



NEWS UPDATE

JULY 2004

PRESIDENT'S MESSAGE

by Cindy M. Johnson

CHICAGO, IL —

Although the frivolity of summer is upon us, and it might seem from the lightened traffic on the ListServ that the ICBA is in a slowed down mode, be assured that Board members continue to work over the summer to advance the organization's goals.

The Association has just rolled out its new Web site. I trust members will be pleased with the new look and the easier-to-use features. Please visit it at www.ilcba.org. If you note any discrepancies in your contact information on the in the Member Directory, please send an e-mail to info@ilcba.org with your name and the corrected contact information. I want to thank our Vice President, Ken Wake, and our Executive Director, Barbara Boden, and her staff for their hard work in making this new Web site a reality.

Another summer project was suggested by our Executive Director who is meeting with an insurance professional on behalf of some other organizations she represents. She has been advised that there may be a possibility of health insurance offered through the Association for our members and their firms. She will be exploring that possibility and reporting to our Membership Advisory Group Chair, Thea Rubin, with the information she obtains. Although the brokers who we contacted previously told us that association policies were being phased out by the insurance companies, this was such an important issue to our members when we made the last exploration of it that whenever a

possibility presents itself, we will be pursuing it.

A new issue of the newsletter is just being released. I want to thank Ira Helfgot of the Education Advisory Group for his efforts in compiling the articles and information for this issue. Ira has agreed to continue in this role to give the Chair of that Group, Steven Fink, more of an opportunity to concentrate on seminars. As you may all realize, the newsletter has not been issued as frequently as we might like. Unfortunately, it is difficult to fill a newsletter unless members submit information or articles. Although some think that the newsletter is superfluous, given the existence of the ListServ, it is not. It serves a different role, as we use the newsletter as an advertising mechanism to non-members to let them know that we exist and what we do. Anyone who has a submission, please contact Ira at iralaw@aol.com. Don't be shy!

Looking back, the spring was a busy time for the ICBA. Our organization was invited by several judges in Cook County to assist in and consult on changes taking place in the court's operation, and the ICBA further reached out to the office of the Clerk of the Circuit Court of Cook County, Dorothy Brown, to further open communications with her office.

The post judgment judges in Cook County requested that the ICBA prepare a brochure on post judgment proceedings for pro se plaintiffs to be made available in the courtroom. The Legal Assistance Foundation was asked to prepare the defendant-side brochure. I want to thank member Julie Egan for volunteering to assist me with this project. The judges were pleased with the product we provided to them. They intend to start providing the brochures in the courtroom this summer.

Judge Rhine, the Presiding Judge of the Municipal division floor where most of us in Cook County practice, spoke at an ICBA brown bag lunch meeting to have an open discussion with ICBA members about courtroom practices on that floor. Thereafter, he arranged a meeting between himself, the Chief Judge of the Municipal Division, and representatives of the ICBA to discuss members' concerns about practices that had recently changed in the courtrooms and about practices members would like to see change in the courtrooms. Based upon our input, the judges have promised to review the current courtroom procedures.

And, most of you know, our Annual Meeting was a great success. About one-third of our members attended the luncheon meeting. As always, we had our annual update on the FDCPA. Jeff Mitchell of Konicek & Dillon was kind enough to take time out of picking a jury to answer members' questions about the new twists and turns of the courts' interpretations of that statute. Dorothy Brown, Clerk of the Circuit Court of Cook County provided us with a presentation of changes she has made and is in the process of streamlining and modernizing the clerk's office. As a result of introducing Dorothy Brown to our organization and its members, she has appointed one of our Board members, Ira Helfgot, to the Clerk's Attorney Advisory Committee. That Committee consists of Cook County attorneys from various areas of the practice of law who meet to assist the Clerk and her office in bettering bar and clerk's office relations.

I am pleased to have so much news to report in this President's letter, but I know that summer is better spent enjoying the weather than reading Association updates. So go out there and enjoy your summer! ■



Mark Your Calendar and Plan to attend!

The Illinois Credit Union League's 27th Annual Attorneys' Conference

When: Friday/Saturday
October 1-2, 2004

Where: Renaissance Hotel
Oak Brook, Illinois

What: Update on issues relevant to financial institutions

Fee: \$225 for Friday only
\$335 for full Conference

Details: Conference brochure and registration info to follow

An event well worth the investment of your time!



ILLINOIS CREDIT UNION LEAGUE FALL CONFERENCE

On Friday and Saturday, October 1-2, 2004, the Illinois Credit Union League holds its 27th Annual Attorneys' Conference at the Renaissance Hotel, Oak Brook, Illinois.

This popular Conference, designed for attorneys representing financial institutions, provides an annual update on laws, regulations, and judicial decisions impacting the operations of clients you assist.

The 2004 Conference includes the following topics:

- Real Estate Levies
- Creditors' Rights in Bankruptcy
- Impact of Garnishments on Financial Institutions
- New Requirements under the Fair & Accurate Credit

- Transactions Act
- UCC – Article 3 & 4 Update
- State Legislative Update: New and Amended Laws Affecting Financial Institutions

And more

Whether you participate only on Friday or for both days, you will take away a wealth of information and networking opportunities that make it well worth your time. ■



MEET THE NEW MEMBERS

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

Michael Brennen
David Hibben
John Rapemacher
Knepper & Kibby, PC
Chicago, Illinois

Lisa Ginther
Canning Law Offices
South Elgin, Illinois

Maureen McGuire
MacCabe & McGuire
Chicago, Illinois

Karl Meyer
Freedmann, Anselmo, Lindberg & Rappe
Naperville, Illinois

Guy Petruzzelli
Martin Potter
Codilis & Associates, PC
Burr Ridge, Illinois
Marlaina Strunk

Damon Young
Blatt Hasenmiller, Leibsker & Moore
Normal, Illinois

Susan Vitello
Law Offices of Susan A. Vitello, LLC
Lyons, Illinois



RECENT LISTSERV QUESTIONS AND ANSWERS

1) A member represents a lender who foreclosed on a 3-flat after the owner died. The foreclosure sale was confirmed and the confirmation order included an order for possession. Should he try to enforce the order of possession pursuant to 5/15-1701(d) of the Foreclosure Act or should he file an eviction action?

One member responded that in a foreclosure, the Sheriff would not evict anyone not specifically named in the order of possession and would not evict unknown tenants or occupants under the Foreclosure Act. As such, file a forcible action, with a termination of tenancy to be served with all known names as well as "tenants" or "unknown tenants." The order of possession from the foreclosure action as well as the sheriff's deed should be attached as an exhibit to the forcible complaint.

2) One member inquired about the priority of a wage deduction order in relationship to a wage assignment.

Two members responded. One suggested that because a wage assignment is voluntary, it should not have any priority over a later entered wage deduction order. Another member disagreed and, although noting that there is no case law on point, suggested that a wage assignment is a lien which is entitled to priority if it is first in time. This member, however, also noted that because wage assignments are only good for 12 weeks, he does not contest them.

3) Another member inquired regarding the legal citation for the proposition that a lien of wage deduction expires when a judgment is 7 years old and not expired.

One member suggested that there is no law currently on point, but that Judge Betar had previously ordered the return of funds collected after the end of the 7-year period through the date of the revival. Another member suggested that the wage deduction statute imposes a lien on wages which cannot be defeated by the expiration of the underlying judgment and, as such, the wage deduction judgment and lien survives, but that

(continued)

the creditor may not undertake any further supplementary proceedings without reviving the judgment.

4) A member inquired about the procedures involved in creating a lien for a real estate broker's commission.

A member responded that the law is found in the Broker's Lien Act, 77 ILCS 5/1 et seq. which deals with the requirements for having, serving, recording and enforcing the lien.

5) A member's client sold playground equipment to a contractor, an Illinois corporation, and received partial payment in the form of a personal check from an officer of the corporation. Is there any recourse against the maker of the check in his individual capacity?

A member responded that assuming the check didn't bounce, it would be difficult to collect from the officer, because the check could have properly been regarded as a loan from the officer to the corporation. Piercing the corporate veil might be a solution, assuming that significant monies were owed.

6) A member is engaged regarding a \$2.5 million judgment entered against a debtor in the Federal Court for the Northern District of Illinois. A creditor had frozen a corporate account in which the debtor is a shareholder.

A member responded and doubted that a corporate account could be frozen, short of a turnover of the debtor's stock in the corporation. This member also suggested that it might be possible to cite the corporation for any prospective distributions to the individual.

7) A member who obtained a judgment against a debtor who works as an \$8/hour employee, whose last paycheck was \$425 gross (\$32.51 FICA), wonders whether it is legally permissible to garnish the debtor's wages.

A member responded that if the debtor is earning \$425/week, it would be legally permissible to do a wage deduction; however, if the debtor's paycheck is biweekly or bimonthly,

then it wasn't legally permissible. Generally, gross earnings below \$12,000/year will all be exempt. The calculation is $45 \times 5.15 = 231.75 \times 52 = 12,051$.

8) A member has a reluctant witness in Wisconsin and a judge who refuses to permit the taking of testimony by affidavit or telephone. What is the procedure was for issuing an out-of-state subpoena?

A member responded that the answer would be found in Wisconsin's version (if any existed) of Supreme Court Rule 204(4).

9) A member wonders what the appropriate procedure is in situations where his clients who have judgments of record are joined in foreclosure actions.

A member responded that the answer to this question depends on the judge; however, the prudent approach is to file an appearance and answer. Further, whether the judgment creditor may bid at the foreclosure sale absent filing a counterclaim is an open question, because some judges permit bidding where the creditor answers and files an affidavit of prove-up at the time of the judgment.



10) A member obtained a substantial judgment for his client against a debtor who had, in turn, been awarded a nominal judgment on a counterclaim against the client. The client is collectable and the debtor may not be and the judgments were not offset. What collection procedures exist to create an offset?

A member responded that the answers were found in Sections 12-176 and 12-177 of the Code of Civil Procedure.

11) A member cited a bank and received an answer that funds were in the account. Subsequent to service on the bank, but prior to the court date, payment on two of the checks which had been the source of the funds, were stopped by the makers. What liability might the bank have?

Two members responded that the bank has no liability, assuming that the makers' checks never cleared the bank. The only recourse would be to issue citations to the makers.

12. A member served a citation on a land trust which disclosed debtor's beneficial interest in the trust. A court ordered the debtor to transfer the beneficial interest to the sheriff for sale. Nine days later, but before the turnover could be effectuated, debtor filed for bankruptcy relief. Will the order be set aside in bankruptcy as a preferential transfer or does the property belong to the creditor for sale purposes?

A member responded that if a citation had also been served upon the debtor individually more than 30 days prior, then the citation lien would be good in bankruptcy unless it was found to impair the debtor's homestead exemption. If the only citation was against the land trust, the date of service would also be determinative of whether the citation lien was outside of the preference period.

13. 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. ■

FOLLOW-UP ON RECENT UNANSWERED LIST SERVE QUESTIONS

1) A member inquired about a situation where a citation was served on a third-party employer for the wages of debtor who he believed was an employee. The employer responded that the debtor was not an employee, but a subcontractor who is provided with a 1099 at the end of the year. What is the proper procedure?

The member indicated that he appeared before Judge Taylor requesting a deduction order of 15 percent. Judge Taylor, upon determining that this was the only source of the debtor's wages, entered a 15 percent deduction order.

2) A member sought case law to defend against a divorce attorney's attempts to consolidate a contract collection case into a prior filed divorce action. The member indicated that the law is not in his favor, as long as the divorce action was filed prior to the collection action.

3) A member represented a bank which mistakenly disbursed \$100,000 to a customer when the proceeds were to have been used as a refinance of a prior \$100,000 loan. The bank recouped about \$49,000; however, the customer spent the remainder on a new vehicle, knowing that he shouldn't have received the funds. What actions may he take without contravening the FDCPA?

The member indicated that he filed a complaint for injunction, which contained a count for constructive trust, and filed a petition for a temporary restraining order. The judge granted a permanent injunction so that the debtor could not dispose of the vehicle.

4) A member sought the address of the IRS for service of a wage garnishment for one of its employees. The member indicated that he later learned that the address is: Department of the Treasury, Chief Special Processing Unit, Garnishment Processing Center, 214 N. Kanawah, Beckley, WV 25801. ■

DANGERS IN DISCLOSURE

by Beth Anne Alcantar

In the Municipal Department of Cook County, the court-approved form Wage Deduction Order encourages you to list the Defendant's social security number on it. In the future, you might want to think twice about doing so.

After one of our clients was served with a summons containing her social security number and far more personal information than we were comfortable seeing on a summons, I did a little research on whether or not it was proper to disclose social security numbers in court filings. *Farrell v. The State of Illinois*, 52 Ill.Ct.Cl.275, 2000 WL 33593153 (Ill.Ct.Cl. 2000) suggests that it may not be proper to do so.

After the Illinois Department of Labor filed complaints containing social security numbers against Farrell and others in the Circuit Court, Farrell and a class sued the IDOL for improper disclosure of their Social Security Numbers. The class alleged violation of 42 U.S.C. section 405(c)(2)(C)(viii)(I) [cited incorrectly in the case as 405(vii)(I)], which is part of the Social Security Act; ii) violation of 26 U.S.C. section 7213(a), which is a provision of the Internal Revenue Code; iii) violation of 625 ILCS 5/2-123(h), which is a section of the Illinois Vehicle Code; and iv) common law invasion of privacy.

The Court of Claims in *Farrell* quickly held that it did not have jurisdiction to hear the two federal claims because its jurisdiction is specifically limited. Those two claims were dismissed with prejudice. Had the parties sued in the circuit courts of the state, of course, that would not be the case.

The *Farrell* Court also dismissed with prejudice the claim under the Illinois Vehicle Code because the Secretary of State is the only entity that is prohibited from disclosing information under that Act.

However, the *Farrell* court suggested that the invasion of privacy claim might have some merit, were the complaint not so poorly pleaded, and granted the plaintiffs leave to replead the invasion of privacy count.

I reviewed 26 U.S.C. section 7213(h). It prohibits the disclosure of many items, but I was not convinced that it prohibited disclosure of social security numbers in a court filing.

However, 42 U.S.C. section 405(c)(2)(C)(viii)(I), which the *Farrell* court dismissed on jurisdictional grounds, is another story. It states that social security numbers are confidential and shall not be disclosed by any authorized person. According to 42 U.S.C. section 405(c)(2)(C)(viii)(III), "authorized person" is defined as "...any ... person ...who has or had access to social security account numbers or related records pursuant to any provision of law enacted on or after October 1, 1990". If you use Accurant or a similar database service to locate a debtor, the law that permits the service to allow you access to the confidential information is 18 U.S.C.A. section 2721(b)(4). This law was enacted in 1994—well after October 1, 1990. Thus, under 42 U.S.C. section 405(c)(2)(C)(viii)(I), you are an authorized person with knowledge of social security number information, and are prohibited from disclosing that information.

If you disclosed that information regardless of 42 U.S.C. section 405(c)(2)(C)(viii)(I) and then tried to argue that 18 U.S.C.A. section 2721(b)(4) is not the law that authorized you to possess the confidential information, you run the risk that you might be deemed to not have been authorized to have the information at all. Being wrongfully in possession of the information certainly isn't going to help you defend against a common law invasion of privacy action.

In the case that caused me to research this issue, I am going to make Illinois common law invasion of privacy and 42 U.S.C. section 405(c)(2)(C)(viii)(I) claims in my client's counterclaim. If such claims are out there, the consumer rights litigation firms may come across them. So be careful with debtors' social security numbers—especially if your client is a governmental entity. Based on the research I did, the prohibitions are even stricter for them. ■

THE SECRET LIFE OF A PHOTOCOPIER

By Barry Lowe

Photocopiers. Remember the days of carbon paper? I mean in your office, not the courthouse. Most of us probably don't. We have been using photocopiers in place of carbon paper for over twenty-five years.

Facsimile machines. Most of us can remember a time before fax machines but how many of us could imagine our daily lives without fax machines today? No one would dream of going back to the days of carbon paper and I doubt any of us would prefer to postpone our lives while we wait for documents to be mailed or messengered instead of faxed to us when we need them.

Computer printers. Anyone prefer to wait for a secretary to type a document instead of pressing a button and having the printer produce it at 10 to 20 pages per minute? How about paying the overhead associated with a secretary while (s)he does the typing? Anyone using a scanner in association with computer software to replace a fax machine or to create a file with a digital image of a document, a photo, or a page of a book so that it can be e-mailed, faxed, copied for someone else, a client or another attorney perhaps? How about using a scanner to convert printed text into digital format for use with a word processor?

Today we have a new machine to assist us in production and cost control: Digital copiers. Digital copiers produce photocopies, but they can be purchased with various additional features. Since the essence of the digital copier machine is the same whether it is used for a fax, a copier, or a scanner, one machine can now do the job of many. This saves a maintenance time and cost, purchase cost, space in your office, the need to have multiple types of toner cartridges and / or printer ribbons and / or fax cartridges, and some of your electric utility bill as well. Digital copiers can be used in addition to or as a replacement for existing equipment in your office. Generally, digital copiers provide a sharper image and copy

faster than most non-digital copiers. A full-featured digital copier will serve as your fax machine, your copier, your scanner, and your printer. It will hook up to your computer if you use a stand-alone machine or to your network if you are networked. Hewlett-Packard, my favorite brand for its quality, price, and reliability, makes an all-in-one machine for under \$500.00. It is perfect for a standalone PC or for a networked PC environment where the individual user wants the convenience of having all these functions at his or her desk. The newer all-in-one machines are no larger than a fax machine. These smaller machines function just as well as the larger machines and all you sacrifice is a little of the speed if you are printing multiple copies, and the size of the paper reservoir is smaller than on a larger machine. The larger digital copiers that are made to handle the volume of a large office mimic photocopiers in size and price, BUT they provide you with far more usefulness and copy quality.



One of the nicest benefits of a digital printer/copier/fax/scanner is that you can direct it to make any number of multiple copies of a document. Digital "copiers" use "engines" that are essentially laser printers. This accounts for the superior speed; it is also why digital copiers can function as printers as well as copiers and always provide that laser-sharp image quality.

Digital copiers can also be purchased with the necessary hardware and software to enable you to keep track of who made copies, how many copies were made, which file the

copies were produced for and most importantly, the software can automatically integrate with your office management software to enable you to capture the photocopy expense and bill it to the proper clients for all of your copying. This benefit alone could pay for the cost of the machine if your volume is sufficient. Of course, the convenience of having all of the functions in one machine that can be accessed without leaving your desk is also valuable to everyone billing for their time.

The next time your copier breaks down, ask your supplier how much you could get for it as a trade-in on a new, digital copier and take the next step towards cost control, efficiency, and quality. Better yet, don't wait for your machine to need service. Call your office equipment supplier and have a salesperson provide you with a presentation on digital "copiers" and enjoy the benefits now. ■

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With the launch of the new ICBA Web site, we would like to encourage all members to check their listing in the Member Directory and verify that the contact data is correct, including the county (or counties) in which your firm operates.

If modifications are needed, please contact the ICBA office to let us know about them.

Have a great summer!

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