



NEWS UPDATE

FEBRUARY 2005

PRESIDENT'S MESSAGE

by *Cindy M. Johnson*

CHICAGO, IL — As 2004 came to a close, I was taken aback by the realization that my tenure as president of the ICBA is almost at its end. As of early March a new president will be leading this organization into the future. I began to reflect upon what this organization has achieved in the nearly two years since I took office. I am pleased that progress has been significant. Our organization has grown in the areas of membership, organization, and education.

Before I begin, let me say that the credit for these improvements goes to the members of our very dedicated Board of Directors and to our Executive Director, Barbara Boden, and her staff. Without their commitment to this organization, I would have been sitting in a conference room once a month, alone, at a Board meeting, accomplishing nothing.

Having been founded by primarily consumer collection and subrogation attorneys, the general public once thought of this as the consumer collection creditor's Bar. The Board and its members have made a concerted effort to publicize this organization to attorneys practicing in other areas of creditor's rights: commercial collection, creditor bankruptcy, foreclosure and forcible entry and detainer to name a few. For instance, the ICBA worked in concert with the Illinois Credit Union League to allow our organization to reach out to attorneys whose practice concentrates in representation of credit unions (both in-house attorneys and those in firms). By our organization providing approximately half of the speakers for their annual meeting, we were given an opportunity to publicize

our organization to the members of their organization.

Also, we have been able to publicize membership opportunities and benefits to a larger base at our increasingly well-attended seminars, gaining us new members at each annual meeting and autumn seminar. My thanks also goes to those of our members who speak for other organizations and take a few moments in those speaking engagements to describe the benefits of our organization.

Through all of these efforts, ICBA has increased its membership by almost 28% in the last year-and-a-half. And, although that is an achievement of which we all can be proud, gaining members is nothing special unless the Association can retain them.

The ListServ, which began well before my tenure, has continued to be one of the most significant benefits of membership. As I have heard our Vice President, Ken Wake, say, "If you have a question, it's like having 130 partners in your firm to ask." Since the ListServ has been in place for several years, however, I couldn't attribute the growth and retention in membership to just that factor.

The next logical outgrowth of the electronic age and its affect on this group was to have our web site brought to a professional level. I am quite proud of our new web site at www.ilcba.org and am pleased that as part of the web site redesign process, we have been able to institute on-line payment for dues and seminar registration by credit card. As we continue to work on the web site to add information on it useful to our members, it should become not only a greater tool for membership re-



ICBA Luncheon Presentation, Seminar, and Annual Meeting

When: Monday, March 7
Noon to 3:00 p.m.

Where: The Mid-Day Club
21 S. Clark St.
56th Floor
Chicago, Illinois

What: Luncheon with Peers,
Nuts & Bolts Seminar and
ICBA Annual Meeting

Fee: Members: Complimentary
Non-members: \$45

RSVP: 800-599-0830 or
info@ilcba.org
by **Thursday, March 3**

Come and network with friends!

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tention but also for attracting new members.

Another boon to our Association's ability to become better organized is our Executive Director. At about the same time I became president, the Association retained the services of a professional executive director. And through her suggestions and assistance and the support of her staff, the

Board's mindset began to shift from thinking of itself as being a few guys running a creditor right's organization to thinking of itself as directing an organization that is on a par with any of the other long-established bar association in the state. Delegating tasks and allowing independent decision making by advisory group leaders and officers has allowed the talents of the Board to spread more broadly and to accomplish more for our membership. And, a side benefit of this process is that it has enabled the Association to achieve a reputation of being a much more diverse, dynamic, and successful organization. This impression makes our organization the first place a number of judges (as well as some clerks' offices) go to in order to open a dialogue with the many attorneys who regularly practice before them. We now also have a regular member on the Attorney Advisory Committee for the Clerk of the Circuit Court of Cook County. These are quite significant accomplishments, and for our membership to have a collective voice to perpetuate change in our day-to-day practices is a significant benefit.

Additionally, because our reputation has increased, our ability to attract more prominent speakers for our seminars has increased. In the last two years, we were able to have the Clerk of the Circuit Court of Cook County speak, along with the Chief Bankruptcy Judge for the Northern District of Illinois, and the Presiding Judge of the 11th floor (in Cook County). Not only does our Association benefit by showing that it can attract important speakers, but our membership benefits by hearing the wisdom from the years of experience these speakers often have.

But education has not stopped there. The ListServ gave birth to a new child: the e-News, which gives updates of important cases to our members on a timely basis. This source of education, along with the ListServ, seminars, and the newsletter furthers one of the aims of the founders of this organization in a way they may not have imagined about ten years ago.

The progress has been substantial, and I am proud to have been chosen

to lead this organization through these changes for the past two years.

I want to close by thanking the Board and the membership for giving me the opportunity to put my stamp on an organization that has had so many dedicated people contribute their talents to it before me. ■

MARCH SEMINAR

On Monday, March 7, the ICBA hosts its annual March Luncheon Meeting, a "Nuts & Bolts" Seminar and the Annual Membership Meeting. This year, the Annual Meeting will include the election of Officers and Directors for 2005-2007. All members are encouraged to attend not only for the networking, but the latest information critical to the practice of creditor's rights.

Education Chair Steve Fink has lined up a panel of knowledgeable speakers who will first present on key issues in their areas of expertise and then discuss them in a panel format. Attendees are encouraged to participate in what is sure to be a lively Q&A session.

Our presenters are:

- *Michael S. Matek*, Matek Law Offices, P.C., who will discuss winning cases without witnesses or less than adequate client support, including situations where there is no witness expected and also no witness and insufficient documents.
- *Larry J. Meyer*, Law Offices of Larry J. Meyer, who will discuss creditor's issues relating to evictions, including an overview of orders entered in eviction cases, obtaining money judgments, collecting money judgments, and FDCPA issues.
- *Raymond J. Ostler*, Gombert, Sharfman, Gold & Ostler, P.C., who will discuss several aspects of foreclosures, including calendars, pleadings, due diligence, downstate cases, mortgages, tax sales, and fees.

- *Harold Stotland*, Teller, Levit & Silvertrust, who will discuss key issues regarding post judgment, including the dangers of multiple defendants, problems with registrations of judgments, violating the automatic stay and how to fix it, and listening to the other side.

Member participation is complimentary. The fee for non-members is \$45.

Reservations are requested by Thursday, March 3 and can be made on-line, including prepayment by credit card, by visiting the Association web site www.ilcba.org and clicking on the "Events" page and then clicking on "Annual Meeting & Seminar" or by calling the ICBA office at 312-360-0563 or toll-free at 800-599-0830.

Plan now to attend on March 7! ■

UPDATE TO PRIVACY ISSUES WITH RESPECT TO SOCIAL SECURITY NUMBERS

Last summer, we published an article issues surrounding the use of Social Security numbers. The author, *Beth Anne Alcantar*, has provided an important follow up to that article.

Although it will not go into effect until July 1, 2006, a new Illinois law affects the discussion that was previously opened with respect to publishing social security numbers on Summons or other documents filed with the Court. The Consumer Fraud and Deceptive Business Practices Act will provide "A person may not publicly post or display in any manner an individual's social security number." Publicly post or publicly display means to intentionally communicate or otherwise make available to the general public. Based on the privacy issues previously raised, and in preparation for the new Act, it seems wise to leave social security numbers off pleadings and orders from this point forward. ■

RECENT LISTSERV QUESTIONS AND ANSWERS

1. A member wonders whether it was permissible for an employee to advise his employer to increase the voluntary portion of the withholding tax by adding additional dependents (in an effort to artificially decrease the amount available for garnishment), or whether the employer could ignore this request and merely use the required withholding amount.

A member responded that it was permissible for an employee to manipulate the number of exemptions in order to lower the amount of funds available for a wage deduction order, but suggested that it might be permissible in that situation for a court to impress a lien against the income tax refund in favor of the creditor.

2. A member who had received a request to register a foreign judgment, inquires about the rate of judgment interest in Michigan.

Two members responded. One suggested obtaining an affidavit from the forwarding attorney in Michigan. Another suggested looking at the following web sites:

www.michbar.org and,
www.michbar.org/resources/legalresources/interest.html.

3. A member wonders about which procedure to utilize to stay or stop a garageman's lien sale, where the amount claimed by the repair shop increased once the lienholder became interested in paying off the bill. One member suggested filing a detinue action against the garage, adding the debtor to the detinue count and adding a second count for the balance due on the contract against the debtor. Another suggested a complaint for detinue and conversion against the garage and a deficiency balance against the customer. A member noted that if the debtor is joined in the detinue count, a FDCPA claim may exist unless a FDCPA letter is sent.

4. A member inquires whether it was permissible for a bank to add the attorney's fees it incurred in preparing a reaffirmation agreement in a bankruptcy action.

A member answered that this was permissible; however, because reaffirmation

agreements are contracts that neither side is obligated to enter into, the attorney's fees are a matter of negotiation.

5. A member obtained a judgment for a post-petition debt against a debtor in Chapter 13 bankruptcy. In response to a wage garnishment, the employer responded that the debtor is in bankruptcy. How does one contest this answer?

Two members responded that discretion is the better part of valor in this case, because in a Chapter 13, all of the debtor's income becomes property of the estate. **See e.g., In re Ziegler**, 136 B.R. 497 (Bankr. N.D. Ill. 1992). It was suggested, therefore, that the wage deduction be dismissed pending completion of the Chapter 13 bankruptcy.



6. A member needs a debtor to execute a release, so that a third party insurance company will pay the debt; however, the debtor passed away with no next of kin or heirs. What is the procedure to effectuate the execution of the release?

Two members responded. One suggested that the creditor is appointed (or nominates someone) as administrator until an heir is found who can then nominate someone else. Another suggested that if the matter is less than \$50,000, a small estate affidavit may be utilized.

7. A member who successfully froze \$7000 through a citation against a bank, wonders whether a debtor's attorney's claim that 85% of the money is exempt as it is all derived from wages, is correct.

A member responded that under **Rowe v. Gold**, the debtor's attorney is, in fact, correct.

8. A member wonders whether a buyer of bad debt who is sending out demand letters which clearly violate the FDCPA, has liability under the Act.

A member responded that a buyer of bad debt is clearly covered by the FDCPA, who must give the requisite notice or be subject to suit.

9. A member inquires regarding the current procedure for getting a bankruptcy order certified/exemplified so that it can be enforced in state court. A member responded with the telephone number for the Bankruptcy Clerk's Office, 312-435-5694.

10. A member inquires about the location of a web site that lists court information for all of the states.

A member responded with courts.net.

11. A member has been retained to collect a personal injury judgment against a taxicab company and its driver, seeks suggestions. The corporate defendant has been involuntarily dissolved; however, its former d/b/a is an Illinois corporation in good standing and sharing an officer with the involuntarily dissolved corporation.

A member responded that the involuntarily dissolved corporation has five years from the dissolution to reinstate. Assuming reinstatement, ascertain what happened to its assets, including the taxicab medallions. Most likely, these are subject to collection procedures. As for a piercing/fraudulent conveyance action theory, this might work if the judgment is very large and the corporate officers have been very sloppy.

12. A member seeks the name of the 5th District case holding that all liens on personal injury cases cannot exceed one-third of the settlement, for an issue that predates the new law that went into effect on 7/1/03.

A member responds with **Burrell v. Southern Truss**, 176 Ill.2d 171 (1997), a Supreme Court case which holds that the total of hospital liens cannot exceed one-third of the total of the physician's lines (separate from the hospital), but that both together can total two-thirds of the gross settlement.



MEET THE NEW MEMBERS

The ICBA is pleased to welcome the following new members who joined the Association since July 2004:

July 2004

Michael Baim
The Chaet Kaplan Baim Firm
Chicago, Illinois

H. Joshua Chaet
Resurgence Financial, LLC
Skokie, Illinois

Deborah Woodruff
Barmann, Bohlent, Woodruff, PC
Kankakee, Illinois

August 2004

Barbara J. Dutton
Dutton & Dutton P.C.
Frankfort, Illinois

William A. Reilly
McGreevy, Johnson & Williams
Loves Park, Illinois

October 2004

Craig Housen
Grabowski Law Center
Des Plaines, Illinois

Todd J. Lansky
Kaplan & Chaet, LLC
Skokie, Illinois

Steven L. Nelson
Snyder, Park & Nelson, P.C.
Rock Island, Illinois

September 2004

Robert T. Kuehl
Sudekum, Cassidy & Shulruff, Chartered
Chicago, Illinois

Lenard Marcus
Linebarger, Goggan, Blair & Sampson
Chicago, Illinois

November 2004

Stephen G. Andich
Andich & Andich

Rock Island, Illinois
Jutla S. Sanjay
Asset Acceptance, LLC
Chicago, Illinois

December 2004

Paul B. Fichter
Credit Union 1
Lombard, Illinois

Carl S. Kubaszewski
Chicago, Illinois

January 2005

Gregory R. Dye
Blatt, Hasenmiller, Leibsker & Moore
Chicago, Illinois

Maria A. Georgopoulos
Arnold Scott Harris, PC
Chicago, Illinois

February 2005

Bryan V. Reed
Law Offices of Bryan V. Reed
Chicago, Illinois

TECHNOLOGY – A LOOK BACK

by Larry J. Meyer

I prepared this discussion on a most basic level, focusing on those of us who use some form of 'technology' on an everyday basis – even if we do not have those skills belonging to people who work in the IT department or the person you call when your computer fails to do what you think it should.

It occurred to me that even those most basic skills (or lack thereof) allow many of us who have been practicing law for nearly thirty years to perform tasks that are incredibly beyond what was imaginable back in the 1970s.

I can't really explain to you how it is that a fax allows the transmission of documents over the telephone lines. I really don't know how the Internet works, at least not on any intermediate technological level. I don't exactly know how it is that a cell phone that fits in my pocket allows me to get e-mail or text messages or browse the Internet for that matter.

What I do know is that we all us have the ability to access these wonderful tools and we probably all do so every day – so radically different from what we could do thirty or so years ago.

Back in the day (1978 in my case) when I first started practicing law, all of our cases were handwritten in a big hard-covered diary, the same kind of diary that the courtroom clerks used. Today I check pending cases from a computer in my office that links to the web site of the Clerk of the Circuit Court (any circuit for that matter).

In 1978, electric typewriters were common. I remember when IBM introduced the first electronic typewriter and a certain kind of lift-off tape was used to correct mistakes. Recently, I accessed a release from a stored file on my PC, faxed it to an attorney in a distant state, who in turn would overnight a payment to me that I would have the next day. In the old days, the same process could take over a week.

Back then, certain forms were kept alphabetically in a file cabinet and were retyped or photocopied (remember the ditto machine)? Today scanners and laser printers are necessities.

What's that you say? You need a copy of a wage deduction affidavit form from McHenry County? Not a problem, just print it off the web page.

These advances in technology really are remarkable and changing quickly all the time. Why send something by fax when you can e-mail it and receive it on your Blackberry?

Future articles will focus on contemporary technological matters such as useful products, web sites and e-filing in DuPage County. For now, however, just think of what technological advances we all use, even on the most basic level, and how they affect our everyday practice. ■

