

THE GAVEL

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The Gavel

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The Gavel

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Check out our Web site at:

www.ija.org

President's Message

Honorable Stephen Mathers

Long Range Planning, which really should never end for an organization as vital as ours, is nonetheless complete for this year. We received the Report of our hired consultant in August, so had the perspective of managers of professional associations. But the hard work (and brain-storming and fun) took place at a Planning Session in September. Assisted and led by Bob Craghead (Exec. Dir. of the ISBA, and also an experienced group Facilitator who volunteered his entire day and preparation time to the IJA), the L. R. P. Committee and Executive Committee developed a raft of ideas and objectives that can guide the Association's officers for years to come. I wasn't surprised at the enthusiasm and ingenuity of those attending--the participants had or will have experience under 18 different Exec. Comm.'s and Presidents.

Although several concepts may not be ripe for implementation for several years, some were considered important for immediate action. Anticipating this, the Board of Directors in July authorized the Exec. Comm. to act on critical needs for the IJA. It has done so in its determination to more publicly declare and internally structure IJA as a truly independent organization, one which can and does more credibly, and uniquely, speak to the needs of Illinois' Judges. This action was also believed to best provide increased service and information to members and committees. Accordingly,

we are in the process of hiring our first full-time employee, an Executive Assistant to the President and Exec. Comm. As well, we are seeking separate and distinct office accommodations in downtown Chicago (which include, of course, discussions with the owners of our present building there).

Although change was forced upon us, almost five years ago, when the IJA no longer could operate out of a Cook County Court facility, all your officers agree that this was one of the most significant and positive events in the history of the Association. Required to stand on its own, the organization thrived and gained both acceptance and strength. To take yet another step forward on a path that has already led to increased success was not a difficult decision for the Exec. Comm. I look forward to being able to announce to you at the Annual Meeting in December the individual who will be our new Exec. Asst., as well as the arrangement for our office facilities.

One unfortunate result of this change will be that we'll no longer have the services of Kathy McEnroe. Kathy has been for years the right arm of the IJA, doing an outstanding job for the officers and committee chairs. Despite only having a part-time position (which she then has had to divide between the Chicago Bar Assn. and the IJA), she has consistently produced a huge volume of work. I personally have appreciated how she has repeatedly responded to my e-mail or voice-mail inquiries, from home, on her scheduled days off. All who have worked
see PRESIDENT Cont'd on Page 2



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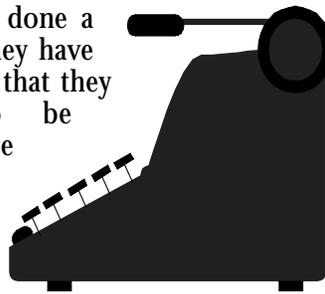
SPEAKERS

Stuart A. Nudelman, Chair
John O. Steele, Vice Chair

Greetings from the IJA Editors

To our fellow Illinois Judges:

Incoming President, Stuart Nudelman, asked us to co-edit The Gavel for the upcoming year. We have accepted this task with a modicum of trepidation. Our feelings are attributable in large part to the shoes that we have to fill. Rita Novak and Lanie Berger, as we are sure you will agree, have done a phenomenal job. They have assured us, however, that they will continue to be involved, and, more importantly, they guarantee that we will continue to receive help and support from judges around the State. In skimming The Gavel, it becomes readily apparent that the success of the publication is a cooperative effort from many sources. We ask that our fellow judges continue to contribute to this publica-



tion and that you let us know of any items that you deem are newsworthy. We further request that you submit articles regarding interesting or relevant issues in the law. Finally, we ask that you tell us what you would like to see in The Gavel. We certainly will appreciate any advice that will aid in insuring that The Gavel continues to be the excellent publication it has become. In closing, we would like to thank outgoing President, Stephen Mathers, for all his enthusiasm and support during this past year. We wish continued success to incoming President, Stuart Nudelman. Here's hoping for a great year to all the judges of the State of Illinois.

Grace G. Dickler

Daniel T. Gillespie

PRESIDENT *Cont'd from Page 1*

with Kathy will miss not only her efficient and professional work-product but her willingness to assist and her warm personality.

In other significant news.....Stuart Nudelman and our Public Relations Consultant, Chris Ruys, have been working with the Illinois State Board of Education on a cooperative project that would place the IJA's "Judges in the Classroom" program into every school district in the State. Details of that joint effort will be announced almost simultaneously with this Gavel issue release. Check your local newspapers for details. And, expect to be asked to participate!

The IJA Foundation is up and running. In the future we of course hope that the Foundation will provide sufficient earnings from investments so as to be the primary source for the annual IJA scholarship to one of the Illinois law schools.

The Judicial Selection & Retention Comm. Chairs, Ray Jagielski and Rich

Goldenhersh, ably assisted by Past-President Pat McGann, have continued to attend meetings of, and provide information and assistance to, various Committees studying the pros and cons of regulating and monitoring judicial campaigns. The IJA has not endorsed any suggestion or proposal. However, the IJA has agreed to assist candidates by participating as a resource, to Bar organization staffers, for a "hotline" for judicial candidates to call with ethical questions. This information would be anonymous and confidential.

Criticism Response Chairs Dennis Burke and Phil Benefiel, although providing counseling about two troublesome media references to Judges, have thankfully had little else to do so far this calendar year. Always ready to respond to Aunfair criticism@, no Judge has called on the IJA for the necessarily speedy media rebuttal it has provided in the past, often with the assistance of the ISBA &/or the CBA. Perhaps our prior *see PRESIDENT Cont'd on Page 3*

Justice Rita Garman: Breaking Boundaries

by Judge Susan S. Tungate

"Why would a nice girl like you want to go to law school?" That was the question posed in 1965 to Supreme Court Justice Rita Garman when she expressed her desire to study the law. In February of 2001, Justice Garman became just the second woman in Illinois history, and the first from downstate, to sit on the Illinois Supreme Court.

With her already distinguished academic record, Oswego High School valedictorian, Bachelor of Science in Economics with highest honors (Bronze Table) and scholarship Key from University of Illinois that query in 1965 only seemed to have strengthened Justice Garman's resolve to meet the challenge. Reflecting back now her explanation of success, like Justice Garman, is direct. "From the time I was a young girl, I'd been taught to set my goals high, and law school was no exception. I had made up my mind, and that was all there was to it." That determination, intelligence and old fashion spunk has taken that "nice girl" to the bench of the Illinois Supreme Court.

After receiving a Juris Doctor, with distinction, from the University of Iowa, she and her husband, Gill, also a 1968 graduate of University of Iowa Law School returned to Illinois. Always looking for a challenge, Garman took a job with the Vermilion County Legal Aid Society, which was, to be kind, on its last legs. The twenty-five year old dynamo solicited support in the community, reorganized the office, hired a director and breathed life back into the Organization. It wasn't long before her reputation as a bright and hard working attorney with the "eye of the tiger" became known and she was offered a job as an assistant States Attorney for Vermilion County. She

served the public as a prosecutor for four years then went into private practice in the Danville law firm of Sabat, Swanson, Banks, Lessen and Garman. That ended Christmas Eve 1973, on the way to her Family Christmas Celebration, when she learned she had become the first woman to be appointed associate judge in her district. That began a series of "Firsts" for Justice Garman. After twelve years on the bench as an Associate Judge she became the first woman to be elected circuit judge for the Fifth Judicial Circuit. In July 1987, she was named presiding judge for her county, another first. The retention vote she received was the highest in the state that year.

In 1995 Justice Garman was assigned to the Fourth District Appellate Court, the first woman from her district to so serve. She was elected to that post in 1996. She served there until she was appointed to the Illinois Supreme Court replacing retiring Justice Benjamin Miller, February 6, 2001.

One of the most remarkable things about Justice Garman is her ability to balance

her professional and private life. She and Gill have raised two children, Andrew and Sara, to adulthood. And yes, they have become the very proud grandparents of year old Kathleen Marie. To relieve the stress of the profession and to off set her gourmet cooking she runs three miles every day.

Justice Garman has been and continues to be active in her community. She is a member of the Executive Club, Rotary and serves on the Board of Directors for the 708 Mental Health District, to mention but a few of her activities.

When asked about the challenges facing the legal community, as viewed from the Supreme Court, Justice

Garman expressed her great concern for the number of attorneys suffering from substance abuse that are facing disbarment. The problem of litigants represented by impaired attorneys is an issue that effects the entire legal system but Justice Garman also pointed out the "Tragedy" of those addicted attorneys "who had worked so hard" to become attorneys and now face losing their opportunity to practice.

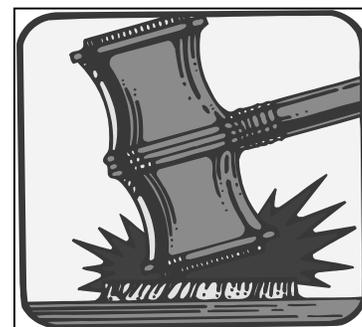
Compassionate, determined Justice Garman "looks forward to the opportunity to "impact Law and Precedent" armed with her broad-based experience, intellect, and skill.

PRESIDENT *Cont'd from Page 2*

responses have impressed the media with the importance of checking its sources. On this subject, "no news" truly is "good news."

Bill Madden and Seymour Simon, Chairs of the Retired Judge Comm., continue to seek out ideas and formulate proposals for the use of that severely underutilized asset, within the IJA and the Court system, able and willing retired Judges. Just one example is the Board of Director Agenda item for December: a suggestion for Continuing Judicial Education for retired Judges.

The Annual Meeting, December 13-15, should be outstanding this year. Check out the excellent Friday afternoon Program, described elsewhere in this Gavel issue, put together by Michele Lowrance and Mary Ellen Coghlan.



News from the 21st Circuit

by Judge Susan S. Tungate

Retired Associate Judge, Sheldon Reagan (Kankakee) is enjoying his "new" life in Missoula, Montana with his wife, Barb, in a beautiful home that overlooks the mountains. Long time outdoorsman and avid reader, he has been fishing, reading and preparing for the hunting season. In a recent telephone conversation Sheldon exclaimed with glee that he had not adorned a suit or tie (bow of course) since he exited the Courthouse July 3 sporting a stylish cowboy hat and cigar.

Judge Reagan's successor, William Schmidt (former Public Defender for Kankakee County) now reins over traffic court. In late September Schmidt left for a 3-week trip to Australia to visit his daughter. Those judges sitting in traffic during his absence are looking forward to his return.

Computer wizard, David Youck (Associate Judge, Iroquois County) has recovered from melanoma surgery and will begin treatment soon. During the

preparation for that surgery a non-malignant brain tumor was discovered. Judge Youck is scheduled for brain surgery in November. Typical of David, he has had little time off the Bench or off the Internet. The day before he left for Mayo Clinic, David portrayed Judge Raymond (Iroquois County Judge and latter Chief Judge of Oklahoma Territories) in a historical presentation at the Onarga Cemetery. David also sings with a barbershop quartet. If Broadway is ready so is David!

It was a monumental week for Circuit Judge Clark Erickson (Kankakee). First he encountered a deer which appeared abruptly before him, pro se, without notice, causing some \$6,500 damage to his vehicle. According to Erickson, everyone at the scene agreed that "the deer was at fault." The deer has not yet filed a notice of appeal. Within seven days, Judge Erickson received a prestigious award in a local photography competition sponsored by the Kankakee Area Camera Club. Judge

Erickson's photograph of the Kankakee County Courthouse gathered 1st place in the General Interest category and Best in Show. The deer, reportedly an avid landscape photographer, came in dead last.

IBF Breakfast Reception to Honor Justice Kilbride

On Friday, December 14, the Fellows of the Illinois Bar Foundation will host a breakfast reception to honor Illinois Supreme Court Justice Thomas L. Kilbride with its Distinguished Service to Law and Society award. The 8 a.m. breakfast is scheduled to coincide with the Joint Meeting of the Illinois State Bar Association and the Illinois Judges Association at the Sheraton Chicago Hotel & Towers. The cost is \$25 per person; complimentary to Fellows of the Illinois Bar Foundation. For more information, contact Susan Pierson at (312) 726-6072.

Program for IJA Convention

Which of the witnesses is telling the truth? For that matter, which of the attorneys is telling the truth? Have you ever felt clueless? This year's IJA annual seminar will address those kinds of problems. The seminar, formally called "Objective Indicators of Deception in the Courtroom," is called informally by the committee "Who Can You Believe?"

The purpose of this year's seminar, to be held on December 14, 2001, at the Sheraton Chicago Hotel and Towers, from 2:00 p.m. to 5:00 p.m., is to go deeper into the subtext and nuances of testimony, perceptual and memory distortion, and how to tell if someone is lying.

We have recruited extraordinary speakers, including Stan Walker, internationally known author and teacher. Mr. Walker teaches various police departments, and at criminal justice training academies. He also teaches interrogative and interview techniques

for numerous national and international institutes, such as the United States Department of Justice, Johns Hopkins University, and the Federal Bureau of Investigation. His latest book is "The Truth About Lying: How to Stop a Lie and Protect Yourself From Deception."

Special Agent Marie Dicen, who is assigned to the Behavioral Analysis Unit of the FBI at Quantico, Virginia, and is a serial killer profiler, will discuss the same topic from a law enforcement perspective.

John J. Ratey, M.D., will speak about memory and perceptual distortions and how our brain chemistry can transform a distortion into truth. Dr. Ratey is Associate Professor of Psychiatry at Harvard Medical School. He recently authored "A User's Guide to the Brain" and "Driven to Distraction."

Assistant U.S. Attorney Mitchell A. Mars, Chief of the Organized Crime

Section of the U.S. Attorney's Office, will give his perspective about deception among those who may be institutional liars.

Dr. Leonard Miller has been a trial attorney for 40 years and is now a Professor of Psychology and Co-Editor of the Journal of Integrative Psychiatry. He specializes in and will speak about flaws in eyewitness testimony and how distorted perception can completely change witness testimony.

The program will be preceded by lunch, and our keynote speaker at the luncheon will be world-famous author Scott Turow. Mr. Turow is a Chicago attorney with the firm of Sonnenschein, Nath & Rosenthal. He is the best-selling author of "Presumed Innocent", "Personal Injuries", and many other works.

This seminar is free to the members of the IJA and ISBA. Non-members are invited, and may pay \$20.00 at the door.

Focus On Judge Stuart Nudelman

By Judge Grace G. Dickler

The Honorable Stuart A. Nudelman will be assuming the helm of the IJA at the Convention in December, 2001. Judge Nudelman graduated from the Chicago Kent College of Law in 1972. From his graduation to date, Judge Nudelman has been committed to public service. He began his legal career as a trial attorney in the Cook County Public Defender's Office. He progressed to a supervisory position in said office wherein he remained until his appointment as an associate judge in 1985. In 1988, Judge Nudelman was elected a Circuit Judge and has been twice retained in said position in both the 1994 and 2000 elections.

Throughout his tenure as a judge, Stuart Nudelman has demonstrated that a judge's role should transcend hearing and adjudicating cases at trial. Judge Nudelman has devoted his career to enhancing both the legal profession and the judiciary. The vehicle employed by Judge Nudelman to effectuate this goal has been through teaching and mentoring both lawyers and judges as they embark in their respective careers. As early as 1982, Stuart Nudelman commenced teaching trial practice at Loyola University Law School as an Adjunct Professor. Thereafter, he began teaching lawyers trial techniques at the Chicago Kent College of Law. Just a few years after his ascension to the Bench, he became an instructor for new judges' seminars both in Illinois and across the country. In 1995, Judge Nudelman initiated a mentoring program for judges and was appointed by then Chief Judge Donald P. O'Connell as Judicial Mentoring Program Chair. In addition to these activities, Judge Nudelman has lectured to innumerable organizations and groups regarding various topics related to the law and the administration of justice.

Judge Nudelman has served throughout his judicial career with honor and distinction. His leadership qualities immediately became apparent. The year following his appointment as an associate judge, he was asked to serve

as Supervising Judge in the Criminal Division of the First Municipal District of the Circuit Court of Cook County. He retained that position until 1992 at which time he was assigned as a trial judge to the Law Division, a prestigious division of the Circuit Court. Thereafter, in 1995, due to the unfortunate illness of Judge Frank Barbaro, he was assigned as Acting Presiding Judge of the Fourth Municipal District and later in 1999, was appointed Presiding Judge of the Second Municipal District. As Presiding Judge of the Second District, he demonstrated once again his indefatigable zest by founding the Evanston Community Court Alliance for Progress, chairing the Second District Domestic Violence Council and participating in the Skokie Youth At Risk Task Force. The District Two Community clearly recognized his work, even after Judge Nudelman was transferred from District Two, he was awarded various awards by the community including a NOW award for his work with domestic violence and an award conferred by the NAACP for work within the Evanston Community. After leaving the Second Municipal District, Judge Nudelman commenced his tenure as a trial judge in the Third Municipal District. Recently, however, he learned that he has been reassigned to the Law Division of the Circuit Court of Cook County.

Judge Nudelman's dedication and excellence has been widely recognized throughout his career. The many awards that he has received demonstrate his commitment to addressing issues of concern to our communities and to his overriding belief that justice must be fairly administered to all regardless of race, ethnicity or creed. Although too numerous to list, examples of awards received by Judge Nudelman include: Concerned County Employees for Victims of Domestic Violence Man of

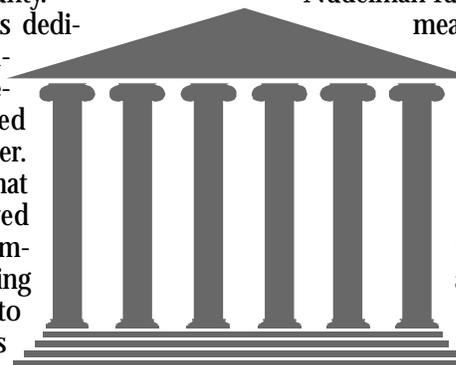
the Year Award; Union Baptist Church Substance Abuse Outreach Man of the Year award; Arab American Association Man of the Year Award and Women's Bar Association and Black Women's Lawyer Association Family Peace Day Award.

Judge Nudelman will assuredly approach the challenge of this presidency with the same enthusiasm and vision with which he has tackled multitudes of endeavors in the past. The difficulties of the office will have been lessened somewhat by the excellent job of his predecessors including our current President, Stephen Mathers. However, as we have come to expect of Judge Nudelman, many existing projects will be revitalized and many new ones will be initiated. For example, Judge Nudelman intends to continue working with the community outreach program concentrating on a coordinated project between the IJA, ISBA and the Illinois State Board of Education which will bring judges and lawyers into Illinois high schools to discuss tragic outcomes surrounding driving under the influence and teenagers. This program will be geared to fifteen year olds about to get their drivers licenses. The program will be headed by Judge Patrick McGann, former president of the IJA and former supervising judge of the Chicago Traffic Court. Judge

Nudelman further hopes to begin a meaningful dialogue with the Judicial Inquiry Board and Court's Commission regarding discipline of Illinois judges. Judge Nudelman believes that the IJA should be actively involved in helping to prevent problems for all its members. Judge

Nudelman stated as follows: "I hope to make myself available to any judge in this state at any time for the benefit of all judges statewide."

We congratulate Judge Nudelman and wish him a year filled with success.



News from the Committees

Electronic Media: Judge David Youck reports that his Committee would like more material for the IJA Website. Feel free to contact him at the IJA web site.

Government Affairs: During the July board meeting, Judge Timothy Evans presented the report. He indicated that meetings with legislative leaders would be planned for the early fall to continue the efforts for judicial compensation. Since that time, intervening events may have impacted the situation. Retired Justice Michael Galasso notes that although 2002 is a Compensation Review Board Report year, with the events of September 11th and the abrupt change in our economic climate, it may be difficult for the Government Affairs Committee to address significant issues with our legislative leaders this fall. Retired Justice Galasso reminds us to all hope and pray that our national interest and well-being will be under control by January or February, 2002.

Judicial Selection and Retention Committee: Judge Raymond Jagielski, Co-Chair of the Judicial Selection and Retention Committee, reported at the July board of direc-

tors meeting that he attends meetings of the Illinois Campaign for Judicial Reform in order to monitor that organization's work. An organization called the Cook County and Illinois Judicial Election Task Force has asked the IJA to be listed on their letterhead. Judge Jagielski moved to allow that action. Judge Evans seconded and the motion passed with two dissensions.

Public Relations: Judge Ann Jorgensen reported that the committee is working on expanding the cable television programs throughout the state.

Retired Judges: Judge William Madden presented the report for the Retired Judges Committee at the July board meeting and moved that the board of directors authorize the Executive Committee to pursue an inquiry (with, among others, the Pension Laws Commission and the leadership of the General Assembly) and, if practical, design a plan to achieve the goal of making the automatic increase in retirement annuities each year, "3% or such greater percentage as might have been awarded as a cost of living adjustment to active judges." The motion was unanimously approved.

IJA Board meets in July

President Stephen Mathers welcomed members of the Board of Directors to the meeting held in Chicago, during July. The board approved a request from Terrence M. Murphy, Executive Director of the Chicago Bar Association to co-sponsor a seminar on women and minorities, also co-sponsored by the A.B.A.'s Commission on Racial and Ethnic Diversity, entitled "Breaking Barriers," on September 28, 2001.

During a discussion of the IJA position on associate and retired judges, it was reported that the IJA proposal regarding a change in Supreme Court Rule 39 was submit-

ted to and rejected by the Supreme Court. The proposal would have held open the associate judge position, until after the next general election, of any associate judge appointed to a circuit judge position. The Supreme Court did not, however, specifically address another portion of the proposal which suggested that the experience and knowledge of retired judges be utilized by recalling them to active service, without effect upon retirement rights or benefits, for a period of 75 days or less. The board agreed to continue to pursue the issues.

see **BOARD** Cont'd on Page 7

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Patricia P. Golden	Mary Jane Theis
Richard P. Goldenhersh	Chet W. Vahle
James F. Henry	Kenneth O. Wenzelman
Vanessa A. Hopkins	

JRS Corner: Your Retirement and the Reciprocal Act

by Rudy Kink

The Reciprocal Act allows individuals with at least one year of service credit in more than one Illinois public retirement system to use the Reciprocal Act for the calculation of benefits.

When using reciprocity, service credit in all systems is combined to determine an annuity or survivor benefit. This benefit amount is based on the benefit formula and service credit in each system. In general, the rules of each retirement system apply in determining eligibility for a benefit.

Under the Reciprocal Act, the highest final average compensation is used for computing benefits under all systems. However, total benefits cannot be higher than it would have been if all service were in one system.

If benefits are being paid under reciprocity, and the member has been granted service credit by more than one system for the same period of time, each system will reduce its credit proportionately.

The Reciprocal Act also allows members to repay a system for a refund in order to reestablish service credit in that system. Most Illinois retirement systems require the member to complete 24 months of service before allowing any repayment. If you received a refund from one of the Reciprocal systems, contact that system for more repayment information.

The systems listed to the right participate in the Retirement Systems' Reciprocal Act.

Retirement Systems' Reciprocal Act Participating Systems

County Employees' Annuity & Benefit Fund of Cook County
33 N. Dearborn St., Room 1100
Chicago, IL 60602
312-603-1200

Metropolitan Water Reclamation District Retirement Fund
111 E. Erie St., Suite 330
Chicago, IL 60611-2898
312-751-3222

Forest Preserve District Employees' Annuity & Benefit of Cook County
33 N. Dearborn St., Room 1100
Chicago, IL 60602
312-603-1200

Municipal Employees' Annuity & Benefit Fund of Chicago
221 N. LaSalle St., Room 500
Chicago, IL 60601
312-236-4700

General Assembly Retirement System
2101 S. Veterans Parkway
P.O. Box 19255
Springfield IL 62794
217-782-8500

Park Employees, Annuity & Benefit Fund of Chicago
55 E. Monroe St., Suite 2880
Chicago, 60603
312-553-9265

Illinois Municipal Retirement Fund
2211 S. York Rd., Suite 500
Oak Brook, IL 60542-2374
1-800-275-4673 or 630-368-1010

Public School Teachers' Pension & Retirement Fund of Chicago
55 W. Wacker Dr., Suite 1300
Chicago, IL 60601
312-641-4464

Judges' Retirement System
2101 S. Veterans Parkway
P.O. Box 19255
Springfield, IL 62794
217-782-8500

State Teachers' Retirement System
2815 E. Washington St.
P.O. Box 19253
Springfield, IL 62794
217-753-0311

Laborers' Annuity & Benefit Fund of Chicago
221 N. LaSalle St., Room 748
Chicago, IL 60601
312-236-2065

State Universities Retirement System
1901 Fox Dr., P.O. Box 2710
Champaign, IL 61825
800-275-7877

BOARD *Cont'd from Page 6*

Judge Stephen Mathers announced that the leadership would hold a long range planning forum on September 14, 2001. Bob Craghead, Executive Director of the Illinois State Bar Association will facilitate the program. Judge Mathers discussed the need for a professional association consulting firm to assess the needs of the associ-

ation. A motion was made seconded and unanimously approved to allot \$5000 to hire a consultant. Judge Patrick McGann is also researching how other judicial associations are structured and what issues they address.

Judge Mathers discussed the Illinois Judicial Speakers Bureau, a collaborative effort of the Illinois Supreme Court and the Illinois Judges

Association. Judge Stuart Nudelman discussed the Judges in the Classroom program, which is currently being expanded. The program will be used in driver's education classes throughout the State. In other business, a motion to allow an independent audit every three years was unanimously approved.

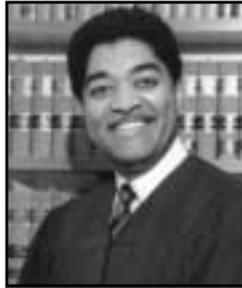
Did You Know . . . by Lainie Berger & a host of statewide correspondents

Before penning each new column, I always glance at my last. And looking at the summer issue, I wish I could go back. For I could brag about my sources giving me the right scoop on Judge O'Connell's new career. Last column, "the event" was the election for Chief Judge of Cook County. That event was eclipsed by a real event, one that changed the face of the world. I start this column the day after three floors at the Daley Center had to be evacuated until the bomb squad could check the content of an unidentified bottle of liquid left in a conference room. Who knew it would only be Kool-Aid? And now comes the news that we started the air war. I wouldn't think of speculating what will happen between now and the time this is published. My prayer today is that we someday get back to a time when something in this column is of some moment.

On a lighter note, if you have news, please mail me at 2102 Richard J. Daley Center, Chicago, Illinois 60602 or e-mail me at my new e-mail: lainiejet@aol.com. I really need more substance and the inside scoop outside of Cook.

Cook County's Corner

Truly a tenacious bunch, the elected judges of Cook County met on September 12th to elect a new Chief. Really, it is quite the story that while baseball, football, the Emmy's, air travel, and about everything else was cancelled, the election for Chief went on. Despite the best efforts of the Gavel's new editors, I was unable to gain a press pass to the election. My sources confirmed all that has already been reported. The election started with four candidates: Judges **Stuart Nudelman**, **Timothy Evans**, **Anthony Montelione**, and **Michael Murphy**. By the third ballot, only Judges Evans and Montelione were still in the race and **Tim** won by about 18 votes. In the spirit of cooperation and conciliation, the circuit judges then



Judge Timothy Evans

voted one more time and unanimously elected **Chief Judge Timothy C. Evans**. On behalf of the IJA, this is fabulous. The new Chief is an active board member and supporter of the IJA, both serving on the Board and having been active in lobbying for our last pay raise. And our incoming President is now assigned downtown to the Law Division- a convenient locale for carrying out IJA business. The IJA certainly won the election. On a personal note, I worked on committees with the new Chief back when I practiced law and worked for him in the Domestic Relations division. Cook County is lucky to have a Chief who (along with many other fine qualities) is the one of the most optimistic, diplomatic, and humble men I have ever met.

Judge **Evans'** first promotion was Judge **Bill Maddux** to Acting Presiding Judge of Law Division. Even though Maddux did give me his raffle prize (a golf umbrella) at a recent golf outing, it's incumbent upon me mention that Maddux did nominate **Evans** for Chief.

I'm delighted to report that the Supreme Court appointed a few good women to the bench. First, kudos to **Moira Johnson**. **Johnson** deserves special mention because she was a finalist in two Associate Judge elections. Does anyone remember what year it was when Moira tried more tort cases than any other attorney? The only thing I am having trouble figuring out is why **Johnson** was sworn to secrecy as to the identity of the Justice appointing her. Because I just don't buy the story reported in the Law Bulletin claiming the Justice's name is unknown to her. Personally, I'm giving credit to Justice **Freeman** for a fine appointment.

Justice Fitzgerald wasn't shy about lending his name to his appointment of **Lori Wolfson**. If you recognize the

name, it's because the new judge is the niece of **Justice Warren Wolfson**. A 14 year veteran of the Cook County State's Attorney's Office, she was a supervisor in the Felony Trial Division at the time of her appointment.

Another mystery is who appointed **Allen Masters** to the Cook County bench. He is quoted in the Law Bulletin as saying he has "no idea" who recommended his appointment. What's happening here? Are people receiving letters out of the blue telling them that the Supreme Court has just appointed them to the bench? **Masters**, a 1967 law graduate, started his career as an FBI agent, did a stint with the Illinois Pollution Control Board, and has been a solo practitioner for the past 15 years. The evidence suggests that **Justice Freeman** is responsible for this experienced attorney taking the bench.

IJA's **Pat McGann** finally gets a well-deserved break. Prior to the election, he left his position as Supervising Judge of Traffic Court and entered the elite world of the Chancery Division.

Retirements abound. Judge **O'Connell** is officially retired. He is now working as special counsel to the University of Illinois where he manages and evaluates medical malpractice cases. Justice **Francis Barth** has retired from the First District Appellate Court. Barth served on the bench for 26 years, eight of them as the Presiding Judge of the County Division. After catching up on household chores and taking life easy for a little while, he may do mediation and arbitration. **Judge Adrienne Geary** had her golf clubs packed and was ready to enjoy life in Florida when she left the bench in October. After years of teaching and then excelling at a post decree call in Domestic Relations, she she deserves the fun. And best wishes to Associate Judges **Frank Meekins** and **Marvin Gavin** on their retirements.

DuPage Doings

A popular name in DuPage County,

Blanche Hill Fawell, is the newest associate judge. She leaves her partnership at Fawell, Fawell & Associates to join the bench. **Judge Fawell** also served as a commissioner on the Court of Claims prior to her appointment. She takes the place of Judge **Michael J. Burke** who was appointed to a full circuit position.

With **Robert Byrne** assigned to the appellate court, DuPage is short judges. The Supreme Court recalled Judge **John Nelligan** to help out.

The 2nd District is losing Justice **John Rapp, Jr.** to retirement at the end of November. It will take a couple judges to fill his shoes, as Justice **Rapp** seems to do about everything. He chaired the Illinois Judicial Conference for 12 years and is on the Illinois Judicial Inquiry Board. Assigned in the Justice's place is **Judge Frederick Kapala** of the 17th Circuit (Winnebago County). **Kapala** has been a judge for 19 years and presiding judge of the Criminal Division since 1995. He will also take **Rapp's** seat on the JIB. While **Kapala** receives the assignment to the 2nd District, Associate Judge **Richard DeMoss** receives a promotion to the circuit bench to fill **Rapp's** vacancy.

Laudable in Lake

The Lake County circuit judges gave **Chief Judge Jane Waller** a vote of confidence in July when they elected her for a second term. Judge **Waller** continues her projects, which include building two more branch courthouses and improving technology.

Around the State

Justice Thomas Kilbride has made history in the 10th Circuit with his elevation of Associate Judge **Jerelyn Maher** to a full circuit position. She is the first woman to hold the post previously held by **Chief Judge Bruce Black**. **Black** resigned to become a federal bankruptcy judge. Judge **John Barra** took over as Chief in the 10th.

Meanwhile, in the 15th Circuit, **Stephen Pemberton** began his term as Chief Judge. And after 14 years as

Chief Judge, **Michael Weber** gave up that post in the 4th Circuit. He had also served a term as chair of the Conference of Chief Judges.

The new associate judge in Effingham Illinois is **James Eder**, a U of I law graduate; he left Taylor Law Offices to join the bench.

It's a surprise and shame to learn that **Justice Peg Breslin** is not running for retention. She was the first woman to serve on the Illinois Appellate Court for the 3rd District.

In the 12th Circuit, Associate Judge **Raymond Bolden** retired after 14 years on the bench.

Associate Judge **Robert Marsaglia** was appointed to fill a vacancy in the 13th Circuit (Grundy County) joining another new Associate Judge, **Lance Peterson** of Morris. Rock Island Judge **Ronald Taber** retired from the 14th Circuit after 18 years. Replacing him is litigator **Walter Braud** of Braud, Westensee & Vanderginst. Kane County (16th Circuit) gained a new judge in **Robert B. Spence**. In the 20th Circuit in Waterloo, Monroe County State's Attorney, **Dennis Doyle** was appointed to succeed **Judge Dennis Jacobsen**. There was a big party to honor him. The 18th Circuit lost Associate Judge **Donald Hennessy** to a final retirement after recall while Associate Judge **Sheldon Reagan** retired in the 21st Circuit.

IN MEMORIAM

We will miss these judges who died recently . . . **Justice William G. Clark** who retired from the Illinois Supreme Court in 1992. **Justice Clark's** career in public service spanned 40 years and included being in the house, senate, Illinois Attorney General and on the Illinois Supreme

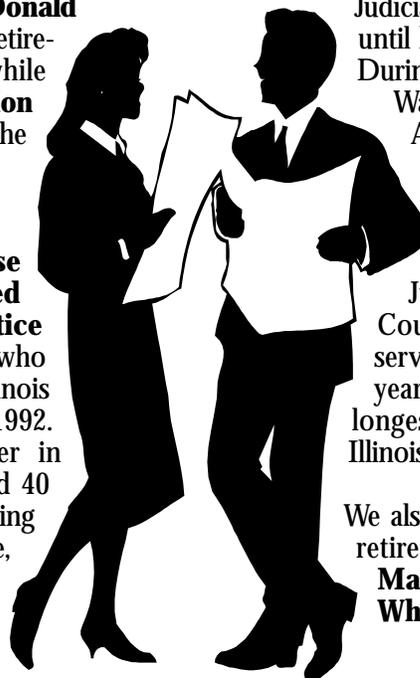
Court. Not to mention a partner at a major Chicago law firm. What a career! Many will miss him.

Cook County lost a legend when **Judge Walter J. Kowalski** died at age 83; he was the longest serving judge in the county (47 years) and possibly the most productive. Known for starting pretrials at 7:30 a.m, plaintiff and defense attorneys alike sought his counsel in evaluating cases. He had been assigned to the Law Division since 1968 and recalled every year past his mandatory retirement. He was known to dispose of in excess of 600 cases per year earning the respect of his colleagues. Condolences to his son, **Judge Robert J. Kowalski**, and cousin, **Judge Thaddeus Kowalski**.

The death of **Judge Saul Epton** made headlines when he died in September at age 91. He is remembered for his creative sentences when assigned to North Boys Court in the early 60's and was honored by the Boys and Girls Clubs for work with teens. After retiring from the bench, he practiced law until retiring in 1997.

We also lost Circuit **Judge Rodney A. Scott**, age 86, who died at his home in Decatur, Illinois on September 30, 2001. Judge **Scott** served as Chief Circuit Judge of the Sixth Judicial Circuit from 1975 until his retirement in 1994. During the Second World War, he served in the Army Air Corps and was discharged in 1946 as a Captain. In 1946, he was elected County Judge in Moultrie County. Judge **Scott** served as a judge for 48 years, making him the longest serving judge in Illinois history.

We also mark the passing of retired Judges **Sidney Mandel** and **Daniel White**.



IJA IN PARTNERSHIP WITH THE ISBA, STATE BOARD OF EDUCATION WILL LAUNCH NEW PROGRAM TO MAKE SAFER TEEN DRIVERS

Auto accidents are the leading cause of deaths among teenagers. A 16-year-old driver has three times the crash risk of an 18-year-old. These are only two of the alarming statistics which led incoming IJA President, Hon. Stuart Nudelman, to plan for a new IJA community relations program during his presidency which will help better prepare adolescents about the consequences they face of risky and illegal behavior behind the wheel.

The program will target 15-year-olds - the group most eager to get the independence and freedom associated with having a driver's license - and provide them with a hard-hitting message about the importance of safe driving.

The IJA will be joined by the Illinois State Bar Association and the Illinois State Board of Education in the program titled "You drink & drive, you lose."

Judge Nudelman, who chairs the IJA's "Judges in the Classroom" program, said: "This program will enable members of the judiciary and the legal profession to assist teachers and parents in delivering to a targeted group an important message that ultimately saves lives."

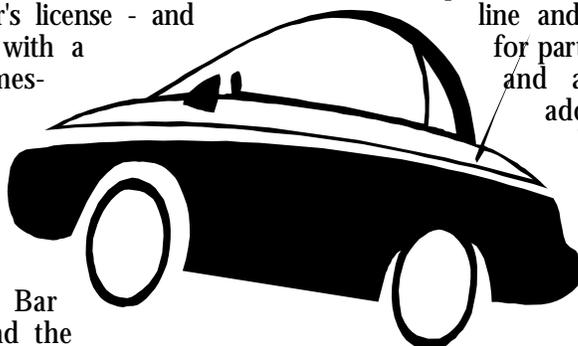
The program, he said, will "seek to persuade youths, through information about the law and a compelling first-person experience shared by a perpetrator and/or DUI victim, that "if they drink even a drop and drive, and are caught, their license is immediately suspended."

Judge Nudelman has tapped Judge Patrick McGann, former presiding judge of the Chicago Traffic Center, to chair the program. Judge McGann also serves on the ISBA's Traffic Laws

and Courts Section Council which will help identify the judges and lawyers to serve as speakers.

Marti Belluschi, formerly with the Illinois Secretary of State's Office and a well-known advocate for safe driving, will participate in the initial sessions and share her gut-wrenching, life-altering experience of being seriously injured at age 15 by a drunk driver.

Chris Ruys Communications, Inc., public relations counsel to both the IJA and ISBA, is assisting in the program's development. A packet will be prepared with a program out-



line and talking points for participating judges and attorneys. In addition,

a brochure will be published for distribution to teens. Information will be posted on the Web

sites of the three participating organizations, and stories in print and broadcast media will be sought in order to increase awareness of the program.

The expected launch date is early December during National Drunk and Drugged Driving Prevention Month, with Judge Stephen Mathers, participating in the event at a yet-to-be-determined Chicago high school. The State Board of Education will serve as the primary liaison to the schools.

The plan for the first year is to attempt presentations at approximately three schools per month. "Deadly Decisions," a newly-produced videotape by the Chicago Traffic Center, also will be made available to interested schools. The film focuses on impaired and aggressive driving, and reminds young people that decisions made in an instant can last a lifetime.

Ethics Opinions Review 2001

By Rita Novak

As you know, the Illinois Judicial Ethics Committee issues advisory opinions upon the request of a judge that arise from a specific set of facts. Although the opinions are not binding in disciplinary tribunals, they provide helpful guidance to the judge in applying the Code of Judicial Conduct. The text of the opinions may be obtained by calling Maureen McClelland at (847) 470-7204 or through the IJA website at www.ija.org.

Summary

This year, the IJEC has issued nine opinions. In general, two of the opinions address the circumstances in which the judge must disqualify himself or herself from hearing matters handled by the former law firm of the judge or by the law firm of the judge's spouse. Four of the opinions further develop a subject presented in an article published in the Fall 2000 issue of *The Gavel*: The judge's participation in activities sponsored by civic and charitable organizations. The particular focus of the 2001 opinions, however, is the judge's participation as speaker or recipient of an award at the organizations' functions. The last three opinions treat diverse topics concerning the judge's acting as a reference for a lawyer seeking an appointment to the governing board of a township political organization, the judge's participation in a "specialized" bar association, and the hosting of a reception by a judge's spouse for a political candidate in their home.

The purpose of this article is to summarize those opinions in order to alert IJA members to situations that might require further consideration and analysis of the Code of Judicial Conduct. Because application of the Code to particular situations often entails sensitive judgments, with an eye toward broad-based principles, IJA members are encouraged to view the

see *ETHICS Cont'd on Page 14*

Recent Decisions Relating to Costs Recoverable By A Prevailing Party

By Hon. Mary K. Rochford

A. Background

An award of costs may be authorized by statute or where the legislature grants the power, by rules or orders of court. Galowich v. Beech Aircraft Corp., 92 Ill.2d 157, 162 (1982). The legislature has granted the Supreme Court the power to enact rules relating to the assessment of costs. 735 ILCS 5/1-105.

Several statutes and rules allow for an award of costs. For example, Sections 5-108 and 5-109 of the Code of Civil Procedure, provide for the recovery of costs by the prevailing party to a lawsuit. 735 ILCS 5/5-108 and 5/5-109. Additionally, Rule 208(d) of the Illinois Supreme Court Rules provides that certain fees and charges relating to depositions may be taxed as costs in the trial court's discretion. S. Ct. Rule 208(d). Recent decisions of the Illinois Appellate Court, which have interpreted the definition of costs as found in these

provisions, must be read in light of earlier cases. As the readers are aware, the landmark cases in the area of costs are Galowich v. Beech Aircraft Corp., 92 Ill.2d 132 (1982) ("Galowich I"), Galowich v. Beech Aircraft Corp., 209 Ill.App.3d 128 (1st Dist. 1991) ("Galowich II"), and Falkenthal v. Pub. Bldg. Com. Of Chicago, 111 Ill.App.3d 703 (1st Dist 1983).

B. The Landmark Cases

In Galowich I, defendants, under Rule 208(d), sought the costs of depositions taken by defendants when the plaintiffs voluntarily dismissed their case after being denied a continuance of their trial. Until this case, the Illinois reviewing courts had not interpreted the meaning of costs in Rule 208(d). 92 Ill.2d at 163. The court examined decisions of other jurisdictions and found more convincing those cases which allowed the recovery of deposition costs "only when the deposition was necessary

purpose for awarding costs and found that generally " a successful litigant was not entitled to recover the ordinary expenses of litigation". 92 Ill.2d at 166. The court then looked at the role depositions play in litigation and found that depositions are used for the preparation of trial and serve "primarily the convenience of counsel". Therefore, the costs relating to discovery depositions generally were "ordinary expenses of litigation. Id. The Galowich I court believed that to allow recovery for deposition costs would encourage the increase of deposition taking and prolong discovery. 92 Ill.2d at 167.

Based on its analysis, the court interpreted Rule 208(d) as giving the trial court the discretion to tax the expenses of those depositions which were necessarily used at trial. 92 Ill.2d at 166. As to the necessity element, the court said:

Though there may be instances in which a discovery deposition would become a necessity - as when a crucial witness died or disappeared before trial - it is difficult to say that all or even most of the depositions routinely taken in preparation for trial are necessary.

Id. Under this interpretation of Rule 208(d), defendants could not recover the costs of discovery depositions on plaintiffs' voluntary dismissal without trial.

Almost nine years later, in Galowich II, the same parties raised the issue of cost recovery. After the plaintiffs refiled their suit, the defendants prevailed at trial. The trial court imposed the costs of depositions against plaintiffs which had been used at trial for impeachment, to refresh recollection or for admissions. 209 Ill.App.3d at 142. On appeal, plaintiffs argued that the costs of depositions could be recovered only when the witness has died or disappeared. 209 Ill.App.3d at

see **DECISIONS** Cont'd on Page 12

Gay-Lloyd Lott Chairs Illinois Judicial Council

The Modern Jazz Ensemble entertained judges from the Illinois Judicial Council and their guests at the Nineteenth Annual Illinois Judicial Council Installation and Awards Reception, held at the Palmer House on September 13th. Outgoing Chairman, Judge Walter Williams, introduced Timothy Evans, newly elected Chief Judge of the Circuit Court of Cook County. Judge Williams presented the Edith S. Sampson Memorial Award to Judge Patricia Banks. Judge Williams also presented the Kenneth E. Wilson Memorial Award to Judge John O. Steele and the Charles E. Freeman Pioneer in Justice Award was awarded posthumously to Judge Cornelius E. Toole. Justice Everette Braden and Judge Sidney A. Jones III were presented Career Service Awards. Justice Carl McCormick presented law school scholarships to ten deserving law students.

Judge Patricia Banks swore in Judge Gay-Lloyd Lott as the new chair of the organization and Judge Jane Stuart as the chair-elect. Judge Drella Savage was installed as secretary, Judge Cheryl Ingram as treasurer and Judge Rodney Hughes Brooks as assistant secretary. Judge Banks also swore in Judges Bernetta Bush, Vanessa Hopkins, John O. Steele, Walter Williams and Chief Judge Timothy Evans as members of the executive committee.

for use and actually used at trial." 92 Ill.2d at 163. The court did not accept the line of cases which allowed deposition costs where the deposition, taken in good faith, was necessary for preparation of the case or protection of the rights of the prevailing party. 92 Ill.2d at 163. The Supreme Court also examined the history and

DECISIONS *Cont'd from Page 11*

140. Defendants argued that they were entitled not only to the costs of the depositions used at trial, but also to the cost of other depositions which were mentioned at trial, depositions which, although not mentioned at trial, were necessary to protect their clients at trial and for the costs of unnecessary depositions taken by plaintiff which amounted to discovery abuses described in Galowich I. 209 Ill.App.3d at 141.

The appellate court found that under Rule 208, defendants could not recover the costs for the depositions which were not actively used at trial. Id. As to the depositions used at trial, the appellate court held that an award of deposition costs was not limited to the instances given in Galowich I, where the witness has died or disappeared. However, the record in Galowich II did not establish that the depositions used at trial for impeachment and to refresh recollection were necessary or "indispensable". 209 Ill.App.3d at 142.

In Falkenthal, the plaintiff, as the prevailing party, was awarded the costs for certain depositions and for the "time" of both her consulting doctor and an expert witness who testified at trial. 111 Ill.App.3d at 710. The appellate court reversed the award of costs finding that the plaintiff had not sufficiently documented or established the basis for requesting the costs and remanded the issue for further proceedings. 111 Ill.App.3d at 711. In reversing the award, the appellate court held that "in the absence of statutory authority experts' fees are not taxable as costs". Id.

These cases appear to set the following framework: ordinary expenses of litigation are not recoverable as costs; the costs of discovery depositions can be assessed only where necessarily used at trial; a prevailing party must sufficiently support a claim for costs; and experts' fees must be specifically authorized. Against this background, the Illinois Appellate Court in recent years has looked at the issue of costs.

C. Recent Decisions

In Physicians Insurance Exchange v.

Jennings, 316 Ill.App.3d 443 (1st Dist. 2000), the trial court awarded the costs of discovery depositions which were stipulated evidence presented at a bench trial. 316 Ill.App.3d at 448-449. The appellate court found that the deposition testimony was not "indispensable" to trial. 316 Ill.App.3d at 463-464. The appellate court relied in part on the holdings in Wrecking C. v. Central National Bank, 216 Ill.App.3d 279 (1991), that the use of depositions at trial was not necessary because the witnesses had not died or disappeared, and in Boyle v. Manley, 263 Ill.App.3d 200 (1994), that the use of depositions was not necessary because the witnesses were available and actually testified at trial. 316 Ill.App.3d at 463. The appellate court's reasoning was that had the witnesses actually testified before the trial judge, the prevailing party would not have been awarded the deposition costs and, therefore, the depositions cannot be considered "indispensable". Id. The court further reasoned that an award of deposition costs would increase the costs of stipulated bench trials and would be contrary to the policy concerns of Galowich I. 316 Ill.App.3d at 464.

The Fourth District of the Appellate Court in May of this year considered the issue of costs in Hesson v. Leichsenring, 321 Ill.App.3d 1018 (4th Dist. 2001). Plaintiff, as prevailing party, was awarded costs which included the costs for the court reporter attending and transcribing the discovery deposition of defendant's medical expert and the cost to plaintiff of copying the videotaped evidence deposition of defendant's medical expert. 321 Ill.App.3d at 1019-1020. The discovery deposition was not used at trial, and the award of costs as to that deposition was reversed. 321 Ill.App.3d at 1021. The evidence deposition of defendant's medical expert was used at trial by defendant. Id. However, the appellate court found that the plaintiff could not recover copying costs because the decision to obtain a copy of the videotape was a trial preparation technique which served the convenience of counsel. Id.

The Fourth District in Weigman v.

Hitch-Inn Post, 308 Ill.App.3d 789 (4th Dist. 1999), considered whether the plaintiff as prevailing party was entitled to the costs of evidence depositions used at trial, including the evidence deposition of plaintiff's liability expert. 308 Ill.App.3d at 804. The appellate court concluded that because the "plaintiff did not offer any reason for the unavailability of its expert witness", the plaintiff had not shown that the use of this evidence deposition was "indispensable to the trial." Id. As to the evidence depositions of the other witnesses, because there was not even a claim that the witnesses were not available for trial, the award of costs for these evidence depositions was found to be "even more inappropriate". Id. The appellate court also reversed the award for the costs of subpoenaed medical records. Id.

In Perkins v. Harris, 308 Ill.App.3d 1076 (5th Dist. 1999), plaintiff's treating physician testified at trial pursuant to a videotape evidence deposition. 308 Ill.App.3d at 1078. The trial court awarded plaintiff, as prevailing party, both the costs of transcribing and of videotaping the evidence deposition and assessed the witness fees of the doctor. Id. The appellate court found that the award for the evidence deposition costs met the "indispensable" requirement of Galowich II because:

...Dr. Jacob was the primary treating physician of plaintiff with respect to the auto accident, and Dr. Jacob could not testify live at trial due to his demanding surgery schedule. Dr. Jacob's deposition was an evidence deposition necessarily used at trial; it was played for the jury in lieu of Dr. Jacob's live testimony.

308 Ill.App.3d at 1080. The Perkins court found that its decision was consistent with the policy concerns of Galowich I, because an award of costs as to an evidence deposition does not encourage the taking of discovery depositions or the prolonging of discovery procedures. 308 Ill.App.3d at 1080-1081.

The defendant, in Perkins, maintained that it was error to charge both
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the cost of transcribing and videotaping the deposition because only the typed transcription was the necessary means of providing the testimony of the doctor. 308 Ill.App.3d at 1080. The appellate court disagreed, finding that videotaping "and concurrently transcribing the deposition is common practice because the transcription protects the audio-visual recording of the deposition in case of technical failure". 308 Ill.App.3d at 1081. The court stated that under Rule 208, the fees for transcribing and videotaping depositions may be assessed "whether the transcription occurs concurrently or subsequently". *Id.*

The Perkins court in upholding the award of costs relating to the doctor's fee for testifying at the evidence deposition distinguished Falkenthal. The court found that Falkenthal applied to retained experts, but not to treating physicians, who "the supreme court has held ... are not hired only to render an opinion at trial do not come within the category of retained experts". 308 Ill.App.3d at 1082. The Perkins court also based its decision on the policy behind Supreme Court Rule 204(c) which recognizes the importance of fees for treating physicians and allows such fees for their discovery depositions. 308 Ill.App.3d at 1084.

The Fifth District, in Woolverton v. McCracken, 321 Ill.App.3d 440 (5th Dist. 2001), appeal denied, 195 Ill.2d 599 (2001), this year addressed the question of recovering the fees of a treating physician for an evidence deposition under Rule 208. The court stated that the evidence depositions were presented to establish the "nature, severity and treatment of the plaintiffs' injuries". 321 Ill.App.3d at 445. The court found that these costs were "necessarily incurred by plaintiffs in asserting their rights in court and were not the ordinary expense of litigation." 321 Ill.App.3d at 446. In reaching its decision, the court cited, with favor, the Perkins holding and the policy concerns of Rule 204(c) that a physician's "time is quite valuable". 321 Ill.App.3d 445, 446.

In June of 2001, the Second District

of the Appellate Court in Irwin v. McMillan, 322 Ill.App.3d 861 (2d Dist. 2001), considered whether the plaintiff, as the prevailing party in a personal injury suit, was entitled to the fees charged by plaintiff's treating orthopedic surgeon relating to his evidence deposition which was taken at plaintiff's request. 322 Ill.App.3d at 863. The parties stipulated in their bystanders' report that the doctor was unavailable to testify at trial. *Id.* The Second District disagreed with that part of the decision in Woolverton and Perkins which found that Rule 204(c) could serve as authority for the award of witness fees for a treating physician against the defendant. 322 Ill.App.3d at 865. The Irwin court stated that when Rule 204(c) is "read in conjunction with Rule 208... the party at whose instance a doctor's deposition is taken bears the burden of paying the doctor's fees." *Id.* See generally Buckholz v. MacNeal, 313 Ill.App.3d 521 (1st Dist. 2000) (where court held that under Rule 204(c), plaintiff was responsible for non-party physician's fee for deposition testimony despite argument that the doctor was "closely related" to defendant-hospital.)

The Irwin court relied on Physicians Insurance Exchange to hold that the plaintiff could not recover for the witness fees under Rule 208. 322 Ill.App.3d at 866. The court stated that if the doctor had testified at trial, the plaintiff could not recover the costs of the deposition and "the mere fact" that the doctor "did not personally appear at the trial cannot somehow change the fact that plaintiff is responsible for paying the witness fees that his own treating doctor charges." *Id.* The court stated that a general rule that a prevailing plaintiff may recover the costs of the doctor's fees would violate the "necessary" or "indispensable" requirement of Galowich II, because under Rule 212(b), a party may move to introduce the evidence deposition of a treating doctor without a showing that the doctor is unavailable to testify at trial. 322 Ill.App.3d at 866-867.

Similarly, the court found that the

plaintiff could not recover the costs of transcribing and videotaping the evidence deposition of the treating doctor. The court stated that the plaintiff was responsible for the expenses relating to the videotaping of the doctor's deposition under Supreme Court Rule 206. 322 Ill.App.3d at 869. Furthermore, the prevailing party is entitled to recover deposition costs only where its use at trial is necessary or indispensable. The court said that "...necessity requires a determination that the deposition must be used because, for example, a crucial witness has died or disappeared. (citation omitted) ... This type of necessity was not present in this cause." *Id.*

The trial court in Irwin assessed against defendant the fees charged by two health care professionals for testifying during plaintiff's case in chief. The appellate court found no authority for this assessment, rejecting plaintiff's argument that the award was proper under Section 2-1101 of the Illinois Code of Civil Procedure which allows a treating medical professional to recover more than the per diem and mileage allowed other witnesses. 322 Ill.App.3d at 867-868. See State Farm v. Flores, No. 2-00-0864 (2nd Dist. 2001) (unpublished opinion) (where court reversed award for travel expenses of out-of-state witness).

D. Conclusion

The decisions in Galowich I and Galowich II remain the starting point for cost recovery analysis. The recovery of costs as to discovery depositions remains limited by the "necessity" or "indispensable" requirement as demonstrated by the holding in Physicians Insurance Exchange. Costs which fall within the ordinary expenses of litigation or which are for the convenience of counsel are not recoverable. Under Perkins and Woolverton, the costs related to the evidence depositions of treating physicians have been allowed in the First District and the Fifth District. The Second District in Irwin did not follow Perkins and Woolverton and denied the recovery of evidence deposition costs relating to a treating physician.

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full text of the opinions from the sources given above.

Disqualification From Presiding Over Pending Cases

Although Opinion No. 01-01 addresses a specific question of when the judge is disqualified from hearing cases that were pending at the judge's former law firm while the judge was practicing there, it also outlines some bright-line rules, in conformance to Rule 63C, for when a judge must disqualify himself or herself from hearing cases involving the judge's former law firm. Specifically, under Rule 63C(1)(c), the judge is disqualified from hearing *all* cases in which the judge's former law firm is involved for a period of three years. Likewise, there is a specific time frame of seven years in which the judge is disqualified from hearing *all* cases involving a client that the judge represented while practicing at the firm. The time-periods start to run from the time the judge left the firm, and the rule applies to the "private practice of law." Ill. Sup. Ct. R. 63C(1)(c). The disqualification in these circumstances extends even to those cases in which the law firm was not involved when the judge practiced there and to those matters in which the client was not involved when the judge represented the client.

Apart from these bright-line categories, Opinion 01-01 also makes clear that the judge is disqualified from presiding over any cases that were pending at the judge's former law firm while the judge was practicing there, regardless of the time-frame and regardless of whether the judge or another lawyer in the firm worked on the cases. Thus, in responding to a question concerning the judge's agreement with the former firm to receive a percentage of the fee earned on cases on which the judge worked while practicing at the firm, the IJEC concluded that, under Rule 63C(1)(b), the disqualification applied to all such cases.

The second opinion presents the question of disqualification in a different context; that is, whether the judge is disqualified from hearing a case in

which the law firm of the judge's spouse is entitled to a referral fee. Relying on Rule 63C(1)(e)(iii), the IJEC concluded that disqualification is required if the spouse's interest in the case is more than *de minimus*. In applying the *de minimus* standard, the judge should consider three factors: 1) the nature of the case, particularly its financial impact on the spouse's law firm; 2) the spouse's position in the firm as partner, shareholder, associate or of counsel; and 3) the size of the firm. Considering these factors, the judge must make "a reasoned assessment of the extent of the [spouse's] interest."

Involvement in Charitable, Civic and Religious Organizations

When considering restrictions on a judge's activities in civic and charitable organizations, the IJEC has previously called attention to a quote by Benjamin Cardozo: "This is no life of cloistered ease to which you dedicate your powers. This is a life that touches your fellow men at every angle of their being, a life that you must live in the crowd, and yet apart from it, man of the world and philosopher by turns." Benjamin Cardozo, "The Game of the Law and Its Prizes," *reprinted in Selected Writings of Benjamin Nathan Cardozo*, at 421 (Margaret E. Hall, ed. Matthew Bender & Co. 1980). While the ethical standards set out in Rules 62A & B and 65B do not wholly restrict the judge's ability to "live in the crowd," at times, they may require the judge to live "apart from it." In deciding where the appropriate line is to be drawn, the judge should consult the detail of the rules and will find guidance in the IJEC opinions.

To begin, an article entitled "Word to the Wise" appearing in the Fall 2000 issue of *The Gavel* provides a helpful backdrop to the IJEC opinions issued this year. In that article, Judges Nancy Arnold and Dennis Cashman, Co-Chairs of the Judicial Ethics Committee, offered a detailed summary of ethics opinions that focused on the application of Illinois Supreme Court Rule 65B to the judge's involve-

ment in civic and charitable organizations. Generally, the article concentrated on the circumstances under which the judge may serve as an officer or director of an organization and what activities the judge may engage in. The reader is referred to the article and earlier IJEC opinions.

This year, the IJEC opinions focus on the judge's participation in such organizations as a guest of honor or speaker. Two of those opinions follow the "absolute bright line" identified in Judges Arnold and Cashman's article, which prohibits the judge's involvement in soliciting or being used to solicit funds. For example, in Opinion No. 01-05, the IJEC concluded that a judge was prohibited from being the guest of honor at a civic organization's fundraising event even where the honor was bestowed for the judge's work in a non-judicial capacity, where the judge did not hold a position with the organization, and where the judge's name would not be used in any invitations or promotional materials. Similarly, in Opinion No. 01-04, the IJEC concluded that a judge could not receive an award for the judge's commitment to public service at a dinner at which "pledge cards" seeking financial contributions would be distributed, even though the price of the dinner tickets only covered the cost of the dinner. According to the opinion, a judge who receives an award for public service at such an event would be considered the "guest of honor" and factors such as the distribution of pledge cards and the keynote speaker's reinforcing the request for the participants to make financial contributions to the organization establish the "primary," rather than the "incidental," purpose of the event as a fundraiser.

In contrast, where a judge participates as a guest of honor or speaker in an organization's activities that do not involve fundraising, the ethical determination depends upon whether the activities will "reflect adversely upon the judge's impartiality or interfere with the performance of the judge's judicial duties." Ill. Sup. Ct. R. 65B; see also Ill. Sup. Ct. R. 62A. In refin-

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ing that standard, Opinion No. 01-03 concluded that a judge may not be the guest of honor at a non-fundraising event of an organization whose employees regularly testify in adversary proceedings before that judge. According to the opinion, the determination of whether the judge must decline the award is governed by a "reasonable person" standard; that is, whether the judge's impartiality could reasonably be questioned or could reasonably reduce public confidence in the impartiality of the judiciary. Although the judge received no financial benefit from the award, and although the scale of the event was small, in this situation, the IJEC nonetheless considered that "a reasonable person would believe that receiving such an honor might play a role in any ensuing rulings by the judge that happen to favor positions advocated by the organization's employees," when it determined that the honor should be declined.

On the other hand, in Opinion No. 01-06, the IJEC concluded that a judge could be a speaker on non-legal subjects addressing family and parenting issues at a church service where the service did not involve fundraising. Although religious activities are encompassed within civic and charitable activities under Rule 65B, according to the opinion, there were no indications that the judge's talk would reflect adversely on the judge's impartiality or commit (or appear to commit) the judge with respect to cases, controversies or issues that are likely to come before the court.

Letters of Recommendation, Participation in "Specialized" Bar Associations, and Spouse's Political Activities

In the three remaining opinions, the IJEC considered disparate factual situations that applied, at least in part, Rule 62B's prohibitions against lend-

ing the prestige of the judicial office to advance the private interests of others and conveying the impression that others are in a special position to influence the judge.

In Opinion No. 01-07, the IJEC applied the well-established rule that permits the judge to provide a letter of recommendation or serve as a reference so long as the recommendation or reference is based on the judge's personal knowledge to a situation in which a lawyer sought a recommendation for appointment to the governing board of a township political organization. The opinion found no distinction between the general rule permitting the judge to provide a recommendation in other contexts and the request for a recommendation to an appointive position to a political office. However, it cautioned that the content and tenor of the recommendation should be consistent with the duty to promote public

confidence in the integrity and impartiality of the judicial system.

In Opinion No. 01-08, the IJEC concluded that a judge may not accept a complimentary membership as a "judicial fellow" in a "specialized" bar association if such membership may give the appearance of favoritism toward a particular class or category of litigants. Thus, where the membership of the "specialized" bar association generally is comprised of attorneys who represent a single side of in legal disputes, the judge should not accept the complimentary membership in the organization.

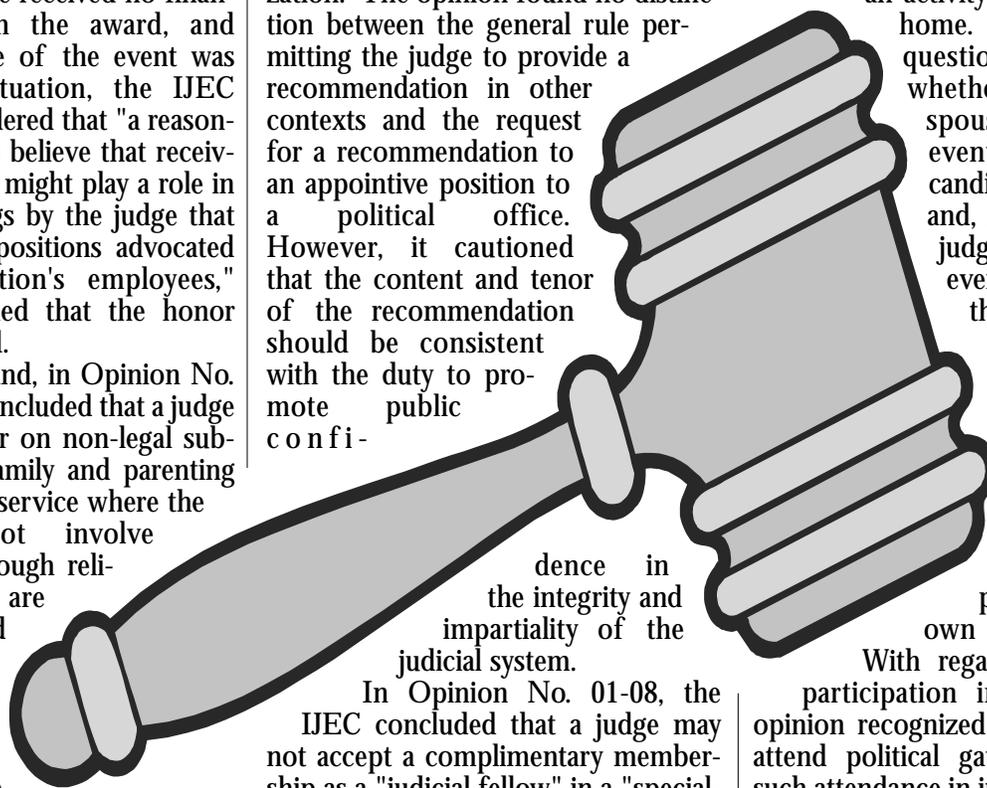
With respect to receiving complimentary publications and attendance at the bar association's conventions, the ethical requirements are somewhat less restrictive. The judge may accept complimentary publications from such

a bar association on the same basis that the judge accepts publications from any other publisher. Furthermore, the judge may attend the "specialized" bar association's conventions "when the event serves to honor the judiciary or is a law-related activity concerning the law, the legal system, and/or the administration of justice, but does not raise questions of the judge's impartiality."

Finally, in Opinion No. 01-09, the IJEC addressed a subject concerning the political activities of the judge's spouse and the judge's participation in an activity given in the their home. Specifically, the questions posed were whether the judge's spouse may host an event for a political candidate in their home and, if so, whether the judge could attend the event. With regard to the activities of the judge's spouse, the opinion concluded that no rule prohibits the judge's spouse from using the spouse's home to promote his or her own political views.

With regard to the judge's participation in the event, the opinion recognized that a judge may attend political gatherings and that such attendance in itself does not constitute public endorsement of a political candidate. Accordingly, the judge is permitted to attend the event; however, care must be taken so that the judge's participation does not amount to a public endorsement of the candidate and does not foster the appearance of partiality in the eyes of the public.

With two months remaining in the year as this issue of *The Gavel* goes to press, readers can keep abreast of further developments of the IJEC for 2001 by checking the IJA website. In addition, guidance can be found in the Code of Judicial Conduct itself.



S a v e t h e D a t e

IJA 30th Annual Convention

Thursday, December 13 through Saturday, December 15, 2001

at the Sheraton Chicago Hotel and Towers, 301 N. Water Street

