

Bench & Bar

The newsletter of the Illinois State Bar Association's Bench & Bar Section

Expectations vs. Reality: Perspectives From a Summer Extern on the Strange Summer of 2020

BY LAUREN EITEN

The summer of 2020 has not gone as planned for anyone, summer externs included. When I signed on to work for Judge Debra Walker, I envisioned a summer in the city observing not only her court proceedings but proceedings in other divisions as well. Like the night before Christmas, visions of potential trials danced in my head. Researching and

writing would fill my days. Happy hours with fellow externs would fill my evenings.

Needless to say, that is not how this COVID-19 summer has gone. At the onset of summer, I experienced mixed emotions; gratitude that I still had an externship but disappointed it was mostly remote. I quickly realized, however, that I may be

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Split Decision

BY MICHAEL G. CORTINA

With discussions of the possibility of attorneys splitting fees with non-attorney referral services on the rise, I am reminded of a case I handled years ago that pertained to a medical professional splitting fees with a non-medical professional. In that case, the doctor contracted with a company that used its business acumen and resources to help the doctor develop and run his practice, and, in exchange, was paid a percentage of all of the fees that the doctor collected. The doctor sought to terminate the agreement by

arguing that the fee-splitting was unlawful, which made the entire agreement illegal and unenforceable, and the court agreed with the doctor's argument and voided the contract. Upon reviewing the pleadings and motions filed in that case, I was reminded of why fee-splitting between professionals and non-professionals has been prohibited for decades.

One of the reasons for prohibiting such agreements is that they fly in the face of

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in for a rare treat. While I was expecting this summer to mainly be a third-party observer with some research and writing, I was immediately brought in to help troubleshoot the court's remote situation. I was able to assist judges in setting up Zoom meetings, running their status calls, and preparing orders for pro se litigants. Instead of observing, I was participating. I was helping. For me, there is no greater feeling than feeling useful. Not to mention as a non-traditional law student, it was also great being the most tech-savvy in the room.



Expectation: Packed court room



Reality: Judge Debra Walker holding a hearing over Zoom in her empty courtroom

The summer of remote courthouse operations did not only affect the externs; judges were also disappointed in how the summer proceeded. As a member of the Dean's Advisory Board, Judge Walker plays a key role in connecting University of Illinois College of Law students with judicial externships and routinely hosts social events throughout the summer in order to get to know the students and help them further network. To wrap up the summer, she arranges for the externs to gather for Music in the Park at Millennium Park and orders pizzas and salads for everyone to enjoy. This summer, she won't have the opportunity to put names to faces, to help make connections for next summer, or swap Illini stories. As someone who knows how important mentoring is, it feels like a missed opportunity, not for her, but for the students.

As a rising 2L and the newly elected U of I Student Bar Association president, I would like to take a moment to thank all the judges who took on an extern this summer when they normally don't. A number of my classmates were left scrambling when their original placements were cancelled. We understand that having an extern onboard adds work to your already busy remote workload, but we cannot thank you enough for giving us this opportunity to peak behind the curtain. And for those judges who always take an extern, thank you, thank you, thank you!

Looking back, it is not the summer I envisioned, not by a long shot, but I still did everything I expected. I researched annulments (which is some fascinating caselaw), helped draft a judgment, and still got to observe a trial with the added benefit of observing it from the comfort of my couch. ■

Lauren Eiten has experienced an unusual summer 2020 judicial externship with Judge Walker due to COVID-19. She is a rising 2L at the University of Illinois College of Law where she is the newly elected president of the Student Bar Association.

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Split Decision

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public policy. An agreement violates public policy in Illinois if it is injurious to the interest of the public, contravenes some established interest of society, violates some public statute, is against good morals, tends to interfere with the public welfare or safety, or it at war with the interests of society or is in conflict with the morals of the time. *E & B Marketing Enterprises v. Ryan*, 209 Ill. App. 3d 626, 630 (1st Dist. 1991).

Several Illinois courts have reviewed the policy on the proscription on the splitting of fees for professional services. In *Vine Street Clinic v. Healthlink*, 222 Ill.2d 276 (2006), the Illinois Supreme Court discussed the policy behind the prohibition on the splitting of professional fees when it stated:

The policy reasons behind the prohibition are the danger that such an arrangement might motivate a nonprofessional to recommend a particular professional out of self-interest, rather than the professional's competence. In addition, the judgment of the professional might be compromised, because the awareness that he would have to split fees might make him reluctant to provide proper (but unprofitable) services to a patient, or, conversely, to provide unneeded (but profitable) treatment. *Vine Street Clinic*, at 288-89.

While *Vine Street Clinic* pertained to medical professionals, this policy goes beyond just doctors. "Not only does fee splitting violate the Medical Practice Act of 1987, but it also violates public policy." *Practice Management v. Schwartz*, 256 Ill. App. 3d 949, 953 (1st Dist. 1993). The *Schwartz* court continued by stating:

One danger of fee splitting arrangements is that they may motivate non-professionals to recommend the services of a particular professional out of self-interest, and not because of the competence of the professional. Such arrangements are against

public policy because the public is best served by recommendations uninfluenced by financial considerations. *Schwartz*, at 953.

The question is not whether a particular statute proscribes such fee-splitting, the question is whether Illinois allows professionals, regardless of the type, to split fees. In *Ryan*, which also pertained to medical professionals, the court cited to another case of fee-splitting that involved attorneys, *Leoris v. Dicks*. The *Ryan* court summarized *Leoris* by stating:

In that case [*Leoris*], the court found that a contract to split fees was void because the best interests of the client were harmed. The same reasoning applies to the instant case. The contract here required Ryan to pay a percentage of his fees for surgery, physical therapy, and other services rendered. There is a danger that a doctor, knowing that he had to split his fees with one who did not render medical services, might be hesitant to provide proper services to a patient. Conversely, unneeded treatment might be rendered just because of the need to split fees. In either case, the interests of the patient would be compromised. *Ryan*, at 360.

The Illinois public policy against the splitting of fees equally applies to all licensed professionals. While doctors and dentists are prohibited from splitting their fees by statute, even if the statutes did not exist, public policy proscribes the same conduct. While the discussions are on-going regarding the possibility of allowing, and regulating, for-profit referral services for attorneys, the fact is that fee-splitting between professionals and non-professionals violates public policy in Illinois. Any modification of existing rules of conduct or practice must first take into account the public policy against such agreements.

Some may argue that attorneys constantly

refer clients to one another and divide the fees for such referrals, so the argument against for-profit referral services is nothing more than veiled protectionism. A major difference, however, is that the public has safeguards in place for lawyers that off-set the concerns about recommendations that are influenced by financial considerations. For example, attorneys must comply with Rule 1.5 of the Rules of Professional Conduct. Under Rule 1.5, both the referring and the referred attorneys must be jointly financially responsible for the representation. As stated in the comments to Rule 1.5, this entails financial responsibility for the representation as if the lawyers were associated in a general partnership. In addition, referring attorneys are also bound to only refer clients to attorneys that the referring counsel reasonably believes is competent for the matter. Can a for-profit referral service personally know the work and reputation of attorneys to whom they refer legal matters, or would they simply compile lists of the practice areas of each attorney to whom they charge to refer business?

If the public is "best served by recommendations uninfluenced by financial considerations," is it possible to have fee-splitting with non-lawyers and still insure that the public is not harmed? Even if it is possible to promulgate regulations that ameliorate these concerns, is this path really worth exploring in the first place?

Before we answer the question of whether we can modify the rules and regulations to allow for the splitting of professional fees with non-professionals, we need to answer the more basic question of whether we should even try. ■

A Virtual Pro Bono Opportunity to Help Those in Need

BY MICHAEL G. BERGMANN

Illinois Free Legal Answers (<https://il.freelegalanswers.org/>) is a virtual legal clinic where low-income Illinoisans can submit a question online to ask a pro bono lawyer for help with a civil legal issue. Volunteer lawyers then log onto the site at their convenience and answer questions waiting in the queue that they feel comfortable addressing. All of the interactions are through a website, so all that is needed is internet access and a device to be able to start helping people. Especially, during the COVID-19 pandemic, this is a great way to help those in need from the comfort and safety of your own home or office.

A project of the American Bar Association, Free Legal Answers was created as a national platform to increase access to advice and information about non-criminal legal matters for those who cannot afford legal assistance. It is now active in 42 jurisdictions within the United States, including Illinois, with the Public Interest Law Initiative (PILI) as the statewide administrator. Since it was launched, the Illinois Bar Foundation has been the primary funder of Illinois Free Legal Answers. PILI provides the necessary support, including an online resource page with training videos and sample questions and answers. The ABA provides malpractice coverage for volunteer lawyers.

Adults who have met financial eligibility guidelines, are not currently incarcerated and are not requesting assistance with criminal law matters are able to ask questions through the website. Before users are allowed to request legal advice, they will be asked questions to establish eligibility. Most clients' questions tend to be in one of the big three civil legal aid categories—family, housing and consumer law. However, since the pandemic and resulting shutdown, people

now are also asking about employment and benefits issues.

Any lawyer who is registered as active and authorized to practice with the ARDC, including those with house counsel status can volunteer. Additionally, those with inactive or retired status and out-of-state licensed attorneys can volunteer under Supreme Court Rule 756 by filling a form through PILI each year with the ARDC. Typically, there are anywhere from 75-125 questions in the queue at any given time waiting to be answered. From August 2019 to August 2020 alone, 1,954 legal questions have been answered through the site.

Starting September 1, 2020, self-represented litigants in Illinois can also submit a question online about their civil appeal and receive an answer from a pro bono lawyer with the launch of Illinois Free Legal Answers for Civil Appeals, the first-ever legal help desk for appeals in Illinois. The program was created to address the pressing need to provide help to self-represented litigants (SRLs), who account for 41 percent of civil appeals filed in the state.

Illinois Free Legal Answers for Civil Appeals will operate through the Illinois Free Legal Answers platform. This initiative is a unique partnership between PILI, the Illinois Supreme Court Commission on Access to Justice (ATJ Commission), the Administrative Office of the Illinois Courts (AOIC), and an Illinois Appellate Legal Answers Advisory Committee, which is comprised of a variety of legal stakeholders throughout the state. Low-income litigants with a civil appeal can submit their questions to a lawyer through the website and the platform is open to both appellants and appellees.

Illinois Free Legal Answers is a convenient way for attorneys to volunteer their skills in a way that best fits their

schedule while assisting those who have nowhere else to turn. You can learn more about Illinois Free Legal Answers at www.pili.org/pro-bono/legal-answers or visit the site to register at <http://il.freelegalanswers.org/>. ■

Michael G. Bergmann is the executive director of the Public Interest Law Initiative (PILI). PILI's mission is to engage, inspire and empower those advancing equal access to justice. Michael is a member of the Standing Committee on the Delivery of Legal Services and the Special Committee on the Rural Practice Initiative. He is also the secretary of the Bench & Bar Section Council and serves on the ISBA Assembly.

Supporting the Illinois Bar Foundation Gala to Aid Access to Justice and Colleagues

BY JENNIFER A. HAASE

With the ever-changing challenges we all face during this time of uncertainty, one thing has remained constant—the Illinois Bar Foundation (IBF)’s commitment to serving the community. If you are unfamiliar with the IBF, the purpose of the foundation is to ensure meaningful access to the justice system for individuals with limited means and to assist those within the legal profession and their families who can no longer work and support themselves. In addition to their fellowship program, which allows members to contribute monetarily, the foundation also hosts events to raise money for people who meet these qualifications. This past spring, the unfortunate timing of the state’s rising concerns over COVID-19 prevented the IBF from hosting their annual Lawyers Rock concert. Over the past several months, the IBF has continued its tireless efforts to continue to raise funds because now, more than ever, so many are facing new challenges to overcome. As a result, the IBF Board has reformatted the popular October gala to adapt to the new protocols and ensure everyone’s safety while continuing to raise funds for two very worthy causes.

The IBF is excited to host a new virtual format for the gala, which will span three days during October. On Monday, October 12, the first event, One Magical Evening, will take place from 7-8 p.m. and is a Zoom magic show featuring Palmer House magician Dennis Watkins. The show is interactive and will be appropriate for kids and adults alike. On Wednesday, October 14, Best of Lawyers Rock, will run during the lunch hour, 12-1 p.m., and allow guests to view performances from the Lawyers Rock Hall of Fame. There will also be an opportunity to vote for your favorite band during the program. The gala will conclude on Friday, October 16, with a cocktail hour celebration, from 3:30-5:00 p.m. Although

we will all miss the typical soiree, the virtual happy hour will honor and present awards to David Sosin for the IBF Champion Award, Kenya Jenkins-Wright and Mary Milano for the IBF Changemaker Awards, and Simmons Hanly Conroy for the IBF Advocate Award. The virtual party will feature music by the Ken Arlen Orchestra.

Please consider attending or sponsoring this new and innovative format that is sure to offer something for everyone. The \$100 cost of admission includes a ticket for all three events and there is a junior advocate sponsorship opportunity, which is \$150. This sponsorship opportunity includes one virtual ticket for all three events and special recognition on event website display; it is intended for young attorneys who are interested in helping the IBF as it is limited to attorneys who are 37 and under and/or are within seven years of practicing. I look forward to seeing you there! ■

Jennifer Haase is a commercial litigation attorney who practices with her father, Ed Pirok, in downtown Chicago, where she is a partner at Pirok & Haase. Ms. Haase is an active member of the Illinois State Bar Association, where she is currently serving as the under 37 Cook County representative for the Board of Governors and the ex-officio of the Young Lawyers Division; she has been a member of the Young Lawyers Division since 2012 and served as chair from 2019-2020, vice-chair from 2018-2019, and secretary from 2017-2018. Ms. Haase is also a member of the Assembly in addition to serving for two consecutive elected terms from 2012-2018. She served as a member of the Special Committee on Transition Planning from 2018-2019. Ms. Haase served as a panelist for the Leadership Academy in 2019 and a moderator and panelist for CLE “ISBA Basic Skills Live for Newly Admitted Attorneys” in 2018. This year Ms. Haase also has the privilege to serve on the Illinois Bar Foundation’s Board as the YLD Liaison and is a member of the ISBA Mutual’s Underwriting Committee.

Recent Appointments and Retirements

1. Pursuant to its constitutional authority, the supreme court has appointed the following to be circuit judges:

- Hon. Cara L. Smith, Cook County Circuit, July 1, 2020
- Hon. William D. Stiehl, 20th Circuit, July 15, 2020
- Sam A. Limentato, 6th Circuit, August 3, 2020
- Hon. Michael Sabol, 21st Circuit, August 3, 2020
- Hon. Michael W. Reidy, 18th Circuit, August 10, 2020
- Hon. Dana McReynolds, 14th Circuit, August 31, 2020

2. The following judges have retired:

- Hon. Heidi Ladd, 6th Circuit, July 1, 2020
- Hon. Thomas Lipscomb, Cook County Circuit, 8th Subcircuit, July 1, 2020
- Hon. Patrick T. Rogers, Cook County Circuit, 4th Subcircuit, July 6, 2020
- Hon. Dorothy French Mallen, 18th Circuit, July 10, 2020
- Hon. Jeffrey W. O'Connor, 14th Circuit, July 31, 2020
- Hon. James B. Kinzer, 21st. Circuit, August 2, 2020
- Hon. Brad K. Bleyer, 1st Circuit,

August 3, 2020

- Hon. William Timothy O'Brien, Cook County Circuit, 10th Subcircuit, August 5, 2020
- Hon. James J. Konetski, Associate Judge, 18th Circuit, August 6, 2020
- Hon. Brian D. Lewis, Associate Judge, 1st Circuit, August 8, 2020

3. The circuit judges have appointed the following to be associate judges:

- Rhonda K. Bruno, 19th Circuit, July 2, 2020
- Kara M. Bartucci, 21st Circuit, August 7, 2020

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