April 2013 Vol. 57, No. 5

ILLINOIS STATE BAR ASSOCIATION

YLD News

The newsletter of the Illinois State Bar Association's Young Lawyers Division

Board of Governors accepts Law School Debt Report—Assembly to consider in June

By John E. Thies, ISBA President

One of the ISBA's top priorities this year concerns the problems newer lawyers are facing with their law school-related debt. Since the fall, our *Special Committee on the Impact of Law School Debt on the Delivery of Legal Service* has taken serious steps to help the Association play a constructive role in addressing this crisis (recognizing that we are just one state, and this is a national problem). This has included the hearings held by the Special Committee (under the leadership of Justice Ann Jorgensen and Dennis Orsey) in each of the five appellate court districts. At these hearings, our Special Committee listened to a wide-range of individuals as to their "front line" experience, including private attorneys in small, medium, and large firms, government attorneys, public defenders, legal aid lawyers, law students, judges, law professors, and law school deans. In addition the Special Committee heard testimony from representatives of the Illinois Attorney Registration and Disciplinary Commission ("ARDC"), the Illinois Board of Admissions to the Bar, and the Lawyers' Assistance Program. The Special Committee has also received written submissions from about a dozen other lawyers and law students—and engaged in other research.

Our committee has now completed its report, and on March 8, 2013, the Board of Governors voted overwhelmingly to accept it and recommended its adoption by the 203-member ISBA Assembly in June. I encourage all members of the Young Lawyers Division to access this report at <http://iln.isba.org/blog/2013/03/12/isba-board-accepts-report-calling-law-school-reform-limit-student-debt> and offer any comments. The YLD's perspective on this is very important!

Continued on page 7

Young lawyers across Illinois make big difference in fight against hunger

By Heather Pfeffer

In between writing briefs, covering court calls and billing hours, young lawyers in Illinois accomplished something big this past month: they provided more than 2,800 meals for hungry families. The Young Lawyers Division made this possible by participating in the ISBA's Lawyers Feeding Illinois campaign. Several months ago, President Thies announced the campaign as a way for Illinois lawyers to join forces and fight the hunger epidemic in our great state. The statistics are staggering: over 1.9 million people in Illinois struggle with hunger on a daily basis. President Thies called on lawyers to band together and raise money and food to help those who need it most. The campaign officially ran from February 18th through March 1st and consisted of competing teams all across Illinois. In addition to spearheading teams at their respective firms and bar associations, young lawyers answered the call by forming their own team, collecting food and raising $575. When placed in the resourceful hands of local food banks, this translates to 2,875 meals and peace of mind for a lot of people who worry about where their next meal will come from. ■

INSIDE

IF YOU'RE GETTING THIS NEWSLETTER BY POSTAL MAIL AND WOULD PREFER ELECTRONIC DELIVERY, JUST SEND AN E-MAIL TO ANN BOUCHER AT ABOUCHER@ISBA.ORG

More things you never learned in law school

By Bradford L. Bennett

The most memorable remark said to me upon being congratulated for passing the bar was by my uncle, a California personal injury attorney. He said, "You won't know your a** from a hole in the ground until you've been practicing law for at least five years." His eloquent comment obviously did not mean I would be suddenly enlightened after practicing for five years, but really there is an extreme learning curve that all new attorneys must endure that does not end with law school.

Similarly, all new attorneys have the revelation that although law school taught us the law, it did not teach us how to actually practice law. If it did, there would be courses taught on how to handle overly aggressive opposing attorneys, untruthful clients, and office politics. Until that occurs, new attorneys are frequently left to fend for themselves.

These esoteric areas of the law practice are ultimately learned by most new attorneys by trial and error. As someone who has recently surpassed that five year milestone, I am, at least according to my uncle, able to find my…you know. The following are some suggestions you may find helpful that are not unique to any particular area of law, but those that I wish I had known before starting my career.

most of the problems new attorneys encounter are universal.

1. Ask the stupid question

We have all been there before. We have just started a new job, the supervising attorney gives us an assignment, and we eagerly say "no problem." However, there is a problem; we have no clue how to complete the assignment. We then do the opposite of what we should. We ask everyone in the office what to do, other than our supervising attorney of course. Invariably, we waste time and usually produce something not quite requested. The problem is obvious; we don't want our supervising attorney to think we are stupid for not knowing where to start. We don't want them to have second thoughts about hiring us.

As someone who has been on both sides of this dilemma, I believe the problem is largely imagined. When I give an assignment to another attorney, law clerk, or paralegal to complete, I simply want them to complete it. I'm not trying to "hide the ball" or setting someone up for failure. We are all on the same team. So if you don't know where to start, save yourself the frustration and ask questions. The problem only gets compounded the longer you wait.

I try to tackle this issue head on with all new staff and tell them that there are no stupid questions. I'd rather spend ten extra minutes explaining an assignment than receive something I did not ask for several hours later.

2. Delegate tasks

Many new attorneys rarely delegate tasks to their support staff. Invariably, they get swamped and their work product suffers. If there is no shortage of work and you are fortunate to have a legal secretary, paralegal, or law clerk, utilize them. If your support staff is older and/or more experienced than you and it feels strange delegating work to them, you must get over that very quickly because you are only limiting yourself. In our firm, our support staff plays an integral role in mentoring new attorneys about office policy and procedure. The last complaint from my paralegal was that she wanted more complicated work to do. If everyone could be so lucky!

3. Sourcing clients

Invariably, most attorneys are expected to generate their own business by sourcing clients. It can be exhilarating and very flattering when a potential client says they want to retain you. I myself have been blinded by the obvious pitfalls in a potential client's case simply because they were willing to sign the retainer.

Use the initial consultation or telephone call as a chance to interview and screen the client as much as they are you. Remember, your firm is a business from which you get paid. Unless you enjoy working for free, if the potential client cannot afford your services, or is otherwise not a good fit for your firm, you must be cognizant of that and decline representation of that client.

Continued on page 4

YLD News

Published at least four times per year.

Annual subscription rate for ISBA members: $20.

To subscribe, visit www.isba.org or call 217-525-1760

Office
Illinois Bar Center
424 S. Second Street
Springfield, IL 62701
Phones: 217-525-1760 OR 800-252-8908
www.isba.org

Co-Editors
Debra Liss Thomas
Douglas F. McMeyer

Managing Editor/Production
Katie Underwood
kunderwood@isba.org

More things you never learned in law school

Continued from page 2

Our firm charges for our initial consultations. Therefore, I always try to talk to potential clients on the phone before the consultation for about five minutes simply to make sure we are not wasting each other's time and money.

4. Managing client expectations

Although applicable during the initial consultation, managing client expectations is an ongoing process that may change as the case progresses. You must determine if your client's expectations of their case bears any resemblance to reality. You cannot be shy about lowering your client's expectations should the circumstance warrant. All too often I see a client yelling at their attorney in the hallways of the courthouse shouting, "You told me this wouldn't happen!" After fully discussing the client's legal options, if you and the client's expectations continue to differ greatly, you should decline the case or be willing to withdraw from representation.

5. Know when to settle or get out of the case

I believe many attorneys, by their very nature, are competitive, aggressive, and hate to lose. This is especially true for new attorneys. They are out to prove themselves and especially do not want to appear weak because they are new or young. Additionally, to some decree, most if not all attorneys take their clients and cases personally. It is only natural that you want your client to prevail. So it is extremely disappointing when your client abruptly wants to concede an issue or the whole case to the other side against your advice. The motivation may be monetary, not setting proper expectations, or it may be known only to your client. In any case, you have a decision to make; do you settle or do you withdraw from representation? The answer of course has to do with the severity and circumstances. At the very least, the client must acknowledge in writing that their decision was against your advice, was not made under duress, and is voluntary. At the very worst, you must withdraw from the case. In either event, you must avoid a disgruntled client from claiming that you falsely gave them advice that you did not, after they themselves made a poor decision.

6. Integrity

Merriam-Webster's dictionary defines the word "integrity" as the "firm adherence to a code of especially moral or artistic value." Upon entering the work force as a new attorney, you've taken professional responsibility in law school, passed the MPRE, and taken the oath at your swearing in ceremony. You will simply tell the truth and not sleep with your clients. Easy enough. However, clients frequently and bluntly ask me if they can misrepresent or omit the truth. Even the ones you least suspect.

I try to nip this one in the bud with clients during the initial consultation and throughout my representation of them. Clients commonly sugarcoat their case for you so you empathize with them, like them, and to make you think they have a stronger case than they actually do. The problem is that the opposing party knows the case, and will surely expose any misconceptions or omissions. Therefore, I play devil's advocate with my client asking them to point out any weaknesses they have, or strengths the other side may assert. I tell them any weaknesses their side may have will ultimately come out and it is better to identify all weaknesses now to address and mitigate them.

For an upcoming deposition, hearing, or trial in which the client will be called to testify, they will ask you how to response to a particularly detrimental topic or line of questions. What they are really asking you is for your permission for them to stretch the truth. Instead work on mitigating the damage or if you are representing the moving party, bring up the unfavorable topic in your case-in-chief first. Your must always advise your clients to tell the truth or you will have to stop the deposition or hearing.

When having these delicate conversations with my clients, I will memorialize my advice (to tell the truth) in an e-mail to further protect myself. Remember, the legal community is small. You will come across the same attorneys and judges repeatedly. You do not want to be branded as an unethical attorney by your colleagues and judges as we all quickly learn who these attorneys are.

Opposing attorneys can be another source of frequent hostility. The limits of civility will often be tested not by your clients, but by the behavior of opposing attorneys. It has become common practice to placate one's clients by sending an incendiary letter to the opposing attorney. I advise to not be baited by engaging in this behavior, much to the likely dismay of your own client. You can remain professional while aggressively advocating for your clients. I have learned that such negative behavior is often an indication of a weak case.

7. Mentorship & sounding boards

New attorneys need someone who is readily available to mentor them. Law schools do not teach the practice of law. For the vast majority of us it is learned on the job. New attorneys are not expected to know the intricacies of the practice. Therefore, it is imperative that every new attorney have a mentor to ask questions and seek advice. If that person is not your boss or senior associate, various bar associations have mentorship programs with willing senior attorneys in your practice area looking for someone to mentor. Take advantage.

Do not be an island at the office toiling away trying to solve every problem you encounter yourself. I frequently seek out my colleagues to round tables ideas and possible courses of action to take in my more difficult cases. By vocalizing thoughts and exchanging ideas from different perspectives, I just as frequently leave these impromptu meetings with valuable insight. However, it is a two-way street. You must unselfishly make time for colleagues expecting to do the same.

This list is by no means exhaustive. I am sure wherever your practice, there are further dilemmas unique to your field and law firm. However, most of the problems new attorneys encounter are universal. It is my hope, that after reading this article, the five-year learning curve so eloquently stated by my uncle becomes only more shorter for you. ■

Find out more...

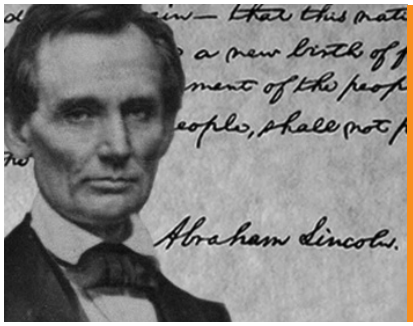
Check out the ISBA's redesigned Practice Resource Center, including the section on Things they Didn't Teach in Law School, at <isba.org/practiceresourcecenter>.

Sponsored by and for members of the Young Lawyers Division

ILLINOIS STATE BAR ASSOCIATION

Announcing the 2014

$3,500 in prizes!



Lincoln Award Legal WRITING CONTEST

THE LINCOLN AWARD CONTEST offers you a chance to enhance your reputation as a lawyer and earn cash at the same time. And whether your manuscript is a winner or not, it will be considered for publication in the Illinois Bar Journal.

WINNERS RECEIVE:

***1st place* – $2,000, *2nd place* – $1,000, *3rd place* – $500.**

Each winner will also get an attractive Lincoln Award plaque.

Your manuscript will be rated by a distinguished review panel of practicing lawyers, law professors or judges.

The ALA Contest is open to all ISBA lawyer members under 36 years of age on July 1, 2013 or admitted to the bar fewer than five years as of that date. ISBA law student members who are admitted to the bar on or before Dec. 31, 2013, are also eligible to enter.

All participants must file a notice of intent to enter the competition by July 15, 2013.

Contest rules and an entry form are at www.isba.org/ibj

If you have questions, contact Jean Fenski at jfenski@isba.org
217/525-1760 or 800/252-8908

New Supreme Court Rule on juror questions presents opportunities for trial lawyers

By Daniel Thies

Lawyers have few opportunities to get inside the mind of jurors, who traditionally remain a black box until the verdict. The Illinois Supreme Court recently provided a rare window into that black box through the promulgation of Illinois Supreme Court Rule 243, which became effective July 1, 2012.

The rule provides that "[t]he court may permit jurors in civil cases to submit to the court written questions directed to witnesses." Although some trial judges previously allowed juror questions in some circumstances, the new rule ensures that doing so is not reversible error, at least so long as the trial judge follows the procedures in the rule. As a result, lawyers in Illinois courts will now encounter the procedure with more frequency.

Many lawyers may approach the new procedure with skepticism, fearing that juror questions will take up too much time, that jurors will ask improper questions, and that jurors will become advocates or usurp the attorneys' adversary role. Fortunately, Illinois is somewhat late to adopt this procedural innovation. Over half of all states and every federal circuit endorsed the practice before Illinois, providing a wealth of experience discrediting those fears and providing guidance to attorneys who wish to take advantage of the new procedure to make their cases more persuasive.

For example, the New York Committee on Juror Questions gathered data from surveys of lawyers, judges, and jurors in 74 trials. Far from delaying trials, the Committee found that only about one-third of jurors asked questions, and most only asked one or two, leading to 2.5 juror questions and an extra ten minutes per civil trial. The survey also found that attorneys did not think that jurors were becoming advocates or preventing them from presenting their case in the manner they deemed appropriate.

Significantly, jurors also rarely asked improper questions. Moreover, when jurors do ask a question prohibited by the rules of evidence, the judge and the attorneys gain a unique opportunity to modify the question and to steer the jury back on the right course. Rule 243, for example, provides that jurors can ask questions only at the end of the lawyers' questioning. The judge and the lawyers must confer over each juror question outside the presence of the jury before the question is asked. If there is an objection, the judge will rule on it and modify or exclude the question if necessary. Then, "the court shall advise the jurors that they shall not concern themselves with the reason for the exclusion or modification of any question submitted and that such measures are taken by the court in accordance with the rules of evidence that govern the case." The lawyers can then ask any follow-up questions they desire within the scope of the juror's question.

Jurors report more satisfaction with their experience as jurors when they can submit written questions.

Some judges will also take the opportunity to explain to the jury why the question is improper and why they need not concern themselves with the answer. For example, imagine that a plaintiff in a prisoner civil rights suit is on the stand testifying about his allegations that he was unconstitutionally beaten by a prison guard. After the lawyers' examination is finished, one juror asks the plaintiff what crime he committed to land himself in prison, information that the judge excluded in a motion in limine. The judge might take the opportunity to explain to the jury that the prisoner's crime is irrelevant for the purposes of the lawsuit because every prisoner enjoys the same constitutional rights, no matter how heinous his crime, and that the jury should not allow the prisoner's crime to influence its deliberations in any way. An astute plaintiff's lawyer should then pick up on this theme in closing, if the judge allows, to emphasize the importance of the constitutional rights that all prisoners enjoy. Jurors whose minds are wandering to inappropriate areas will then be focused on the relevant evidence.

Another benefit is that jurors will feel less of a desire to access the internet or social media sites to get their questions answered. In our digital age, jurors find it difficult to resist the itch to find relevant information on the Web. If the jurors can get their questions answered in court by submitting written questions to witnesses, they are less likely to look elsewhere.

Finally, jurors report more satisfaction with their experience as jurors when they can submit written questions. The jurors are likely to pay closer attention, knowing that they have the opportunity to participate. They also feel more engaged and often feel more satisfaction with the verdict they have reached after the trial.

Lawyers who confront the procedure of jurors submitting written questions need not be skeptical of the procedure. Instead, they should embrace it and be prepared to alter their trial presentation to account for the particular concerns of the jury in the box, as revealed by their questions. As a result, jury trials in the future will be a more interactive process.

Moreover, it is likely that the procedure may expand even further in the future. In February, the American Bar Association Young Lawyers Division Assembly adopted a proposal to amend the ABA Principles for Juries and Jury Trials to recommend that judges allow written juror questions in criminal trials, as well as civil trials (which the current Principles already recommend). If the ABA House of Delegates adopts the proposal in August, more states may begin to allow the procedure in criminal trials as well.

In short, juror questions are likely to become a standard part of the jury trial of the future. Every trial lawyer should be ready to take advantage of this unique window into the jury's thought process. ■

Board of Governors accepts Law School Debt Report – Assembly to consider in June

Continued from page 1

As was made clear at the hearings around the state, there can be little doubt that the debt burden of new attorneys is detrimental to the public's ability to access quality legal services. Reform of our system of legal education is clearly on the horizon, and I hope that our Association's work this year through our Special Committee will have a positive impact on ultimate changes.

I want to thank the many YLD members that participated in the Special Committee's activities this year—this includes the committee's reporter, YLD Council member Daniel Thies, and YLD chair Meghan O'Brien, whose testimony at the Chicago hearing was impactful. Again, please access the report at <http://iln.isba.org/blog/2013/03/12/isba-board-accepts-report-calling-law-school-reform-limit-student-debt> and give us your comments! ■

Every will needs a paragraph allowing for a supplemental needs trust

By Carl M. Webber and J. Amber Drew

In your morning mail is a letter from a client that includes an inquiry as to why her 35 year old bi-polar daughter no longer qualifies for SSI or Medicaid. In addition, the daughter has been given a formal notice to vacate her Section 8 housing.

After some inquiry, you find that she has too much money. Hardly a bad thing. But here, it's not so good. You are informed that your client's brother, who recently passed away, left $50,000 to each nephew and niece.

So, now your client's daughter has $50,000, but no SSI, no Medicaid and no apartment.

You call the attorney who drafted the uncle's Will. She says that it's not her fault, since at the time of writing his Will, she obtained an estate planning checklist that was filled out in full. No beneficiary was shown to be disabled. Unfortunately, that was then and this is now.

Imagine now the same scenario but it is your elderly mother, suffering from dementia, who has received the inheritance from her recently deceased brother. The same dire consequences might apply to her.

Any beneficiary can become disabled at any time. A Will speaks as of the future date of death and should protect beneficiaries who may become disabled during the time between the execution of the will and the death of the testator.

As shown in the example above, a gift to a disabled person can result in automatic disqualification from a number of well-known government assistance programs.[1] Even immediate reversal of the disqualification can still lead to the person being placed on long waiting lists to resume participation in the programs.[2]

Every will should include all the protection possible for those who may already be disabled as well as for those who might become disabled by the time of the testator's death. In all cases, a Will should include a paragraph that allows the Executor to set up Supplemental Needs Trusts, if, at the time of the death of the testator, any beneficiaries qualify under the Social Security Administration's definition of "disabled."

This requirement is in addition to the more traditional inquiry into whether any beneficiaries have any then current disabilities, which often results in the need to incorporate a Supplemental Needs Trust in the estate plan. All estate planning client-intake forms should elicit information about existing supplemental needs issues.[3]

For clients who have beneficiaries with current disabilities, the need for a Supplemental Needs Trust can be addressed in the client's will[4] or in either a testamentary or living trust[5]. The key is to assure that, if appropriate, upon the death of the grantor/testator, the share of the estate going to a disabled beneficiary is transferred to a supplemental needs trust.

It is not the goal of this short article to review the many details of drafting a Supplemental Needs Trust. Such considerations as assuring that it is truly "supplemental," avoiding an "ascertainable standard," determining whether the trust should be a "third-party trust" or a "self-settled trust" are for the client and the attorney to address.

Adding language to a Will, though, can reduce the risk of a beneficiary becoming disqualified for government assistance. A Will typically contains language that places a minor's share in trust. The Will should also include a provision addressing disability. Any provision for a particular client would have to be tailored to their particular circumstances. A sample provision follows:

ITEM __(in the GRANTING CLAUSE)

If any beneficiary hereunder is disabled at the time of my death, as defined below, my Executor shall distribute such disabled beneficiary's share according to ITEM X herein. The receipt of the trustee to whom such share is distributed shall be a complete discharge of my Executor,"

ITEM X PROTECTION OF DISABLED BENEFICIARY'S SHARE

Executor Authority Regarding Beneficiaries Receiving Certain Government Assistance. If the Executor reasonably believes that a beneficiary is receiving (or may receive) governmental benefits under the Supplemental Security Income Act ("SSI"), 42 U.S.C. §§1381 et seq., Medicaid, 42 U.S.C. §§1396 et seq., or other federal or state means-tested government benefit programs, then the Executor may, in the Executor's sole discretion, withhold any distribution due under this Will to or for such beneficiary and retain such distribution amount as a discretionary, non-support, spendthrift trust share for the benefit of such beneficiary. In the alternative, the Executor may establish a separate third-party supplemental needs trust for such beneficiary with such terms as the Executor/Trustee shall deem appropriate and qualify under all applicable rules and regulations in force at the time. It is my intent that any supplemental needs trust provide the maximum benefit to the beneficiary without the principal and/or income

Continued on page 9

An overview of the Federal CJA Panel

By Anthony A. Bruno

As new lawyers starting out in their careers, and often in their own firms, it is important to consider all avenues of available practice in order to gain legal experience, build a client base and grow your practice. One such avenue to consider is the Federal CJA Panel. Here is a peek into the system.

The System

Enacted in 1964, the Criminal Justice Act established a comprehensive system for appointing and compensating lawyers to represent indigent defendants in federal criminal proceedings. Today there are 80 authorized federal defender organizations across the United States serving 90 of the 94 federal judicial districts.

Each defender organization has a chief federal defender with a staff of federal employees. These organizations provide legal representation to roughly 60 percent of indigent federal defendants. Where a conflict of interest or some other factor precludes representation by a federal defender, the court appoints a member of its district CJA panel to represent the defendant. There are roughly 10,000 private "panel attorneys" across the United States who accept CJA appointments. In the four judicial districts without a federal defender, panel attorneys represent all defendants receiving court-appointed counsel.

Compensation

Currently, panel attorneys are paid $125 per hour in non-capital cases and $178 per hour where the death penalty is at issue. Additionally, panel attorneys are compensated for travel expenses. This is especially important to panel members not in major metropolitan areas. Where there is no federal jail near the district courthouse, the government often contracts with nearby county jails to house federal inmates awaiting trial. Traveling to and from these county jails can account for a significant percentage of the time expended defending a federal criminal case.

The Work

Membership in the CJA panel is limited in order to ensure each member attorney receives an adequate number of assignments to keep his or her skills sharp. Federal defense work is different from state court defending.

The feds rarely lose – that's the nature of getting to handpick most of your caseload. In the Central District of Illinois, the government has not lost a criminal case at trial in 14 years. With that reality, the work of a federal defense attorney is more concentrated on client counseling and negotiation of sentencing guideline factors, than it is on preparing for trial. But that doesn't mean you shouldn't defend your client and take a case to trial when you think it is appropriate. The toolbox of strategies, demands, and concessions one might bring to the negotiating table with an assistant state's attorney can often be left behind when negotiating with an AUSA. The Justice Department leaves little discretion with its attorneys to participate in the give-and-take customary of negotiations in the state court. If the AUSA believes the evidence would support a conviction for a higher level offense, or a companion offense, they are often discouraged from conceding it in the name of reaching a deal. Expediency and the need to plow through a heavy caseload seem almost irrelevant at the federal level. This prosecutorial posture, combined with a seemingly infinite government budget, and a winning streak older than YouTube and Facebook, dramatically narrows room for negotiation.

Cooperation

Cooperation plays a key role in negation of a federal criminal case. If the defendant cooperates with the United States, the AUSA will promise to make a motion at sentencing for a downward departure or downward deviation from the sentencing guideline range. U.S.S.G. § 5K1.1. This telegraphs to the judge that the defendant has provided useful information to the United States and encourages the judge to impose a sentence below the guideline range. As a practical matter, a "B" agreement with 5K1 paperwork is usually the best bet for a defendant looking to minimize his sentence.

Pleading Guilty

It's not a guilty plea in federal court, it's a "change of plea." It's 35 pages long and often takes two court appearances to get done. The first appearance is before a magistrate judge who reads 150 paragraphs into the record, stopping after each one to ask the defendant if he understands and agrees. If the magistrate judge is satisfied with the defendant's understanding and acceptance of the terms, the magistrate makes a recommendation to a district court judge to accept the agreement of the parties. The case is then assigned to a district court judge's calendar for acceptance of the recommendation.

There are two common types of plea agreements in federal court, "B" agreements [Rule 11(c)(1)(B)] and "C" agreements [Rule 11(c)(1)(C)].

> (c) Plea Agreement Procedure.
>
> (1) In General. An attorney for the government and the defendant's attorney, or the defendant when proceeding pro se, may discuss and reach a plea agreement. The court must not participate in these discussions. If the defendant pleads guilty or nolo contendere to either a charged offense or a lesser or related offense, the plea agreement may specify that an attorney for the government will:
>
> (A) not bring, or will move to dismiss, other charges;
>
> (B) recommend, or agree not to oppose the defendant's request, that a particular sentence or sentencing range is appropriate or that a particular provision of the Sentencing Guidelines, or policy statement, or sentencing factor does or does not apply (such a recommendation or request does not bind the court); or
>
> (C) agree that a specific sentence or sentencing range is the appropriate disposition of the case, or that a particular provision of the Sentencing Guidelines, or policy statement, or sentencing factor does or does not apply (such a recommendation or request binds the court once the court accepts the plea agreement).

The majority of pleas are resolved with "B" agreements, which require the defendant to plead guilty with virtually no agreement beyond the sentencing guideline range. Defendants are willing to do this because they receive credit for pleading guilty and the government often rewards that further by agreeing not to object to the defendant's sentencing recommendation within the guideline

Continued on page 12

Every will needs a paragraph allowing for a supplemental needs trust

Continued from page 7

of the trust being available to the beneficiary for the determination of the beneficiary's continued eligibility to receive such governmental assistance programs. If any such trust is created for the life of a beneficiary, then upon the death of such beneficiary, the trust shall be distributed to the beneficiary's issue, if any, per stirpes, or if there are no such issue, to the Settlor's issue, per stirpes. If such a trust for the beneficiary cannot be established, then the Trustee may create a first-party supplemental needs trust for the beneficiary pursuant 42 U.S.C. §1396p(d)(4) which, to the extent possible, provides the benefits referenced above for a third party trust. However, in the case of a self-settled trust, the contingent beneficiary shall be as then required by all applicable laws and regulations. No trust created hereunder is to be considered a "Medicaid qualifying trust" as that term is defined at P.L. 99-272, §9506 (42 U.S.C. §1396(a) (k)).

In the best case, this will allow a newly drafted third party Supplemental Needs Trust to receive the share for a disabled beneficiary. If that is not allowed, then, at least, the Executor should be allowed to create a first-party, self-settled, supplemental needs trust for the beneficiary.

This general paragraph is not a substitute for specific estate planning that addresses known needs of a beneficiary who is disabled at the time the document is drafted. It is planned to avoid the dire consequences of a later disability.

Not for everyone? Only a few can say that they are sure they will never need the kind of governmental support referenced in this article. But, even for them, placing funds into a Supplemental Needs Trust should not be expected to have adverse consequences. A proper trustee of a Supplemental Needs Trust should not be unduly restrained in caring for a beneficiary who, it turns out, is never in need of these benefits. ■

Carl M. Webber (cwebber@webberthies.com) is a shareholder at Webber & Thies, P.C., in Urbana, Illinois, and his practice emphasizes the areas of commercial and real estate law, as well as commercial litigation, real estate litigation and real estate tax appeals. In addition, he has been active in the areas of estate planning and special needs trusts. His work in business development includes the construction of both electrical power and alternative energy facilities.

J. Amber Drew (adrew@webberthies.com) is an associate at Webber & Thies, P.C. in Urbana, Illinois, and specializes in guardianship, estates and trust law.

1. *See* 89 Ill.Adm.Code 120.308, et seq. (establishing eligibility for medical assistance generally.) and 89 Ill.Adm.Code 120.384 (spend-down rules). *See also* 89 Ill.Adm.Code 120.381 (inheritance is not exempt from the category of "resources" and thus counts towards excess resources); 89 Ill.Adm. Code 120.388(d)(3)(B) (waiving an inheritance triggers period of ineligibility under the look-back provision). For social security issues, see 20 C.F.R. §404.415 (deductions from disability benefits due to excess earnings). *See also* 20 C.F.R. §404.430 and §404.434 (excess earnings). Note, however, that the disqualification limits for Medicaid differ for income versus assets. Considered income the month it is received but assets thereafter, it is possible that an inheritance might only disqualify a beneficiary for one month – a potentially palatable option.

2. Statistics in a 2010 Minnesota court case highlighted that disqualification from a program, even when immediately corrected, could lead to a disabled beneficiary being disqualified from aid and placed on a three-year waitlist to get back into that crucial programs, *In re Sabrina M. Schultz*, 368 B.R. 832.

3. Ignore disability issues at your peril – disqualifying a client's child, grandchild, or even elderly parent from valuable aid may trigger a malpractice suit. A malpractice suit was successfully brought Maine against a lawyer who failed to create a special needs trust when he should have and resulted in the impairment of benefit qualification for a beneficiary. (Board of Overseers of the Maine Bar v. Brown, SJC-01-06 (Oct. 25, 2002).

4. In addition to the supplemental needs language discussed in this article, clients may want to consider including guardianship language pertaining to their child with disabilities. (See, e.g., 755 ILCS 5/11a-16) Note that this should not unduly restrain the powers of a guardian existing at the time of the client's death because the provision only becomes effective when that existing guardian cannot continue to serve.

5. See e.g., §15.1 of the Illinois Trust and Trustees Act (760 ILCS 5/15.1).

Upcoming CLE programs

To register, go to www.isba.org/cle or call the ISBA registrar at 800-252-8908 or 217-525-1760.

May

Friday, 5/3/13 - Moline, Stoney Creek Inn—Civil Practice and Procedure Update - 2013. Presented by the ISBA Civil Practice and Procedure Section. All Day.

Saturday, 5/4/13 – Oak Brook, The Hyatt Lodge at McDonald's Campus—DUI, Traffic, and Secretary of State Related Issues. Presented by the ISBA Traffic Laws/Courts Section Council. All Day.

Tuesday, 5/7/13 - Chicago, ISBA Regional Office—Legal Considerations for Entrepreneurs, Founders and Startups. Presented by the ISBA Intellectual Property Section. 8:30 AM – 4:30 PM.

Tuesday, 5/7/13 - Live Webcast—Legal Considerations for Entrepreneurs, Founders and Startups. Presented by the ISBA Intellectual Property Section. AM Session 8:30 AM – 12:00 PM, PM Session 1:00 - 4:30 PM.

Tuesday, 5/7/13 – Webinar—Introduction to Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 1:30 – 2:30 p.m. CST.

Tuesday, 5/7/13- Teleseminar—Choice of Entity for Service-based and Professional Practice Business. Presented by the Illinois State Bar Association. 12-1.

Wednesday, 5/8/13 - Chicago, ISBA Regional Office—Settlement in the Federal Courts. Presented by the ISBA Federal Civil Practice Section. 12:00 Noon – 4:30 PM.

Wednesday, 5/8/13- Teleseminar—Ethics and the Use of Metadata in Litigation and Law Practice. Presented by the Illinois State Bar Association. 12-1.

Thursday, 5/9/13 - Webinar—Advanced Tips for Enhanced Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 1:30 – 2:30 p.m. CST.

Friday, 5/10/13 - Chicago, Bilandic Building—Ethics Extravaganza - Chicago Live 2013. Presented by the ISBA Standing Committee on Government Lawyers. 12:45-5pm.

Friday, 5/10/13 - Lincolnshire, Lincolnshire Marriott—General Practice Update 2013: Suburban Regional Event. Presented by the ISBA General Practice, Solo & Small Firm Section. 8:45 a.m. – 5:00 p.m. CLE Program. 5:30 p.m. – 7:00 p.m. Complimentary Reception Following (RSVP required).

Monday 5/13/13 – Chicago, ISBA Regional Office—Achieving Diversity in Your Law Firm: Business Advantage and Best Practice. Presented by the ISBA Racial and Ethnic Minorities Section; Co-sponsored by the ISBA Sexual Orientation and Gender Identity Section; the ISBA Business and Securities Law Section; the ISBA Diversity Leadership Council; ISBA Standing Committee on Women and the Law Chicago Committee on Minorities in Large Law Firms and the Chinese American Bar Association. 12:30 pm. – 4:30 pm. 4:30 – 6:00 Reception.

Tuesday, 5/14/13- Teleseminar—Estate Planning for Education and Gifts to Minors. Presented by the Illinois State Bar Association. 12-1.

Wednesday, 5/15/13 - Springfield, INB Conference Center—More Issues for the Local Government Attorney. Presented by the ISBA Local Government Law Section. 8:30-1:00.

Wednesday, 5/15/13 – Chicago, ISBA Regional Office—Staying Out of Trouble: Avoiding Sexual Misconduct and Mismanagement of Client Money. Presented by the ISBA Standing Committee on the Attorney Registration and Disciplinary Commission (ARDC). 9:00 – Noon.

Wednesday, 5/15/13 – Live WEBCAST—Staying Out of Trouble: Avoiding Sexual Misconduct and Mismanagement of Client Money. Presented by the ISBA Standing Committee on the Attorney Registration and Disciplinary Commission (ARDC). 9:00 – Noon.

Thursday, 5/16/13 – Chicago ISBA, Regional Office—ISBA's Reel MCLE Series – Flight – Ethical Dilemmas. Master Series Presented by the ISBA. 1:00 – 5:15 pm.

Thursday, 5/16/13- Teleseminar—Attorney Ethics in Adding Lawyers to a Firm. Presented by the Illinois State Bar Association. 12-1.

Friday, 5/17/13 - Chicago, ISBA Regional Office—Mental Health Law- Some Basics and All That's New. Presented by the ISBA Standing Committee on Mental Health Law. 9:00 – 4:00.

Friday, 5/17/13 - Live Webcast—Mental Health Law- Some Basics and All That's New. Presented by the ISBA Standing Committee on Mental Health Law. AM Session 9-1; PM Session 1:30- 4:00.

Tuesday, 5/21/13- Teleseminar—Real Estate Development Agreements, Part 1. Presented by the Illinois State Bar Association. 12-1.

Wednesday, 5/22/13- Teleseminar—Real Estate Development Agreements, Part 2. Presented by the Illinois State Bar Association. 12-1.

Wednesday, 5/22/13 - Webinar—Introduction to Boolean (Keyword) Search. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 1:30 – 2:30 p.m. CST.

Thursday, 5/23/13 - Chicago, ISBA Chicago Regional Office—More Issues for the Local Government Attorney. Presented by the ISBA Local Government Law Section. 9:00 – 1:30 (half day)

Friday, 5/24/13- Teleseminar—Independent Contractor Agreements- Live Replay from 1/11/13. Presented by the Illinois State Bar Association. 12-1.

Wednesday, 5/29/13- Teleseminar—S Corp & LLC Mergers, Part 1. Presented by the Illinois State Bar Association. 12-1.

An overview of the Federal CJA Panel

Continued from page 8

range. A "C" agreement has the benefit of being a known quantity, but the agreed sentence will almost always be higher than a sentence derived from a "B" agreement.

Why young lawyers should join the Panel

Membership in the CJA panel could make you a better lawyer. Not only is it a great opportunity to meet a whole new courthouse of judges, clerks, probation officers and others, but it is an opportunity to practice an entirely separate system of law. You also get better at building rapport with clients who have never met you, did not choose you, and may not trust you. If you are successful here, you will be successful in your private practice as well. The lessons you learn as a panel attorney can help you in every aspect of the practice of law.

There is a certain majesty about federal court that is inspiring to any young lawyer who finds himself there. Looking up at the unusually high ceilings designed to "reflect the solemnity of proceedings,"[1] you realize the judge you are talking to was appointed by a president, and confirmed by the Senate. Here, it is impossible to forget the serious nature of your work. Practice on the CJA panel has the not insignificant consequence of boosting a young lawyer's confidence as a multifaceted legal professional.

1. US Courts Design Guide. <http://www.wbdg.org/ccb/GSAMAN/courts.pdf>.

YLD News

Illinois Bar Center
Springfield, Illinois 62701-1779

February 2013

Vol. 57 No. 4

Non-Profit Org.
U.S. POSTAGE
PAID
Springfield, Ill.
Permit No. 820