



President's Volunteer Appreciation Luncheon

The Northwest Suburban Bar Association honored its volunteers at the Fifth Annual President's Volunteer Appreciation Luncheon on Thursday, October 8th at Ditka's in Arlington Heights.

Ronald F. Wittmeyer, Jr., NWSBA President, welcomed several Third Municipal District judges, as well as thirty NWSBA members who volunteered as court facilitators, paternity court facilitators, pro bono desk volunteers and legal self-help center volunteers. He thanked everyone for their time, and expressed his desire to see more attorneys donating their expertise to those in our community who might not otherwise have access to legal services.

He took a few minutes to ask the attendees "Why do pro bono"?

Past President Angela Peters felt it was because attorney's have so much knowledge to pass on. Allen Gabe commented that often, people need help and it was important to give back to the community. The action of helping others not only helps the individual, but

assists the judges by uncluttering court calls. "We, as attorneys, have a unique skill and knowledge, and by doing pro bono work, we assist people in our community



Front Row: Joel Weiner & Sandra Stermer Coscino; Back Row (L-R): NWSBA President Ronald F. Wittmeyer, Jr., the Hon. William O. Maki, presiding judge of the Third Municipal District, Hon. Martin C. Kelley, Hon. Alfred Levinson, Hon. Hyman Rieberman and Janet Maxwell-Wickett.

who simply cannot afford a lawyer", said Wittmeyer. "The members of the NWSBA go above and beyond. Everyone's effort is highly important. As an Association, and we have donated over 500 hours during the 2014/15 fiscal year."

The Honorable William O. Maki, Presiding Judge of the Third Municipal District, acknowledged and thanked all of the volunteers who so generously donated their time at the courthouse.

"We appreciate the effort by everyone in this room. Doing pro bono work that truly helps someone is not only refreshing and satisfying, but should be a part of our profession," said Maki.

Judge Maki also announced that the Hon. Steven Goebel, from the Second Municipal District will be joining Third District judges in Rolling Meadows. With a background in felony cases, Judge Goebel will be a welcome addition to our district.

Continued on Page 6

ISSUE FEATURES:

PRESIDENT'S PAGE	3
TABLE OF CONTENTS	5
BOARD MEETING HIGHLIGHTS	24
BULLETIN BOARD	26
CALENDAR	27



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PRESIDENT'S PAGE

BY: RONALD F. WITTMAYER, JR.

ONLY WITH YOUR HELP, CAN WE HELP YOU BE SUCCESSFUL

Please allow me to be blunt – this or any other volunteer organization can only provide quality member benefits by members giving of their time to lead, organize, and participate in association programs, activities, and events. If you seek greater member benefits from this organization (and you should), I suggest that you first find ways to make a contribution of your time and talent to the association and its activities. We all know that you get out of something what you put into it – and this professional organization is no different. I also believe that we all have a lot to gain by more widespread involvement by more of our members. Taking the first step is the hardest, especially when you are new to an organization and may not know many people in the group. Call or email me, any board member, any committee chair, or any of our office staff as they will help you find a way to get more involved in the NWSBA.

UPDATES

Get active in a substantive law committee – A great way to start to meet other members, improve your knowledge and skills, and gain some CLE credits is to get involved with a substantive law committee. Many of the substantive committee chairs are working hard and putting on regular monthly 1 hour committee meetings. Attendance is free and you can obtain 1 hour of CLE, networking, and mentoring opportunities. The substantive law committees are also vetting and contributing forms in their area of practice to create a Forms Bank, available as a free member benefit to NWSBA members. So, make a contribution by pulling out one of your most effective and useful forms and send it over to the substantive law committee coordinator of the substantive law committee you just joined, and before long we will have a valuable bank of legal forms exclusively for our members' use. See page 13 for a list of regularly scheduled Committee Meetings. Please note that dates, times and locations are subject to change, so always consult the NWSBA Event Calendar for the most up-to-date information.

Pro Bono Volunteer Recognition Lunch – Pro Bono Committee Co-Chair, Janet Maxwell Wickett, organized our annual volunteer lawyer recognition lunch this year. The other co-chairs of the Pro Bono Committee are: Jonathan Anderson, Robert Kaplan, and Lance Ziebell. Several judges attended the luncheon and helped us recognize over 30 pro bono volunteers who (together with the other 23 NWSBA pro bono volunteer lawyers who were unable to attend the luncheon) donated over 500 hours of volunteer legal services at the Rolling Meadows Courthouse last year. Presiding Judge Maki, Judge Reibman, Judge Levinson, and Judge Kelley each voiced their appreciation for the volunteer legal services our members regularly and selflessly provide to our community at the Rolling Meadows Courthouse. Five of our members were chosen for special



recognition, based on their individual contributions of more than 20 hours of volunteer legal services each this past year: Joel Weiner, Sandra Stermer Coscino, Patti Levinson, Fedor Kozlov, and Steve Koukios. These five individuals have been dedicated to providing outstanding volunteer legal services for many years, and the special recognition was well deserved. Another way to get involved in the NWSBA is to contact the office and sign up to start performing volunteer legal services in one of several of our programs.

Continued on Page 13

VOLUNTEER THANK YOU!

The NWSBA and the co-chairs of the Pro-Bono Committee want to extend an extremely grateful thank you to those attorneys that volunteered their time at the Third District Municipal courthouse in October. The NWSBA could not run these voluntary community outreach programs without the generous time given by NWSBA attorneys. The following NWSBA attorneys staffed the Pro Bono Desk, and served as paternity and/or court facilitators during the month of October:

Pro Bono Attorneys:

Neil Good

Brad Chelin

Gregory Martucci

Matthew Hess

Ellen Yearwood

Paternity Facilitators:

Steven Koukios

Joel Weiner

Angela Peters

Divorce Court Facilitators:

Kristin Edmunds-Flanagan

Howard Bernstein

Amil Alkass

Caroline Powell

Ellen Grennier

Attorneys who staff the Pro Bono desk assist pro-se litigants in a wide variety of matters – the desk is open from 1:00 p.m. through 3:00 p.m. on Friday afternoons outside courtroom 206. The Paternity Facilitators and Court Facilitator Attorneys assist

pro-se litigants and judges in Domestic Relations cases and attorneys volunteer their time on Thursdays from 9:00 a.m. to 12:00 p.m.

For the past couple of months filling some of these spots has become more challenging. Please see what you can do to try and fill some of these spots as they are very meaningful to the judges and individuals we are able to assist.

The NWSBA Pro Bono Committee is also tasked with overseeing the Legal Self Help Center located at the Rolling Meadows courthouse. The Legal Self Help Center is currently facing a staffing shortage, so if you, or anyone you know, would be interested in volunteering their time to staff the Legal Self Help Center on a Thursday or Friday morning, please contact Ron Wittmeyer or Lance Ziebell.

Again, thank you for your service,
Pro Bono Committee Co-Chairs:

Janet Maxwell-Wickett (Committee Coord.)
630-916-6000

Jonathan Anderson
847-995-9999

Robert Kaplan
847-995-8800

Lance C. Ziebell
847-705-7555

TABLE OF CONTENTS

TITLE	PAGE
President's Volunteer Appreciation Luncheon	1
President's Page	3
Volunteer Thank You!	4
Civil Litigation CLE Registration	7
<i>"Discovery Trends: Proportionality in e-Discovery"</i>	8
Criminal Law CLE Registration	9
<i>"The Many Faces of Lawyer Stress"</i>	10
Ethics Committee CLE Registration	12
Substantive Committee Meeting Schedule	13
"On This Day..."	14
Matrimonial Law Holiday Party Registration	16
NWSBA Holiday Party Registration	17
Matrimonial Law Recent Cases	18
New & Noteworthy	20
LAP Honors William Kelley and the NWSBA	21
Traffic Law: Recent Cases	22
Young Professionals Event Registration	23
Board Meeting Highlights	24
Nominating Committee Announcement	24
NWSBA Networking Nite (<i>formerly Pub Trawlers</i>)	25
Bulletin Board	26
Calendar	27

Newsbriefs

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Parliamentarian: *Matthew Hess*

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Lawyers Assistance Program

Continued From Page 1

The Hon. Alfred L. Levinson, Hon. Hyman I. Riebman and Hon. Martin C. Kelley addressed the group and thanked those individuals who volunteered their time in their respective courtrooms.

Janet Maxwell-Wickett, Co-Chair & Coordinator of the Pro Bono Committee at the NWSBA, recognized the 2014-2015 Outstanding Legal Volunteers.

Honorees included Sandra Stermer Coscino and Joel Weiner, who were present, and Patti Levinson, Steven Koukios and Fedor Kozlov who were unable to attend.

“Volunteering is a great way for young lawyers, as well as seasoned attorneys to give back to the community and to increase their knowledge in a different area of practice, while providing a vital resource to the public,” said Maxwell-Wickett.

The NWSBA operates the pro se desk on Friday afternoons from 1:00 pm – 3:00 pm. The purpose of the Pro Se desk is to provide answers to those with simple legal questions and Court and Paternity facilitators assist both judges and pro se litigants in moving their case forward in a more efficient and timely manner.



*Go to our Facebook Page
to see more photos!*

NORTHWEST SUBURBAN BAR ASSOCIATION



Civil Litigation CLE

Michael Rothmann, Joseph Vito, Gary Newland, Sheila Genson, Co-Chairs

November 11, 2015
4:45 PM - 8:00 PM

Forest View Education Center
2121 S. Goebbert Road
Arlington Heights, IL 60005

\$50 –Members
\$100 –Non-Members
After November 4th:
\$60 Members & \$110 Non-Members

Seminar will begin promptly at 4:45 PM and will include digital materials and a light dinner.

This program is appropriate for
ALL LEVELS

RSVP by 11/4/14
To avoid late registration fees

Climate Change: New Winds Blowing in Foreclosure Litigation

Lori Cunningham, Newland & Newland LLP

Fraudulent Transfers in Personal Injury Cases

Michael Rothmann, Martin Glink & Associates

Are We In For a Long Winter: Update on Illinois Workers Compensation Law

Gary A. Newland, Newland & Newland LLP

Business Valuations with a Focus on Valuations of Distressed Businesses

Michael Pakter, CPA, Gould & Pakter Associates, LLC

NWSBA is going "Green". All registered/paid attendees will receive the seminar booklet in PDF format prior to the seminar via Email. Attendees can choose to print out the booklet, or reference the document from their smart phone or electronic device. A very limited supply of the hardcopy booklet will be available that evening for \$10 each.

**NORTHWEST SUBURBAN
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Discovery Trends: Proportionality in e-Discovery

By: George Bellas

One of the most important aspects of discovery of ESI (Electronically Stored Information) is the concept of proportionality, which is designed to reduce costs in discovery. This concept was first expressed in an opinion written in the case of *Zubulake v. UBS Warburg LLC*, 217 F.R.D. 309 (S.D.N.Y. May 13, 2003) (“*Zubulake I*”).

It was in this case that Judge Shira Scheindlin noted that whether the production of electronically stored information is unduly burdensome is dependent upon whether that information is in an accessible or inaccessible form, which is further dependent upon the type of media on which this ESI is stored. Judge Scheindlin further found that the *Rowe*¹ eight-factor balancing test “tend[ed] to favor the responding party, and frequently result[ed] in shifting the costs of electronic discovery to the requesting party.”² The court then modified the *Rowe* balancing test to a seven-factor balancing test.³ It was that seven-factor test first outlined by the *Zubulake* court that heavily influenced the 2006 amendments to the Federal Rules of Civil Procedure Rule 26.

The Federal Rules are being amended (again) with the amendments going into effect on December 1 with the rules regarding e-discovery taking central stage. The amendments provide that parties may seek discovery that is relevant and proportional to the needs of the case. The factors to be considered in assessing proportionality have been revised and rearranged. The new six factor test to be considered includes these factors in order of importance:

- the importance of issues at stake in the action,
- the amount in controversy,
- the parties’ relative access to relevant information,
- the parties’ resources,
- the importance of the discovery in resolving the issues, and
- whether the burden or expense of the proposed discovery outweighs its likely benefit.

The test places “the importance of the issues at stake” as the first factor, replacing the amount in controversy as the first listed factor. The comments to the rule do not state that this list is in order of importance, nor is it explained how the factors are to be used.

The new factor is “the parties’ relevant access to relevant information” is intended to address the asymmetry in the process where one party has the information and this imposes a greater burden on that party rather than the requesting party.

The important thing for litigators to remember is that the enforcement of the rules requires and encourages the active involvement of the court in the case management process. At the first sign of disagreement, the court needs to be involved.

For those practitioners who don’t believe the federal rules are important, please keep in mind that the Illinois Supreme Court rules were amended in 2014 to parallel the changes in the federal rules as it relates to e-discovery. And, the state judges who need to address these issues rely on the decision of the federal courts for guidance. The nature of the practice is rapidly changing and we need to keep up the changes, adapt and use the rules to best represent the interests of our clients.

¹*Rowe Entertainment Inc. v. William Morris Agency, Inc.*, 205 F.R.D. 421, 424–26 (S.D.N.Y. 2002).

²*Zubulake I*, 217 F.R.D. at 323.

³See *Zubulake v. UBS Warburg LLC*, 216 F.R.D. 280, 284 (S.D.N.Y. 2003) (“*Zubulake I*”) (citing the seven factor test for determining whether cost-shifting is appropriate for inaccessible data: 1) The extent to which the request is specifically tailored to discover relevant information; 2) The availability of such information from other sources; 3) The total cost of production, compared to the amount in controversy; 4) The total cost of production, compared to the resources available to each party; 5) The relative ability of each party to control costs and its incentive to do so; 6) The importance of the issues at stake in the litigation; and 7) The relative benefits to the parties of obtaining the information.)

NORTHWEST SUBURBAN BAR ASSOCIATION



Criminal Law CLE

Matt Fakhoury & Mohammed Ahmad, Co-Chairs

November 17, 2015
5:45 PM - 8:00 PM

Forest View Education Center
2121 S. Goebbert Road
Arlington Heights, IL

\$50 –Members
\$100 –Non-Members
After November 10th:
\$60 Members, \$110 Non-Members &

Seminar will begin promptly at 12:00 PM and will include Digital materials and a light dinner

To receive full credit, attendees must be checked in by 5:45 pm

This program is appropriate for ALL LEVELS

RSVP by 11/10/15
To receive the early bird discount

Deferred Prosecution

Chloe Schor, The Schor Law Firm

Expungements & Sealing

Matt Fakhoury, Law Offices of M. Fakhoury

Questions & Answers

NWSBA is going "Green". All registered/paid attendees will receive the seminar booklet in PDF format prior to the seminar via email. Attendees can choose to print out the booklet or reference the document from their smart phone or electronic device. A very limited supply of the hardcopy booklet will be available that evening at a cost of \$10.

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The Many Faces of Lawyer Stress

Submitted By: Illinois Lawyers' Assistance Program

Take a moment right now and think of stress. There is not a day that goes by that we don't hear, read or use the word. Stress has become a normal part of everyday life for everyone, and most especially for those in the legal profession.

What is Stress?

Originally stress was an engineering term used to describe the amount of pressure structures could withstand. Social scientists began to use the term as a way to look at psychological states and the related pressures. In the seventies and eighties, medical professionals looked at stress as a psychological condition with physical implications. They began to look at ways to "manage" stress.

Life is full of stress. In fact, we need a certain amount of stress to accomplish things. It is *excessive* stress that causes the negative connotation associated with the concept of stress. Tim Hindle, in his book *Reducing Stress* describes stress as: "...any interference that disturbs a person's healthy mental and physical well being. It occurs when the body is required to perform beyond its normal range of capabilities." Stress affects everyone in the physical, emotional and behavioural aspects of life. It's real - it is not just "in your head."

Are lawyers stressed?

At the Illinois Lawyers' Assistance Program, lawyers who request counselling are asked about their level of stress in that moment. This is a subjective measurement, but the majority indicate they are experiencing a moderate to severe level of stress. There are specific characteristics of legal life that contribute to excessive stress. Lawyers are often described as having a "Type A personality." There are two major features of Type A personalities as described by Friedman: "time urgency or time impatience" and "free floating hostility." Other characteristics include insecurity about status, competitiveness, aggression and inability to relax. Type A personalities are also generally ambitious, successful in their business/career and are able to multi-task. Does this describe any lawyers that you know?

The area that seems to cause the most difficulty is the hostility. Hostility brings out angry or aggressive behavior and a mistrust of the motives of others. Law has been identified as the one profession that is based on pessimism. Other factors include the large firm stress of billable hours and isolation and the business-building pressure of the solo practice. There is the stress of the courtroom and the adversarial approach

of the litigation process. Lawyers are also viewed as leaders in the community and are held to a high level of responsibility, and most have very high expectations for themselves.

In his book *The Lawyer's Guide to Balancing Life and Work*, George Kaufman describes stress and lawyers as follows: "Lawyers resist the notion that stress at work poses significant individual risk. Part of that resistance stems from the image we try to project. We work hard at developing calm demeanors: but that doesn't mean we have shaken off the effects of stress. Like ducks on a pond, we are calm and placid above the water and paddling like mad underneath."

Excessive stress affects us in three areas--physically, emotionally and spiritually

Stress and the Body

Stress affects the body as it does metal. As noted above, the measurement of stress helped determine how much pressure could be put on a piece of metal before it bent or broke. It is the same for the human body. Stress does some intense things to us. Let's scan the body under stress:

- Flight or fight response – increased blood pressure, blood to the internal organs so the extremities get cold (hands and feet), body perspires, adrenaline pumps – vision and hearing become more acute, on edge
- Tight shoulders, neck, back and chest
- Upset stomach – heartburn
- Diarrhea and tight bladder

Here are suggestions for dealing with the physical aspects of stress:

- Take deep breaths to get the oxygen flowing through the blood
- Stretch your arms and legs and shake them to increase circulation
- Move your neck in circles to release tightness
- Get eight hours of sleep a night
- Eat three balanced meals a day plus healthy snacks
- Exercise at least three times a week for half an hour minimum
- Cut out or down on caffeine and nicotine
- Drink plenty of water to hydrate yourself
- Take vitamins

Continued on the Next Page

*Continued From the Previous Page***Stress and the Emotions**

Excessive stress makes you ill. Yes, actually sick. And we're so deep in the middle of that proverbial cloud that it usually seems that our emotions just happen to us without our noticing them. A stressful person is often angry, sad, fearful or frustrated, but they don't consciously label or notice these emotions. They just feel awful. The problem with unconsciously experiencing or trying to cover up emotions is that they don't go away-- they just fester and usually get worse. This is where addictions come from -- a compulsive need to self-tranquelize in order to avoid facing what's inside.

How does this manifest in legal practice? The negative emotional impact of lawyer stress is rooted in the stressful stimuli noted above. In each case, pressure builds and stress increases. For many, the unavoidable result is a mental health crisis. Hopelessness, anxiety, depression, withdrawal, desperation, loneliness, shame and even thoughts of suicide arise. At the Illinois Lawyers' Assistance Program, all of these are observed.

Some stress-reducing techniques for emotional impact of stress include:

- Be aware of your breath. Stop- ping and taking a few deep breaths serves as a 'reset button'. It centers you and refocuses your mind.
- As difficult as it is, try to curtail the judgment of others. Most people judge others as a means of soothing themselves. It allows them to be more than the "other." It's an inauthentic way of self-tranquilization.
- Cultivate friendships. Share your feelings with those that are close to you and have fun with those people.
- If you're a pet person, get and enjoy one. There's a reason hospitals hire therapy pets.
- To counteract the negative orientation of legal work, actively practice gratitude. Keep a gratitude journal. We're too quick to notice what's wrong, so deliberately choose to notice what's right in your life as well.
- Learn to forgive. Many take this as a suggestion to reward the bad behavior of others. What it really does is remove the albatross of negativity that you carry around your neck, not the other person's responsibility for their actions.
- Get a counsellor if stress becomes too much. Whether through LAP or otherwise, talking to a professional about the emotions swirling around inside you is a sure way to process and get past them.

Stress and the Spirit

Here we refer to spirituality, not religion. Religion is only one form of spirituality. The concept is much more about the essence of who you are, beyond your mind, body and emotions.

Spirituality is something that thrives in all of us much like a tree with roots that grow in the soil for food with the branches growing towards the light, using the nutrients provided by the soil and the light to create new life. As we draw from within the knowledge of who we really are, we can explore these in light of our relationship with nature and with others. We can maximize our assets and minimize our liabilities in a balanced and healthy way.

The best techniques for dealing with "spiritual stress" are set out in the Serenity Prayer.

***"God grant me the Serenity to accept the things
I can not change;
The Courage to change the things I can;
And the Wisdom to know the difference."***

Spirituality is extraordinarily subjective.

- Connect to the spirit (music, dance, people, nature)-with what matters to you
- Meditate
- Pray to whomever or whatever is your higher power
- Read daily affirmations or meditations
- Laugh
- Tell those close to you that you love them

The key to stress management for lawyers, and everyone, is active and conscious self care. If you care for your mind, body and spirit as a deliberate and daily endeavor, stress is entirely manageable.

References

M Friedman, *Type A Behaviour: Its Diagnosis and Treatment*, New York, Plenum Press, 1996

Peter G Hanson, *The Joy of Stress*, Hanson Stress Management Organization, Islington, Ontario Publishers, 1986

Hans Selye, *Stress Without Distress*, New York: Lippincott, 1974.

Tim Hindle, *Reducing Stress*, Essential Managers, Dowling Kindersley Publishing Inc., London 1998

George Kaufman, *The Lawyer's Guide to Balancing Life and Work*, ABA Law Practice Management Section, 1999.

NORTHWEST SUBURBAN BAR ASSOCIATION

Professional Ethics Committee CLE
The Basics: Fees, Retainers & Trust Accounts
Scott Kozlov, Moderator

2 Prof. Credits

December 9, 2015
12:00 pm - 2:15 pm

Rolling Meadows Courthouse
2121 Euclid Avenue
Rolling Meadows, IL 60008

\$50 Members
\$100 Non-Member
After December 2nd:
\$60 Members, \$110 Non-Members

Seminar will begin promptly at 12:00 pm and will include digital materials and light lunch.

To receive full credit attendees must be checked in by 12:00 pm.

This program is appropriate for ALL LEVELS

Register by 12/2/15
To receive the early bird discount.

IOLTA Accounts:
Common Questions & Banking Issues
David Holterman, Lawyers Trust Fund of Illinois

Fees, Retainers & Trust Accounts
Mary Andieoni, ARDC, Ethics Education

Financial Issues From a Practitioner's Perspective
James Doppke, Robinson Law Group,

NWSBA has gone "Green". All registered/paid attendees will receive the seminar booklet in PDF format prior to the seminar via Email. Attendees can choose to print out the booklet, or reference the document from their smart phone or electronic device. A very limited supply of the hardcopy booklet will be available at the event for \$10 each.

Participants will receive 2 MCLE Ethic Credits once approved by the IL Supreme Court's Commission on Professionalism

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Continued From Page 3

Fall Dinner Meeting – Dinner Meeting Committee Chairs, Joette Doran and Joel Weiner, along with Diversity Committee Chair, Zubair Khan, put together an informative Fall Dinner meeting last month at Ditka’s. The evening included first class speakers, great food, and 2 hours of CLE ethics credit. Ms. Cie Armstead, who has devoted her career to studying and teaching on the subject of diversity got some lively discussion going on the subject of diversity and inclusion in the legal field. Legal tech guru, Catherine Sanders Reach, the Director of Law Practice Management & Technology at the CBA presented on the subject of online reviews and reputation management. Catherine, who has presented at past NWSBA seminars, advocated that we as lawyers need to constantly work to generate as much good online news & reviews, which will help “push down” anything negative that someone happens to write about us. She also discussed how and when to respond to negative online reviews or comments.

UPCOMING PROGRAMS & EVENTS

We have decided to scale back the frequency of our Pub Trawlers networking events this fall in favor of one, hopefully, really big NWSBA Network-

ing Nite, on Thursday November 19, 2015 at Ditka’s. This event is being organized by our Membership committee chairs – Kristy Regal, Natasha Adler, Robert Boszko, Erin Calandriello, and Frank Ponticelli. Our special guests are the newest Third District Judges; Judge Steven Goeble, Judge Anjana M.J. Hansen, and Judge James Pieczonka, as well as Kerry Lavelle, author of “The Business Guide to Law: Creating and Operating a Successful Law Firm”, which has just been published by the ABA. We have 4 sponsors and are looking for more. This event is free to all members, and prospective members, as long as the sponsorship money holds out. So, please come out, and bring a prospective member!

We have many more CLE programs and special events planned for the rest of 2015, just check out our website at nwsba.org for details. From the homepage, scroll down for Calendar items on the lower right, and click “More” to see a complete listing of all upcoming events. You can also register for most events online. So, get involved and help us help you grow as a professional, and grow your business too. I hope to see you at the **NWSBA Networking Nite** next month, if not before.

Stay Safe & Be Well,
Ron Wittmeyer

NWSBA Substantive Committee Meetings are held at the times and locations listed below. Please note that all meeting times/locations are subject to change. We encourage you to consult the NWSBA Event Calendar on a regular basis for the most up to date information.

NWSBA Committee Schedules
2015/16

Committee	Date	Time	Location
Civil Lit	4th Monday of the Month	Noon - 1:15pm OR 5:15 - 6:30pm	121 S. Wilke, Ste. 401 Arlington Heights, IL
Criminal Law	1st Tuesday of the Month	Noon - 1:15pm	Ditka's Arlington 2000 W. Euclid Avenue Arlington Height, IL
Business Law	3rd Tuesday of the Month	8:15am - 9:30am	Harper Professional Center 650 E. Higgins Road Schaumburg, IL
Debtor/Creditor	1st Wednesday of the Month	Noon - 1:15pm	Tuscan Market 141 W. Wing Street Arlington Heights, IL
Employment Law	3rd Tusday of the Month	Noon - 2:00 pm	Favaro & Gorman 835 N. Sterling Palatine, IL
Estate Planning & Probate	Last Thursday of the Month	7:45am - 9:00 am	Elly's Pancake 372 E. Golf Road Arlington Heights, IL
Law Practice Management	4th Wednesday of the Month	Noon - 1:15pm	Elly's Pancake 372 E. Golf Road Arlington Heights, IL
Real Estate	3rd Tusday of the Month	Noon - 1:15pm	Lower Level Conference Room 1699 E. Woodfield Rd, Schaumburg, IL

On This Day....

By: Robert Stoller

Alexander Mitchell Palmer was born on May 4, 1872 in the small town of Stroudsburg, Pennsylvania. His parents raised him as a devout Quaker. After graduating Swarthmore College summa cum laude, he returned to Stroudsburg to practice law. Over the next twenty-two years Palmer proved himself a master politician, winning three campaigns for the United States Congress and losing a close race for the U.S. Senate.

Palmer built his political career primarily around one key friendship: the one he had with Woodrow Wilson. They met long before Wilson's House years, back when Wilson was still New Jersey's up-and-coming governor and Palmer a junior Congressman from Pennsylvania. They struck up an odd rapport, Palmer the likeable, outgoing backslapper and Wilson the stiff, bookish college professor with the long face and the cold demeanor. But politically, they saw eye to eye. Palmer always carried the torch for Wilson's progressive causes. As a congressman, Palmer introduced the bills to give women the right to vote and to bar child labor. He backed Pennsylvania's coal miners and steel workers whose unions consistently backed his campaigns. When Wilson first decided to run for president in 1912, he asked Palmer to manage his campaign in Pennsylvania and help lead his forces at the Democratic convention in Baltimore. When Wilson won, he put Palmer's name high on his initial list for a cabinet seat. He offered Palmer the post of secretary of war, but Palmer declined, insisting that his Quaker roots made him a pacifist. During the first two years of Wilson's presidency Palmer remained in Washington to serve as a Congressman. In 1914, Wilson convinced Palmer to return home to Pennsylvania and run for an open seat in the U.S. Senate. When Palmer lost the race, Wilson thanked him for the effort by making him a judge on the U.S. Court of Claims. After the U.S. entered World War I in 1917, Wilson offered Mitchell a new job that of Alien Property Custodian. Palmer soon would make his obscure wartime title a household word.

Germany, through its business elite, owned almost a billion dollars in American-based assets at the start of World War I, including major corporations. As Alien Property custodian, it was Palmer's job to stop them from damaging American interests, and he did it with gusto. In a dazzling display of raw executive muscle, he quickly seized dozens of major German firms, thousands of patents, and millions of dollars in financial assets. He sold the German firms

to new American owners, often at a bargain price. The campaign kept Palmer's name in the headlines throughout the war. In Berlin, they called him the "official American pickpocket." "In America his nickname was the Fighting Quaker.

In March 1919 Wilson was able to promote Palmer to the cabinet as Attorney General when Francis Gregory announced his resignation. On June 2, 1919 everything changed, bombs exploded simultaneously in nine American cities, including one that destroyed Mitchell's home and nearly killed him and his family. Flyers declaring war on capitalists in the name of anarchist principles accompanied each bomb. Palmer decided that for the rest of his time in office, he would commit the Department of Justice to the singular task of tracking down and stopping the "Red Menace." To lead this crackdown, he named a young assistant, J. Edgar Hoover, to head a new division of the Justice Department's Bureau of Investigation, the General Intelligence Division, with responsibility for investigating the programs of radical groups and identifying their members. At 9 p.m. on November 7, 1919, a date chosen because it was the second anniversary of the Bolshevik revolution, agents of the Bureau of Investigation, together with local police, executed a series of well-publicized and violent raids against the Union of Russian Workers in 12 cities. Newspaper accounts reported some "badly beaten" during the arrests. Many later swore they were threatened and beaten during questioning. Government agents cast a wide net, bringing in some American citizens, passers-by who admitted being Russian, some not members of the Russian Workers. Others were teachers conducting night school classes in space shared with the targeted radical groups. Arrests far exceeded the number of warrants. Of the 650 people arrested in New York City, the government managed to deport 43.

Amid the hysteria, a pattern of abuse emerged prompting a backlash. A handful of lawyers like Clarence Darrow, Felix Frankfurter and Harlan Fiske Stone defended the accused radicals and challenged Palmer and the Justice Department in the name of free speech and civil liberties. Palmer and the Government would lose in court and eventually in the court of public opinion. A. Mitchell Palmer, once seen as a likely presidential candidate, lost his bid to win the Democratic nomination for president in June of 1920.

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Matrimonial Law Committee - Recent Decisions

By: Howard Bernstein

MOTION FOR SUBSTITUTION OF JUDGE - POST DECREE

***IRMO CRECOS*, Nos. 1-13-2756, 1-13-2756, 1-13-3780 and 1-14-0112 Cons. 2015 IL.App. (1st) 132756 (July 28, 2015)**

A judgment for dissolution of marriage was entered in 2009. Husband appealed this decision, which was subsequently affirmed. During the appeal, the case was assigned to another judge for the purpose of hearing post decree petitions. Husband filed two “emergency” petitions that were heard on the day after they were filed. The post decree judge entered an order finding that Husband’s two petitions were not an emergency and gave the Wife 14 days in which to respond or otherwise plead; the hearing on the petition was set for a day approximately two weeks after the date on which the Wife was to respond to Husband’s petitions. Subsequent to the order giving Wife 14 days to respond, but prior to the scheduled hearing on Husband’s two petitions, Wife filed a motion for substitution of judge as a matter of right. Wife’s motion for a substitution of judge was denied but did not give a reason for the denial. Subsequently, both parties filed post-judgment petitions that were held. At the conclusion of the hearings on the post judgment petitions which was approximately three years after Wife’s motion for a substitution of judge, Wife filed an appeal to the ruling denying her motion for a substitution of judge. On appeal, the order entered denying Wife’s motion for a substitution of judge was reversed because the post decree judge had not heard nor ruled on any substantial matter. The order setting a briefing schedule was not a ruling on a substantial matter before the court. All orders entered subsequent to Wife’s motion for a substitution of judge were void.

LIMITATION OF MAINTENANCE - INTERIM FEES FROM RETIREMENT ACCOUNT - CHILD REP FEES

***IRMO SHEN*, No. 2015 IL.App (1st) 130733 (June 30, 2015)**

In a long term marriage where husband was the primary source of support and the Wife was the primary homemaker, the trial court had made several decisions during the course of the contested hearings. One court order directed Husband to liquidate a portion of his 401(k) plan to pay interim attorney’s fees. Another order directed the parties to liquidate a marital asset to pay fees owed to the child representative. The final judgment ordered both parties to evenly contribute to the child representative’s fees and terminated the Wife’s maintenance at age 66. The judgment provided for a review of maintenance prior to Wife’s 66th birth date if she earned an income of at least \$45,000.00 in any year. Both parties appealed those various orders. The Appellate Court ruled as follows:

1. The trial court erred when it ordered Husband to pay interim fees from his retirement account. Retirement accounts are exempt from creditors.
2. It was not error for the court to require the parties to sell a marital asset in order to pay the child representative because 750 ILCS 5/506(b) authorizes the payment of these fees from the marital estate.
3. Requiring each party to pay half the fees due the child representative because the source of payment was not from any retirement account but was the remainder of funds held in escrow after the withdrawal from retirement accounts.

Continued From Previous Page

4. Terminating maintenance when the Wife reached 66 years of age was error because the Wife was entitled to permanent maintenance and the court should not attempt to foresee if the Wife would be financially self-sufficient. “That is why permanent maintenance is always modifiable or terminable should there occur a substantial change in circumstances”.

CHILD CUSTODY - INTERNATIONAL LAW

MONTROY GUERRERO v. RAUL ESTEBAN OLIVEROS, et al, No. 15 C 2422 (August 11, 2015)

Defendant, an American citizen, met Plaintiff, a Mexican citizen, when he was visiting relatives in Mexico. Two years later Plaintiff moved to Chicago to live with Defendant. While living with Defendant for approximately six years, the parties had two children that were born in Chicago. Plaintiff took the two children and moved back to Mexico. Two years later, while Defendant and his mother were visiting relatives in Mexico, Defendant and his mother took both children and returned to Chicago. Defendant and his mother signed a notarized document that they would return the children on a date that was approximately one month later. Defendant did not return the children as promised alleging that Plaintiff’s residence was in a heavy crime area and that he believed the children were being harmed in Mexico. Plaintiff filed an application under the Hague Convention alleging the children were “habitual residents” of Mexico before they were moved to the United States. The Court appointed a GAL to represent the children who recommended that the children remain in Chicago. The trial court found that both parties had agreed that Plaintiff should take the children with her to live in Mexico as evidenced by Defendant’s regular payments for support of the children and that the children had become acclimated to living in Mexico. Defendant also alleged that Plaintiff was not using this support payment for the

children and one of the children, seven years of age, wanted to remain in Chicago as she stated in an “in camera” interview with the judge. The trial court held that it was his duty, under the Hague Convention, to decide which country has jurisdiction to decide which parent should be awarded custody, not which parent should have custody. Defendant was ordered to return the children to Mexico.

CHILD CUSTODY - UCCJEA HOME STATE JURISDICTION

FLECKLES v. DIAMOND, 2015 IL.App. (2d) 141229 (June 23, 2015)

The parties to this action had a romantic relationship resulting in Respondent becoming pregnant. Prior to the birth of the child, Respondent moved to the State of Colorado. Petitioner filed a petition in Illinois for a declaration of paternity, joint custody and visitation rights. Respondent filed a motion to dismiss the Illinois petition claiming that she moved to Colorado prior to the child’s birth and therefore Colorado was the home state of the child pursuant to Section 102(7) of the UCCJEA. The trial court denied the motion to dismiss and Respondent appealed. The Appellate Court reversed the trial court stating that under Section 102(7) of the UCCJEA the home state of a child is the state where the child resided for at least six months prior to the commencement of the child custody proceeding. However, in a case where the child is less than six months old, the home state is where the child lived from birth with either parent or a person acting as a parent. In this case, Petitioner’s action must be bifurcated. The child custody issue must be determined in Colorado and the issues of parentage and visitation could be heard in Illinois.

Howard Bernstein is a partner at Schwartz, Wolf & Bernstein LLP, in Buffalo Grove and specializes in Domestic Relations and Family Law, Bankruptcy and Real Estate.

New & Noteworthy

By: Crystal Bush

Following are two of our noteworthy members:

COLIN H. GILBERT

Colin is a partner at Drost, Gilbert, Andrew & Apicella, LLC located in Palatine, IL. Colin practices in the areas of creditor's rights, residential real estate and criminal defense. He graduated from Chicago Kent law school in 2005 where he was a member of the International Moot Court Society. He received his undergraduate degree from the University of Illinois in 2002 with a major in speech and communications.

A native of the Northwest suburbs, Colin attended Hersey high school located in Arlington Heights. His interest in the law was kindled in high school as a result of being involved in debates. He also was active in drama and held leading roles in several plays.

Colin is active in the community and is the President Elect for the Arlington Heights Chamber of Commerce. He is also currently Village Commissioner for Arlington Heights. In addition he owns a restaurant in downtown Arlington Heights along with his wife called Tuscan Market and Wine Shop.

Tuscan Market and Wine Shop is a unique combination of Italian/American delicatessen, wine bar, and wine shop. In addition they offer catering, gift baskets, shopping and wine tasting. It's a venture he and his wife got involved in because they loved the restaurant and the village of Arlington Heights. In addition, Colin stated that it was a good business opportunity.

There are several reasons Colin credits to his success as an attorney. One is being active in the Northwest Suburban Bar Association which he believes is critical to anyone's success. He also credits Kenneth B. Drost as being the greatest legal mentor an attorney could ever ask for. Ken taught him that in order to be a success in the legal field he needed to work his tail off and give his client's the best service possible. Colin also stated it's important to surround yourself with positive people.

When I asked Colin if he could have done anything differently, he stated that he would have analyzed the cost of law school a bit more. He would still have

attended law school, but he would have taken some general business classes first.

One of the things he likes about the practice of law is that he believes that the legal system and the thought process that goes into cases gives equity and fairness in a world that is often chaotic. The two things he likes least about the practice of law is that sometimes the competitiveness among lawyers result in a lack of basic congeniality. Also, the fee structure often creates a race to the bottom of how low can you go or the client gets stuck with the short end of the stick.

When not practicing law he enjoys spending free time with his wife and three children.

ELLEN A. YEARWOOD

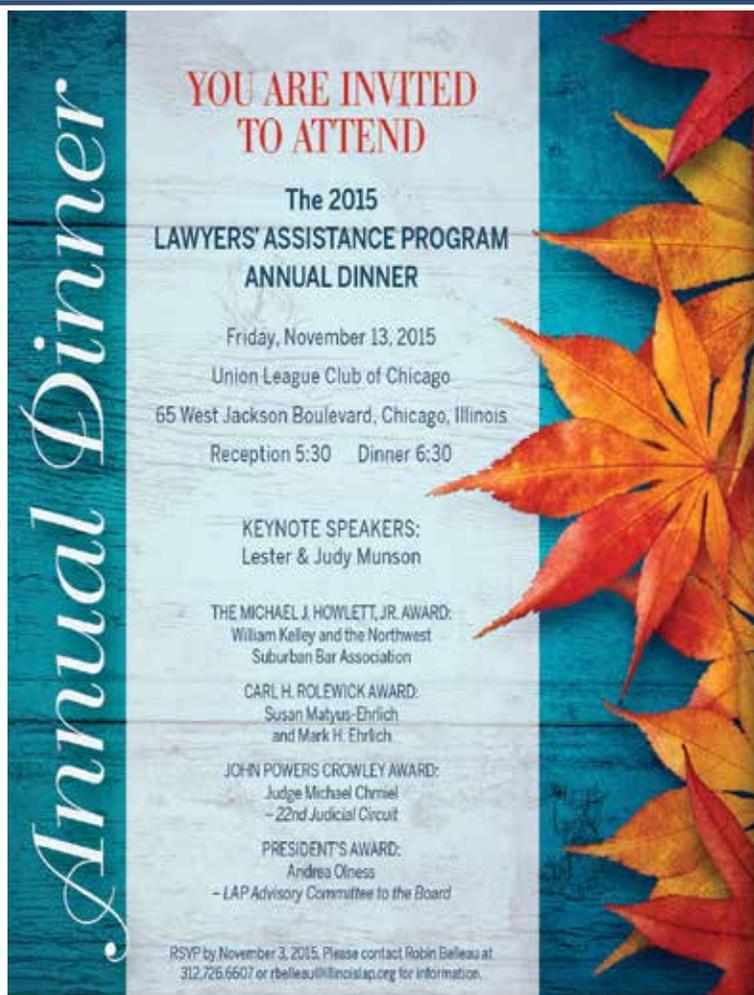
Ellen is the owner of Yearwood and Associates LTD, where she practices in the areas of family law, wills & trusts, probate, employment law, general civil matters, residential real estate and employment law. Ellen also handles dispute resolution of all sorts. Ellen received her law degree from DePaul University and her undergraduate degree from Emory in Atlanta, GA.

Ellen started her career working in the IT industry. Her venture into the legal profession was based on the suggestion of a friend that said "Let's go to Law School." Ellen took her up on her suggestion and the rest is history.

One of the things Ellen likes about the practice of law is the high diversity of matters. She also enjoys helping people and mentioned that there are few legal matters that are divorced from the real world. A whole lot of stress can be relieved from a client's life once legal matters are addressed.

Ellen is quite active in the community and is an officer with the Illinois NOW legal and education fund, a volunteer and member of the board of the Des Plaines History Center, an officer at the Des Plaines Chamber of Commerce and a Precinct Captain in Maine Township. When I asked Ellen how she juggles a busy law practice with her community service involvement, she stated that she uses her calendar quite well.

Continued on the Next Page



The Lawyers' Assistance Program's Board of Directors will be awarding Immediate Past President William Kelley, and the Northwest Suburban Bar Association the *Michael J. Howlett, Jr. Award* at their Annual Dinner on November 13, 2015 at the Union League Club of Chicago.

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Continued From Previous Page

One of Ellen's strongest qualities is her honesty. It's really important to her to not take advantage of people. People hire her because they know that she will do the job. When I asked her what makes her stand out, she chuckled and said "I'm really tall."

Her advice to someone considering the practice of law is to really consider if this is something you really want to do as there are a lot of lawyers out there. For a new attorney just starting out she suggested that they join the state and local bar associations, learn how to use Fastcase or similar legal research programs, and find a mentor. She mentioned that many of the bar associations have mentorship programs for newer attorneys. She strongly believes in mentoring and mentioned that if one is having difficulty finding a mentor, be persistent in that pursuit.

One of the things she has found to be beneficial in her career has been the kindness of Judges. She believes that most Judges are fair and will try hard to bring

about a fair resolution to a matter. One of the things she doesn't like about the practice of law is the huge cultural differences among clients about paying their bills.

When not practicing law Ellen enjoys walking with her favorite spots being the Morton Arboretum, the Chicago Botanical Gardens and walking along the Des Plaines River. Her favorite cuisine is southern soul food.

Crystal R. Bush is an attorney at CR Bush Law where she practices in the areas of estate planning, real estate, business and probate law.

Recent Cases

By: Thomas M. Moran

Breath Test

In *People v. Smith*, 2015 IL App (1st) 122306, ___ N.E.3d ___, ___ Ill.Dec. ___, Defendant argues that his breathalyzer test was improperly admitted into evidence at his trial for DUI because the State did not lay an adequate foundation. Specifically, Defendant contends that the self-certification of the breath machine does not satisfy 20 Ill.Admin.Code 1286.230 (2011) requiring that the machine be certified as accurate within 62 days before his specific test.

The trial court held that the electronic certification was admissible as a self-authenticating business record. The appellate court reversed the trial court holding that the certification alone, absent evidence providing interpretation of those results does not satisfy the foundational requirements outlined in the Illinois Administrative Code. The court went on to say that the electronic certification contains raw data but does not provide specific interpretation of that data thus putting into question the machines' accuracy.

Squad Video

In *People v. Moises*, 2015 IL App (3d) 140577, ___ N.E.3d ___, ___ Ill.Dec. ___, Defendant was arrested for DUI pursuant to 625 ILCS 5/11-501(a)(2). The videotape prepared in conjunction with Defendant's arrest did not capture Defendant's performance of the field sobriety tests because the defendant was directed by the arresting officer to conduct the tests in an area outside the view of the camera. Consequently, Defendant filed a motion for sanctions asking that the police officer be barred from testifying to anything that would have been captured on the videotape. The trial court, relying on *People v. Kladis*, 2011 IL 110920, 960 N.E.2d 1104, 355 Ill.Dec. 933, granted the defendant's motion.

On appeal, the State argues that no discovery violation occurred. The appellate court agreed holding the State neither destroyed nor withheld the squad car video. The court went on to say that the arresting officer's decision to conduct the Defendant's field sobriety testing outside of the view of the squad car camera was not, as Defendant suggested, tantamount to destroying a video.

Sanctions

In *People v. Olson*, 2015 IL App (2nd) 140267, ___ N.E.3d ___, ___ Ill.Dec. ___, Defendant was stopped by the Illinois State Police on suspicion of

DUI. Defendant was asked to submit to field sobriety testing in a location that could not be captured by the officer's squad video. At trial, Defendant moved for sanctions because the officer failed to comply with Section 30(c) of the State Police Act (20 ILCS 2610/30(c)) (West 2012), which provides that the "in car video camera shall record activities outside a patrol vehicle..." including field sobriety tests. The trial court granted the defendant's motion suppressing all observations made by the arresting officer.

On appeal, the State argued that the trial court abused its discretion because sanctions were inappropriate because Section 30(c) of the State Police Act (20 ILCS 2610/30(c)) (West 2012) does not provide a remedy for noncompliance and because the State did not commit a discovery violation. The Appellate Court agreed holding that, because a discovery violation did not occur, a sanction was improper. In addition, Section 30(c) of the State Police Act (20 ILCS 2610/30(c)) (West 2012) is directory and as such, a particular consequence (sanction) is not triggered from non-compliance.

PBT

In *People v. Gutierrez*, 2015 IL App (3d) 140194, ___ N.E.3d ___, ___ Ill.Dec. ___, Defendant was an off duty police officer who was involved in a motor vehicle accident. After waiting for the police to arrive for over thirty minutes the defendant exchanged information with the other driver and went home. Shortly thereafter he was summoned back to the scene by an Illinois State Police Trooper where he was asked to take a PBT. The request of the PBT came at the direction of the Aurora Police Department who employed Defendant. Defendant submitted to the PBT and blew a .249. Defendant subsequently was arrested for DUI. He later filed a petition to rescind and Motion in Limine arguing that the admission of the PBT violated his Fifth Amendment against self-incrimination. The trial court denied both the petition and the motion holding that the PBT was an administrative search and therefore admissible so long as the PBT was not merely a subterfuge for discovery of criminal activity.

The Appellate Court affirmed the trial court ruling that Defendant's assertions regarding the Fifth Amendment were misplaced given that a PBT result is not testimonial in nature and did not initially pertain to a criminal matter. Lastly, the court held that the PBT statute does not require affirmative consent.



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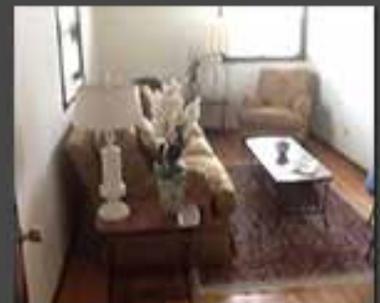
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Board Meeting Highlights

By: Miriam E. Cooper, NWSBA Secretary

Our Treasurer advises that our financial condition remains strong.

We have received a letter of resignation from Board Member Colin Gilbert. Applications for a new board to replace Mr. Gilbert are being solicited for the remainder of his term (June 2016).

1st Vice Pres Nichole Waltz is seeking forms from the substantive law committee members for our members only Forms Bank.

A Recognition Luncheon was held at Ditka's on October 8, 2015;

approximately 35 lawyers were honored. Fedor Koszlov, Sandra Coscino, Joel Weiner, Steve Kokios and Patti Levinson received special recognition for volunteering more than 20 hours each in the divorce, paternity, and civil courtrooms. Judge Levinson, Judge Riebman and Judge Kelley presented the words.

We will have a Networking Event at Ditka's in Arlington Heights on November 19th; this event will replace Pub Trawlers. Kerry Lavelle will speak - he has a newly pub-

lished book, and the new Third District Judges will be welcomed by our Association.

There is a Young Professionals Networking Event on 11/5/2015 at Metropolis in Arlington Heights. This event is for attorneys and other professionals who are under 40 years of age.

We have one new member: Steven Kozicki and one Government /Retired Member Judge Anjana Hansen.

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