICS 5/115-3(b).
19 725 ICS 5/104-25(a).
20 725 ICS 5/104-25(c).
21 730 ICS 5/5-2-4
22 730 ICS 5/5-2-4(a).
24 730 ICS 5/5-2-4(g)(1).
25 730 ICS 5/5-2-4(a).
26 However, these defendants rarely spend less time. In fact, studies show that defendants acquitted by reason of insanity are likely to spend as much or more time confined in a psychiatric institution as they would have if convicted and sentenced for the same crime. One study determined insanity defense acquittes frequently spend twice as much time institutionalized as defendants convicted of a similar offense spend in correctional facilities. See, Perlin, Michael, The Jurisprudence of the Insanity Defense (Carolina Academic Press, 1994), citing Rodriguez, LeWinn, and Perlin, The Insanity Defense Under Siege: Legislative Assaults and Legal Rejoinders, 14 Rutgers Law Journal 397, 402 (1983).
27 725 ICS 5/115-2(b)
28 725 ICS 5/115-3(c)
30 730 ICS 5/5-2-6(b)
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NIU Health Advocacy Clinic: Reaching Across Professions to Help the Mentally Ill

by Colleen Boraca, Esq.

We all have clients who we want to assist more than circumstances allow. “Brad” was in his early twenties and severely depressed. He was infected with HIV, had diabetes and became homeless at fourteen after his mom died of AIDS. He had no income, a factor which contributed to his depression. He had recently been treated in the emergency room for low blood sugar levels after his food stamps lapsed due to public aid’s error. I met Brad when he came to me for assistance with applying for Social Security and reinstating his food stamps. He needed to come to my office to sign releases as he had no address where things could be sent. His doctor wanted to examine him before completing forms for Social Security. His case manager had different forms needing his signature. However, because Brad’s doctor, case manager, and I were all located at different offices, he told me that he could not “keep track of everyone.” He fell out of contact with all his providers, including me, before I could make a difference in his case.

Thanks to the Northern Illinois University College of Law Health Advocacy Clinic, today Brad could “keep track of everyone” if he were living in Kane County. Founded in 2013, the Health Advocacy Clinic is a medical-legal partnership that aims to assist individuals, like Brad, experiencing social determinants of health or underlying legal stressors that cause poor health. Brad’s lack of food stamps led to his low blood sugar levels. His lack of income and stable housing exacerbated his depression. Recognizing that individuals living in poverty experience these social and legal stressors more often, the Clinic strives to improve people’s health by resolving these stressors. The Clinic is a collaboration of lawyers, law students, medical providers, social workers and case managers from Northern Illinois University College of Law, Aunt Martha’s Health Center and Hesed House. This article will provide a brief history of medical-legal partnerships, describe the Clinic and discuss how it will assist individuals, like Brad, who face physical and mental illnesses.

Medical-Legal Partnerships

Imagine that you are going to your next physical. Walking to the exam room in the medical office, you pass a nurse, a doctor and a lawyer. A lawyer? Medical-legal partnerships (MLPs) integrate legal care into health care settings. One of the first MLPs was founded by a pediatrician in Boston, Dr. Barry Zuckerman, who realized that having an attorney on staff could help improve his patients’ health.1 Attorneys could help resolve complicated legal problems, similar to Brad’s, that resulted in poor health, such as children whose asthma was exacerbated by mold in substandard housing. Witnessing the result of these health-harming legal needs, Dr. Zuckerman realized that “We can treat the health problem with medication, but the point is the cause of it frequently is a legal one, and we’re going right to the root cause. It’s amazing how many people get their utilities shut off in the winter when it need not happen. These are things that our lawyers can help us prevent.”2

MLPs differ from traditional legal aid models in that they focus on prevention. Most legal aid providers become involved once an actual crisis has occurred, such as after a client has been evicted. In MLPs, legal providers train medical providers to identify health-harming legal needs during a patient’s medical exam. Rather than simply refer the patient, the medical providers (after appropriate releases are signed) continue to play an active role in the cases. For example, medical and legal providers work together to draft supporting documentation for a patient’s Social Security disability case.

What started out in Boston is now a national movement, including in Kane County.5 Now, over 200+ hospitals and health centers make legal services part of their medical care.4 88 legal aid agencies and 37 law schools have also joined the movement.5 The difference is inspiring. Last year, “medical-legal partnerships helped nearly 60,000 patients resolve legal issues that were impeding their health.”6

The Health Advocacy Clinic Partners

NIU Law

Located in DeKalb, Northern Illinois University College of Law has a strong
commitment to serving its community and providing hands-on opportunities for its law students. NIU Law has Juvenile Justice and Civil Justice Clinics in Rockford. In 2013, it expanded its clinical program to include two legal clinics in Kane County. In addition to the Health Advocacy Clinic, the NIU Law Mediation Foreclosure Clinic represents individuals facing foreclosure during the mediation process.

**Hesed House**

Hesed House, located in Aurora, is the second largest homeless shelter in Illinois. In 2013, Hesed recorded services for 1,457 people including 261 minors. In addition to residential services, Hesed House has a Comprehensive Resource Center (CRC) located across the street from the actual shelter. The CRC aims to address the social needs of homeless guests, hopefully improving the factors that may have contributed to the homelessness. At the CRC, Hesed House collaborates with agencies that provide services such as case management, mental health counseling, addiction counseling and job training.

**Aunt Martha’s**

Aunt Martha’s Health Center provides primary medical, dental and behavioral health services throughout Illinois regardless of one’s ability to pay. In Aurora, Aunt Martha’s has two federally qualified health centers that annually serve over 9,000 patients. In early 2014, one of its clinics moved to a newly-constructed facility located inside the Hesed House CRC.

The Health Advocacy Clinic has an office inside Aunt Martha’s new clinic in the CRC to meet with clients and allow on-site collaboration with medical providers. In addition, it has an office in the CRC adjacent to the case managers and other service providers. The interprofessional model of the Clinic expands clients’ access to all the professionals involved in their cases, thereby improving overall client health. For example, clients similar to Brad can access their medical providers, case manager and attorney in one building, the CRC.

**Helping the Mentally Ill and Others in Need**

As the only medical-legal partnership in the Chicago suburbs, a tremendous need exists in Kane County for the work of the Health Advocacy Clinic. Out of the 522,487 people living in Kane County in 2012, 61,375 live in poverty. Further, 20% of individuals in Kane County reported having no health insurance in 2013, and 41,622 are diabetic. As the Health Advocacy Project partners with Hesed House, the second largest homeless shelter in Illinois, the client needs are particularly acute. Many homeless persons experience medical conditions, especially mental illnesses. According to the Substance Abuse and Mental Health Services Administration, 20 to 25% of the homeless population in the United States suffers from some form of severe mental illness.

To meet this need, the Health Advocacy Clinic handles cases aimed at improving the health of its clients. Attorneys and law students assist clients with applying for and appealing the denial of government benefits, such as Social Security, Medicaid, Medicare, Supplemental Nutrition Assistance Program (formerly known as “food stamps”) and Temporary Assistance for Needy Families. They also help with Charity Care applications to help individuals with outstanding medical bills. Clients can participate in advanced care planning by completing Powers of Attorney for Health Care as well as Mental Health Declarations, specific advanced directives for individuals facing mental illness.

The holistic approach provided by the Health Advocacy Clinic particularly benefits individuals with mental illness. NIU law students train Aunt Martha’s providers to identify and refer health-harming legal issues to the legal team. After clients sign appropriate releases, the NIU legal team speaks to and coordinates with Hesed House case managers and Aunt Martha’s medical providers. This increased communication helps clients keep track of appointments, complete paperwork and be successful with cases. Bureaucracies are challenging for anyone to navigate, especially individuals facing schizophrenia, bi-polar disorder, or depression. Without this collaboration, it would be easy for individuals to fall through the cracks. When the task is left to one person, it can seem insurmountable. This interprofessional collaboration leads to increased success with the approval of benefits. The resulting access to food and income could take someone out of homelessness, improving his or her overall health.

I am very excited to be directing the NIU Health Advocacy Clinic and have been welcomed and inspired by the multiple legal aid agencies, pro bono attorneys, and community organizations committed to eliminating health disparities in Kane County. Do not be surprised when you see attorneys and law students working together with health providers and case managers at Aunt Martha’s in the CRC. By bridging the gaps, the legal, medical and social work professions will make Kane County a healthier place to be.

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1. For the history of medical-legal partnerships, please visit the National Center for Medical-Legal Partnership’s website at http://www.medical-legalpartnership.org/mwp/
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A brief bibliography of the Kane County Law Library & Self Help Legal Center’s holdings on MENTAL HEALTH

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**Alcoholism Sourcebook:** basic consumer health information about alcohol use, abuse, and addiction, including facts about the physical consequences of alcohol abuse, such as brain changes and problems with cognitive functioning, cirrhosis and other liver diseases, cardiovascular disease, pancreatitis, and alcoholic neuropathy, and the effects of alcohol on reproductive health and fetal development, mental health problems associated with alcohol abuse, and alcohol’s impact on families, workplaces, and the community; along with information about underage drinking, alcohol treatment and recovery, a glossary of related terms, and directories of resources for more information / Shannon, Joyce Brennfleck. — Detroit, MI: Omnigraphics, 2010. (RC 565.A4493 2010)

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HELP WANTED: The immense need for our “LAWYER IN THE LIBRARY” program is such that we are having to turn people away due to lack of attorney volunteers!

Have a trial go away? Stuck in the courthouse between appointments? Stop by the Kane County Law Library and let us know you are available to briefly meet with those desperately seeking legal guidance. More and more we are encountering individuals who economically qualify for legal aid assistance, but have conflicts with the agencies. These people have nowhere to turn! Next time you have time to kill in the courthouse, stop on by the Law Library and volunteer a few minutes of your time!

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  (4 Appointments)
- Daniel Klenke
  (1 Appointment)
- Bilal Siddiqui
  (1 Appointment)
- Bruce Steinberg
  (2 Appointments)

The “Lawyer in the Library” program, created by the Kane County Law Library & Self Help Legal Center with support from Administer Justice, is a resource whereby volunteer attorneys coach qualifying low-income individuals in ½ hour sessions and assist with document preparation and review.

Contact Halle Cox at the Kane County Law Library & Self Help Legal Center and become one of our “Lawyers in the Library” (630) 406-7126
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Thank you to the following KCBA members who volunteered to serve our low income clients during the month of June:

SERVED AT ONE OF OUR CLINICS
Catherine Battista
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Thom Walsh

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Administer Justice is a faith based nonprofit providing legal aid to low income individuals within Kane County and throughout northern Illinois. Our holistic services empower individuals and families to move beyond their circumstances to a place of stability and hope.
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Thank you!
The Madwoman in the Attic: Mental Illness and the Americans with Disabilities Act Amendments Act of 2008

by Stephanie Ridella

Editor's Note: This article is the winner of the 2014 Winter Law Student Legal Writing Contest sponsored by the National Law Review. It is re-published with the express consent of both the author and the National Law Review.

Stephanie Ridella

Introduction

We are what we work, so to speak. To put it more eloquently, as sociologist Peter Worsley said: “Work is central to our culture. When someone asks “What do you do?” they really mean “What work do you do?” It is widely recognized that the significance of employment is both practical and symbolic; the ability to work results not only in income but also in a sense of community participation and self-worth.5 In our culture, one’s work is integrally tied to one’s sense of self and identity, and is one of the primary means by which people enter and make their mark on the world.

Yet people with disabilities are often limited in or eliminated from the workforce, and this is especially true for people with mental illness. One study estimates that 60-80 percent of people with mental illness are unemployed, and that for those who suffer the most severe forms of mental illness, that number approaches 90 percent.4 For those people with severe mental illness who do work, many are underemployed.5 By one estimate, one-third to one-half of people with severe mental illness lives at or near the federal poverty level.6 Annually, approximately 25 billion dollars is spent on disability payments to people with mental illness.7 Meanwhile, studies show that work is a key factor to successfully managing mental illness, improving health and encouraging social inclusion.8

This paper will discuss the limitations of the 1990 Act with regards to mental illness and employment discrimination, and how the 2008 Amendments Act has or may be expected correct some of these limitations. It will also discuss the problems caused by the stigmatization of mental illness in this country and how that has contributed to the limits of the legislation.

The Stigma of Mental Illness

“...[M]adness is both an intensely private experience and a profoundly social category...”9 These are complicated disorders that few people can understand unless they have the misfortune to experience them. As one study of patients with serious mental illness stated, it is difficult for “normal” people to comprehend “[t]he personal bewilderment and solitude of an hallucination, multiplied by poverty or rejecting others, is a prescription for social marginality, produced by and then reproducing the public and private nature of the disorderliness.”10 The social ills manifested by mental illness – namely poverty and violence – are only made worse by the symptoms of mental illness, creating a vicious circle.

Finding a way to break that cycle, and foster inclusion and understanding is tremendously important. But “US disability history has frequently been a story of stigma and of pride denied – particularly when ableism defines disability and people with disabilities as defective and inadequate.”11 Literature, as well as history, is full of the insane or the undesirable people locked away from sight, like Rochester’s wife in Jane Eyre – the madwoman in the attic.12

Believing the days of locking anyone with mental illness or disability away, many people are not aware of the way in which these stigmas are still perpetuated, that people with mental disabilities are other, dangerous, and should be kept separate for everyone’s safety.

Whatever stigma attaches to a physical disability, however, most scholars agree that people with mental disabilities are more feared, more stigmatized, discriminated against more often, and are seen as more likely to commit acts of violence than are people with physical disabilities. People with mental disabilities are seen as shameful, dangerous, and irresponsible, and discrimination against people with mental disabilities is widespread.13

Interestingly, per one commentator, bias “may lessen if mental illness is coupled with a physical one. A recent study has indicated that persons with both a mental disability and a physical one do better in the employment arena than those with a mental disability alone. Experts postulate that this may be because the presence of the physical disability reduces the stigma of having a mental illness.”14

The dangers of the stigma attached to mental illness are not necessarily drawn along the disabled/non-dis-
abled divide. When lobbying for the Americans with Disabilities Act, advocated encouraged divergent groups of people with disabilities to come together for a common cause, a fight against the general stigma against disabilities.\textsuperscript{15} But several scholars have suggested that within the larger group of people with disabilities, those with mental illness feel stigmatized and that they are like the red-headed stepchild of the community.\textsuperscript{16}

**The Effect of Stigma on ADA Claims**

The stigma of mental illness can prevent victims of discrimination from obtaining relief under the ADA. First, employees may be reluctant to inform the employer that they have a mental illness, for fear of the stigma attached to the disease. The EEOC Interpretive Guidance states that “[e]mployers are obligated to make reasonable accommodation only to the physical or mental limitations resulting from the disability of an individual with a disability that is known to the employer. Thus, an employer would not be expected to accommodate disabilities of which it is unaware...In general, however, it is the responsibility of the individual with a disability to inform the employer that an accommodation is needed.”\textsuperscript{17}

Second, a person with mental illness may deny they have a disease or not otherwise seek treatment or the protection of the law because they do not believe they are sick. Despite the science behind medical diagnoses, people often contest the “nature and meaning of the psychiatric diagnosis,” often because if it is true it will devastate.\textsuperscript{18} One study respondent, faced with a diagnosis of schizophrenia, said “it’s like a death sentence.”\textsuperscript{19}

Third, quite separate from the stigma of employers or the self-directed stigma of the employee, judicial stigma can act as an obstacle to plaintiffs in ADA employment discrimination cases.\textsuperscript{20} “Judges reflect and project the conventional morality of the community and their judicial decisions, in all areas of civil and criminal mental disability law, continue to reflect and perpetuate [] stereotypes.”\textsuperscript{21} With judges, and juries as well, there is another factor to consider: “fear of fakery.”\textsuperscript{22} This is a certain disbelief attached to “invisible” illnesses, like mental illness, which is “widespread and entails the belief that despite the negative societal consequences, such as profound stigma attaching to mental illness, claimants manufacture mental sequelae in an attempt to mislead judges and jurors for their personal benefit.”\textsuperscript{23} No one could ever want one of these illnesses, those who have them hide them for fear of stigma and fear, and yet juries are still willing to believe it’s a fake claim to get a quick payday.

**The Americans with Disabilities Act of 1990**

When Congress passed the Americans with Disabilities Act of 1990 (“ADA”), one of the legislation’s purposes was to combat the “discrimination against individuals with disabilities [that] persists in such critical areas as employment.”\textsuperscript{24} The ADA states that “[n]o covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.\textsuperscript{25}

The ADA defined a disability as “(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment.”\textsuperscript{26} But Congress failed to define these terms, leaving the courts to decide what constituted a “substantial limitation,” a “major life activity,” and even what impairments qualified as a disability under the ADA, leaving most cases decided not on the merits, but on the threshold issue of whether a claim had been stated at all.

Plaintiffs have to clear several hurdles. First, they must show the disorder they claim to suffer from limits a major life activity. Establishing a disorder can also present difficulties, because “[d]efining mental illness is fraught with difficulties including the fact that it is heavily dependent on context. In addition to the difficulty in defining mental illness, diagnosing mental illness is also problematic, in large part, because of the subjectivity involved.”\textsuperscript{27} “It is insufficient for individuals attempting to prove disability status ... to merely submit evidence of a medical diagnosis of an impairment” under the ADA.\textsuperscript{28} EEOC regulations promulgated a non-exclusive list including “caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.”\textsuperscript{29} This list, largely consisting of physical tasks, made it more difficult for plaintiffs with mental illness to meet the initial burden. It has been suggested that “the Regulation’s list of major life activities reveals the supposition that the activities that are truly major in one’s life are physical as opposed to mental. Moreover, it suggests that Congress, in enacting the ADA, and the EEOC, in enforcing Title I of the ADA, envisioned the disability paradigm as a physical one. Because of this emphasis on the major life activities that are affected by a physical disability, it is not surprising that courts [] struggled with the question of what constitutes a major life activity with regard to mental illness.”\textsuperscript{30}

Courts, in deciding what constitutes a major life activity, parsed concepts that might seem patently obvious to a lay person. A number of courts held that concentration was not major life activity.\textsuperscript{31} Most courts, following vigorous analysis, concluded that eating is a major life activity.\textsuperscript{32} Some courts also accepted thinking as a major life activity.\textsuperscript{33} Sleeping, reproduction, sexual intercourse, and interacting with others were also accepted by many courts.\textsuperscript{34}

Even if a plaintiff successfully established that she had an impairment limiting a major life activity, she still had to establish that it was a substantial limitation. The EEOC’s regulations defined “substantially limits” as
“(i) Unable to perform a major life activity that the average person in the general population can perform; or 
(ii) Significantly restricted as to the condition, manner or duration under which an individual can perform a 
particular major life activity as compared to the condition, manner, or duration under which the average 
person in the general population can perform that same major life activity.” The regulations included the 
following factors for evaluating whether someone is substantially limited in a major life activity: “(i) The nature and 
severity of the impairment; (ii) The duration or expected duration of the impairment; and (iii) The permanent 
or long term impact, or the expected permanent or long term impact of or resulting from the impairment.”
This standard created problems, not just in assessing whether the impairment was sufficiently severe, but 
especially issues of duration. Many mental illnesses are episodic in nature, and severe symptoms may 
only flare up occasionally.

For example, while sleeping was accepted as a major life activity, the circuits differed as to the degree of 
disturbance necessary to constitute a substantial limitation. In one court, “[t]o establish a substantial limit in 
the major life activity of sleeping, a plaintiff ‘must present evidence, beyond vague assertions of a rough 
night’s sleep or a need for medication, that his affliction is worse than that suffered by a large portion of the 
nation’s adult population.” In another, “the inability to enjoy more than three or four hours of uninterrupted 
sleep does not qualify as a substantial limitation.” Still again, the court said that sleeping only four to five 
hours per night was not a substantial limitation and that “[w]hile less than five hours sleep is not optimal, it is 
not significantly restricted in comparison to the average person in the general population.” In the 10th 
Circuit, it was not a substantial limitation where a plaintiff was limited to two or three hours of sleep a night 
due to her depression.

From early in its enactment the ADA has been criticized as ineffective or inadequate in its ability to protect 
people with mental illnesses from discrimination in the workplace. These criticisms multiplied exponen-
tially in 1999 when the Supreme Court handed down its ruling in Sutton, significantly narrowed the def-
inition of disability and made it even more difficult for plaintiffs to prevail on the threshold question of whether 
or not they qualified for protection under the statute.

The ADA and Sutton

In Sutton v. United Air Lines, Inc., plaintiffs were twin sisters with severe myopia, but with corrective 
lenses had vision of 20/20 or better. Plaintiffs applied for jobs as commercial airline pilots, met all of the 
requirements and qualifications of the job, but were mistakenly invited for second interviews because they did 
not meet the airline’s vision requirements. They were terminated from the interview process, and plaintiffs 
filed a claim with the EEOC alleging discrimination on the basis of their disabilities.

The Supreme Court held that plaintiffs were not disabled within the meaning of the ADA, because the reg-
ulatory and statutory scheme, per the Court, did not intend plaintiffs to be assessed in their unmitigated state, 
and with corrective lenses, the plaintiffs were not limited in the major life activity of seeing. The Court con-
cluded this based on present tense of the verb the term of the statute “sub-
stantially limits” – that this tense 
meant that Congress intended plaintiffs to be assessed in their state at the time of the alleged discrimination.

The Court found that the EEOC interpretation would grant protection to millions of people unintended by 
Congress to be covered under the ADA, and held that “disability under the Act is to be determined with refer-
ce to corrective measures.”

In Albertson’s, Inc. v. Kirkingburg, a companion case to Sutton, the plaintiff, a truck driver, was fired when it 
was discovered that he had monocular vision and was unable to see from his left eye, but was mistakenly certified 
under the Department of Transportation standards when hired. The Court found that the plaintiff’s brain had developed mech-

Three years later, in Toyota Motor Mfg., Kentucky, Inc. v. Williams, the Court found the plaintiff, who suf-
fered from carpel tunnel syndrome, was not substantially limited in a major life activity because the lower 
court “analyzed only a limited class of manual tasks and failed to ask whether respondent’s impairments 
prevented or restricted her from performing tasks that are of central importance to most people’s daily 
lives.” The Court reiterated its position that the terms “substantially limited” and “major life activity” “need to 
be interpreted strictly to create a demanding standard for qualifying as disabled.” The Court said the lower 
court erred and “should not have considered respondent’s inability to do such manual work in her specialized 
assembly line job as sufficient proof that she was substantially limited in performing manual tasks.”

Sutton’s Impact on Plaintiffs’ Mental Illness Claims

While these cases did not deal with mental illness, the holdings clearly impacted all plaintiffs’ ability to bring 
cases under the ADA. Many mental illnesses, while chronic, are not always persistent, and symptoms
appear and disappear; cannot meet the Court’s standard for substantial limitation under *Toyota Motor*, because they cannot demonstrate long-term and invasive impact. As one commentator framed the issue: “The Sutton rule forces individuals with mental illness to choose between two equally unattractive situations: 1) remaining in a less functional unmitigated state, but thereby potentially having protection under the law, and 2) undergoing therapy, including medication, which, if “too” effective, could potentially remove them from the realm of disability and leave them unprotected at law, though the discrimination they face may continue.” But failure to seek treatment for the mental illness can also be grounds for losing the protection of the law, as the plaintiff will have failed to take steps to control the disease and caused significant disruptions in the workplace. The Court held that “a plaintiff cannot recover under the ADA if through plaintiff’s own fault plaintiff fails to control an otherwise controllable illness.”

In addition to the mitigation of psychotropic medications, plaintiffs also ran the risk of losing protection under the law if they found other ways to cope with their illnesses through therapy or sheer force of will under the holding in *Albertson’s, Inc. v. Kirkingburg*. Several cases involving learning disabilities illustrate the problem. In *Bartlett v. New York State Bd. of Law Examiners*, the court found that the plaintiff was not limited in the major life activity of reading because when compared to the “average person in the general population” (as [] required to do by the ADA’s implementing regulations, [, Bartlett’s history of self-accommodation had allowed her to achieve roughly average reading skills (on some measures) when compared to the general population.”

Those who are able to overcome the symptoms of their illness and achieve academic and other successes may find themselves disadvantaged by the law. As with the mitigating effects of medication, it becomes a choice of seeking help but losing protection of the law, or suffering the disability so as to be better protected from potential discrimination.

**The Americans with Disabilities Act Amendments Act of 2008**

Frustrated by the Court’s decisions in *Sutton* and *Toyota Motor*, Congress passed the Americans with Disabilities Act Amendments Act (ADAAA) in 2008, to specifically overrule *Sutton* and *Toyota*, and fulfill “the Nation’s proper goals regarding individuals with disabilities [so as to][] to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals.” The ADAAA’s definition of disability...shall be construed in favor of broad coverage of individuals...to the maximum extent permitted..." 61

The ADAAA expanded the definition of major life activities. With regards to substantial limitations, the ADAAA states that “an impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.” Furthermore, “[a]n impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.” “The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures.”

The ADAAA should have opened the door to litigation, and given victims of employment discrimination a day in court. Establishing the existence of a disability and the substantial limitation of a major life activity can be easily dispensed with. The regulations clearly state that “it should easily be concluded that the following types of impairments will, at a minimum, substantially limit the major life activities indicated: major depressive disorder, bipolar disorder, post-traumatic stress disorder, obsessive compulsive disorder, and schizophrenia substantially limit brain function.”

When analyzing substantial limitations, courts are to consider “condition, manner, or duration may include, among other things, consideration of the difficulty, effort, or time required to perform a major life activity; pain experienced when performing a major life activity; the length of time a major life activity can be performed; and/or the way an impairment affects the operation of a major bodily function.” In addition, the non-ameliorative effects of mitigating measures, such as negative side effects of medication or burdens associated with following a particular treatment regimen, may be considered when determining whether an individual’s impairment substantially limits a major life activity.

**Qualified Employees, Reasonable Accommodations and the Direct Threat Defense**

However, after having dispensed with the threshold arguments and meeting the initial burden to plead an ADAAA case, plaintiffs with mental illnesses face a new hurdle; qualification for the job. Proving a disability is only the first step. The plaintiff must next demonstrate that he or she is qualified for the job. “The term ‘qualified individual’ means an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires.” The term essential function means the fundamental job duties of the employment position, but “does not include the marginal functions of the position.” Evidence of whether a particular function is essential includes … [t]he employer’s judgment as to which functions are essential.” If qualified, the reasonable accommodation must not place an undue burden on the employer.

Mental illnesses are not easily or predictably controlled, and treatment can change suddenly, so it is difficult to predict what accommodations will be required and when they may become necessary. Often, the only accommodation that could correct the problem is to allow floating sick days or a sudden leave of absence or
extended leaves of absence. Such requests often will not be considered reasonable requests, or would be an undue burden upon the employer.

Attendance is usually considered an essential function of the job, “irregular attendance compromises essential job functions.”73 An unpaid medical leave of absence may be considered a reasonable accommodation under the ADA, but the “question is not whether the employee can perform the essential functions of the job during the leave period, [but] whether the leave of absence is likely to enable the employee, upon his return from leave, to resume performing the essential functions of the job.”74 Additionally, “the ADA does not require an employee to show that a leave of absence is certain or even likely to be successful to prove that it is a reasonable accommodation.”75

In Reed v. Maryland, Dep’t of Human Resources, the Court stated that “the ADA does not require an employer to give a disabled employee an indefinite period of time to correct a disabling condition that renders him unable to work.”76 In Reed, the plaintiff repeatedly asked for extensions of his leave in order to “refocus” and find a medication that would work to manage his depression.77 “A defendant does not violate the ADA by terminating the employment of a plaintiff whose disability would require the defendant “to wait indefinitely” for the plaintiff to be ready to work again.”78 Unfortunately, for many who suffer from mental illness, finding an effective treatment plan takes time and is unpredictable. An employer is not required to accommodate this need.

Furthermore, some of the ways in which mental illness manifests are not behaviors that employers are required to tolerate. “The law is well settled that the ADA is not violated when an employer discharges an individual based upon the employee’s misconduct, even if the misconduct is related to a disability.”79 The EEOC has clearly said that employers “do not have to ... excuse violations of conduct rules necessary for the operation of your business. Example: You do not have to tolerate violence, threats of violence, theft or destruction of property, even if the employee claims that a disability caused the misconduct.”80 For example, in Foley v. Morgan Stanley Smith Barney, the plaintiff allegedly took a computer when he was in the midst of a psychotic episode (a manifestation of his bipolar disorder) and thought Morgan Stanley was spying on him through his computer.81 He never disclosed his disorder nor did he ask for reasonable accommodations.82 Despite having admittedly broken the rules, the plaintiff asked that he be accommodated by being reinstated, because he was unlikely to have another episode and was again qualified for his position.83 The court said that to require Morgan Stanley to do so would be an undue burden and an unreasonable accommodation.84

The EEOC its Interpretive Guidelines, the EEOC explains when an employer may appropriately assert the direct threat defense: where there exists a high probability of substantial harm to the individual, like the assessment that there exists a high probability of substantial harm to others, must be strictly based on valid medical analyses and/or on other objective evidence.85 This determination must be based on individualized factual data, using the factors discussed above, rather than on stereotypic or patronizing assumptions and must consider potential reasonable accommodations.86 Generalized fears about risks from the employment environment, such as exacerbation of the disability caused by stress, cannot be used by an employer to disqualify an individual with a disability.87 As one court offers as an example, “a law firm could not reject an applicant with a history of disabling mental illness based on a generalized fear that the stress of trying to make partner might trigger a relapse of the individual’s mental illness.”88 “Nor can generalized fears about risks to individuals with disabilities in the event of an evacuation or other emergency be used by an employer to disqualify an individual with a disability.”89

But it is not solely the more extreme examples of misconduct that make it incredibly difficult to accommodate mental illness. Some courts have held that “an employee’s ability to handle reasonably necessary stress and work reasonably well with others are essential functions of any position [and the] [a]bsence of such skills prevents the employee from being ‘otherwise qualified.’”90 This can be a very real challenge to a person with a mental illness, who may be able to perform the technical skills of the job, but at certain times has problems interacting with others.

**Conclusion**

There is a real question as to whether the ADA and ADAAA can adequately protect persons with mental illnesses. Thus far, the criticisms and failures far overshadow any other results. The greatest problem is that the most effective accommodations for mental illness are also accommodations that will almost certainly be seen as undue burdens on employers. Leaves of absence and tolerating otherwise intolerable behavior are undoubtedly burdens. It’s not necessarily the fault of the statutory and regulatory scheme, which favors the physically disabled over the mentally disabled. The fact is that employers have the right to not tolerate behavior that is disruptive, illegal or imposes too great a financial burden or a burden on the daily operations of the company. Thus far, no one has found a way to balance two compelling competing interests – the managerial right versus the need to accommodate disabilities in the workplace. Until then, the ADA and the ADAAA have failed many plaintiffs with mental illnesses, and unfortunately but undoubtedly will fail many more to come.

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1 This article is an abridged version of a paper written for Disability Law Seminar, Fall 2013, at Chicago-Kent College of Law. The author would like to thank Professor Edward Kraus and the entire class for their input and support.


4 NAT’L ALLIANCE ON MENTAL HEALTH, Unemployment (January 2010), http://www.nami.org/Template.cfm?Section=About_the_Issue&Template=/ContentManagement/ContentDisplay.cfm&ContentNumID=114540.

5 Id.

6 Id.

7 Id.

8 Id.


10 Id. at 331-32.


14 Id. at 607-08.


16 Michael L. Perlin, The ADA and Persons with Mental Disabilities: Can Sanitised Attitudes Be Undone?, 8 J.L. & Health 15, 20 (1994) (Even within the disability community, persons with mental illness are often the poor stepchild, and remain the last hidden minority.); Hensel & Jones, supra note 14 at 47; Korn, supra note 12 at 601-02.

17 29 C.F.R. § 1630.2 (emphasis added).

18 Estroff, supra note 8 at 352.

19 Id.

20 See Korn, supra note 12 at 607.


22 Michael L. Perlin, “The Borderline Which Separated You From Me “: The Insanity Defense, the Authoritarian, the Fear of Faking, and the Culture of Punishment, 82 IOWA L. REV. 1375, 1409 (1997) (for the idea that juries in criminal trials often believe the defendant is faking to avoid punishment).


27 Korn, supra note 12 at 597.


29 29 C.F.R. § 1630.2(i)

30 Korn, supra note 12 at 598.


32 See eg Lawson v. CSX Transp., Inc., 245 F.3d 916, 926 (7th Cir. 2001)” (a jury could find that the prescribed treatment Mr. Lawson must take to survive with diabetes causes symptoms that substantially limit the major life activity of eating.”); Fraser v. Goodale, 342 F.3d 1032, 1040 (9th Cir. 2003)” (Not only is eating of comparative importance, but it is integral to daily existence, even more so than other activities specifically listed as major life activities. For instance, one can survive without seeing, hearing, speaking, or walking. One cannot survive (absent medical technology) without eating.”) (internal citation omitted).

33 See eg Taylor v. Phoenixville Sch. Dist., 184 F.3d 296, 307 (3d Cir. 1999) (“we conclude that it is reasonable to include thinking as a major life activity. Perhaps the activity is rather broad, but given the difficulty of specifying the different constituents of thinking or otherwise narrowing this central activity (especially when discussing the effects of psychosis or its subclinical manifestations).”

34 McAlindin v. Cnty. of San Diego, 192 F.3d 1226 (9th Cir. 1999)(reproduction, sexual activity, sleeping, thinking); EEOC v. Chevron Phillips Chemical Co., L.P., 570 F.3d 606, 616 (5th Cir.2009)(sleeping).

35 29 C.F.R. § 1630.2(j)(1).

36 29 C.F.R. § 1630.2(j)(2).

37 See Nelson, Starting Anew; supra note 22.


39 Swanson v. Univ. of Cincinnati, 268 F.3d 307, 316–17 (6th Cir. 2001).

40 Pack v. Kmart Corp., 166 F.3d 1300, 1306 (10th Cir. 1999).

41 See Jane Byeff Korn, Crazy (Mental Illness Under the ADA), 36 U. Mich. J.L. Reform 585 (2003); Michelle Parikh, Burning the Candle at Both Ends, and There Is Nothing Left for Proof: The Americans with Disabilities Act’s Disservice to Persons with Mental Illness, 89 CORNELL L. REV. 721 (2004);


43 Id. at 475-76.

44 Id.

45 Id. at 482.

46 Id.

47 Id. at 486-88.


49 Id. at 565.

50 Id. at 565-66.


52 Id. at 197.

53 Id. at 201.

54 Id. at 198.

55 Parikh, supra note 40 at 740.

56 Id.


58 Id.


62 Id.

63 Id.

64 Id.

65 Id.

66 29 C.F.R. § 1630.2.

67 Id.

68 42 U.S.C. § 12111(8).

69 29 C.F.R. § 1630.2(n)(1).

70 29 C.F.R. § 1630.2(n)(3)(i).

71 Id.

72 Parikh, supra note 40 at 742.


75 Id.


77 Id.

78 Id.


80 EQUAL OPPORTUNITY EMPT’ COM’N, THE AMERICANS WITH DISABILITIES ACT: A PRIMER FOR SMALL BUSINESS, (February 4, 2004)

KCBA Cares

KCBA Cares is a monthly volunteer opportunity for our members ranging from helping at food pantries and other non-profit organizations who need support to drives for donated items such as clothing, toys, etc. If you have suggestions for organizations who may need some help, please contact Vince Mancini, KCBA Cares Coordinator, at vmancini@eklwilliams.com.

FOOD FOR GREATER ELGIN - MONDAY, AUGUST 25, 2014

WHAT: Food For Greater Elgin is a large fast-growing Client Choice Food Pantry serving low income residents in Elgin and South Elgin. Just 2 years at its warehouse/office complex, Food For Greater Elgin is currently providing food assistance to 1100 families each month, feeding 5000 individuals in those households, of whom nearly half our children.

WHEN: Monday, August 25, 2014  |  5:30 p.m. to 8:30 p.m.
WHERE: 1553 Commerce Drive, Elgin, IL 60123
WE NEED: 10 volunteers are need to help pack and distribute food.
CONTACT: Call the KCBA Office at (630) 762-1915 if you can help.

If you have suggestions of volunteer opportunities in Kane County, please call the KCBA Office with your ideas. (630) 762-1915

KCBA WEEKLY COMPASS

The KCBA Compass is an electronic newsletter that is emailed to our members every Friday. It informs you of upcoming events and is designed to help you plan your week ahead.

Please contact Lesley Barber at membership@kanecountybar.org if you are not receiving it.
HELP WANTED

FULL TIME LEGAL SECRETARY /PARALEGAL WANTED: Aurora law firm seeks individual for full-time legal secretary/paralegal position. Must have computer and organizational skills and the ability to work independently and multi-task. Spanish fluency is a plus. Experience is required. Please e-mail your resume to: vcarmona@kfklaw.com.

LEGAL ASSISTANT WANTED: Naperville law firm seeks legal assistant (experience in labor/employment and litigation preferred) and receptionist/billing clerk - knowledge of ProLaw software a plus. Please email resume with salary expectations to resume.lawfirm13@gmail.com

BILINGUAL ASSOCIATE WANTED: Established Kane County law firm is seeking a full time bilingual (English/Spanish) associate. No experience necessary. Please email your resume and cover letter to barbriefs@kanecountybar.org and place Job #7450 in the subject line.

ATTORNEY WANTED: Dykema’s Lisle office seeks an attorney with two to four years litigation experience for the position of Staff Attorney. The position involves handling defense of medical malpractice actions, as well as general business litigation, employment, insurance coverage, and other matters. Willingness to learn and handle a broad range of matters, excellent research and writing skills, and strong oral communication abilities are required. Some experience handling medical malpractice actions is preferred. Job duties include overall general case/file management, contact with clients and expert witnesses, drafting of pleadings and discovery, document production, depositions, motion practice, hearings, trial preparation and assistance at trial. Illinois license and local court experience required. Please send cover letter, resume, copy of law school transcript and salary requirements to: Ms. Justine A. Maury, Recruiting and Professional Development Manager, Dykema Gossett PLLC, 10 South Wacker Drive, Suite 2300, Chicago, IL 60606. (jmaury@dykema.com, www.dykema.com).

LEGAL SECRETARY NEEDED: Full time Legal Secretary needed for family law firm concentrating in complex divorce cases. Candidate must have past law firm experience, but not necessarily in family law. Candidate must possess exceptional organizational and technology skills. Salary dependent upon experience. Please send resume to: allison@peskindlaw.com.

ADMINISTRATIVE ASSISTANT WANTED: Administrative Assistant III -Legal Secretary Elgin Community College. Salary Information: $30,074 minimum annual starting salary. Function: Provide clerical and administrative support to the legal department. Assist with responding to requests and draft correspondence. College Online Application Form: https://jobs.elgin.edu/applicants/Central?quickFind=51845

PARALEGAL / LEGAL ASSISTANT NEEDED: High volume General Practice firm in Kendall County seeking an experienced paralegal/legal assistant. Salary negotiable based on experience. Strong writing skills, detail oriented and must be a self-starter. Able to handle multiple projects. Experience in Tabs, Practicemaster a plus. Please send your resume to barbriefs@kanecountybar.org and place Job 8213 in the subject line.

BANKRUPTCY ATTORNEY AVAILABLE: Drendel & Jansons Law Group is now accepting referrals for Chapter 7 and Chapter 13 Bankruptcy in Kane, DuPage, Kendall, DeKalb, and Will counties. Please contact Larry Lobb at (630) 406-5440 or by email at lw1@batavialaw.com.

IMMIGRATION LAW SERVICES AVAILABLE: The Law Offices of Shirley Sadjadi practices exclusively in the area of immigration law and is accepting immigration cases. Appointments are available in our Aurora and Elgin offices. Our attorneys and support staff are bilingual (Spanish). Please call (847) 741-6180.

Continued on next page
OFFICE SPACE AVAILABLE:
Approximately 2,125 sq.ft. of professional office space available at 1971 West Downer Place, in Downer Place Executive Center, Aurora. Call (630) 892-1468.

OFFICE SPACES AVAILABLE:
- Professional offices available for lease in Geneva and Warrenville, full suite or individual offices. Reasonably priced. Immediate occupancy.
- Monthly rent includes utilities and CAM. Tastefully furnished if needed. Off street parking. Call (630) 440-1600.

ST. CHARLES OFFICE CONDO AVAILABLE: 2210 Dean Street, Suite A, St. Charles, IL 60175. Just minutes from both Kane County Courthouses. For sale or lease, approximately 1,100 square feet, waiting room, office staff area, large conference room, storage room, private office and two lavatories. Excellent space for one or two attorneys, all office furniture to be included. Call Joseph Tryzna at (630) 377-5600 if you are interested.

ST. CHARLES OFFICE CONDO FOR RENT: 1687 square feet; partial floor. Office space includes off street parking, security system and storage. Outdoor sign space is available. The second floor office spaces are approximately 14’ x14’ and 9.5’ x 9’. Contact Mark at (630) 892-4349.

PROFESSIONAL OFFICE CONDO FOR SALE OR LEASE: Executive office suite located on first floor immediately at the entrance of the same building as the Kane County Bar Association. 1687 square feet; partially furnished with five offices, conference area, reception area, work stations, and kitchenette. 555 S. Randall Road, Suite 101. Across the street from Circuit Court Clerk’s office and three minutes from the Kane County Judicial Center. Reduced for quick sale $312,000.00 or lease price $2,500.00 per month. Contact Steve at (630) 584-4800.

OFFICE SPACE FOR RENT: Victorian style professional office building with two offices available for immediate occupancy in Aurora. Office space includes off street parking, security system and storage. Outdoor sign space is available. The second floor office spaces are approximately 14’ x14’ and 9.5’ x 9’. Contact Mark at (630) 892-4349.

OFFICE SPACE FOR RENT: Galena Professional Building. 403 W. Galena Blvd., Aurora. All sizes of office space available. You determine what size space you need! Recently remodeled. Call Fred Morelli at (630) 892-6665 if you are interested.

PLACING AN AD
KCBA Members are allowed to run one free classified ad per month. Classified ads must be submitted or renewed by the 10th of every month for publication in the following month (i.e., January 10 for the February issue). Classified advertisements are limited to 125 words. When you submit your ad please specify the months that you would like your ad to run. You may run your ad up to 6 months at a time. Call Deb Cook at 630-762-1915 if you have questions regarding placing a classified advertisement. Ads can be emailed to barbriefs@kanecountybar.org.
This Calendar was created on 07/21/2014
Please call (630) 762-1915 to confirm date, time and location of event before you attend.

### AUGUST 2014

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
<th>Time</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>08/05</td>
<td>Bar Briefs Editorial Board Meeting</td>
<td>Noon</td>
<td>KCBA Office</td>
</tr>
<tr>
<td>08/06</td>
<td>Combined Residential &amp; Commercial Real Estate Committee</td>
<td>8:00 a.m.</td>
<td>Chicago Title, Geneva</td>
</tr>
<tr>
<td>08/09</td>
<td>Ask a Lawyer Day</td>
<td>9:00 a.m. - Noon</td>
<td>KCBA Office</td>
</tr>
<tr>
<td>08/12</td>
<td>KCBF Board of Directors Meeting</td>
<td>5:00 p.m.</td>
<td>KCBA Office</td>
</tr>
<tr>
<td>08/13</td>
<td>Estate, Probate &amp; Elder Law Comm. Mtg.</td>
<td>Noon</td>
<td>KCBA Office</td>
</tr>
<tr>
<td>08/13</td>
<td>Family Law Committee Meeting</td>
<td>Noon</td>
<td>KCJC, Jury Lounge</td>
</tr>
<tr>
<td>08/14</td>
<td>New Lawyers’ Committee Meeting</td>
<td>5:15 p.m.</td>
<td>Old Towne Pub, Geneva</td>
</tr>
<tr>
<td>08/20</td>
<td>Estate &amp; Probate Collegium</td>
<td>8:00 a.m.</td>
<td>KCBA Office</td>
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<tr>
<td>08/21</td>
<td>Criminal Law Committee Meeting</td>
<td>Noon</td>
<td>KCJC, Jury Lounge</td>
</tr>
<tr>
<td>08/21</td>
<td>Local Government Law Committee Mtg.</td>
<td>Noon</td>
<td>KCBA Office</td>
</tr>
<tr>
<td>08/21</td>
<td>KCBF Board of Managers Meeting</td>
<td>4:30 p.m.</td>
<td>KCBA Office</td>
</tr>
<tr>
<td>08/28</td>
<td>Women in the Law Committee Meeting</td>
<td>12:15 p.m.</td>
<td>KCBA Office</td>
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<tr>
<td>08/28</td>
<td>Combined Meeting: Employment/Labor Law &amp; Business Issues Committee Mtg.</td>
<td>Noon</td>
<td>KCBA Office</td>
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### SEPTEMBER 2014

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
<th>Time</th>
<th>Location</th>
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<tbody>
<tr>
<td>09/09</td>
<td>Civil Practice Committee Meeting</td>
<td>Noon</td>
<td>KCJC, Judge Murphy’s Jury Room</td>
</tr>
<tr>
<td>09/09</td>
<td>KCBF Board of Director’s Meeting</td>
<td>5:00 p.m.</td>
<td>KCBA Office</td>
</tr>
<tr>
<td>09/10</td>
<td>Estate, Probate &amp; Elder Law Comm. Mtg.</td>
<td>Noon</td>
<td>KCBA Office</td>
</tr>
<tr>
<td>09/10</td>
<td>Family Law Committee Meeting</td>
<td>Noon</td>
<td>KCJC, Jury Lounge</td>
</tr>
<tr>
<td>09/11</td>
<td>New Lawyers’ Committee Meeting</td>
<td>5:00 p.m.</td>
<td>Old Towne Pub, Geneva</td>
</tr>
<tr>
<td>09/13</td>
<td>Ask a Lawyer Day</td>
<td>9:00 a.m. - Noon</td>
<td>KCBA Office</td>
</tr>
<tr>
<td>09/17</td>
<td>Estate &amp; Probate Collegium</td>
<td>8:00 a.m.</td>
<td>KCBA Office</td>
</tr>
<tr>
<td>09/17</td>
<td>Criminal Law Committee Meeting</td>
<td>Noon</td>
<td>KCJC, Jury Lounge</td>
</tr>
<tr>
<td>09/18</td>
<td>Local Government Law Committee Mtg.</td>
<td>Noon</td>
<td>KCBA Office</td>
</tr>
<tr>
<td>09/18</td>
<td>KCBF Board Of Managers Meeting</td>
<td>4:30 p.m.</td>
<td>KCBA Office</td>
</tr>
<tr>
<td>09/23</td>
<td>Bar Briefs Editorial Board Meeting</td>
<td>Noon</td>
<td>KCBA Office</td>
</tr>
<tr>
<td>09/25</td>
<td>Women in the Law Committee Meeting</td>
<td>12:15 p.m.</td>
<td>KCBA Office</td>
</tr>
<tr>
<td>09/26</td>
<td>KCBF Pig Roast Fundraiser</td>
<td>6:00 p.m.</td>
<td>Hickory Knolls Discovery Center, St. Charles</td>
</tr>
</tbody>
</table>

**ATTENTION KCBA MEMBERS!**

ONE OF YOUR MEMBER BENEFITS IS THE USE OF OUR OFFICE CONFERENCE ROOMS AT NO CHARGE!
PLEASE CALL 630-762-1915 TO RESERVE A ROOM.
YOU’RE INVITED TO A

PIG ROAST

FRIDAY
SEPTEMBER 26, 2014
6:00 P.M.

KANE COUNTY BAR FOUNDATION FUNDRAISER

REGISTER ON PAGE 28!

HICKORY KNOLLS DISCOVERY CENTER, ST. CHARLES

Proceeds will benefit the many programs funded by the Kane County Bar Foundation, Inc.

Includes Dinner, Beer, Wine & Soft Drinks and Music by DisBard!
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