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TUESDAY, OCTOBER 30, 2018

Chicago Daily Law Bulletin®

$2.50

A Product of Law Bulletin Media | Volume 164, No. 212

Serving Chicago's legal community for 164 years

28 pages in 2 sections

Insurer asks for 'due proof' after suicide

INSURANCE MATTERS, PAGE 4

TRIAL NOTEBOOK

STEVEN P. GARMISA
Hoey & Farina

Student debt counts under Chapter 13

Stearns v. Pratola

Section 109(e) of the Bankruptcy Code limits Chapter 13 plans to debtors who owe less than $394,725 — and Christopher Pratola had debts totaling $591,223 when he petitioned for relief under Chapter 13 — but a bankruptcy judge denied a motion to dismiss the case for cause under Section 1307(c), because $194,563 of his obligations were from student loans.

"Congress simply could not have intended to exclude otherwise eligible individuals from being Chapter 13 debtors solely because of educational debt that exceeds the limit," Bankruptcy Judge Janet S. Baer concluded.

Reversing, U.S. District Judge Robert M. Dow Jr. explained that Section 109(e) "contains no reference to specific types of debt or any indication that the type of debt would affect a debtor's eligibility to file a petition under Chapter 13." Pratola owes more than the statutory limit, and "despite the educational nature of this debt, under the plain language of Section 109(e), he is ineligible for Chapter 13."

Although he was "not unsympathetic to the policy concerns raised by the bankruptcy court and highlighted by Pratola," Dow ruled the bankruptcy judge's decision was incorrect as a matter of law. *Stearns v. Pratola*, 2018 U.S. Dist. Lexis 148891 (Aug. 31, 2018).

Here are highlights of Dow's opinion (with omissions not noted, formatting modified for clarity, and Pratola's name substituted for "debtor"):

According to the statute, "only an individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than $394,725" may be a Chapter 13 debtor. Beyond specifying that the debt subject to this limit must be noncontingent, liquidated and unsecured, the statute contains no reference to specific types of debt or any indication that the type of debt would affect a debtor's eligibility to file a petition under Chapter 13. The statute says only that an individual, with a regular income, owing less than the unsecured debt limit may be a Chapter 13 debtor.

Pratola owes more than the unsecured debt limit: [D]espite the educational nature of this debt, under the plain language of Section 109(e), he is ineligible for Chapter 13.

This reading of the statute is supported by 7th Circuit [Court of Appeals] case law. The 7th Circuit has stated that a debtor whose unsecured obligations exceed Section 109(e)'s limits "cannot obtain relief under Chapter 13." *In re Day*, 747 F.2d 405 (7th Cir. 1984).

In *Day*, a creditor moved to dismiss the debtor's Chapter 13 petition, claiming that under Section 506(a) the unsecured portion of a debtor's secured debts should be treated as unsecured for purposes of Section 109(e), which would cause the debtor to exceed the statutory unsecured debt limit. The bankruptcy court denied the motion, but the district court reversed on appeal.

The 7th Circuit affirmed the district court, holding that the unsecured portion of the debt counted against the debt limit. Because the debtor's unsecured debts exceeded the Section 109(e) limit, the debtor could not obtain Chapter 13 relief.

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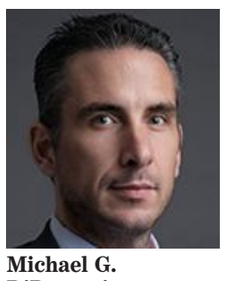
IN THE NEWS

BY SARAH MANSUR

The Rev. Elena H. Calloway speaks during "Conversation About Criminal Justice Reform," a Chicago Bar Association-sponsored program at New Covenant Missionary Baptist Church last Wednesday. that gathered lawyers, judges and faith leaders to discuss ways the courts and clergy can work together to improve their communities' lives. Pictured behind Calloway are CBA Executive Director Terry Murphy and U.S. District Judge Sharon Johnson Coleman. *Photo provided by the U.S. District Court for the Northern District of Illinois.*

Timothy A. Castelli



Michael G. DiDomenico

Craig D. Tobin

IN THE LAW FIRMS

Ropes & Gray LLP promoted **Timothy A. Castelli** to partner in the private equity practice.

He focuses his practice primarily on transactional matters, representing private equity firms, family offices and public and private companies.

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Lake Toback DiDomenico partner **Michael G. DiDomenico** will co-moderate a seminar and luncheon with Illinois Appellate Court justices on Wednesday at noon at the Union League Club of Chicago, 65 W. Jackson Blvd.

The event is sponsored by the American Academy of Matrimonial Lawyers.

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Craig D. Tobin of Tobin & Munoz LLC was named to this year's Irish Legal 100.

Members are the 100 leading lawyers nationwide of Irish descent. Irish Legal 100 was founded in 2008 by the Irish Voice newspaper in New York.

AROUND TOWN

The Arab American Business & Professional Association will host its annual dinner on Nov. 7 at The Estate by Gene & Georgetti, 9421 W. Higgins Road, Rosemont.

Registration and reception begin at 6 p.m. with the dinner program from 7 to 9 p.m.

For more information or to register, e-mail arabbarrsvp@live.com.

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The Diversity Scholarship Foundation's annual Unity Award dinner will be held on Nov. 27 at the Hilton Chicago, Grand Ballroom, 720 S. Michigan Ave.

The reception starts at 5 p.m. and the dinner program at 6 p.m. For more information or to purchase tickets or tables, e-mail dsfchicago@gmail.com.

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"[O]ne of the largest doping programs which ever existed in any sport on the planet."

SPORTING JUDGMENT, PAGE 5

Evans talks closure of branches

Chief judge, president about $3.2M apart in court budget proposals

BY DAVID THOMAS
Law Bulletin staff writer

During a budget presentation last week, Chief Cook County Circuit Judge Timothy C. Evans said he's eyeing an early January closing date for the Branch 34 and 48 court facility at 155 W. 51st St. and Branch 29 and 42 facility at 2452 W. Belmont Ave.

Before the Cook County Board of Commissioners, Evans said he would soon release an order specifying a date for closing the four branch courts, as stipulated in a deal struck last year with County Board President Toni Preckwinkle.

Evans said he wanted to close the branch courts earlier — he had suggested a Nov. 19 closing date — but he pushed the closing date back in order to accommodate other Cook County stakeholders and the Chicago Police Department.

He said the court and county expect it may take time for the court's users to adjust.

Preckwinkle's office will provide "transportation certificates" to people who forget that their cases have been moved elsewhere.

Branches 29 and 34 handle misdemeanors and ordinance violation cases. Branches 42 and 48 hear felony preliminary hearings and public housing cases.

"We are still certain that we're going to have some people who will forget or misplace their notices," Evans said. "We're working with the president's office to make sure they can receive adequate transportation capability to get the new place they're supposed to be."

Evans said different parts of the Belmont courthouse will be split between the branch courthouse at 5555 W. Grand Ave. and the 2nd Municipal District courthouse in Skokie. The 51st Street courthouse workload will be divided between the branch courthouses at 727 E. 111th St. and 3150 W. Flournoy St.

Evans sued the county last year after the Board of Commissioners signed off on a budget that laid off 156 circuit court employees.

Under the terms of the settlement agreement between the court and the county, the court received an additional $11 million, agreed to close the two branch courts and established its sole authority in determining whether its employees are laid off.

For fiscal year 2019, which begins Dec. 1, Evans is seeking $272 million. That's $18 million more than what the court received this year and about $3.23 million more than what Preckwinkle sought for the court for 2019.

"This recognizes the need for the Office of Chief Judge to make additional budget adjustments to meet the recommendation while providing them the latitude to do so as they see fit," Preckwinkle spokesman Edward Nelson wrote in an e-mail.

Evans briefly referenced the gap

EVANS, *Page 6*

Judge nixes government lawyer's teleworking suit

HUD not required to let employee work from home full time

BY PATRICIA MANSON
Law Bulletin staff writer

A government lawyer who was not allowed to work at home full time while receiving physical therapy following surgery for carpal tunnel syndrome does not have a case under the Rehabilitation Act, a federal judge ruled.

In a written opinion last week, U.S. District Judge Harry D. Leinenweber granted summary judgment in favor of the U.S. Department of Housing and Urban Development in a lawsuit brought by Elisa J. Yochim.

Yochim worked for HUD for 26 years, first in Washington, D.C., then in Milwaukee and finally in Chicago.

She served as the sole procurement attorney for the Office of General Counsel of Region V — which covers Illinois, Indiana, Michigan, Minnesota and Ohio — for more than 20 years.

Yochim also was the attorney who handled ethics matters with Region V.

Yochim alleges she was forced to retire in May 2015 because HUD refused to provide her with a reasonable accommodation that would have allowed her to continue working after she underwent surgery on her right hand.

In his opinion, Leinenweber held Yochim was a qualified individual with a disability as defined by the Rehabilitation Act.

Yochim showed she was substantially limited in major life activities requiring manual dexterity or hand strength — including opening doors, lifting even light-weight items and grasping such objects as the hand rail on a commuter train — following the surgery in November 2012, Leinenweber wrote.

However, he continued, Yochim's Rehabilitation Act claim fails because working at home full time for several months would not have constituted a reasonable accommodation.

Yochim's supervisor contended a restructuring a month before Yochim underwent surgery required attorneys to move away from specialization and adopt skills in several legal fields, Leinenweber wrote.

"This change," he wrote, "required cross-training and collaboration among the HUD attorneys so that, for example, plaintiff would train other attorneys in the fields of ethics and procurement."

HUD made "a more than credible showing" that Yochim's presence in the workplace was necessary to carry out the training, Leinenweber wrote.

And HUD, he continued, offered Yochim reasonable accommodations.

Those accommodations included the ability to work at home two or three days a week and a flexible schedule on the days she worked in the office so she could avoid a rush-hour commute, Leinenweber wrote.

HUD, he wrote, also offered Yochim voice-recognition software, an ergonomic assessment, additional paralegal assistance and generous leave.

The only accommodation HUD denied Yochim was permission to work at home every day, Leinenweber wrote.

Citing *Vande Zande v. State of Wisconsin Department of Administration,* 44 F.3d 538 (7th Cir. 1995), he wrote "there is no requirement that an employer allow an employee to work full time unsupervised at home, where productivity must inevitably be reduced."

Leinenweber also granted summary judgment in favor of HUD on

TELEWORK, *Page 6*

Birthright citizenship threatened by Trump

BY LAURIE KELLMAN AND CATHERINE LUCEY
Associated Press writers

WASHINGTON — President Donald Trump is making another hardline immigration play in the final days before the midterm elections, declaring that he wants to order an end to the constitutional right to citizenship for babies born in the United States to noncitizens. Most scholars think he can't implement such a change unilaterally.

With seven days to go before high-stakes elections that he has sought to focus on fearmongering over immigration, Trump made the comments to "Axios on HBO." Trump, seeking to energize his supporters and help Republicans keep control of Congress, has stoked anxiety about a caravan of Central American migrants making its way to the U.S.-Mexico border.

His administration announced Monday it was dispatching thousands of active-duty troops to the border, and Trump said he would set up tent cities to house asylum seekers.

Trump has long called for an end to birthright citizenship, as have many conservatives. An executive order would spark an uphill legal battle for Trump about whether the president has the unilateral ability to declare that children born in the U.S. to those living here illegally aren't citizens. Most scholars think he can't.

Asked about the legality of such an executive order, Trump said, "they're saying I can do it just with an executive order." He added that "we're the only country in the world where a person comes in and has a baby, and the baby is essentially a citizen of the United States."

A 2010 study from the Center for Immigration Studies, a group that supports immigration restrictions, showed that 30 countries offered birthright citizenship.

The Pew Research Center found in a survey published two years ago that births to "unauthorized immigrants" were declining and accounted for about 1 in 3 births to foreign-born mothers in the U.S. in 2014.

About 275,000 babies were born to such parents in 2014, or about 7 percent of the 4 million births in the U.S. that year, according to Pew estimates based on government data. That represented a decline from 330,000 in 2009, at the end of the recession.

An excerpt of Trump's interview was posted on Axios' website today.

The president said White House lawyers are reviewing his proposal. It's unclear how quickly he would act and the White House did not provide further details.

A person familiar with the internal White House debate said the topic of birthright citizenship had come up inside the West Wing at various times over at least the last year, but has some internal detractors.

White House lawyers have debated the topic and expect to work with the Justice Department's Office of Legal Counsel to develop a legal justification for the action.

It is one of many immigration changes being discussed including asylum law changes and barring

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