

# The Chicago Bar Association

[www.chicagobar.org](http://www.chicagobar.org)

## OFFICERS

### President

Anita M. Alvarez  
Cook County State's Attorney

### First Vice President

Terri L. Mascherin  
Jenner & Block LLP

### Second Vice President

Robert A. Clifford  
Clifford Law Offices

### Secretary

J. Timothy Eaton  
Shefsky & Froelich Ltd.

### Treasurer

Aurora N. Abella-Austriaco  
Austriaco and Associates Ltd.

### Executive Director

Terrence M. Murphy

### Assistant Executive Director

Elizabeth A. McMeen

## BOARD OF MANAGERS

Dan L. Boho

Mary Beth Cyze

Carrie J. Di Santo

Hon. Joel M. Flaum

Hon. Margaret O'Mara Frossard

Mara S. Georges

Arthur S. Gold

Scott W. Henry

Daniel M. Kotin

Barry Kozak

Megan Healy McClung

William B. Oberts

Timothy Ray

Jesse H. Ruiz

Mary L. Smith

John S. Vishneski, III

Elizabeth M. Wells

Hon. E. Kenneth Wright, Jr.

# FOR THE RECORD

BY CRAIG M. SANDBERG

## Recent Changes to the Federal Rules of Civil Procedure

On December 1, 2009, a number of technical, but quite significant, changes to the Federal Rules of Civil Procedure went into effect. Below is a brief summary of three of the most important elements of those amendments.

### Rule 6. Computing and Extending Time; Time for Motion Papers

Most important, under the new rules, intermediate weekend days and holiday count no matter how many days are provided for any given deadline. FED. R. CIV. P. 6(a)(1)(B). Thus, if a rule provides for 10 days to file a brief, then that brief must be filed within the 10 days.

### Rule 15. Amended and Supplemental Pleadings

The revised version of Federal Rule of Civil Procedure 15 changes when a plaintiff may amend their complaint without leave of court. Under the former Rule, a plaintiff had a right to amend its complaint once, as a matter of course, only before being served with a responsive pleading. The amended rule provides that a plaintiff may amend his complaint (without leave of court) a full 21 days after service of a responsive pleading or Rule 12(b) motion.

### Rule 56. Summary Judgment

A motion for summary judgment may be filed immediately and the former 20-day waiting period is gone. Absent a local rule to the contrary, any party may now move for summary judgment at any time up until 30 days after the close of discovery. The response is due 21 days later, and the reply is due 14 days after that. FED. R. CIV. P. 56(c)(1)(A).

Additional information can be found at <http://www.uscourts.gov/rules/>.

The Federal Rule of Appellate Procedure have been amended to provide that, absent leave of court, all reply briefs must be filed at

least 7 days before oral argument, unless the court, for good cause shown, allows a later filing. The old rule permitted 3 days before oral argument. FED. R. APP. P. 28.1(f)(4), 31(a). Also, the new rules specify that when a paper is due on a specific date, electronic filing will be timely until midnight in the court's time zone, but that filings by other means must be received by the clerk's office by the time the clerk's office is scheduled to close. FED. R. APP. P. 26(a)

The Circuit Rules and Operating Procedures for the U.S. Court of Appeals for the Seventh Circuit have a few changes regarding date changes, so consult the Court's web site: <http://www.ca7.uscourts.gov/>

Finally, the U.S. District Court for the Northern District of Illinois, pursuant to General Order 09-025, has amended its Local Rules to comply with the Statutory Time Period Technical Amendments Act of 2009. All time periods of less than 30 days are changed to multiples of 7 days and every calendar day, including weekends and holidays, is counted in determining a deadline date. See [http://www.ilnd.uscourts.gov/home/\\_assets/\\_news/TimeChangesStatutory.pdf](http://www.ilnd.uscourts.gov/home/_assets/_news/TimeChangesStatutory.pdf)

## U.S. Court of Appeal Grants Writ of Mandamus and Orders District Court to Rule on Kuwaiti Resident's Motion to Dismiss the Indictment Against Him

On December 11th, Circuit Judge Diane P. Wood, writing on behalf of a unanimous three-judge panel of the U.S. Court of Appeals for the Seventh Circuit (*In re Ali Hijazi*; No. 08-3060), granted petitioner's petition for a writ of mandamus, and hereby order the district court promptly to rule on his motions to dismiss the indictment.

In late 2001, the U.S. Army contracted with Kellogg Brown & Root ("KBR"), a U.S. company, to provide both goods and services to the military at locations throughout the world, including in Kuwait. Co-defendant Jeff Alex Mazon, an Ameri-

can, was the procurement manager for KBR stationed in Kuwait. Among other things, he was responsible for hiring subcontractors to perform work under KBR's contract. The Army concluded that it needed fuel tankers and related services at the Kuwaiti airport, which it used for military operations. Mazon accordingly solicited bids for the tankers in early 2003; KBR anticipated that the cost would be about \$685,000. Two bidders responded: one was Ali Hijazi (a Lebanese citizen and a resident of Kuwait), who submitted a bid for 507,000 Kuwaiti Dinars (approximately \$1,673,100) on behalf of his company, LaNouvelle General Trading & Contracting Co., a Kuwaiti company with no American ownership interests; the other is referred to only as Company A, which bid 573,300 Kuwaiti Dinars (approximately \$1,891,890).

Mazon pushed the prices up more than threefold, so that LaNouvelle's bid became \$5,521,230, and Company A's bid \$6,243,000. So "adjusted," Mazon then awarded the contract to LaNouvelle. The government alleges that he did so with the understanding that Hijazi would "reward" him for his efforts. Mazon and Hijazi signed the subcontract in Kuwait. Around the same time, Mazon sent four emails relating to the subcontract to KBR managers in the United States. Then, from March to August 2003, LaNouvelle submitted allegedly inflated invoices to KBR for its work, and KBR paid the anticipated \$5,521,230. After paying LaNouvelle, KBR turned around and billed the United States for reimbursement; the Army complied, using checks and wire transfers. LaNouvelle itself had no direct dealings with the U.S. Army or the U.S. government.

In September 2003, Hijazi paid Mazon \$1 million and executed a promissory note to make it appear that this represented a loan. Later, however, Hijazi sent an email to Mazon, to an account based in the United States, in which he wrote "this whole lown [sic] (principal & interest) totally your money..." Mazon himself, however, was not in the United States at that time. He was living and working in Greece during the relevant period, and that was where he received this email from Hijazi. In October 2003, back in the United States, Mazon opened a bank account where he unsuccessfully tried to deposit the \$1 million. When that did not work, Hijazi emailed Mazon again (this time at his personal account, also allegedly based in the United States), instructing Mazon to open three different offshore accounts where he could deposit the money. Hijazi represents that Mazon opened this email in Greece as well. Mazon, however, tried again to deposit the funds in a different U.S. bank, on October 28, 2003. It is unclear whether the second bank was more accommodating. Two weeks later, after he was interviewed by a KBR investigator, Hijazi sent a third email to Mazon warning him to be careful about what he said to his "ex-friends in Kuwait." The government alleges that Mazon was back in the United States at the time he received this email.

Based on these facts, Hijazi and Mazon were indicted in the Central District of Illinois; the initial indictment was returned in 2005, and the Second Superseding Indictment was filed on August 3, 2006. Following his indictment, Hijazi surrendered voluntarily to Kuwaiti authorities, posted a \$1,800 bond, and was released. There is no

extradition treaty between the United States and Kuwait. Although the Department of Justice formally asked the Kuwaiti authorities to turn Hijazi over to it, through a diplomatic note dated September 13, 2005, Kuwait has refused to grant that request. All indications in the record continue to support the conclusion that the Government of Kuwait is unwilling to cooperate in this prosecution, insofar as it concerns Hijazi. In the meantime, the government proceeded with its prosecution of Mazon and Mazon pled guilty to a single misdemeanor count of making a writing containing a false statement, in violation of 18 U.S.C. § 1018.

The court noted that it was authorized to issue a writ of mandamus pursuant to 28 U.S.C. § 1651(a), the All Writs Act. *See also* FED. R. APP. P. 21. This writ is available in the federal courts only in extraordinary circumstances, either "to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so." The Court cited and quoted the Supreme Court of the United States in *Cheney v. United States Dist. Court for D.C.*, 542 U.S. 367 (2004) in that "the writ is one of the most potent weapons in the judicial arsenal." In *Cheney*, the Supreme Court laid out the three conditions that must be satisfied before a writ of mandamus may issue. "First, the party seeking issuance of the writ [must] have no other adequate means to attain the relief he desires—a condition designed to ensure that the writ will not be used as a substitute for the regular appeals process. Second, the petitioner must satisfy the burden of showing that [his] right to issu-

*continued on page 56*



## Now save up to 26% with UPS! All thanks to The Chicago Bar Association

Take advantage of new savings with UPS offered to you as a member of The Chicago Bar Association. We have recently enhanced our relationship with UPS in order to provide the best value to our members.

You can now save up to 26% off Express Shipping with the peace of mind that comes from using the carrier that delivers more packages on time than anyone. Simple shipping! Special savings! It's that easy! Just go to [www.ups.com/savings](http://www.ups.com/savings) for details or to enroll. For more information call (800)325-7000.

## For the Record continued from page 10

ance of the writ is clear and indisputable. Third, even if the first two prerequisites have been met, the issuing court, in the exercise of its discretion, must be satisfied that the writ is appropriate under the circumstances. These hurdles, however demanding, are not insuperable. This Court has issued the writ to restrain a lower court when its actions would threaten the separation of powers by embarrass[ing] the executive arm of the Government or result in the intrusion by the federal judiciary on a delicate area of federal-state relations.”

Thereafter, in the opinion, Circuit Judge Wood, then, walks through each of the three conditions and determined that Hijazi has met those conditions and granted his petition.

## Second District Appellate Court of Illinois Rules the Village of Deerfield Can Sue ComEd for Bad Service

On December 15th, Justice Hudson writing on behalf of the Appellate Court of Illinois, Second District (*Village of Deerfield v. Commonwealth Edison Co.*; Docket No. 2-08-0917) ruled the village can sue the power company for bad service.

On April 17, 2008, the Village of Deerfield filed a three-count complaint against ComEd claiming ComEd broke its service agreement with the village and violated the Illinois Public Utilities Act by providing unreliable service to areas of the community. Deerfield officials alleged that during the period from 2000 until 2007, the Village suffered 82,347 individual customer power outages during 1,377 separate electrical failures. Count I, which is titled “Breach

of Contract,” alleges that chronic electrical outages occurred within the village as a result of various breaches of ComEd’s duties under a “Franchise Agreement.” Count II was abandoned. Count III is titled “Civil Damages for Violation of Public Utilities Act.” This count sought class-action certification for all customers located within the village. It alleges that potential class members have suffered damages such as “spoiled food, purchase of electric generators to deal with [ComEd’s] unreliable service, property damage, temporary housing, [and] extra municipal and policing services.” The trial court dismissed plaintiff’s complaint with prejudice and ruled that the Illinois Commerce Commission has exclusive jurisdiction over utility disputes. It also found the third count was barred by the *Moorman* doctrine (holding that a “plaintiff cannot

## THE INDEPENDENT POLICE REVIEW AUTHORITY AS SUCCESSOR TO THE OPS

# Thorough, Timely Investigations with Fair Results Transparent to the Public are Works in Progress

By Jeffrey Flicker, Editorial Board Member

**M**embers of the public have told Ilana Rosenzweig at community meetings that they don’t like everything she has to say, but they do like the fact that she is speaking with them. Conducting such community meetings are part of the efforts made by Rosenzweig as the Chief Administrator of the Independent Police Review Authority (IPRA) toward achieving transparency, one tier in the two-tiered mission of the IPRA which she described during a recent appearance at the December 2009 monthly meeting of the Cook County Bar Association (CCBA). Transparency is part of a strategy to help distinguish the IPRA from its predecessor Office of Professional Standards (OPS).

The OPS had developed such a notorious reputation for finding that virtually all complaints lodged with it against Chicago Police Officers lacked merit that the public cry for significant reform could no longer be ignored. Consequently, in 2007 the City Council

enacted an Ordinance to establish the IPRA. A key change made by the Ordinance is to make the IPRA a separate entity from the CPD. The big question is whether the IPRA’s decisions and recommendations to date represent a significant improvement over the practices of the OPS.

Rosenzweig explained that her office initially receives all complaints against Chicago Police Officers, whether from the public or from fellow officers. It must first decide which complaints it will investigate, and which to forward to a different government office. The Ordinance requires the IPRA to investigate allegations involving excessive force, domestic violence, coercion through express or implied threats of violence, and verbal abuse of a discriminatory nature (a new category). Most other allegations are referred to the CPD’s Internal Affairs Division.

Abstracts of sustained cases are published monthly and contain the

date of the complaint, a summary of the allegations, the evidence considered and a disciplinary recommendation. The recommendation can vary from the least severe “violation noted,” to a temporary suspension (e.g. 10 days), to “separation,” meaning the officer should be fired. The Administrator submits her disciplinary recommendations to the Superintendent of police. If the Superintendent disciplines the officer differently than the recommendation, he must justify his decision in writing to the Administrator within 90 days.

Within 10 days, the Administrator and the Superintendent must meet to discuss all instances where the Superintendent deviates from the disciplinary recommendations. If the Administrator disagrees with any of the Superintendent’s decisions, she submits a letter to a three person panel from the Police Board who renders a decision based on a majority vote within ten days. Rosenzweig noted that Superintendent Jody

Weis follows the great majority of her recommendations.

Based upon Rosenzweig’s presentation to the CCBA and the sampling of published materials reviewed, attempting to compare IPRA’s performance in its relatively short history to its predecessor OPS is either difficult without the availability of similar numerical data or may be premature due to the lack of adequate time for IPRA to establish a track record that is not only statistically meaningful but one that resonates positively or negatively with those who allege wrongdoing by Chicago Police Officers. The possibility also exists that the formation of the IPRA was primarily a symbolic effort to put a new face on a fundamentally similar institution by way of measures designed to improve public relations in order to quiet critics. ■

recover for solely economic loss under the tort theories of strict liability, negligent and innocent misrepresentation”).

Justice Hudson wrote that circuit court had jurisdiction because the plaintiff alleged deficient performance by ComEd, not excessive or discriminatory rates. However, in considering the doctrine of primary jurisdiction, which sets forth the orderly relationship between administrative and judicial decision making, the Court ordered that, in light that in the regulatory world of transmission of electric power, the Illinois Commerce Commission’s ability to apply consistent standards throughout the state favors allowing the Commission to consider this case. On remand, the trial court is to stay the proceedings and refer certain portions of this case to the Commission. After the Commission has had an opportunity to pass upon these matters, the trial court may engage in “whatever further proceedings are proper.” ■

### Anatomy of a Trial continued from page 52

one can imagine, Mr. Clifford’s suggested reading was extremely time consuming; however, it gave me an advantage over my contemporaries in responding to motions, preparing for trial and simply handling the

motion call in the Circuit Court of Cook County.

Although my legal career is in its infancy, I often share with my colleagues resources that I have found to be useful and educational. My advice to all young attorneys who want to be trial lawyers is to read Sandler’s *Anatomy of a Trial*. ■

### President’s Page continued from page 12

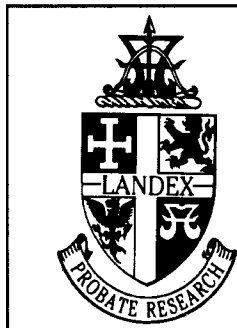
new team of Investigators and Hearing panel members who were not involved with the candidates prior evaluation.

While the Judicial Evaluation Committee is not perfect, it is considered one of the best peer review processes in the country. The American Bar Association’s Standing Committee on the Federal Judiciary uses many of the JEC’s Guidelines, Criteria and Rules of Confidentiality. We are proud of the men and women who serve on the JEC and thankful for the extraordinary service they provide to the bench, the bar and to the public. I am asking for your help in distributing the JEC’s findings to members

of your law firms, family, friends, and even to clients who want to know more about the qualifications of judicial candidates running in the February primary. The public knows little or nothing about the qualifications of the 110 judicial candidates running in the primary and voters tend to either skip the judicial ballot or cast uninformed votes. This is a massive public education effort and while we have had limited success in past judicial elections we share a collective responsibility to our profession and to the public to work for a “qualified” judiciary. With your help we can make a difference. Remember to download the JEC’s “Vote Smart” guide at [www.chicagobar.org](http://www.chicagobar.org) and vote for a qualified judiciary. ■

## SAVE MONEY ON CBA MEMBER DISCOUNT PROGRAMS

Save on Lexis, UPS deliveries, Findlaw legal marketing, client credit card processing, Avis and Budget car rentals, AAA Motor Club memberships and insurance, magazines and more. Visit [www.chicagobar.org](http://www.chicagobar.org), click on the Membership tab, then Member Discounts for more information and links to our vendors. These programs have been negotiated to offer you savings and special offers as a value-added benefit of your CBA membership. Make the most of your membership investment and check out these savings!



### Landex Research, Inc. PROBATE RESEARCH

*Missing and Unknown Heirs Located  
With No Expense to the Estate*

Domestic & International Service for:

- \* Courts
- \* Trust Officers
- \* Lawyers
- \* Executors & Administrators

1345 Wiley Road, Suite 121, Schaumburg, Illinois 60173

Phone: 800-844-6778 Fax: 800-946-6990

[www.landexresearch.com](http://www.landexresearch.com)



## Attorneys & Legal Professionals Needed IMMEDIATELY

Finding the perfect job has never been easier. The CBA Career Center is custom tailored to our business.

[www.chicagobar.org](http://www.chicagobar.org)

Powered by affiniscap

- > POST YOUR RESUME TODAY
- > ACCESS PREMIER JOB POSTINGS
- > RECEIVE JOBS VIA EMAIL
- > LAND THE PERFECT JOB



CAREER CENTER