



NEWS UPDATE

FEBRUARY 2004

PRESIDENT'S MESSAGE

by Cindy M. Johnson

CHICAGO, IL —

Mark your calendars!

I am very excited that the Clerk of the Circuit Court of Cook County, Dorothy Brown, has accepted the ICBA's invitation to speak at our annual spring luncheon and seminar on March 10, 2004 at noon. Ms. Brown will answer written questions submitted in advance of the seminar and will give us her thoughts about the operation of the Clerk's office. Also, the event will feature our annual update of the FDCPA. All members are then encouraged to stay for the ICBA's Annual Meeting, which will be held after the speakers have concluded their presentations.

Not only is this annual event a prime opportunity for networking, but, this year, we will meet two of the ICBA's other continuing goals: practice enhancement and education.

Also, in keeping with the ICBA's aim of providing its members with educational updates, the organization has launched a new service for its members. Over the ListServ, you may have noticed a monthly "E-News." It is a monthly update of recent court rulings relevant to collection practice and creditor's rights. The E-News contains a short synopsis of the case, along with a link to access the case. Credit for this idea goes to our Vice President, Ken Wake, who thought there was a better way to get these case updates to our membership than by random ListServ postings by members. Our thanks to Ken for sharing this idea with us and for actually compiling the cases for each update.

The autumn educational seminar was a great success. It was an ambitious goal to cover five hot topics in one seminar: Overview of the Soldiers and Sailors Relief Act, A Look at HIPPA and Collecting Medical Debt, Update on Forcible Entry and Detainer, FDCPA Update, and Real Property Levies.


Unfortunately, the topics were so hot, and the questions so numerous, that we ran out of time for the presentations by two Board members: Mike Polk's presentation on the Soldier's and Sailor's Relief Act and Bob Markoff's update on Forcible Entry and Detainer.

The ICBA would like to thank the three firms of Baker, Miller, Markoff & Krasny, LLC; Blatt, Hasenmiller, Leibsker & Moore, LLC; and Blitt & Gaines, P.C. for co-sponsoring the seminar, keeping the cost down for members and non-members alike.

Finally, look for a new feature in upcoming newsletters: a synopsis of hot topics, questions and answers, synthesized from the ListServ, in case you missed it the first time. ■

ABOUT THE LISTSERV . . .

If you posted a question to the ListServ and no one answered it, you may receive a telephone call from Board member, Ira Helfgot, our designated "follow up guy." The ICBA Board believes that if you asked the question, it is because you needed an answer for something in your practice, and, therefore, even if no one responded, you probably found an answer for the case you were working on. If you did, Ira will follow up with you so that a note can be published in the newsletter, giving all ICBA members the benefit of your newfound knowledge. ■



ICBA Luncheon Presentation, Seminar, and Annual Meeting

When: Wednesday, March 10
Noon to 3:00 p.m.

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

What: Luncheon with Dorothy Brown, FDCPA Seminar, and ICBA Annual Meeting

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

RSVP: 800-599-0830 or info@ilcba.org
by **Monday, March 8**

Come and network with friends!
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MARCH SEMINAR

On Wednesday, March 10, the ICBA welcomes **Dorothy Brown, Clerk of the Circuit Court of Cook County**, as our keynote speaker. She will provide an update on changes to the Clerk's office since she has been in office and will answer pre-submitted questions concerning issues with the Clerk's office.

Ms. Brown's presentation will be followed by the ICBA's annual Fair Debt Collection Practices Act update (speaker to be announced). *(continued)*

The Annual Meeting will follow immediately after the seminar.

The event is being held at the Mid-Day Club, 21 S. Clark St., 56th floor, Chicago, from Noon to 3:00 p.m.

Attendance for members is complimentary. The fee for non-members and guests is \$45. The event includes a buffet lunch and ample time to network with other industry professionals.

Please mark your calendars and watch for e-mail updates. You can register by phone (312-360-0563), by fax (312-360-0388), or by e-mail (info@ilcba.org). Please plan to do so by **Monday, March 8.** ■



MEET THE NEW MEMBERS

The ICBA is pleased to welcome the following new members who joined the Association this year:

Daniel J. Hayes
Paul H. Lauber
Law Offices of Daniel J. Hayes
Belleville, Illinois

William G. Schur
Chicago, Illinois

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MEMBER BENEFITS

LAST CHANCE FOR ADP BENEFIT

The Illinois Creditors Bar Association has negotiated discounts with ADP to provide discounts for its payroll services for members. In order to take advantage of this program, ICBA members must sign up with ADP **before March 18, 2004**. ADP requires that at least five firms sign up and that these firms must be new customers to ADP. If you are thinking about having your payroll prepared

by an outside vendor, consider this offer!

For information about the service and who to contact at ADP, please call Thea Rubin at 618-692-4422.

RECENT LISTSERV QUESTIONS AND ANSWERS

1) One member wrote foreclosing a judgment lien as a counterclaim in a foreclosure action where the judgment lien was only against one of the mortgagors and the property was held in a tenancy by the entireties. The member wondered whether the judgment lien would be defeated because of the judgment by the entireties situation or whether the prior recorded lien. One member responded that he wondered whether one can foreclose on a judgment lien in this situation; however, he suggested obtaining a court order that the lien survive the foreclosure. He also suggested filing a counter-claim in two counts, one for foreclosure of the judgment lien and the second asking that the judgment lien be paid first out of any sale proceeds (due to priority) or that the lien survive the foreclosure.

2) One member wrote about the statute of limitations on credit card debts, especially where there is a lack of documents for those clients who purchase debt. One member responded and suggested that credit card debts are written agreements under Section 13-206 of the Code of Civil Procedure; therefore, the limitations period is ten years. Where there are no documents, however, he follows the five year statute of limitations. He noted that judgment purchasers should be careful to calculate interest exactly as the original creditor, for fear of FDCPA issues.

3) Another member wrote about a claim being filed by a credit card company against his client's estate, where the card was a corporate card belonging to the decedent's company. The member was rebuffed in his efforts to obtain a signed copy of the credit card agreement and wondered how long the credit card company must retain the same. One member responded that the credit

card company must retain the credit card agreement for 25 months, pursuant to the terms of 12 CFR 226.25 (Reg Z TILA) and the commentaries, as well as 12 CFR 202.12 (Reg B ECOA).

4) A member wrote about a debtor and sole obligor on a mortgage, dies with no estate having been opened. May the family members reinstate the mortgage? One member suggested that because death is usually an event of default resulting in the acceleration of the debt, some lenders will work with the family and accept payments if the family places the home on the market to be sold and the mortgage paid off in the near future. Another member, however, believed that the estate or heirs inherit the rights of the deceased mortgagor, including the right to reinstate the mortgage. Still another member suggested that it is the mortgagor's option depending on the circumstances. Finally, one member wondered about who would be the parties defendant in this circumstance, and suggested that a creditor's estate would have to be opened. ■

REVIVAL OF JUDGMENT REVIVED

Illinois has a new Revival of Judgment Statute. It is found at 735 ILCS 5/2-1602. It became effective August 21, 2002.

For many years, the Illinois Code of Civil Procedure simply stated (Part 16, Revival of Judgment) that the writ of Scire Facias was abolished. Unfortunately, abolishing the writ did nothing to help inform practitioners as to how and when a judgment was to be revived. The new law provides clarity as to the process including what is to be found in the petition, when a judgment may be revived, how a revival action is served and how and when liens may be continued against property.

In Illinois, a judgment is valid for 20 years from the date of its entry. However, it is only enforceable for seven years from the date of its entry or the date of its last revival. If not revived, a judgment becomes dormant. For example, you may not issue a wage

deduction proceeding on a judgment that is eight years old unless it has previously been revived. Also, all liens expire unless the judgment is revived.

There are four possible exceptions to the above stated rule:

- 1) A judgment relating to child support does not need to be revived at any time;
- 2) A judgment recovered in an action for damages for injury described in Section 13-214.1 of the Code of Procedure (Crime Victims Act) does not need to be revived;
- 3) A Sheriff's real estate levy pending at the end of the seventh year may be continued to completion within one additional year without reviving the judgment; and
- 4) The filing of a bankruptcy proceeding by the debtor during the time period in which a creditor must revive a judgment in order to continue a lien may toll the filing of the revival action.

A Petition to revive a judgment is to be filed in the original case in which the judgment was entered. The Petition may be filed at the end of the sixth year after the judgment was entered or last revived. This allows for a revival proceeding to take place before the judgment becomes dormant. The importance of revival before the end of the seventh year is that a memorandum of judgment may remain a lien against realty and maintain its priority if a new memorandum of the revived judgment is recorded prior to the end of the last seven-year period. This represents a change from prior laws when all judgment liens against realty would expire at the end of the seven-year period except as stated above.

A judgment need not be revived before it becomes dormant. It may be revived at any time before the expiration of the judgment's twenty-year life

The Petition to revive a judgment shall include a statement as to the original date and amount of the judgment, court costs expended, accrued interest and credits to the judgment, if any. Service of the notice of the Petition to revive a judgment is to be made in accordance with Supreme Court Rule 106 which then refers you to Supreme Court Rule 105.

The order reviving a judgment is not a new judgment order. The law states that a revival order revives the

judgment in the original amount of the judgment. Costs, interest and credits are to be set forth by the Plaintiff in further supplemental proceedings or execution.

The law then goes on to clarify other areas of law that have given rise to controversy over the last 20 years. It clearly states that a judgment may be revived as to fewer than all debtors and that such an order for revival shall be a final, appealable and enforceable order. This eliminates controversies relating to missing or deceased debtors. It is particularly important when one wishes to continue a lien against real estate but is unable to serve all judgment debtors.

The law also clarifies issues relating to property lien by a judgment creditor prior to the debtor's filing bankruptcy. The judgment may be revived against said property in the event that the debtor has failed to adjudicate the lien in the bankruptcy proceedings. An example of this is where a memorandum of judgment is recorded against real estate before the debtor files a bankruptcy. The debtor then fails to adjudicate and remove the lien in the bankruptcy proceedings. Although the debt may be discharged in the bankruptcy proceedings, the effect of the lien is not. The judgment lien against the real estate may be continued by reviving the judgment as to that piece of property.

The new Statute for Revival of Judgments provides judgment creditors with a simple and straightforward process by which to proceed. It also affords judgment debtors a breakdown of sums claimed pursuant to the judgment and an opportunity to receive notice and be heard prior to the entry of an order reviving the judgment. ■

LAWYERS RESIST TECHNOLOGY

by Barry N. Lowe, Technology Chair

The Internet provides a number of totally free choices for e-mail, which has been discussed previously in this newsletter. The Internet also provides totally free, worldwide, voice and video communications, Web-based (something that can be accessed worldwide via the Internet), calendaring systems, weather reports, stock reports, news reports, language translation services, reference libraries on all subjects, and much more. "Yahoo," in the context of

the Internet, is a word known to many but understood by few. Yahoo represents a variety of services available to the public. As an attorney, I find the services, offered free by Yahoo.com, to be of good use. Specifically, most of us use the ICBA ListServ; additionally, I use the on-line calendaring system, the current news feature, the e-mail system, the weather forecasting feature, and the voice and video chat features. All of this is free. All of this can be accessed anywhere at any time from any computer that is connected to the Internet or from any laptop, handheld, or palm computing device that has a cellular modem (to access the Internet when you are not in your home or office). All of this can be shared with your staff or associates if you choose.

I have been writing about the benefits to lawyers of telecommunications since 1983. The biggest task is still the same now – to convince lawyers that they can benefit from the Internet and that they can learn to use a computer and the Internet regardless of how computer-phobic they may be. If you still do not access Internet services, if you still do not utilize the ICBA Web site, and if you still do not utilize the fantastic benefits of our ListServ, you are missing out on a lot. If you are not using computerized legal research, arguably, since you are not as up to date as you should be, not as up to date as your opponent might be, you are committing malpractice. If your excuse is that you are not technically inclined, you are fooling yourself out of some of the best advantages to your practice and out of some of the most wonderful additions to our daily lives that have come along in decades. Just like any other learning experience, there are good and bad teachers. A good teacher, using today's versions of software, can teach anyone to use these aspects of modern technology with ease. Yes, even YOU can be taught, without getting a headache or that feeling of being irretrievably lost. I used to teach water skiing and when I did, I guaranteed that I could get anyone up on skis in three attempts or less. In over ten years on the waterfront at various summer camps, I never missed. I have offered to teach ICBA members how to use the Internet before. I renew my offer again. I am available at: barrylowe@yahoo.com or (312) 644-1000. ■