THE
DECALOGUE TABLETS

SPRING 2023

THE DECALOGUE SOCIETY OF LAWYERS

JUSTICE, JUSTICE SHALL YOU PURSUE

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President's Column

by Hon. Myron F. Mackoff

I wanted to use this opportunity to talk to you about Passover. Passover has always been one of my favorite holidays. It follows the traditional Jewish holiday theme of "they tried to kill us, they didn't, let's eat." It is essentially Jewish Thanksgiving (also a favorite holiday). Besides the wonderful food, as a child I loved the holiday because it was home and family oriented and there was no need to sit through boring services. I remember *Seder* at my grandmother's house with the adults all around the large dining room table and the children relegated to the "Kiddie table." By the time I was eight, I had committed to memory the page on which the meal was served. I remember singing the four questions and *Dayenu* and hunting all around my grandmother's house for the *afikomen*. At that time, it was primarily family involved in the seder. I also remember locking up all the *chametz* in a cabinet and taking peanut butter and jelly on *matzah* as my school lunch. I remember the Manischewitz chocolate cake and the jelly slices.

As I grew older, my parents took over hosting duties. The people involved changed. It was still primarily family but with many friends, both Jewish and non-Jewish invited. I was still seated at the kiddie table. It was always a fascinating mix of people. Lawyers and judges, of course, but so many others. Monsignor Ignatius MacDermott ("Father Mac") was a regular at the *seder* table. He always brought a flaky pastry with him (which my mother quietly put to the side and gave away the next day or sent home with a guest who was not keeping kosher for Passover). Around that time, I realized that my parents' *seder* was a teaching opportunity. For all the non-Jewish attendees, it was a chance to participate in a ritual that has existed for thousands of years. For our Christian friends it was a chance to see what may have transpired during the Last Supper. Thanks to our wonderful humanist *Haggadah*, it was a chance to read relevant quotes from Albert Einstein and Anne Frank about the Jewish experience, good or bad, and to reflect on what it means to be a Jew in the world: why we mourn, why we celebrate. I loved the idea of sharing my favorite holiday with people who have never experienced it.

My favorite Passover memory from this time involves my grandmother. Her main contribution to the *seder* was a wonderful fluffy carrot cake about which everyone raved. I usually had 2 or more slices. Her recipe was a secret. After she passed, we learned that her secret ingredient was flour. She was more concerned about making something that people loved than keeping it kosher for Passover. I miss her and I miss that cake.

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Friendly Contempt: The Only Contempt Finding You Ever Really Want

by Alon Stein

You are ordered to turn over certain documents, pursuant to a Motion to Compel Production. However, in good faith, you do not believe that the discovery ruling made was correct. What can you do to protect your client's interests? You can ask the court to please hold you and your client in contempt of court. What? Why would anybody, much less a lawyer, ask to be held in contempt of court? Because the contempt order would be a "friendly contempt" order. But how can contempt of court ever be friendly? Isn't friendly contempt of court an oxymoron? Enter Illinois Supreme Court Rule 304(b)(5).

Supreme Court 304(b)(5) allows litigants the procedural mechanism by which they can challenge the discovery ruling, by asking the Court to find the litigant and its counsel in "friendly contempt," and by entering a nominal and symbolic sanction of one dollar ($1.00). Specifically, to challenge a discovery order, litigants can file a motion respectfully requesting, pursuant to Illinois Supreme Court Rule 304(b)(5) for the Circuit Court to hold them and their counsel in friendly civil contempt of court and to impose a nominal fine of $1.00 (USD), in order to allow them to take an immediate interlocutory appeal from the Court's discovery order. While it may seem counterintuitive to be asked to be held in contempt, the "friendly contempt" practice was codified in December 1993 when Supreme Court Rule 304(b) was amended to expressly provide for appeals of contempt orders. That amendment, contained in subpart (5) of Illinois Supreme Court Rule 304(b), simply states:

> Judgments and Orders Appealable Without Special Finding. The following judgments and orders are appealable without the finding required for appeals under paragraph (a) of this rule: ...(5) An order finding a person or entity in contempt of court which imposes a monetary or other penalty.

The Illinois Supreme Court has blessed the fact that obtaining a friendly contempt finding and then appealing is the proper way to challenge the correctness of discovery orders. In *Norskog v. Pfiel,* 197 Ill. 2d 60 (2001), the Illinois Supreme Court set forth the procedural framework in which an appeal can be taken from a discovery order, stating in relevant part (emphasis added):

> As noted above, an interlocutory appeal was initiated in the appellate court, pursuant to Supreme Court Rule 304(b)(5), after defendant refused to comply with the trial court's discovery orders, were held in contempt, and were sanctioned. Because discovery orders are not final orders, they are not ordinarily appealable. [citations omitted] However, it is well settled that the correctness of a discovery order may be tested through contempt proceedings. [citations omitted] When an individual appeals contempt sanctions imposed for violating or threatening to violate, a pretrial discovery order, the discovery order is subject to review. [citations omitted]. Review of the contempt finding necessarily requires review of the order upon which it is based.

Thus, both case law and Supreme Court Rule 304 (b)(5) make it is clear that an appeal of a friendly civil contempt order is the appropriate method for testing the correctness of a discovery order. *See* Supreme Court Rule 304(b)(5); *Lewis v. Family Planning Management, Inc.*, 306 Ill. App. 3d 918, 922-23 (1st Dist. 1999); *Allianz Ins. Co. v. Guidant Corporation*, 373 Ill. App. 3d 652, 677-78 (2d Dist. 2007); *Illinois Emcasco Ins. Co. v. Nationwide Mut. Ins. Co.*, 393 Ill. App. 3d 782, 785 (1st Dist. 2009); *Cangelosi v. Capasso*, 366 Ill.App. 3d 225 (2d Dist. 2006); *In re Marriage of Nash*, 2012 IL App (1st) 113724; *Dufour v. Mobil Oil Corp*., 301 Ill. App. 3d 156, 162 (1998).

The discovery order is reviewed when the contempt order is appealed because the discovery order which led to the sanction must necessarily also be reviewed. *Almgren v. Rush-Presbyterian-St. Luke's Medical Center*, 162 Ill. 2d 205, 221 (1994). *See also Allen v. Peoria Park District*, 2012 IL App (3d) 110197 (holding that a request to be held in contempt and the imposition of a nominal fine is the appropriate procedure to allow counsel to contest a trial court's discovery order).

As a practice pointer, when asking for a friendly contempt, one should remind the Court that the contempt request is being made solely to preserve the rights to challenge the discovery order on appeal. In the motion, the movant should state that consistent with *Norskog v. Pfiel* and Illinois Supreme Court Rule 304(b)(5), it respectfully declines to comply with the discovery order and requests to be held in "friendly" civil contempt with an award of a nominal sanction of $1 in order to take an immediate appeal from the discovery order at issue. The movant should state in the motion that if left uncorrected, the discovery order would deny the movant of its right to obtain an immediate appeal on this issue.

Further, the movant should also argue that the Motion for Friendly Contempt is not meant to disrespect the Court or the Court's orders, nor to delay the proceedings. Rather, to the contrary, that the movant has the utmost respect for the Court and that the motion for a finding of "friendly contempt" is being brought because the attorney believes that it is his or her ethical duty to zealously represent the movant and this is the proper procedure for testing the correctness of a discovery order. *See In re All Asbestos Litigation*, 385 Ill.App. 3d 386 (4th Dist. 2008) (The trial court granted the motion to compel discovery and entered an order of "friendly contempt," with a penalty contempt citation of $1 as a friendly contempt, and appeal was the proper procedure for testing the correctness of the discovery order); *Cangelosi v. Capasso*, 366 Ill. App. 3d 225 (2d Dist. 2006); *In re Marriage of Nash*, 2012 IL App (1st) 113724; *Dufour v. Mobil Oil Corp.*, 301 Ill.App.3d 156, 162 (1998). Finally, after the appeal, or if the discovery issue is resolved prior to an appellate court ruling, one should probably seek to vacate the contempt finding, even though it was a "friendly" finding.

In sum, litigators should not forget that Supreme Court Rule 304(b)(5) allows a mechanism for interlocutory Appellate Court review of the Circuit Court's discovery orders. While the term "contempt" must be included in the order to be appealed, obtaining a friendly contempt finding is the proper, and only, procedure for getting interlocutory appellate review of discovery orders. Because it is civil procedure mechanism that is approved by the Illinois Supreme Court if properly used in good faith, it is important that every litigator become familiar with this rule.

Alon Stein practices business law and is licensed in Illinois, Wisconsin, and Arizona. This article is dedicated to the memory of his father, Meyer Ben Shalom Eliyahu v' Shoshana, Z"L.

President's Column *(cont'd)*

That brings us to about seven or eight years ago. Joel Chupak was the president of Decalogue, and I was relatively new to the Board. At a CBA event, he and I were talking about Passover with Celestia Mays, then president of the Cook County Bar Association. Because of Ms. Mays' interest in the holiday, I asked Joel if Decalogue ever hosted a *seder* and invited our colleagues from other bar associations. He remembered that we had done it in the past but, for whatever reason, we were not currently doing one. With Joel's help and a promise of support from the CCBA, I went about trying to recreate my seder experience for our colleagues in the legal community. Thus, the model *seder* was (re)born. In the early years, the costs were low, and we did not charge for the event. I am happy to say that, with Justice Hyman as our *Seder* leader, this has become one of our most popular events. We have grown dramatically over the last few years, pandemic notwithstanding. I have even been able to add a unique element from my home seder to the Model Seder. If you don't know what that is, you will have to come to the Model Seder and find out.

We have come a long way from the days when Aviva and I and a few volunteers were setting out *matzah*, parsley, and hard-boiled eggs on a couple of dozen plates in the small kitchen attached to the bank vault room under Helen Bloch's office. In some ways, we are victims of our success as our Model Seder has become one of the more popular events that Decalogue sponsors, in conjunction with the CCBA and a rotating group of other bar associations. We have outgrown the Loop Synagogue space and because of the number of participants expected this year, we now have to charge for admission. Nevertheless, I am still proud of our ability to partner with other bar associations and provide this experience to anyone who wants to learn about our rituals and the reasons behind them. I hope everyone can join us this year.

And by the way, at 54 years old, with children of my own, I now sit at the head of the kiddie table. Change is slow but inevitable.

Decalogue President Myron F. Mackoff is an Associate Judge in the Domestic Relations Division, Cook County Circuit Court.

Contractor v. Employee: Dept. of Labor Proposed Employee Classification Rule

by Charles A. Krugel

Contractor v. employee violations occur in every industry. This is in part due to the regulatory processes in wage rates, labor agreements, and exemptions defining who is and who isn't an independent contractor.

To paraphrase a genial and genuinely funny former U.S. President, I'm from the government, and I'm here to help! This article analyzes a new government attempt to help society and the economy by improving guidance on employment relationships and minimizing the impact of wage and hour evaders. A typical case can cost an employer thousands to hundreds of thousands of dollars and costs taxpayers billions in lost tax revenues annually. According to the IRS, the government loses approximately one trillion dollars annually from tax avoidance and evasion tactics. Will it be successful? For now, it's a 50/50 call.

What's Happening

On October 13, 2022, the U.S. Department of Labor (DOL) proposed a new rule for the never-ending employment conundrum concerning the independent contractor v. employee classification—1099 v. W2. At the federal level, these rules interpret the Fair Labor Standards Act of 1938 (FLSA). The FLSA is the preeminent law governing wage and salary classifications and overtime. Many states, and even some municipalities, have their own laws. Some of these laws mirror the FLSA's definitions, while some have their own distinct definitions. In other words, they may weigh some factors more than others, exempt certain industries, or give greater deference to different factors than those assessed by the DOL. Like previous proposed rules and guidance, this new rule intends to clear up ambiguity and confusion among businesses, employees, and the public in general, while maintaining currency with our maturing gig economy. And just like current and previous rules, businesses and employees will search for loopholes to avoid employment taxes and overtime. Thus, this repeated cycle of hairsplitting explanations, updated guidance, and evolution in enforcement. As a labor and employment lawyer representing business, I've met few employers who want to pay payroll and employment-related taxes and overtime. This is why so many employers utilize (try never to say "hire") independent contractors, right? On the other hand, the government wants to catch, punish, or rehabilitate tax scofflaws, deter future evasion schemes, and recover lost tax revenue.

Background About the New Contractor v. Employee Classification Rule

The DOL estimates that there are 22.1 million independent contractors. Most will be affected by this proposed rule. According to the DOL, the industries with the highest number of independent contractors are the professional services and construction industries. In my opinion, most contractor v. employee violations occur in the construction industry. This is in part due to the labyrinthian regulatory processes in wage rates, labor agreements, and exemptions for certain subindustries wherein every level of government defines who is and who isn't an independent contractor. Furthermore, federal, state, and local agencies regulate classification—IRS, state unemployment compensation, or local and state wage and hour agencies. There are hardcore intentional evaders, but there's ample opportunity for businesses to make good-faith, honest mistakes that will cost thousands of dollars to resolve. A 2020 National Employment Law Project (NELP) report reviewed state audits and concluded that "state reports show that 10% to 30% of employers (or more) misclassify their employees as independent contractors." Much of what's enacted or implemented is based on DOL *fiat* and court rulings upholding USDOL guidance. The DOL's investigators, supervisors, and lawyers report what's happening in the field to agency heads. This information competes with information coming from businesses, lobbyists, special interest groups, and sometimes consumers. The DOL mixes it all up and either greatly influences or creates a typical sausage factory of legislation and rulemaking.

What's the DOL Proposing?

In the big picture, the same factors will apply to determining worker classification as was true under the Trump administration — ironic because Biden might be the most pro-employee president since LBJ. These factors are the control the principal has over their contractor and the contractor's ability to impact their own profit and loss. Can or does the contractor work for other principals? Can or does the contractor engage in marketing or advertising of services? To a lesser extent, and due to the ever-evolving nature of work, there are considerations of factors like work locations, tools used, and control over processes and methods. Now, as always, the focus is determining whether a worker is economically dependent on the client company or whether the worker is in business for themself. The DOL will consider the totality of the circumstances without much weight given to command and control or the importance of the work to the independent contractor's client (AKA *principal*). We're still splitting hairs, but hopefully, there are fewer split ends and less hair loss.

Keep in mind one essential precept in this analysis. In our Supreme Court and USDOLs' own words: "…there is in the [FLSA] no definition that solves problems as to the limits of the employer-employee relationship under the Act." Therefore, in articulating the distinction between FLSA-covered employees and independent contractors, courts rely on a broad, multifactor "economic reality" analysis derived from judicial precedent…The economic reality test focuses more broadly on a worker's economic dependence on an employer, considering the totality of the circumstances. *Rutherford Food Corp. v. McComb*, 331 U.S. 722, 729 (1947). If we drill down, the test focuses on five primary factors per *United States v. Silk*, 331 U.S.704, at 714–719 (1947):

(continued on next page)

Contractor v. Employee *(cont'd)*

1. how much control the employer has over the contractor
2. the contractor's opportunity for profit and loss (including their own investment in the business)
3. the degree of independent initiative required to work
4. the duration of the relationship
5. how integral the contractor's work is to the principal's business

However, unlike past rules, no single factor is given more credence than others. Thus, we get the totality of the circumstances analysis and how that relates to the aforementioned five factors. According to the DOL, the ultimate inquiry will be the contractor's reliance on the principal for income and work. This focuses on whether the contractor can accept or reject other work from either the principal or other customers, the ability to negotiate pay, and to what degree the contractor engages in marketing or advertising their services. To a lesser extent, you can add whether the contractor uses their own tools, supplies, and equipment, but these factors seem to be diminished due to increasingly remote work and decentralization of the workplace redefining the where, when, and how of work.

Can't We Just Codify Worker Classification?

There's one simple point that's always been an issue with this topic: Whether or not a controlling test should be codified within the FLSA. Arguably, codifying a common law test for the FLSA may create a more uniform legal framework among federal and even state and local laws and rules. This would probably reduce the number of tests and definitions used for worker classification and even for tax purposes. However, the DOL doesn't believe that codifying a uniform test will be effective because the Supreme Court has cautioned that other common-law tests contain "no shorthand formula or magic phrase that can be applied to find the answer, [as] all of the incidents of the relationship must be assessed and weighed with no one factor being decisive. *Nationwide Mutual Insurance Co. v. Darden*, 503 U.S. 318, 324–326.

A note about the DOL and its guidance: Among my colleagues and myself (including our Financial Poise panelists for the seven-part Protecting Your Employee Assets: The Life Cycle of the Employment Relationship), the DOL's website is a terrific source of information concerning federal, and sometimes state wage and hour laws. This is unsolicited praise. Public comments concerning the proposed rule were due by December 13, 2022. So far, the DOL has received more than 12,000 comments. It's expected that the final rule will be issued sometime during the first half of 2023.

What's an Employer to Do With This Information?

Here's some general and practical advice my colleagues and I regularly provide during seminars and media interviews, including Financial Poise's presentations:

- Keep accurate and easy-to-understand payroll and attendance documents. If you're in Illinois, keep these records for 10 years. If you're outside of Illinois, seven years is recommended. Here's the importance of record keeping:
- Recently, I obtained an early dismissal of a federal lawsuit by providing all employee payroll and attendance records to opposing counsel. I did this prior to the start of discovery. Once the employee's counsel reviewed those documents, they withdrew as counsel, and the lawsuit was dismissed because the employee never appeared or obtained new counsel. This cost my client around $6,000.
- Contrast this to another recently settled federal lawsuit. We had very little in recordkeeping to prove that the employee was either properly paid or correctly classified. All fees and backpay cost around $40,000. Even if we litigated this case and won, it would still have cost my client at least $40,000.
- Never arbitrarily classify employees and contractors.
- Just because something is an industry-wide practice/standard doesn't mean it's legal. Give greater deference to what the worker does and means to the business than to how things have always been done.
- Similar to the above, if the worker tells you that they prefer to be classified as one or the other, don't take their word for it. Again, always give greater deference to the work done, the worker's independence, and what this all means to the principal.
- Few businesses get away with tax and payroll dodges. We're always asked, "How do employers get caught?" Most of the time, a disgruntled current or ex-employee or the employee's friend blows the whistle on suspected illegal practices. That results in a full-blown investigation, a lawsuit, and payment of back taxes and penalties. On a more limited basis, some employers are randomly selected for audits by enforcement agencies. It doesn't matter who launches the investigation or lawsuit. Once the process starts, it's costly and time-consuming. Wage and hour law is an increasingly costly problem for businesses. Conversely, it's increasingly profitable for plaintiff-side attorneys. Try to pay attention to changes in rules and enforcement. When in doubt about worker classification or overtime, always consult a qualified professional.

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Want to write for the Tablets?

Decalogue members are encouraged to submit articles on topical legal and Jewish issues.

Contact the Editor with your article idea
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The Protect Illinois Communities Act – What it Does and How it Impacts Gun Laws in Illinois

by Jonathan Federman and Britanny Jocius

Illinois recently passed the Protect Illinois Communities Act. There are some important changes to consider as to how the new law will affect Illinois and its citizens. This new law has the potential to change current and established practices in a significant manner, and will require attorneys to prepare to advise clients both for criminal and civil matters. As such, attorneys should be prepared to understand how the law is likely going to affect commerce, criminal matters, and understand that the law may face significant constitutional challenges.

On January 10, 2023, Governor J.B. Pritzker signed Illinois General Assembly Bill, HB5855, also known as the Protect Illinois Communities Act (the "Act"). The Act amended five separate statutes to fall within newly implemented gun regulations, including: (1) the Illinois State Police Law of the Civil Administrative Code of Illinois; (2) the Firearm Owners Identification Card Act; (3) the Wildlife Code; (4) the Firearms Restraining Order Act; and (5) the Criminal Code of 2012.

This article seeks to break down the newly enacted changes and provide transparency in the policies' effects on gun owners and businesses. *See generally* 102nd General Assembly, State of Illinois, *HB5855* 2021-2022. Guns can have an enormous impact on society and therefore attorneys should be prepared to address the changes in the law in order to best advise clients, defend clients from criminal charges, advise clients in potentially civil litigation, and advise clients as to their constitutional rights. In short, the Act can influence most practices, whether criminal or civil.

I. Illinois State Police Law of the Civil Administrative Code of Illinois (20 ILCS 2605-35)

The Act amends the Illinois State Police Law of the Civil Administrative Code of Illinois. Specifically, the Act states that the Division of Criminal Investigation shall provide investigations of human trafficking, illegal drug trafficking, and illegal firearms trafficking. The amendment further provides that that the Division of Criminal Investigation shall provide statewide coordination and strategy pertaining to firearm-related intelligence, firearms trafficking interdiction, and investigations. This includes providing crime gun intelligence support for suspects and firearms involved in firearms trafficking or the commission of a crime involving firearms that is investigated by the Illinois State Police and federal, State, and local law enforcement agencies. The objective of these changes is meant to reduce and prevent illegal possession and use of firearms, firearms trafficking, firearm-related homicides, and other firearm-related violent crimes in Illinois.

II. Firearm Owners Identification Card Act (430 ICLS 65)

The amendment to the Firearm Owners Identification Car Act eliminates provisions that permit a person under 21 years of age who is not an active-duty member of the United States Armed Forces or the Illinois National Guard to obtain a Firearm Owner's Identification Card with parental consent. Now, under the new amendment, each applicant for a Firearm Owner's Identification Card must submit evidence to the Illinois State Police that the person is 21 years or over. If the person is under 21, he or she must be an active-duty member of the United States Armed Forces or the Illinois National Guard. The person must also never have been convicted of a misdemeanor other than a traffic offense or adjudged delinquent. The person must also re-submit up to date proof annually to the Illinois State Police until he or she reaches 21 years of age.

The Act provides amended grounds for denial and revocation of a Firearm Owner's Identification Card. The Illinois State Police can deny or revoke the Card from: (1) a person under 21 years of age who has been convicted of a misdemeanor other than a traffic offense or adjudged delinquent, or (2) a person under 21 years who is not an active-duty member of the United States Armed Forces or the Illinois National Guard.

III. Wildlife Code (520 ILCS 5/3.1-5)

The amended Wildlife Code provides that when a person under 21 years of age is hunting within the supervision of an adult, the adult must possess a Firearm Owners Identification Card. Of note, these amendments do not alter the Apprentice Hunter License, which applies to individuals under the age of 21.

IV. Firearms Restraining Order Act (430 ILCS 67)

The Firearms Restraining Order Act was amended to include a provision that allows the State's Attorney of the county where the petition is filed to act as a friend of the court in any action filed pursuant to the Act. The State's Attorney can then assist the person filing the petition for the firearms restraining order.

The amendment also provides that a petitioner may request a one-year firearms restraining order. The prior law allowed only for a 6-month restraining order. In order to file the petition for a restraining order, the petitioner must file an affidavit or verified pleading. The one-year restraining order can be filed against a person who poses a significant danger of causing personal injury to himself, herself, or another in the near future by having custody or control, purchasing, possessing, or receiving a firearm, ammunition, and firearm parts that could be assembled to make an operable firearm. A person who wrongfully files a petition, knowing the information in the affidavit or verified pleading is false, is guilty of perjury under Section 32-2 of the Criminal Code of 2012.

V. Criminal Code of 2012 (720 ICLS 5/24)

The Criminal Code of 2012 is where the majority of the Act's amendments occurred. The Act now makes it unlawful to manufacture, deliver, sell, or purchase or cause to be manufactured, delivered, sold, or purchased or cause to be possessed by another, an assault weapon, assault weapon attachment, .50 caliber rifle, .50 caliber cartridge, or large capacity ammunition feeding devices 300 days after the effective date of the amendatory Act, except possession of weapons registered with the Illinois State Police in the time provided.

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The Protect Illinois Communities Act *(cont'd)*

A. Breakdown of the Act's Amendments in the Criminal Code of 2012.

The Act makes it unlawful for a person to knowingly manufacture, possess, sell, or offer to sell, purchase, manufacture, import, transfer, or use:

> i) Any manual, power-drive, electronic, or any other device that is designed to and functions to increase the rate of fire of a semiautomatic firearm when the device is attached to the firearm;
>
> ii) Any part of a semiautomatic firearm or combination of parts that is designed to an functions to increase the rate of fire of a semiautomatic firearm by eliminating the need for the operator of the firearm to make a separate movement for each individual function of the trigger; or
>
> iii) Any other device, part, kit, tool, accessory, or combination of parts that is designed to and functions to increase the rate of fire of a semiautomatic firearm above the standard rate of fire for semiautomatic firearms that is not equipped with that device, part, or combination of parts.

720 ILCS 5/24-1(a)(14)

A person who violates Section 24-1(a)(14) commits a Class 2 felony. 720 ILCS 5/24(b). Section 5/24-1.9(c) makes unlawful the manufacture, possession, delivery, sale and purchase of assault weapons, .50 caliber rifles, and .50 caliber cartridge. The Act does not apply to a person who possessed an assault weapon or .50 caliber rifle (a "weapon") before the effective date of the Act if a few conditions are met. 5/24-1.9(e). The person must provide via affidavit: the affiant's name; date of birth; Firearm Owner's Identification Card number; the make, model, caliber, and serial number of the weapon; and proof of a locking mechanism that properly fits the weapon. 5/24-1.9(e)(1)-(5). The latter can be provided in the form of a statement that the weapon is owned by the person submitting the affidavit and that the affiant owns a locking mechanism for the weapon. 5/24-1.9(e)(5).

In order to properly register the weapon, the owner of the weapon must pay a flat fee of $25 to the Illinois State Police. Only one $25 payment is required per owner, regardless of how many weapons the person owns. 5/24-1.9(f). After 300 days of the Act's effective date, a person who satisfies the above conditions may transfer the registered weapon only to an heir, an individual residing in another state and maintaining said weapon in another state, or a dealer licensed as a federal firearms dealer under the federal Gun Control Act of 1968. 5/24-1.9(e).

The Act does not apply to peace officers; wardens, superintendents, and keepers of prisons, penitentiaries, or jails; member of the Armed Services or Reserve Forces of the United States or the Illinois National Guard, in the course of their official duties; certain companies that employ armed security officers; authorized manufacturer transport, or sale to authorized persons; possession if sanctioned by the International Olympic Committee and USA Shooting; a nonresident transporting, within 24 hours, for any lawful purpose; possession at the World Shooting and Recreational Complex at Sparta; for hunting permitted under the Wildlife Code; or for the use of as a prop for media production. 5/24-1.9(g)(1)-(11). In addition to the afore-mentioned weapon, the same applies to the manufacture, delivery, or sale of large capacity ammunition feeding devices. 5/24-1.10.

B. Who Will the Act Impact

The Act contains significant exceptions, which should be consulted if there is a question of application. 5/24-1.9(g). In general, it appears the Act does not have a significant effect on current lawful owners of the aforementioned weapons. So long as the current owners register their weapon with the Illinois State Police and pay a one-time fee of $25, current owners should feel virtually no impact from the Act. Manufacturers and distributors in Illinois who only manufacture and distribute the aforementioned weapons for recreational purposes will feel the greatest impact. Since the Act amends the requirements for production, sale, distribution, and transport of the afore-mentioned weapons, these enterprises must be informed of the necessary steps for maintaining lawful status.

Conclusion

As a result of the Protect Illinois Communities Act, Illinois is now one of the states with the strongest assault weapons ban in the nation. In order to comply with the Act, existing lawful owners of semi-automatic rifles need only register their ownership in order to maintain lawful possession. In general, understanding gun laws is an important part of being a responsible gun owner. Gun laws can be complex and vary by state and country. Knowing the laws can help gun owners avoid inadvertently breaking the law and facing legal consequences. Moreover, understanding gun laws is an important part of responsible gun ownership. It can help individuals understand the responsibilities and obligations that come with owning a firearm, including proper storage, handling, and transport.

The information provided in this article seeks to inform members of the public, police enforcement, and attorneys on the new compliance requirements set forth by the Act. In order to ensure proper advising, attorneys should take time to review the Act in detail to understand its provisions, scope, and impact. Accordingly, attorneys in both the criminal and civil side should prepare to understand how the Act may affect commerce and criminal laws. The Act will also likely face significant constitutional challenges, so attorneys who have clients that may be affected should stay apprised of new developments.

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The Rules We Weed By: Understanding How the 4th Amendment Affects the Use and Possession of Cannabis in Illinois

by Yolanda H. Sayre

The slow decriminalization and subsequent legalization of cannabis, for both medical and recreational use, has created a great deal of confusion among cannabis users, law enforcement, and the legal profession. Well-settled laws concerning certain Fourth Amendment rights in Illinois—specifically whether law enforcement officers can search a vehicle solely based on the odor of cannabis—are being fiercely debated all over the State. This seismic shift has even created a split among our Illinois appellate courts. Understanding where the law stands today requires a look back at the origin and evolution of some of the laws related to vehicle searches.

The Odor of Cannabis as Probable Cause – Before Legalization
In 1925, in the seminal case of *Carroll v. United States*, the United States Supreme Court created the automobile exception to the warrant requirement and allowed warrantless searches of vehicles if there were reasonable grounds to believe that a vehicle contained contraband or evidence of criminal activity. 267 U.S. 132 (1925). In other words, if there was probable cause for a search, officers could dispense with the warrant requirement and immediately search the car.

In 1985, the Illinois Supreme Court, in *People v. Stout*, held that the odor of burning cannabis emanating from the vehicle was probable cause and therefore justified a warrantless search of a vehicle and any containers that could hold cannabis. 106 Ill. 2d 77 (1985). The court stated in pertinent part: "…distinctive odors can be persuasive evidence of probable cause. A police officer's detection of controlled substances by their smell has been held to be a permissible method of establishing probable cause. This method of detection does not constitute an unconstitutional search. In the case at bar, it was the duty of [the officer], when confronted with circumstances which tended to indicate that criminal activity was taking place to investigate in order to determine whether such criminal activity in fact existed. Based on the particular facts of this case, including the officer's experience and training on the detection of controlled substances, we find that probable cause existed to justify the warrantless search." *Id.* at 88.

Over the years, this principle has been extended to include searches of the driver in *People v. Strong*, 215 Ill. App. 3d 484 (1991); the passengers in *People v. Boyd*, 298 Ill. App. 3d 1118 (1998); and any containers that had a reasonable likelihood of containing cannabis in *People v. Williams*, 2013 IL App (4th) 110857, 990 N.E.2d 916. In addition, as is evident from the cases discussed below, the law evolved to consider not only the odor of burning cannabis as probable cause, but also the odor of fresh cannabis.

The Odor of Cannabis as Probable Cause – After Legalization
The enactments of the Compassionate Use of Medical Cannabis Program Act, 410 ILCS 130/1 *et seq.*, and then the Cannabis Regulation and Tax Act, 410 ILCS 705/10-35(a)(2)(D), have caused many to believe that the law as it pertains to vehicle searches has or should be changed. Some have argued that the legalization of cannabis, both medically and for recreational purposes, has rendered the smell of raw or burning cannabis on its own insufficient to constitute probable cause of illegal activity because it is no longer illegal to use or possess.

1) The Illinois Supreme Court
In 2020, the Illinois Supreme Court, in *People v. Hill*, declined to overrule *Stout* and found that despite legalization, the odor of fresh cannabis could form the basis of probable cause to search a vehicle. 2020 IL 124595. The court in *Hill* did acknowledge that decriminalization "somewhat altered the status of cannabis as contraband." *Id.* ¶ 26. However, the court noted: "While the mere presence of cannabis for medical users may no longer be immediately attributable to criminal activity or possession of contraband, *such users must possess and use cannabis in accordance with the Act.* Notably, section 11-502.1 of the Illinois Vehicle Code prohibits any driver or passenger, who is a medical cannabis cardholder, from possessing cannabis within an area of the motor vehicle except in a sealed, tamper-evident medical cannabis container." *Id.* ¶ 34 (quotations and citations omitted, emphasis added).

Shortly prior to *Hill*, the Seventh Circuit had also weighed in on this issue and held that because police smelled cannabis coming from the car after they validly blocked it, they had probable cause to search the defendant and the vehicle. *United States v. Bean*, 775 Fed. Appx. 822 (7th Cir. 2019) (nonprecedential disposition). With the advent of full legalization, and since *Hill* was decided in 2020, there has been a flurry of hesitant or conflicting decisions in the lower courts—despite facing almost identical fact patterns and despite the Illinois Supreme Court's refusal to overturn *Stout*.

2) The First, Second, and Fourth Appellate Districts Adhere to *Stout*
In 2021, the Fourth District ruled that despite the partial decriminalization of cannabis at the time of the stop, *Stout* was still good law and binding precedent. *People v. Rowell*, 2021 IL App (4th) 180819, ¶ 24. In *Rowell*, after the officer detected the odor of cannabis, a search of the vehicle revealed evidence of identity theft. In affirming the defendant's conviction, the court found the defense counsel was not ineffective for failing to file a motion to suppress because nothing in the record suggested the search was unlawful. *Id.* ¶ 31. Later in 2021, the First District decided *People v. Lymon*, 2021 IL App (1st) 173182-U. In *Lymon*, the defendant argued that *Stout* and the cases following it were no longer good law and should not be followed after the partial decriminalization that had taken place at the time of the stop. *Id.* ¶ 60. The First District, relying on *Hill* and *Rowell*, noted that *Stout* remained good law that they were "bound to apply—at least to cases . . . based on an incident in 2016, after cannabis was partially decriminalized but before it was partially legalized." *Id.* ¶ 64. The court was careful not to commit to maintaining the same position after the later legalization of cannabis and acknowledged that it would no doubt have to revisit the issue. *Id.* ¶ 65. Next, in 2022, the Second District decided *People v. Sims*, which also held that, despite the decriminalization of the possession of small amounts of cannabis, probable cause to search the vehicle existed where the officers smelled cannabis emanating from it. 2022 IL App (2d) 200391, ¶ 93.

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The Rules We Weed By *(cont'd)*

3) The Third District Disagrees
Later in 2022, the Third District found itself with a very similar fact pattern but what could be considered new circumstances—full legalization at the time of the search, as opposed to legalization of medical use of cannabis or partial decriminalization. The Third District, creating a split among the Illinois appellate districts, held that *Stout* is no longer good law. *People v. Stribling*, 2022 IL App (3d) 210098, ¶ 29. In *Stribling*, the defendant was charged with unlawful use of weapons based on a firearm found during a vehicle search conducted after the officers detected the "strong odor of burnt cannabis emitting from inside the vehicle." *Id.* ¶¶ 3-4. The Third District, not mentioning the Fourth District's decision in *Rowell* (issued 18 months earlier), found that the supreme court's holding in *Stout* was "no longer applicable to post legalization fact patterns." *Id.* ¶ 29.

4) The Fourth District Snaps Back
In November 2022, the Fourth District decided *People v. Molina*, 2022 IL App (4th) 220152. In that case, the defendant was a passenger in a vehicle that was stopped for speeding. When a trooper approached the passenger side of the vehicle, he testified that he smelled the strong odor of raw cannabis. Based solely on that smell, the trooper conducted a search of the vehicle. Prior to the search, the defendant told the trooper that he had a license for the medical use of cannabis. The defendant was charged with unlawful possession of cannabis by a passenger in a motor vehicle but filed a motion to suppress the evidence, arguing that the smell of raw cannabis without more did not constitute probable cause to search the vehicle.

The defendant argued that recent legalization of cannabis in Illinois rendered the smell of raw cannabis on its own insufficient to constitute probable cause. Specifically, defendant argued that the language of those statutes does not require storage of cannabis to be in an "odor-proof" container as section 11-502.1 of the Illinois Vehicle Code requires. Further, defendant argued that the Cannabis Regulation and Tax Act had "fundamentally changed the state of Illinois relating to cannabis[;] *** the substance itself is no longer 'contraband.'" *Id.* ¶ 6. The trial court granted the defendant's motion to suppress, stating in its written order that "[t]he smell of raw cannabis can be quite strong even in small quantities," and "there are many innocent reasons someone or someone's vehicle may emit the odor of raw cannabis." *Id.* ¶ 7. The trial court explained that: (1) a person who works with cannabis could smell like it; (2) a person with a medical cannabis card may cultivate plants and, in the process of doing so, would likely smell of raw cannabis; and (3) anyone using, possessing, or otherwise around raw cannabis wholly within the bounds of the law can, and likely will, have the odor of cannabis on their clothes, hair, and even personal effects. *Id.* (quotations omitted).

On appeal, the State argued that the trial court erred by granting defendant's motion to suppress because: (1) *Stout* is still good law; (2) the trial court improperly based its decision on the plausibility of innocent explanations for why a car could smell of raw cannabis, and (3) the court improperly considered evidence outside the record and its own personal knowledge. *Id.* (quotations omitted). The Fourth District agreed with all three of the State's arguments and held: "We acknowledge that cannabis is in a different position in society than it was even four years ago, but that position is not so different that we need to reevaluate the law of probable cause, particularly in light of the supreme court's recent decision in *Hill* not to overrule *Stout*. Accordingly, we conclude that (1) *Stout* remains good law and (2) the smell of raw cannabis, without any corroborating factors, is sufficient to establish probable cause to search a person's vehicle." *Id.* ¶ 52. Again, in 2023, the Fourth District doubled down on its holding that the odor of cannabis is sufficient to create probable cause to search a vehicle. *People v. Hall*, 2023 IL App (4th) 220209. Although, as in *Hill*, there was an additional factor creating probable cause (the admission of the passenger that he possessed cannabis), the court made clear that the odor of cannabis and nothing more was sufficient for probable cause. *Id.* ¶ 27.

The Bottom Line
We now have one appellate case that says that the odor of cannabis is not enough to create probable cause for purposes of the automobile exception to the warrant requirement. We also have at least five appellate cases that have held or noted that the odor of cannabis is enough to search a vehicle. The latter cases are not only acknowledging the supremacy of the Illinois Supreme Court and its recent refusal to overturn its decision in *Stout*, but also the laws that remain in effect after the legalization of cannabis. Until the Illinois Supreme Court specifically addresses the issue, everyone must remain conscious of the split. Evidence found as a result of a search based on the officer's detection of the odor of cannabis will likely be admissible.

Lawyers should counsel their clients that they may enjoy their cannabis but remember the laws set forth below which still govern its use and possession:

1. The prohibition on the use of cannabis within a motor vehicle upon a highway in Illinois. 625 ILCS 5/11-502.15(a).
2. The requirement that cannabis be transported in a secured, sealed, child-resistant and odor-proof container so that it is inaccessible and undetectable by smell by a law enforcement officer. 625 ILCS 5/11-502.15(b)-(c).
3. The limitation which allows Illinois residents to legally possess only up to (1) 30 grams of cannabis flower, (2) 500 milligrams of THC contained in a cannabis-infused product, or (3) 5 grams of cannabis concentrate. 410 ILCS 705/10-10(a).
4. The prohibition on the use of cannabis while in a vehicle. 410 ILCS 705/10-35(a)(3)(D)
5. The prohibition on driving a vehicle under the influence of THC or with an unlawful THC level, as measured by the person's blood, urine, or other bodily substance. 410 ILCS 705/10-35(a)(5); 625 ILCS 5/11-501(a)(7), 11-501.2(a).

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Happy Birthday, Title IX

by Sharon Eiseman

"*No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance...*" Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681(a).

What is Title IX and how did it become a law?
Title IX arose from an initiative that Representative Patsy Mink of Hawaii conceived and presented to Congress in the 1970s to specifically focus on assuring equal rights for women and girls not specifically covered in the 14th Amendment of the Constitution. With data submitted to Congress by Dr. Bernice Sandler on behalf of the Women's Equity Action League (WEAL) reflecting substantial numbers of complaints of sex discrimination in and after 1969 that she had helped women file against approximately 250 educational institutions, Rep. Mink recognized that females of all ages had been sidelined for years in achieving access to opportunities in many fields of endeavor which had received federal funds, including education institutions and in the sports arena—in both training and participation in competitive sports. (For further details regarding the founding and work of WEAL, see "Title IX at 50: A Report by the National Coalition for Women and Girls in Education," available from https://nwlc.org/resource/ncwge-title-ix-at-50/.)

Such gender inequality adversely affecting girls and women had also been evident in workplaces across all kinds of businesses and at all levels of employment. Given such a landscape, it was easy to conclude these inequalities were also intentional since all the facts, such as salary differentials between the genders, were well known. Once Rep. Mink raised the issue of endemic gender discrimination, she worked closely with various branches of the Federal government on refining her concepts regarding how to make such a Federal law effective in assuring equality of access and treatment, irrespective of gender, in education and other public service arenas, which lead to her introduction of Title IX into Congress. This life-changing piece of legislation, having been in gestation for a while, was born on June 23, 1972, when President Richard M. Nixon signed and delivered Title IX into law—thereby creating a lexicon for conduct that has brought us to this moment of observing and evaluating the impact of Title IX on those it intended to benefit, as well as assessing what more might need to be done to reach the goal of achieving gender and racial equity across the designated areas.

How far does Title IX reach in its coverage and what entities are authorized to enforce the Act when violations are alleged?
The Act has a broad reach across many entities, and persons connected to such entities, that fall within the designation of an education program or activity receiving Federal financial assistance which includes, among many others, universities, Head Start/early childhood education programs, public schools, school districts, the State, research and related programs, and medical institutions like hospitals, medical schools, and medical centers. Persons covered include students, parents, applicants for employment or participation in programs of any of the identified institutions, and employees. The case of *Waid v. Merrill Area Public Schools*, 91 F.3d 857 (7th Cir. 1996), illustrates how a Title IX preemption issue was addressed. In that case, the plaintiff alleged gender-based employment discrimination by a junior high school. She successfully filed an administrative claim with a state agency, which under state law was the only place where she could have filed that claim. Afterwards, she filed suit against the school district in Federal court under Title IX, for intentional discrimination in employment by a school receiving Federal funds. The Seventh Circuit held that such a lawsuit was not precluded by her earlier state administrative claim, because the plaintiff could not have brought her state claim for employment discrimination anywhere other than the state agency, which did not have jurisdiction over her Title IX claim.

What legal recourse does a victim of discrimination as defined under Title IX have to obtain justice following a violation of this law? And what rules apply to school disciplinary hearings against students?
A lawsuit alleging a Title IX violation should be brought in Federal court, which is the proper jurisdiction for such matters, whether the defendant entity is a college-based team, an entity that provides training in a specific field of sports, or an educational institution through which the accuser has suffered any form of gender discrimination. The nature of the claims to be brought on behalf of a complainant can range from harassment and assault, including liability for "deliberate indifference" as an unreasonable response to "actual knowledge" of harassment, to gender discrimination, now including against LGBTQI+ persons, in regard to access to facilities, programs, and other resources in the arena of sports through limiting access to programming, facilities, and other resources available to others.

In such an assessment for the plaintiff, it may be relevant to determine whether the institution to be named as a defendant may, due to its nature, be held to a different standard than is imposed elsewhere, and whether particular employees or other staff in decision-making positions, and/or consultants not on the payroll but involved in the actions being challenged, may have been implicit in any of the acts of misconduct against the plaintiff. That information will help determine who to name.

Certain legal standards are embedded in the litigation process for bringing a claim of a Title IX violation against a covered entity as well as for defending a student in a disciplinary proceeding brought against the student alleging sexual or other form of misconduct. A most basic one is the particular burden of proof applicable to a claim against an educational institution or other entity subject to Title IX regulation which is, at a minimum, a "preponderance of the evidence" as opposed to the "clear and convincing" standard one might anticipate because it is applied in other discrimination cases such as claims of racial harassment.

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Happy Birthday, Title IX*(cont'd)*

In a successful court proceeding, what remedies are available to a plaintiff? Is mediation or arbitration available to address an alleged Title IX violation?
Remedies that a successful plaintiff in a Title IX case can obtain include an injunction against the defendants, specific to the nature of the violation. In addition, because Title IX is a civil rights law covered by 42 U.S.C. § 1988, the plaintiff may be awarded attorney fees and costs related to the case. Compensatory damages can be ordered, but pursuant to the fairly recent opinion in *Cummings v. Premier Rehab Keller, P.L.L.C.*, 596 U.S. (Apr. 28, 2022), certain impacts upon the complainant of a physical health nature which are proven, such as emotional distress damages which Cummings ended for Section 504 claims, and by extension, other legislation relating to institutions receiving Federal funding such as Title IX, may not be allowed despite being claimed, and proven, by the plaintiff. After changes to Title IX complaint procedures in 2022, one of the options now available to higher education institutions for resolving a Title IX matter is the option for an informal resolution under specific circumstances. Such a resolution might be considered similar to a settlement of a complaint or claim in other types of litigation or dispute that allows concerns of each of the parties to be addressed. It may also replace a court process for litigants who may agree with the basis for the availability of participating in such an informal process which was implemented to resolve an expressed concern about whether the due process rights of both parties were being observed in the proceedings.

Forthcoming amendments to Title IX regulations and what they mean.
To celebrate the half century of Title IX's impact in protecting students and athletes from gender discrimination, the U.S. Department of Education recently proposed a set of amendments to its regulations intended to provide guidance to educational institutions at all levels in implementing Title IX protections. Per the Department's recent announcement, the changes will "advance Title IX's goal of ensuring that no person experiences sex discrimination, sex-based harassment, or sexual violence in education" no matter that person's sexual orientation or gender identity, or because of pregnancy. The regulations will require covered institutions to fully investigate reports of homophobic or transphobic slurs against students and athletes.

What can we learn from beneficiaries of Title IX protections in the field of sports, and what comes next across the landscape of all populations identified as protected under Title IX?
Sadly, despite the presence of Title IX and its new amendments, gender abuse and inequities persist. We have learned recently of resources available to girls and women in sports who may need support and guidance from professionals in the field whom they can trust to guide them in how to identify, respond to, and report any form of discrimination or assault against them or refusal of access to necessary resources due to their participation on any team or as a trainee or candidate for a team. One of those resources, *Sports on the Lips* (https://sportsonthelips.com/), is a website created and managed by Shellie Wilson for the benefit of females involved in sports, particularly at the collegiate level, to help connect them to opportunities for entry into the field of professional sports. This is the kind of resource that helps create and sustain a community of females, with a common purpose and also shared experiences of barriers to their hopes, particularly for those who are women of color, as well as shared vulnerability to discrimination and abuse. Being part of such a community can build both strength and confidence in the members and enlighten them so they are able to identify and achieve their goals, knowing they are not alone in the ongoing fight for both gender and racial equality for women in sports, no matter the nature or level of the particular sport, or in their training or performance, or in pay or access to opportunities, whether at the professional level or as part of a school team.

Links to articles and materials regarding Title IX

For articles on women in sports, including "50 Years of Title IX: We're Not Done Yet," and more, check out https://www.womenssportsfoundation.org/.

- Also of interest is the Report by the National Coalition for Women and Girls in Education on Title IX at 50 entitled "Gender- and Race-Conscious Programs," available at www.ncwge.org.
- Check out an article by Adam J. Sheppard entitled "What are students' due process rights in school disciplinary proceedings?" published in the Chicago Daily Law Bulletin: https://www.chicagolawbulletin.com/archives/2013/04/19/adam-sheppard-forum-4-19-13.
- "The New Provisions in Title IX Regulations: Taking the Right Steps for a Successful Informal Resolution" by Adrienne Publicover, Esq. at https://www.jamsadr.com/blog/2020/the-new-provisions-in-title-ix-regulations.
- "Generations of Women Lawyers Pay It Forward by Advocating for Title IX," by Cynthia L. Cooper, independent journalist and member of the ABA Commission on Women in the Profession, at https://www.americanbar.org/groups/diversity/women/publications/perspectives/2023/december/generations-women-lawyers-pay-it-forward-advocating-title-ix/.

Sharon L. Eiseman is a board member of Decalogue. This article was written with support from Hon. Deborah Gubin (Ret.), and lawyers Adam Sheppard, Charlie Wysong, and Shellie Wilson.

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Transgender Health Care: Federal and Illinois State Regulations Addressing Discrimination in Health Insurance

by Shannah Sacco

Illinois legislators have taken significant steps to increase and ensure access to health care and insurance for protected groups based on sexual orientation and gender identity. However, many states across the U.S. have progressively rolled back protections.

Even predating the U.S. Supreme Court's decision in Dobbs v. Jackson Women's Health Organization, legislatures in some states have eliminated such protections entirely. For example, Ohio House Bill HB454, introduced on October 19, 2021, attempts to categorize lifesaving transgender health care in youth as "Adolescent Experimentation" in the "Save Adolescents from Experimentation (SAFE) ACT." Currently, some state legislatures have been encouraged to entirely remove protections, even going as far as criminalizing patients for seeking or undergoing treatment and providers for their services.

On June 12, 2020, the U.S. Department of Health and Human Services ("HHS") issued a revised rule called the "2020 Final Rule." This new rule eliminated previously existing protections that prevented discrimination against individuals based on sex or gender-identity. While the 2020 Final Rule eliminated protections, this is in stark contrast to the HHS 2016 Final Rule that provided very broad antidiscrimination protections. The new 2020 Final Rule "has been narrowly interpreted in an attempt to exclude transgender, nonbinary, and gender nonconforming individuals from nondiscrimination protections in access to healthcare programs, activities, or health insurance."

Although HHS, through the promulgation of the 2020 Final Rule, eliminated protections in an apparent attempt to exclude transgender, nonbinary, and gender nonconforming individuals from accessing vital health care services like health insurance, Illinois has not only upheld protections but expanded them through the Illinois Administrative Code, Illinois Insurance Code, and Illinois Human Rights Act, specifically, in finalizing amendments to Title 50 of the Illinois Administrative Code.

This article initially examines the evolution of the HHS rule addressing discrimination against individuals based on sex or gender-identity regarding access to healthcare programs and health insurance including recent changes proposed by the Biden Administration. It then looks at recent changes in Illinois law related to this topic.

Final Rule Implementing Section 1557 of the Affordable Care Act ("ACA")

Section 1557 of the Affordable Care Act ("ACA"), codified at 42 U.S.C. §18116, prohibits any health care provider that receives funding from the federal government from refusing to treat an individual, or to otherwise discriminate against the individual, based on race, color, national origin, sex, age or disability. Pursuant to this provision, HHS issued regulations prohibiting discrimination as specified in Section 1557.

The coverage of this rule included, "Any health program or activity, any part of which receives funding from HHS (such as hospitals that accept Medicare or doctors who accept Medicaid); any health program that HHS itself administers; and Health Insurance Marketplaces and issuers that participate in those marketplaces protections under the rule." Under the ACA, "Section 1557 builds on long-standing and familiar Federal civil rights laws: Title VI of the Civil Rights Act of 1964 (Title VI), Title IX of the Education Amendments of 1972 (Title IX), Section 504 of the Rehabilitation Act of 1973 (Section 504), and the Age Discrimination Act of 1975 (Age Act.)"

A. 2016 Final Rule and Non-Discrimination Protections

The HHS 2016 Final Rule "defined 'sex' as an individual's internal sense of gender, which may be male, female, neither, or a combination of male and female, and which may be different from an individual's sex assigned at birth." *See* 45 C.F.R. § 92.206 (Equal program access on the basis of sex); 45 C.F.R. § 92.207 (Nondiscrimination in health-related insurance and other health-related coverage) The 2016 Final Rule also included provisions which required any covered entity to (1) not discriminate "on the basis of sex" (to include gender identity and sex stereotyping) in providing access to healthcare programs and activities, (2) "treat individuals consistent with their gender identity," and (3) not "deny or limit health services that are ordinarily or exclusively available to individual's sex assigned at birth, gender identity, or gender otherwise recorded is different from the one to which such health services are ordinarily or exclusively available." *See* 45 C.F.R. § 92.4 45 C.F.R. § 92.206.

B. 2020 Final Rule and Rollback of Non Discrimination Protections

The 2020 Final Rule removed essential non-discrimination protections for transgender and non-binary individuals. This rule provides a very narrow interpretation of protections under Section 1557 of the ACA. This interpretation "…seeks to eliminate the specific requirement that individuals be treated consistent with their gender identity."

When there is a narrow definition that does not allow for individuals to be treated consistent with their gender identity, this inherently opens the door to discrimination against individuals who identify as non-binary, transgender, or gender nonconforming. This kind of narrow interpretation of the ACA's Section 1557 language exacerbates the issue transgender and non-binary individuals already face in seeking treatment, insurance, and health care providers. A June 3, 2019, Center for Health Progress report out of Colorado indicated that 41% of LGBTQIA+ individuals and 75% of transgender individuals reported needing to educate their health care providers on LGBTQIA+ individuals' specific health needs.

It is important to note that the 2020 Final Rule eliminated vital health protections for LGBTQIA+ individuals during the height of the COVID-19 pandemic, making it harder for them to access care during a vital time.

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C. Biden Administration's Revision of the 2020 Final Rule

On August 4, 2022, the Biden Administration proposed rulemaking regarding ACA Section 1557 "to revise the 2020 Rule to reinstate regulatory protections from discrimination on the basis of race, color, national origin, sex, age, or disability in covered health programs and activities, consistent with the statutory text of Section 1557 and Congressional intent." These proposed rule making changes have broad application to programs and activities as "The Proposed Rule would apply to every health program or activity any part of which receives federal financial assistance ("FFA"), directly or indirectly from HHS; every health program or activity administered by HHS, and every program or activity administered by an ACA Title I entity (Exchanges, both FFE and state based, including those on the federal platform)."

In its press release in connection with the proposed rule, HHS stated, "The proposed rule affirms protections against discrimination on the basis of sex, including sexual orientation and gender identity." The press release also notes that the proposed rule is consistent with the Biden Administration's position as reflected in Executive Order 13988 on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation issued on January 20, 2021, as well as in Executive Order 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, which worked to advance racial equity and support for underserved communities through the federal government.

Protections Against Discrimination in Health Care for Illinoisans

A. Illinois Human Rights Act

There are many protections at the state level in Illinois that ensure nondiscrimination protections for LGBTQIA+ individuals. First, under the Illinois Human Rights Act ("IHRA") Illinoisans cannot be discriminated against on the basis of their sexual orientation or gender identity when they are accessing health care services. Article 5 of this Act indicates that it is a civil rights violation to discriminate in order to "deny or refuse to another the full and equal enjoyment of the facilities, goods, and services of any place of public accommodation." A "place of public accommodation" is defined in the IHRA to include "an insurance office, professional office of a healthcare provider, hospital or other service establishment." The Act makes it unlawful to discriminate on the basis of "actual or perceived heterosexuality, homosexuality, bisexuality, or gender-related identity, whether or not traditionally associated with the person's designated sex at birth." Even though the 2020 Final Rule took these protections previously mentioned away, they are still effective and remain in place for all Illinoisans.

There are many examples of discriminatory treatment noted by the IHRA which include, but are not limited to: (1) refusing to admit or treat an individual because of the individual's sexual orientation or gender identity; (2) forcing individuals to have intrusive or unnecessary examinations because of an individual's sexual orientation or gender identity; (3) refusing to provide individuals services that are provided to other patients on the basis of an individual's sexual orientation and gender identity; (4) not treating an individual according to the individual's gender identity; (5) refusing to provide the individual access to restrooms consistent with an individual's gender identity; (6) refusing to respect an individual's gender-related identity in making room assignments; (7) harassing an individual or refusing to respond to harassment by staff or other patients because of an individual's sexual orientation and gender identity; (8) refusing to provide counseling, medical advocacy or referrals, or other support services because of an individual's sexual orientation and gender identity; (9) isolating an individual or depriving an individual of human contact in a residential treatment facility, or limiting participation in social or recreational activities offered to others because of an individual's sexual orientation or gender identity; (10) attempting to harass, coerce, intimidate, or interfere with an individual's ability to access healthcare because of an individual's sexual orientation or gender related identity; and (11) refusing to offer insurance coverage to an individual because of an individual's sexual orientation or gender-related identity.

B. Illinois Department of Insurance Regulations

The Illinois Department of Insurance ("DOI") also provides health care and insurance protections for LGBTQIA+ individuals. All Illinois-licensed insurance companies must comply with state laws and regulations prohibiting discrimination. The DOI does "…prohibit in offering a provision of health insurance coverage based on actual or perceived gender-identity or health conditions or based on sexual orientation." The protections, however, do not apply to Medicare and Medicaid, or self insured plans offered by a private employer.

The Illinois DOI protects LGBTQIA+ individuals from discriminatory practices in obtaining health insurance under the Illinois Administrative Code. Specifically, under Section 2603.30 "…no health insurance issuer shall refuse to issue any contract of health insurance or decline to renew a contract because of the sex, sexual orientation, or marital status of the insured or prospective insured." In addition, insurance companies licensed in Illinois cannot establish separate conditions, benefit options, or policy limits based on sex, sexual orientation, or marital status, or require an applicant to submit to a medical examination for that reason.

Under Section 2603.35 the DOI regulations specifically prohibit (1) using policy exclusions that directly or indirectly discriminate based on gender identity or the fact that the insured is a transgender person; (2) using provisions that treat medical benefits for gender dysphoria differently from other medical conditions covered by the policy;

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Transgender Health Care *(cont'd from page 17)*

(3) cancelling, limiting, or refusing to issue or renew an insurance policy because of an insured's or prospective insured's actual or perceived gender identity, or because the insured or prospective insured is a transgender person; (4) designating an insured's or prospective insured's actual or perceived gender identity, or the fact that an insured or prospective insured is a transgender person, as a preexisting condition for which coverage will be denied or limited; (5) using provisions that exclude from, limit, charge a higher rate for, or deny a claim for coverage for the surgical treatments for gender dysphoria; and (6) denying or limiting coverage, or denying a claim, for services due to an insured's actual or perceived gender identity, or because the insured is a transgender person, or is undergoing or has undergone gender transition. This includes healthcare services that are ordinarily or exclusively available to individuals of one sex.

C. Expansion of Administrative Code Rules to Enhance Protections for Transgender and Non-Binary Individuals

The DOI proposed changes to the Illinois Administrative Code to expand protections for LGBTQIA+ individuals at 43 Ill. Reg. 14987 (Dec. 27, 2019) amending sections 2603.20, 2603.35, and 2603.40 of 50 Ill. Adm. Code 2603. These proposed amendments were adopted with some revisions, effective July 31, 2020, as reflected at 44 Ill. Reg. 13352 (Aug. 14, 2020). After contacting Robert Planthold, the Acting Deputy General Counsel of the Illinois Department of Insurance, it is clear the DOI regulation does not affect:

1. Multi-employer plans or single-employer plans defined at 29 U.S.C. § 1002(37) and (41) that are self funded;
2. Non-federal governmental plans defined at 42 U.S.C. § 300gg-91(d)(8) that are self-funded;
3. Medicaid;
4. Medicare (including Medicare Advantage);
5. Health care sharing ministries that satisfy the criteria at 215 ILCS 5/4 Class 1(b)(i)-(xii);
6. Group health insurance coverage lawfully issued and delivered in another state to an employer, employee organization, or association with a bona fide situs in that state (regardless of whether any employees or dependents covered under that policy reside in Illinois);
7. Other health benefit programs that are not offered by a private health insurance issuer subject to Illinois insurance laws.

This is due to federal preemption or various statutory limitations; however, other nondiscrimination protections may apply to such plans under other federal or state law outside of the Illinois Department of Insurance's jurisdiction.

There are some exemptions to the previously referenced protections and that is (1) through the DOI a domestic captive insurance company with a certificate of authority under Article VIIC of the Illinois Insurance Code is exempt, and (2) companies that are referred to as "expected benefits" plans (formerly known as "Grandfather" plans).

In terms of changes to the Illinois Insurance Code that are significant for patients to be aware of, an amendment to Section 2603.35 added the word "individual" under part a: "A company that offers or provides group or individual health insurance coverage that is neither a grandfathered plan nor a plan offering excepted benefits shall not discriminate on the basis of an insured's or prospective insured's actual or perceived gender identity, or on the basis that the insured or prospective insured is a transgender person." See 55 Ill. Adm. Code 2603.35(a).

Section 2603.20, which contains the purpose and scope provisions, was amended and reads: "The purpose of this Part is to eliminate unfair discrimination based upon sex, gender identity, sexual orientation or marital status in the terms and conditions of insurance contracts and in the underwriting criteria of insurance carriers. This Part shall apply to all companies authorized to do an insurance business in this State of the kind or kinds of business described in Class 1(a), 1(b) or Class 2(a) of Section 4 of the Code, all companies licensed in accordance with the Voluntary Health Services Plans Act [215 ILCS 165], the Health Maintenance Organization Act [215 ILCS 125] and to all Fraternal Benefit Societies licensed in accordance with Article XVII of the Code. This Part shall not affect the rights of fraternal benefit societies as specified in Section 314.1 of the Code." *See* 50 Ill. Adm. Code. 2603.20.

Lastly, Section 2603.40 concerning the rates of insurance plans was amended to include broader coverage in terms of consistent and non-discriminatory insurance rates based on sexual orientation and gender identity. See 50 Ill. Adm. Code 2603.40. Due to these changes, patients in Illinois can be assured that the state has rules and regulations in place that ensure nondiscrimination and protections in obtaining health insurance.

Conclusion

Since even before the recent overturning of Roe v. Wade in Dobbs v. Jackson Women's Health Organization 24, there have been an increasing number of state legislatures that have been moving toward the removal of health care accessibility and vital antidiscrimination protections for transgender adults and youth. Health care accessibility for transgender individuals, and youth especially, is lifesaving. Recent amendments to Illinois Administrative Code Title 50 Ill. Adm. Code. 2603, as well as proposed revisions by the Biden Administration to the 2020 Final Rule, ensure access to vital health care services and non-discrimination in health insurance access for transgender adults and youth in Illinois. It is important that patients in Illinois remain up-to-date on the changing policies not only in their home state but federal policies as well to be aware of their rights as patients in obtaining vital healthcare resources, especially life-saving ones.

Shannah Sacco is a UIC law student pursuing health law, Legal & Policy Extern at the National Council on Disability, and law clerk at the Binational Institute of Human Development. This article previously appeared in the December 2022 issue of the ISBA Health Care Lawyer.

"Diversity" Is Not Always Inclusive of Jews

by Helen Bloch

On March 29, 2023, a New York federal judge allowed Ilana Gamza-Machado De Souza's case to proceed to trial against Planned Parenthood, who terminated her based on her Jewish identity. (*See 1:21-cv-05553.*)

The following facts are gleaned from the June 7, 2022, and March 29, 2023 Opinions and Orders. Ilana is a Jewish woman who worked at Planned Parenthood as a Senior Director in its Brand & Culture Department. During her employment, a supervisor told her that she "did not want an old Jewish woman running a multicultural department." Around the same time, another director level employee mentioned that "there were too many white Jewish Chief Executive Officers in positions of power and it [was] time to get them out." An all-staff meeting was scheduled on a Jewish holiday when Ilana required time off for the religious observance. She became aware that some workers had previously complained about being expected to work on Jewish holidays. Such comments and occurrences prompted Ilana to ask Planned Parenthood's Employee Resource Group ("ERG") Coordinator if she could start a Jewish ERG. Planned Parenthood had many other ERGs at the time, such as Latin/Latinx, LGBTQIA+Pride, Young Professionals, etc. Ilana hoped that through a Jewish ERG she could educate her colleagues about anti-Semitism and stop what she perceived as microaggression towards Jews. The Coordinator gave her the green light, so Ilana recruited employees to join the ERG. Unfortunately, the ERG Coordinator left the organization. Ilana then contacted Mr. Walker, a named defendant, who was Planned Parenthood's Vice President of Diversity, Equity and Inclusion to finalize the ERG. Defendant Walker refused to allow a Jewish ERG, noting that he did not want a religious ERG and that a Jewish ERG was not aligned closely enough with Planned Parenthood's organizational goals. Ilana educated Defendant Walker that Jewish people also were considered a racial/ethnic group and asked that he reconsider. In reconsidering, Defendant Walker commented that if such a group were to be allowed it should focus on educating Orthodox Jewish women about birth control because they were "birthing factories." Defendant Walker continued to delay, coming up with different criteria that Ilana needed to fulfill. In the interim, Planned Parenthood terminated Ilana alleging that her job was being eliminated, later claiming the termination was performance based. Ilana has been represented for over 3 years by Daniel Altaras of Derek Smith Law Group, PLLC.

As Ilana's case highlights, many folks who hold themselves out as proponents of "diversity" truly do not believe in diversity. They seem to believe "diversity" means just folks of a certain racial or ethnic background. However, if one were to look up the word "diversity" in the Oxford dictionary, one would find that it means "the state of being diverse; variety. The practice or quality of including or involving people from a range of different social and ethnic backgrounds and of different genders, sexual orientations, etc." This means bringing together not just certain minorities, but all minorities, and perhaps even going the step further of including folks from the "majority" in the mix.

A mission of Decalogue, which we just observed at our judicial reception in March, is to be a paradigm of diversity. When looking around the room at the reception, one saw folks of a "variety" – different colors, creeds, ethnic backgrounds, and sexual orientation – having a great time together. Hopefully Planned Parenthood will take a lesson from Decalogue and allow various ERG's to flourish, including the Jewish one!

Helen Bloch founded the Law Offices of Helen Bloch, P.C. in 2007, a general practice firm with an emphasis on the employment and business arena, workers' compensation, and defense against City of Chicago municipal code violations. Helen, a past president of Decalogue, serves on the Alliance of Bar Associations for Judicial Screening and is a member of several bar associations and civic organizations.

Trip to India

Judges Abbey Romanek, Steve Bernstein, James Shapiro, and recently retired Presiding Judge Grace Dickler joined about 20 judges from Chicago and elsewhere in Kerala in south India. Here they are at the Paradesi ("foreigners") Synagogue, the oldest in the British commonwealth, which celebrated its 450th anniversary several years ago. Earlier in the day, these judges and others met with justices of the High Court of Kerala for an enlightening presentation on LGBTQ rights and other issues in India. Earlier in the trip, they met in Delhi with the dynamic Chief Justice of India, together with leaders of both the majority and minority parties in Parliament.

Government Funding and the Separation of Church and State

by Prof. Michael Helfand

On June 21, 2022, the Supreme Court issued a landmark decision prohibiting government from excluding religion and religious institutions from government funding programs.

This decision in Carson v. Makin follows on the heels of two other high court decisions in the last five years emphasizing that such exclusions constitute religious discrimination prohibited under the First Amendment. But what makes this decision important is its rejection of the so-called "status-use" distinction: government may not discriminate based on the mere religious status of an institution, but could discriminate if funds would be used for a religious purpose. That distinction had left the door open for government to prevent funding, available to other private institutions, from flowing to religious institutions — and in particular religious schools. Yesterday's opinion closes that door.

At stake in Carson was Maine's tuition assistance program. Over half the school districts in rural Maine do not have their own secondary schools. Maine solved this problem by allowing parents in those districts to select an approved private school for their children. In turn, the state would pay tuition to the parents' chosen private school on the student's behalf. However, Maine's program expressly excluded "sectarian" schools from the tuition assistance program, even if they satisfied all other criteria for being an approved school.

In the 1970s and early 1980s, the Supreme Court's doctrine would have deemed it unconstitutional to include religious schools in such a program. At that time, the Court viewed nearly all funding of religion and religious institutions as violations of the separation of church and state. But at the turn of the millennium, the Supreme Court's views shifted. Instead of viewing separation of church and state as requiring a general prohibition on the funding of religion, the Court's decision emphasized that the doctrine simply required neutrality. That prohibited funding designed specifically for religious institutions, but allowed government to fund religious institutions alongside other comparable private institutions.

This shift, however, exposed the discrimination question at stake in yesterday's decision. If government is now allowed to include religious institutions in funding programs on equal terms with other comparable private institutions, what happens when it refuses to do so? Is that sort of refusal the kind of religious discrimination that the First Amendment prohibits?

In recent years, the Court has tried to walk a fine line in answering this question. In 2017, in Trinity Lutheran v. Comer, the Court's majority opinion, authored by Chief Justice John Roberts, held that when government makes funding generally available, it cannot exclude institutions based on their religious status. In that case, Missouri rejected a church-run school from an environmental grant to resurface a playground. The Court ruled that the state had violated the First Amendment by excluding an institution "because of what it is — a church." By contrast, the Court implied that government could exclude religious institutions from programs in which the funds would be used for specifically religious purposes. Resurfacing a playground is one thing; rebuilding a church sanctuary quite another.

Maine deployed this distinction in defending its tuition assistance program. In its view, the religious schools would presumably use the funds — that is, at least in part — to teach religion. Excluding religious schools from the program was thus constitutional.

In a 6-3 decision, the Supreme Court held that excluding religion and religious institutions from generally available government funding programs — whether it is based on religious status or religious use — violates the First Amendment. In the majority opinion, written by Roberts, the Court held that Maine "pays tuition for certain students at private schools — so long as the schools are not religious. That is discrimination against religion." And importantly, the Court argued, it would be a mistake to read past cases as suggesting "that use-based discrimination is any less offensive to the Free Exercise Clause."

Describing the precedents in this way is a bit of a stretch: The Court's prior decisions had certainly implied that government could exclude religious institutions from funding programs on the basis of religious use. But there is good reason to think that the distinction was a mistake from the get-go. After all, it is all-too-easy for government to play semantics: When they exclude a religious school, is it because of its status as a religious school or because the funds will be used for religious purposes? Those permeable categories open the door for government to rebrand discrimination as needed to avoid constitutional obstacles.

What will be the likely impact of the decision? By its terms, it applies to cases where government is providing funding to private institutions for secular reasons and doing so on neutral terms. Notwithstanding concerns expressed by Justice Stephen Breyer, it does not allow government to simply fund religious institutions. And it does not allow government to fund religion unless it is part of a broad funding program available to all comparable institutions — religious and non-religious alike.

But that doesn't mean its impact will be narrow both with respect to existing funding programs and new funding initiatives. To see the likely impact on existing funding programs, consider a 2018 decision issued by the New Jersey Supreme Court. New Jersey had announced a historic preservation grant program and awarded funds to, among other institutions, some churches that had historic value. The New Jersey Supreme Court concluded, however, that doing so violated the state's rule against funding religious institutions. In the court's view, these churches could be excluded because some of the funding would be used for a religious purpose — for example, to repair church sanctuaries.

(continued on next page)

Church and State *(cont'd)*

Going forward, this sort of analysis is no longer good law. As long as the funding program advances a secular purpose — protecting historic buildings — the fact that some of the funds will incidentally be used for religious purposes will not authorize religious discrimination.

When it comes to new initiatives, yesterday's ruling provides a strong incentive for religious communities to work alongside other groups to create new funding programs that advance important public policies. With all forms of religious exclusions now constitutionally prohibited, religious communities can rest assured new funding programs will not provide for the general public while excluding them.

Not surprisingly, given these bolstered constitutional protections, the Orthodox Union — consistent advocates for Jewish day school funding — has already expressed its commitment to "proactively pressing for policymakers . . . to ensure that any state and local education funding programs are fully available and accessible to nonpublic schools and their families as the Supreme Court has clearly mandated."

However, maybe the most important feature of yesterday's decision isn't the impact on funding. Yes, the door is now open not just for including religion in a host of funding programs, including historic preservation grants, environmental grants, security grants, and, maybe most importantly, school funding programs.

But the decision also speaks to core constitutional principles of neutrality and equality. It states unequivocally that religious citizens need not worry that the price of their religious commitments will be exclusion from funding programs geared towards solving secular policy interests that impact everyone. In this way, the decision protects not only the funding prospects of religious communities, but it protects the underlying principles that ensure the equal citizenship of all — religious or not.

All told, when it comes to both the principles and pragmatics of funding, yesterday's decision ensures that religious institutions will no longer be left behind.

Michael A. Helfand is the Brenden Mann Foundation Chair in Law and Religion and Co-Director of the Nootbaar Institute for Law, Religion and Ethics at Pepperdine Caruso School of Law; Visiting Professor and Oscar M. Ruebhausen Distinguished Fellow at Yale Law School; and Senior Research Fellow at the Shalom Hartman Institute.

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Violations of the Automatic Stay

by Jocelyn E. Lupetin and Michael Traison

A decision issued recently by Hon. Christopher D. Jaime of the U.S. Bankruptcy Court, Eastern District of California, touches upon several aspects of bankruptcy law that are of interest to creditors and debtors alike. *Valentine v. Holmes, et al.*, 2022 WL 17408093, Case No. 22-21184-B-13, Adversary No. 22-2086 (Bankr. E.D. Cal. Dec. 2, 2022). While the important points are distilled below, a reading of the entire decision is encouraged due to the specifics of the case.

The *Valentine* decision does away with the distinction between willful and technical violations of the automatic stay of 11 U.S.C. § 362(a) and holds that all acts taken in violation of the stay "are void and of absolutely no effect whatsoever regardless of whether the acts are willful or so-called 'technical' automatic stay violations." *Valentine*, p. 1. We have discussed issues related to the automatic stay provision in prior alerts and cannot overstress the need for creditors to remain vigilant and wary of potential violations.

As highlighted previously, stay violations come in two flavors – willful and technical. A willful violation exists when a party knew of the automatic stay and the actions taken in violation of the stay were intentional. *See Eskanos & Adler, P.C. v. Leetien*, 309 F.3d 1210, 1215 (9th Cir. 2002).

The presence of intention is irrelevant, however, as only the actions taken must be intentional. *See In re Pinkstaff*, 974 F.2d 113, 115 (9th Cir. 1992). Meanwhile, a technical violation may occur when actions are taken without notice of the bankruptcy case or knowledge of the automatic stay. *See In re Iezzi*, 504 B.R. 777, 792 (Bankr. E.D. Pa. 2014). Judge Jaime rejects the so-called "Brooks exception," holding that "all acts that violate the automatic stay are void without regard to any knowledge or notice of a bankruptcy case or the automatic stay." *Valentine*, p. 15. He notes the difference in types of violations acknowledging there may be support among the judiciary for the notion that, while willful violations are always void, technical violations may only be voidable. This case is another reminder of the importance of observing the restrictions of the automatic stay upon the filing of a bankruptcy case. Lack of knowledge of the filing of a petition in bankruptcy or of the existence of the stay may no longer act as a defense to allegations of stay violations or allow a creditor to argue that a violation is merely voidable, not void.

Challenging a *De Facto* Administrative Review

by Alon Stein

An administrative agency, after a full evidentiary hearing, has ruled that your client acted in good faith and does not have personal liability for the company's debt of back wages. The administrative agency has stated on the record that its ruling applies class-wide to all employees who filed a claim with that administrative agency. It has served a copy of its written decision to those employees, providing notice of an opportunity to file a Complaint for Administrative Review with the Circuit Court.

Then, an employee who did not file a claim with the administrative agency, files a class action complaint with the Circuit Court, seeking damages from your client personally. In addition, that plaintiff seeks to include the former employees who had filed claims with the administrative agency and received the administrative agency's ruling of no personal liability. None of those class members had filed an administrative review action and the deadline for filing an administrative review complaint has passed. The plaintiff argues that the administrative agency did not properly certify the class pursuant to its own administrative rules and procedures and therefore the administrative agency's decision finding no individual liability is inapplicable to the case pending before the Circuit Court. Without a complaint for administrative review, can the Circuit Court conduct an examination as to whether the administrative agency employed the proper rules or procedures? What arguments are available to your client to prevent a collateral attack on the administrative agency's finding of good faith/no individual liability?

In addition to the obvious argument of the class' claims being barred by *res judicata*/collateral estoppel, the other key objection would be, that allowing the Circuit Court to review the administrative agency's actions would lead to an administrative review without jurisdiction. Specifically, the Circuit Court does not have jurisdiction to examine what was done by the administrative agency without the filing of an administrative review action, which among other things, requires that a complete copy of the administrative record be filed with the Circuit Court by the administrative agency, which needs to be named as a party.

The Illinois Constitution provides that the trial court may only review an administrative action "as provided by law." *See* Ill. Const. 1970, art. VI, § 9; *Collinsville Community Unit School District No. 10 v. Regional Board of School Trustees*, 218 Ill. 2d 175, 181 (2006). The trial court exercises "special statutory jurisdiction" when it reviews an administration decision, which "is limited to the language of the act conferring it and the court has no powers from any other source." *Collinsville Community Unit School District No. 10*, 218 Ill. 2d at 181-82 (quoting *Fredman Brothers Furniture Co. v. Department of Revenue*, 109 Ill. 2d 202, 210 (1985)). "A party seeking to invoke a court's special statutory jurisdiction must strictly comply with the procedures prescribed by statute." *Collinsville Community Unit School District No. 10*, 218 Ill. 2d at 182.

The governing statute for judicial review of an administrative agency decision is the Illinois Administrative Review Law, 735 ILCS 5/3-101, *et seq.* The trial court has no jurisdiction to review an administrative decision if the mode of procedure for administrative review, as provided by law, is not strictly followed. *Nudell v. Forest Preserve District*, 207 Ill. 2d 409, 422-23 (2003). The only way that an administrative review action of an administrative agency's decision can be commenced is by filing an administrative review Complaint with the Circuit Court. Specifically, the Administrative Review statute states: "Every action to review a final administrative decision shall be commenced by the filing of a complaint and the issuance of summons within 35 days from the date that a copy of the decision sought to be reviewed was served upon the party affected by the decision." *See* 735 ILCS 5/3-103 (Commencement of action). In addition, "[u]nless review is sought of an administrative decision within the time and in the manner herein provided, the parties to the proceeding before the administrative agency shall be barred from obtaining judicial review of such administrative decision." *See* 735 ILCS 5/3-102 (Scope of Article). Thus, Section 3-102 of the Administrative Review Law provides that if a complaint is not filed within the time and in the manner provided in the Administrative Review Law, no jurisdiction is conferred, and judicial review is barred. As to the time, the Administrative Review Law expressly states that it is 35 days.

As to the manner, the Administrative Review Complaint must allege that plaintiff was a party of record to administrative proceedings and that rights, privileges, or duties were adversely affected by the agency's decision. *Novosad v. Mitchell*, 251 Ill. App. 3d 166 (4th Dist. 1993). The Complaint must request that the administrative record shall be filed by the agency as part of the record. The Complaint must also contain a statement of the decision or part of the decision sought to be reviewed. The plaintiff has the burden of proving that the agency was wrong, and a court may not substitute its judgment for that of the agency. *See Water Pipe Extension v. City of Chicago*, 195 Ill. App. 3d 50 (1st Dist. 1990). All parties of record to the proceeding need to be named in the Administrative Review Complaint, such as the director of the agency, and the administrative agency and the Complaint needs to name all other parties who participated in the administrative agency action. *See Jones v. Cahokia Unit Sch. Dist. No. 187*, 363 Ill. App. 3d 939 (5th Dist. 2006).

It is crucial to argue that an administrative review without jurisdiction to do so, and without the benefit of the entire administrative record, filed by the administrative agency, is unconstitutional and improper. How can a court make a ruling as to whether or not the administrative agency followed its own procedures if the entire Administrative Record is not filed by the administrative agency? Thus, if the time period for an administrative review has passed, no such review of the administrative agency should occur. As the Illinois Supreme Court has held: "judicial scrutiny by way of equity is improper where administrative review is available under the Administrative Review Law." *Dubin v. Personnel Bd. of Chicago*, 128 Ill. 2d 490 (1989).

In conclusion, if you are faced with a situation where a Circuit Court is seeking to review administrative actions that would undo favorable rulings issued by an administrative agency, consider objecting on the grounds that the Circuit Court lacks jurisdiction to examine whether an administrative agency has followed its procedures, especially if an administrative review complaint has not been filed.

Alon Stein practices business law and is licensed in Illinois, Wisconsin, and Arizona. This article is dedicated to the memory of his father, Meyer Ben Shalom Eliyahu v' Shoshana, Z"L.

Pulling Up the Weeds of Antisemitism at the Grass Roots: How the Community, Police, and Government Can Work Together to Combat Antisemitism

By Hon. Joel Chupack and Joel Bruckman

On November 2, 2022, the Decalogue Society of Lawyers, in partnership with the Cook County Anti-Semitism Task Force, hosted a town-hall styled event called, "*Pulling Up the Weeds of Antisemitism at the Grass Roots: How the Community, Police, and Government Can Work Together to Combat Antisemitism*" at Congregation Kol Emeth in Skokie, Illinois. This event was the first official programming presented by the Cook County Anti-Semitism Task Force, a coalition formed by the Cook County State's Attorney's Office, Jewish United Fund, and The Decalogue Society of Lawyers, to bring together members of law enforcement and Jewish community organizations to share information to prevent and protect against antisemitic attacks. Similarly, the purpose of this event was to bring together the Jewish community from in and around the City of Chicago to hear directly from those in law enforcement, local government, and Jewish community organizations on their efforts to combat antisemitism and to provide community members an opportunity to ask questions and express concerns about issues related to antisemitism.

For our Law Enforcement Panel, moderated by Joel Bruckman, we were very fortunate to have a strong lineup of presenters, which included:

- David Williams, Supervisor Cook County State's Attorney's Office;
- Leo Schmitz, Chief, Cook County Sheriff's Police;
- James Davis, Commander, Cook County Sheriff's Police;
- Jay Parrott, Chief, Lincolnwood Police Department;
- Brian Baker, Chief, Skokie Police Department;
- Jonathan Reeder, Detective, Chicago Police Department;
- Michael Specht, Officer, POWSAT, Chicago Police Department; and,
- Roger Heath, POWSAT, Chicago Police Department.

Our equally impressive Local Government/Jewish Community Organizations panel, moderated by Judge Joel Chupack, included:

- Scott Britton, Cook County Commissioner, 14th District.
- Jane Charney, Asst. V.P., Local Government Affairs, Jewish United Fund.
- Alison Pure-Slovin, Director, Midwest Region, Simon Wiesenthal Center; and
- Kelley Szany, Senior Vice President of Education and Exhibits, Illinois Holocaust Museum & Education Center.

The event sparked thoughtful (and at times passionate) discussion about everything from the reporting, investigation, and prosecution of hate crimes, to Kanye West. Significant time was spent discussing the ongoing need for education, both among law enforcement and community members relating to antisemitism; from identifying micro-aggressions; understanding when tropes become antisemitic; to how and when to report incidents as antisemitic hate crimes; and, what the community can expect thereafter.

This event was meant to be the start of similar events to come, so that we can continue this important discussion and continue to build bridges and lines of communications that strengthen our coalition in the fight against antisemitism. It is clear that the Jewish people are not alone, and at least in the Chicagoland area, have many allies willing to listen, discuss, and work tirelessly to Pull up the Weeds of Antisemitism by the Grass Roots! Special thank you to Rabbi Barry Schechter and Michael Okmin of Congregation Kol Emeth, the community members in attendance, and all of our esteemed panelists; thank you for all that you do!

Joel Chupack is a Circuit Judge in the Circuit Court of Cook County, Chancery Division.

Joel Bruckman is a partner in the litigation practice of Smith, Gambrell & Russell, LLP.

Upcoming CLEs

Thursday, April 20, 12:00-1:15pm
Hot Topics in Family Law
Speakers: Judge Matthew Jannusch, Judge Naomi Schuster, Judge William Yu
Moderators: Erin Wilson & Judge Lori Rosen

Thursday, May 4, 12:15-1:15pm
Intersection of Mental Health and Criminal Justice
Speaker: Judge Lauren Edidin

Thursday, May 11, 12:15-1:15pm
Estate Planning
Speaker: Corinne Heggie, Wachner Law Firm

Thursday, May 18, 12:15-1:15pm
Veterans Court *(rescheduled from November 10)*
Speaker: Judge Michael Hood

Thursday, June 1, 12:15-1:15pm
Professor Wendy L. Muchman Decalogue Society Professional Responsibility Lecture Series

Thursday, June 8, 12:15-1:15pm
Diversity as a Mindset, Not Just an Initiative
Speaker: Julia Livingston, DEI Manager, Illinois Supreme Court Commission on Professionalism

Credit for Decalogue members, register at
https://www.decalogue society.org/cle-schedule

Mishpat Ivri – Code of Jewish Law (Part III)

by Adv. A. Amos Fried

In previous installments regarding the subject of "*Mishpat Ivri*" (lit. "Hebrew Law"), we reviewed its origins as a kind of Jewish secular legal code, addressing matters of civil, criminal, administrative and even constitutional law, and then examined several cases demonstrating the role Hebrew Law serves in the Israeli court system. In the discussion below, I would like to address further the fundamental and contentious issue of how Israel's jurists, and in particular those of its Supreme Court, relate to the applicability of Hebrew Law as a source for their jurisprudence. Finally, I will survey the alternative venues available to litigants preferring to adjudicate their disputes in strict accordance with the *Halacha* (traditional Jewish law).

As portrayed in detail earlier, the turning point in the Israeli judicial system's approach to Hebrew Law was intended to derive from enactment of the "Foundations of Law Statute" of 1980, later revised in 2018. Under this seminal piece of legislation, the courts in Israel were instructed to resolve instances of *lacuna* in the law, by referring to "the principles of freedom, justice, equity and peace of the Hebrew Law and Israel's heritage." So it was envisioned, albeit in practice, the results have been partial at best.

The arguments surrounding the centrality of Hebrew Law in the Israeli legal system have occupied Israel's judiciary from the very beginning, yet were best elucidated in a major Supreme Court ruling decided just prior to the ratification of the above Foundations of Law Statute. The circumstances of the case in C.A. 546/78 *Bank Kupat HaAm Ltd. v. Eliezer Hendels et al.*, were prosaic and mundane: on the floor of the safety-deposit vault room in the Appellant bank, the Respondent Hendels found an envelope containing two bonds entitling their bearers to the amount of 20,000 Israeli Liras (approximately $2,600 at the time). Neither on the envelope nor the bonds was there any indication as to the rightful owner. Hendels refused to hand the envelop over to the branch manager and instead brought it to the police, in accordance with Israel's 1973 Restitution of Lost Property Law. The actual owner of the envelope was never identified hence a dispute arose between the parties as to who is eligible to benefit from the find.

The case was brought before the Jerusalem District Court which ruled in favor of the actual finder, Mr. Hendels. In support of his decision, the trial judge relied, *inter alia*, on Hebrew Law which deals extensively with the duty to return lost property to its owner, beginning with the explicit Torah injunction of "*Hashavat Aveda*" (lit. returning a loss; Deuteronomy 22:1), and onwards throughout the ages. The judge reasoned that the safe deposit box room was not actually the private domain of the bank but rather a public area where bank customers were allowed entry without any particular intervention by the bank itself. Under such circumstances, a distinction must be made between "lost" as opposed to "abandoned" property. Items of the latter status, according to classical Jewish sources, can be acquired by the individual finder, regardless of where they were actually located.

The bank's appeal before the Supreme Court, pitted two of Israel's most renowned jurists against each other on the question of what role Hebrew Law should obtain in rulings by the Israeli judiciary. Then Justice Menachem Elon (eventually Deputy Chief Justice), the foremost expert in *Mishpat Ivri* and Israel Prize Laureate, sided with the trial judge and moved to reject the bank's appeal. Then Justice Aaron Barak (eventually Chief Justice), on the other hand, penned the majority opinion accepting the appeal. According to Barak, the practice of reviewing comparative law is legitimate so long as the basic tenets of the various systems are compatible. In this particular instance however, Hebrew Law should not be referred to even as a source of inspiration, since its fundamental approach to the matter of lost and abandoned property is so disparate from that of the Restitution of Lost Property Law. More pointedly, Barak held that Hebrew Law does not in fact constitute a normative system as such, but rather "a treasury of legal thought" in the cultural sense.

Menachem Elon took issue with every aspect of Barak's decision. The ethos of Hebrew Law was not only embedded in the law's very name ("חוק השבת אבידה"), but its contents as well were evidently informed by age-old Torah principles. Whereas the envelope contained no identifying information, it should thus be considered as abandoned by the owner on the assumption that he relinquished any hope of retrieving his property. Elon supported this conclusion on a lengthy discussion of traditional Jewish sources from the Talmud onwards, which he claimed were all relevant and applicable to the present case. Indeed, the Mishna itself (*Baba Metzia*, 2:4) recites an almost identical situation. In light of the pivotal issues involved, Hendels was granted leave to have the case reviewed in an additional proceeding before a panel of five Supreme Court justices including the three who sat on the original appeal (F.H. 13/80 *Eliezer Hendels v. Bank Kupat HaAm Ltd. et al.*). By this time the Foundations of Law Statute had already been enacted and thus became the crux of the dispute between the varying opinions.

Justice Elon reasoned that as a result of the above statute, Hebrew Law had now been bestowed with primary status as the "first source of inspiration among equals" in those cases where there is no clear answer in the existing law. Furthermore, Hebrew Law should now serve as a fundamental component of Israel's national legal system, whereby the Foundations of Law Statute implies that it is "the desired and preferred legal system in the eyes of the legislator, even when serving only as a source of inspiration." Justice Barak squarely objected to this approach to the Foundations of Law Statute. He argued that it would be a mistake to afford Hebrew Law the status of "first among equals" and thereby replace the English law that had previously reigned in Israel's legal system, going so far as to opine that "not only is there no benefit in giving priority to Hebrew law, but this goes against the very work of interpretation." And indeed, this position prevailed to defeat the further appeal in a 4-1 decision, against Justice Elon's minority opinion.

(continued on nex page)

Mishpat Ivri (cont'd)

To be sure, the controversy between Elon and Barak didn't end there but rather gained additional traction with the enactment of Israel's 1992 Basic Law: Human Dignity and Liberty, which declares as its purpose, "to protect human dignity and liberty, in order to establish in a Basic Law the values of the State of Israel as a Jewish and democratic state." While the fact that "Jewish" preceded "democratic" would seem to indicate the dominance of the earlier over the latter, Aaron Barak would have none of it. "Human dignity is a complex principle" and its content should be determined "according to the views of the enlightened public in Israel" as expressed in the Basic Law. Where a conflict arises between competing fundamental values, the weight of each should be determined by assessing its position within the hierarchy of fundamental precepts of the legal system as whole. Such an understanding "is anchored in the legislative system. It reflects the basic precepts of the enlightened public in Israel" (HCJ 5699/92 *Shmuel Vicselbaum v. The Defense Minister*).

From there the path was cleared for Barak to interpret the Jewishness of the State of Israel as essentially synonymous with its democratic character. In his opinion, the meaning of the term "Jewish state" should be held to "a high level of abstraction, which will unite all members of society and find the common among them. The level of abstraction should be so high, until it becomes identical to the democratic nature of the state. The state is Jewish not in a halachic-religious sense, but in the sense that Jews have the right to immigrate to it, and their national experience is the experience of the state."

Almost immediately, Menachem Elon called out what he saw as a blatantly biased dichotomy in Barak's formula: contrary to the "high level of abstraction" imposed upon Jewish principles, no such hypothetical interpretation was applied when discussing the "democratic" state. "How can it be that there is an entirely different standard for each of the two expressions contained in the same statute and in the same clause – 'Jewish and democratic' – when both of them come to describe the same thing: the character of the State of Israel?" Elon openly protested. "How can it be that the expression 'democratic' – which by the way appears second, after the expression 'Jewish' – is to be given its full meaning and is to be interpreted according to the decisions and literature that was written on the subject inside and outside of Israel, yet the expression 'Jewish' must be 'abstracted' of all independent and original meaning, to be regarded as an artificial attachment that is subordinate to the concept of 'democracy'?"

As for "the enlightened public" Barak repeatedly referred to, Elon's retort was sharp and acerbic: "I puzzle over how and from where 'the enlightened public in Israel' enters into this Basic Law – for the purpose of defining the basic rights in it. Who is this public, who deserves to be counted among them or not, what is the nature of this enlightened person and what is the meaning of his enlightenment? The concept of an 'enlightened' public or person is a vague concept, and on its own has nothing to offer." Citing the pre-state Zionist thinker Ahad Ha'am (1856-1927), and his admiration for "those educated in the spirit of one the enlightened nations of Europe", Elon comments wryly: "Who will remove dirt from the eyes of this theorist so that he could know the way and the terrible cruelties of one of those nations so-called enlightened, which were perpetrated in the light of the sun, in the middle of the twentieth century, during the Second World War, in the days of destruction and holocaust…In any case, having merited a world of our own legal system producing the Basic Law: Human Dignity and Freedom, there is no longer any need nor is it appropriate to introduce an element and definition such as 'the attitudes of the enlightened public in Israel' into our legal system" (C.A. 506/88 *Shepher v. The State of Israel*). And indeed, in that particular case then Deputy President Elon ruled that while jurists must strive for synthesis between the varied principles embodied in the Basic Law, "whereas active euthanasia runs counter to the essence of the State of Israel as a Jewish state…the synthesis between the two concepts – 'the values of a Jewish and democratic state' – requires us to prefer the conclusion deriving from the values of a Jewish state and in accordance with them interpret the conceptual values of a democratic state." Which is to say – not the exact opposite of Aaron Barak's view, but certainly a stark deviation from it. Nevertheless, it is specifically the latter approach which has held sway over the vast majority of the Israeli judiciary to this day.

As a result, those wishing to be certain that their dispute will be adjudicated in conformity with Hebrew Law, will not voluntarily engage with the Israeli court system, but rather seek alternative venues, avowedly committed to the *Halacha*. In the past, one such forum was the officially ordained Rabbinical courts of Israel, who would hear cases where both litigants freely submitted to the authority of these tribunals. However, in 2006 Israel's Supreme Court declared such activity as *ultra vires* on the part of Rabbinic court system, whereby any such rulings would thus be devoid of official legal status. In the meantime, there has developed an ever-growing profusion of private Torah Courts (*Batei Din*), essentially serving as consensual arbitrators whose decisions can be enforced once adopted into the standard Israeli legal system. Historically, such forums have been the practice of Haredi (so called ultra-orthodox) communities for generations on end. Yet increasingly, also the Religious Zionist movement has begun establishing a variety of Rabbinic courts as an alternative means to litigate disputes in accordance with the precepts of *Mishpat Ivri*.

The Rabbis tell us that Elijah the prophet will appear three days prior to the coming of the Mosiah, so that during the interim he will resolve all outstanding disputes that have beleaguered Israel from time immemorial. Undoubtedly, the modern State of Israel has provided a substantial contribution to assure that Elijah will remain quite busy throughout those three days.

Adv. A. Amos Fried, a native of Chicago, is a licensed member of both the Israel and New York State Bars, practicing law in Jerusalem for more than 30 years in civil litigation, criminal defense, and commercial law. His private law firm is located at 5 Ramban St. in Rehavia, Jerusalem, and he can be reached at 011-972-544-931359,

Tax Forfeitures:
The 6th Circuit Calls Strict Foreclosure State Sponsored Theft

by Michael H. Traison, Bozena M. Diaz, and Jocelyn E. Lupetin

Lawyers reading the text of a recent decision issued by the Court of Appeals for the Sixth Circuit (*Hall v. Meisner,* Case No. 21-1700, Oct. 13, 2022) will likely feel they are back in law school. In reaching its determination that a lower court erred in dismissing homeowner suits where a County in Michigan ("County") had forcibly taken homes "worth vastly more than the debts these plaintiffs owed," the Court takes a deep dive into the history of strict foreclosure and its historical treatment and analysis by English courts, American courts, the Magna Carta, and the U.S. Constitution.

The central issue in the *Hall* case is whether the state may cause owners of real estate to forfeit the entire value of their real property in satisfaction of delinquent property tax bills – particularly when the value of the real property far exceeds the amount of the tax debt and the homeowners receive nothing in exchange for the taking of the equity remaining in the property. Here, the Sixth Circuit confidently determined that such practice is in violation of the "Takings Clause" of the U.S. Constitution, and remanded the case to ensure the lower court revises its position to be consistent with its findings. We are reminded that this issue, upon which there remains a 4/3 split among the circuits, is far from resolved.

To understand the gravity of this decision, it is important to discuss the difference between strict foreclosure – which is at issue here – and the more familiar foreclosure by sale. Strict foreclosure is a form of judicial foreclosure that allows the foreclosing party to receive title to the real property without requiring a sale. Strict foreclosure is still permitted in some U.S. jurisdictions. However, it is typically reserved for situations where the amount of the debt exceeds the value of the property.

The reason the *Hall* case deserves special attention is that the County, in satisfaction of delinquent property taxes, transferred title to the real property in question, which had a value far exceeding the amount owed, to itself, and gave nothing to the homeowners/tax debtors in exchange for the equity they held in the property prior to the taking. Thus, the homeowners/tax debtors were effectively robbed of their equity and the Court concluded that such action violates the "Takings Clause," which reads: "Nor shall private property be taken for public use, without just compensation."

This is not to say that all foreclosure proceedings violate the U.S. Constitution. In fact, the more common foreclosure by sale, be it judicial or non-judicial, allows that the real property be sold for an amount reasonable within the market and any sale proceeds which are not needed to satisfy outstanding tax, mortgage or other debts be paid back to the homeowner. The return of that surplus compensates the homeowner/tax debtor for his or her equitable interest in the property, and has been standard practice under both Michigan law and the law of virtually every state for the past 200 years. Clearly, this practice, which dominates the foreclosure landscape, does not violate the rights of the homeowner/tax debtor, and properly enables creditors to be made whole. What made this situation different was that the Michigan General Property Tax Act created an exception to this rule for a single creditor - namely, the State itself (or a county thereof) - who alone among all creditors could take a landowner's equitable title without paying for it in the process of collecting a tax debt. In that respect, the Michigan statute proved self-dealing and an aberration from some 300 years of decisions by English and American courts, which barred precisely the action that the County took here.

In addition to the constitutionality of the strict foreclosure process, the *Hall* case also causes us to question whether such practices, if violative of the "Takings Clause," are also fraudulent transfers. As we have discussed in prior client alerts, portions of the Bankruptcy Code permit trustees or debtors in possession to set aside fraudulent transfers. *See,* 11 U.S.C. §§544, 548. In other words, transfers of property that were made for "less than a reasonably equivalent value in exchange for such transfer" are considered constructively fraudulent and can be set aside by the bankruptcy trustee or debtor in possession. 11 U.S.C. § 548(a)(1)(B).

Additionally, Section 544 of the Bankruptcy Code, 11 U.S.C. §544, incorporates applicable state law governing voidable or fraudulent transfers. Accordingly, it must follow that a strict foreclosure of the type at issue in the *Hall* case, which renders a debtor insolvent, should be considered constructively fraudulent and may be set aside because there has been no reasonably equivalent value given to the debtor in exchange for the transfer. This is an area that is actively evolving, and we will continue to monitor and provide further updates as appropriate.

Please note this is a general overview of developments in the law and does not constitute legal advice. Nothing herein creates an attorney-client relationship between the sender and recipient. If you have questions regarding voidable transactions or fraudulent transfers, please contact Michael H. Traison (mtraison@cullenllp.com) at 312.860.4240, Bozena M. Diaz (bdiaz@cullenllp.com) at 212.510.2227 or Jocelyn E. Lupetin (jlupetin@cullenllp.com) at 516.296.9109.

2023 Judicial Reception Photos

Photos by Sheri Witko Photography

View more photos on our Facebook page

Save the Date!

Wednesday, July 12, 2023

Decalogue Society 89th Annual Installation and Awards Dinner

Chai-Lites

by Sharon L. Eiseman

News about our busy members' coming, going, celebrating, being recognized, speaking, writing, making new career moves, standing up for the oppressed, volunteering, acquiring more new titles and awards than seems possible. And now, some of the accomplishments and accolades of our Members:

Mazel Tov to Decalogue President **Judge Myron Mackoff** on his marriage to Andrea Chavvaria on January 18. Decalogue member Hon. Travis Richardson officiated.

Hon. Milton Black was honored by the Illinois Workers Compensation Commission for his longtime work—more than 50 years!—in both the private and public sector, his service as an Arbitrator for the Commission, as a member of the Commission's Review Board, and his mentorship of Commission Arbitrators.

Decalogue Board member **Chuck Krugel** was named Co-Vice Chair for the Chicago Bar Association's Solo/Small Firm Practitioners' Committee. Also, Chuck will be moderating this year's series of seven employment law seminars for Financial Poise and West LegalEd Center's "Protecting Your Employee Assets." **Helen Bloch** & **Max Barack** are serving as panelists for this CLE as well.

As an alumnus of DePaul University College of Law, **Jeff Cohn** has been featured in the DePaul Migration Advocates Video Series led by the DePaul Migration Collaborative. To learn about this collaborative, visit DePaul Migration Collaborative's website: https://lnkd.in/gQ-44U_9C. Jeff invites you to enjoy this video about his experiences working in the field of immigration. Maybe it will inspire you to get involved!

Mazel Tov to **Michele Katz** on the Bar Mitzvah of her son, Elon Rosenbaum, at the Anshe Emet Synagogue in February.

Past President **Judge Joel Chupack** has been assigned to General Chancery Section of the Circuit Court of Cook County. He was also the Keynote Speaker at the ABA's 5th annual Unauthorized Practice of Law seminar last Fall.

Past President **Barry Goldberg** was sworn into the judiciary December 5, after being elected from the 9th subcircuit in November. And for a bit of record-setting: Barry and his twin brother, **Associate Judge Mitchell Goldberg** (also a Past President), are the first set of twins in Illinois history to ever serve simultaneously!

Benjamin Koufax Marks, son of Decalogue Recording Secretary **Alex Marks** and his spouse Erica Marks, will be called to the Torah for his Bar Mitzvah on April 15, 2023.

Decalogue Board member **Howard Ankin** is celebrating the 25th anniversary of his firm Ankin Law Offices.

Long-time member **Louis Berns**, of Favil David Berns & Associates, reached an agreement to settle client claims against 7-Eleven for $91 million, after discovery revealed that parking lot crashes like those which seriously injured his client, happen daily at 7-11 stores throughout the country, and despite 15 years of accidents, no protective strategies had been made. Kudos to Louis for helping keep the 7-11 visiting public safe!

Mazel Tov to Board member **Max Barack** and his wife Deborah on their recent New Year's gift: the birth of their daughter Sari Dana Barack on January 10, 2023—at 10:45, to be precise. She will have the privilege of being the sister to the first daughter of Max and Deborah whom we highlighted in a prior Chai-Lites publication.

DSL Past President **Judge Martin Moltz** was honored by the Chicago Alumni Chapter of the Phi Alpha Delta Law Fraternity with the 2023 Hon. Mary Ann G. McMorrow Distinguished Service to the Legal Profession Award.

We have room for one more Mazel Tov: this one for DSL member **Jon Federman**, who was recently engaged to Bryce Lindon, with the sharing of wedding vows scheduled for November.

And a loud Congratulations, filled with pride, to DSL Past President **Michael Strom** for his very giving nature that prompted the "Community", a local publication, to feature him as a valuable link in the provision of legal aid resources to represent a couple devastated by a foreclosure on their mortgage, threatening the loss of their home. Michael, who does pro bono work for the JUF Evelyn R. Greene Legal Services organization, dove right into the mess of paperwork, saw the flaws in the process, and, in his own words, "sounded the alarm, and in a couple of days, I had expert attorneys contacting me" who ultimately took on the case. Due to valuable communications with the bank, the insurers, contractors, and the courts, counsel for the homeowners reached a settlement and thereby "saved the house from the auction block" and allowed the very grateful couple to breath freely.

And last but certainly not least or forgotten, our DSL 2nd Vice President **Joel Bruckman** served superbly as the emcee of the February 5 DSL Program at the Illinois Holocaust Museum in Skokie featuring the Green Book exhibit, and for the presenting of Solidarity Awards to several well-respected judges and legislators for their histories of outstanding public service and dedication. Those award recipients were Hon. Bobby Rush, **Judge Abbey Romanek**, Sen. Laura Fine, and Illinois Supreme Court Justice P. Scott Neville. All were present to accept their well-earned recognition and some serious audience applause as public confirmation of their accomplishments. The Green Book in the form of a travel guide identified as "The Black Travelers' Guide to Jim Crow America," was created by Victor Hugo Green—a Harlem-based postal carrier. This Guide, first published in 1936, listed accommodations across the U.S. which welcomed African Americans, thus enabling this otherwise ostracized population to travel across the country without having to sleep and eat in their cars. Following the program, attendees were invited to tour the Museum's Green Book Exhibit, including information about and photos of the hotels that served in such a capacity, and of some of the travelers and their experiences.

Sharon L. Eiseman is a board member of Decalogue..

Welcome New Members!

Miriam Isabelle Berne
Irene Schild Caminer
Ariella Campisi
Paul Jordan Cherner
Todd David Cohen
Jennifer F. Coleman
Samantha R. Crane
Nia Inez Crosley
Michael Anthony Currie
Joshua Ari Dicker
Ivannova Nataly Barreto Espinosa
Molly Franklin
Michele Gemskie
Shlomo Hahn
Nathan Hakimi
Patrick Charles Heery
Todd Heller
Steve Hendler
Perry J. Hoffman
Isaac M. Jaroslawicz
Jocelynn Jordan-Kerzner
Shimon B. Kahan
Adam Levinson
Ken Levinson
Rebecca Melzer
Melissa Needlman
Stuart Nudelman
Michael I. O'Malley
Howard Peritz
Joseph Preiser
Scout Franklin Savage
Lindsay A. Saylors
Erin Rachael Shanahan
Rachel Sheinin
Noa Gabrielle Siskind
Josh Sklare
Smith Spencer
Alon Spevak
David Sternfield
LaRie Suttle
Larisa Vishkovetsky
Caitlin Wilder
Rachel Fanny Wittenberg

Thank You to Our Members Who Gave Above and Beyond

Sustaining Members

Kevin B. Apter
Robert K. Blinick
Adam E. Bossov
Irene Schild Caminer
Hon. Neil H. Cohen
Stephen G. Daday
Hon. Morton Denlow
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JUSTICE, JUSTICE SHALL YOU PURSUE

134 North LaSalle Street Suite 1430
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The Decalogue Tablets is published semi-annually by The Decalogue Society of Lawyers, Inc.

2023 Vanguard Awards Luncheon

Tuesday, May 2, 2023, 11:30am - 1:15 pm

The Union League Club Chicago, 65 W. Jackson

Join us to Congratulate

Steven M. Elrod

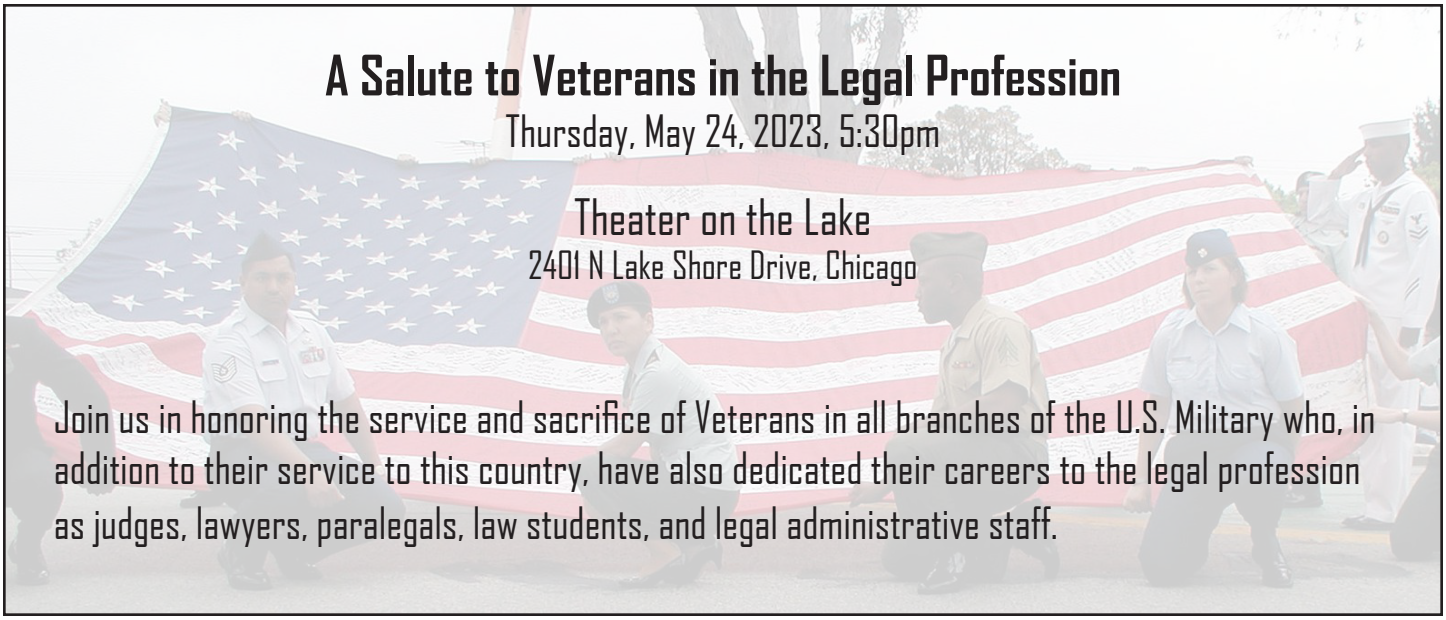
Decalogue's 2023 Honoree

Tickets: $75

CBA is providing kosher meals on request for $200 if you register through our website.A limited number are being subsidized by Decalogue on a first come basis. Please email us at decaloguesociety@gmail.com with questions.

Buy tickets to sit at Decalogue's Table Here

SAVE THE DATE
for this All-Bar Event



A Salute to Veterans in the Legal Profession

Thursday, May 24, 2023, 5:30pm

Theater on the Lake
2401 N Lake Shore Drive, Chicago

Join us in honoring the service and sacrifice of Veterans in all branches of the U.S. Military who, in addition to their service to this country, have also dedicated their careers to the legal profession as judges, lawyers, paralegals, law students, and legal administrative staff.