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TRIAL NOTEBOOK

STEVEN P. GARMISA
Hoey & Farina
sgarmisa@hoeyfarina.com

Strict ruling on privilege — for now

Attorney-client waiver

Crystal Derrick's motion to compel Roche Diagnostic to hand over attorney-client communications presented U.S. Magistrate Judge Jeffrey T. Gilbert with a question about waiver that has not yet been answered by the 7th U.S. Circuit Court of Appeals: What is the "federal common law standard" for deciding whether a litigant put attorney-client communications at-issue?

Derrick contends Roche violated the False Claims Act with a scheme involving alleged violations of the Anti-Kickback Statute. According to Derrick, Roche forgave debts owed by Humana Inc. — giving the insurance company a financial windfall that allegedly amounted to a kickback — in order to entice Humana to put Roche medications on its formulary for Medicare Advantage plans.

Bills subsequently sent to the government for these drugs allegedly contained false certifications about compliance with federal laws.

As part of its defense, Roche alleged it "acted in good faith, in compliance with applicable law and consistent with industry practice." During discovery, Roche handed over documents ("Exhibits C - I") that referred to Roche's attorneys as having had a role in approving the Humana deal.

Derrick's motion argued that, "by pleading the affirmative defense of good faith and producing documents that show it consulted with counsel in connection with the agreements it reached with Humana, Roche injected its state of mind and, implicitly, its reliance

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An investigation into the workplace culture of Illinois House Speaker Michael J. Madigan's office found his former chief of staff contributed to a widespread culture of bullying throughout the Capitol system. Madigan is pictured at the Illinois Democratic County Chairs' Association brunch in Springfield on Aug. 14. Capitol News Illinois photo/Jerry Nowicki

Speaker's ex-chief fueled 'bullying' culture

Watchdog's probe of statehouse workforce found pervasive issues

ADRIANNA PITRELLI
apitrelli@lawbulletinmedia.com

SPRINGFIELD — A legislative watchdog has substantiated harassment claims against a former top Democratic aide, though other harassment and retaliation claims could not be proven.

Schiff Hardin LLP partner Margaret "Maggie" A. Hickey, formerly the state's executive inspector general, released a 202-page report Tuesday regarding harassment claims at the Capitol following a year-long review.

"People from across the Capitol workplace reported that they had witnessed or personally experienced what they described as in-

appropriate sexual conduct in the Capitol workplace," the report reads. "They described conduct that included inappropriate sexual comments and unwelcome sexual advances."

The review started last summer, after the House Democratic Women's Caucus and House Speaker Michael J. Madigan's office hired Hickey and Schiff to investigate three specific harassment allegations that purportedly took place under the dome.

Hickey was also asked to provide an overall investigation to the culture of the speaker's office and review its policies for handling sexual harassment complaints.

Hickey's independent review interviewed more than 100 people — including current and former speaker's office workers, legislators and others involved in Illinois politics.

The three specific claims investigated by Hickey were retaliation allegations from state Rep. Kelly Cassidy, activist Maryann Loncar's sexual harassment allegations against former Rep. Louis I. Lang and allegations that a former employee of the speaker's office, Sherri Garrett, was harassed by Madigan's former chief of staff, Timothy Mapes.

REVIEW • Page 6

Estate suit revived on code error

Reversal hailed as clarifying statute on 20-year requirement

DAVID THOMAS
dthomas@lawbulletinmedia.com

A state appeals panel on Friday called for an encore in the legal battle over the estate of the former Lyric Opera of Chicago CEO.

The 1st District Appellate Court found the lawsuit filed by six of Kenneth G. Pigott's children — after Pigott reduced their collective share of his estate to less than 50% — was timely filed.

Former Cook County judge Karen L. O'Malley dismissed the lawsuit filed by petitioners Christine Brown, Ann Durham, Amy Pot, John Pigott, Steven Pigott and Katherine Pigott after finding their lawsuit was not filed within 20 years of the execution of a settlement between Kenneth Pigott and his first wife Donna.

Agreeing with the executors of Kenneth Pigott's estate, O'Malley cited provisions within the Illinois Code of Civil Procedure that gives judgments a seven-year lifespan and a 20-year window to reviving dormant judgments.

The settlement, reached in 1982, required Kenneth Pigott to execute a will that left at least 50% of his estate to his six children. Shortly before his death on Feb. 13, 2015, he executed a new will that seemed to reduce the share his six children from his first marriage would receive. The petitioners sued in October of that year.

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FOIA suit brings order to release officer photos

SARAH MANSUR
smansur@lawbulletinmedia.com

A journalist seeking photos of Chicago Police Department officers has a right to access the images under the state's public records law, a Cook County judge ruled last week.

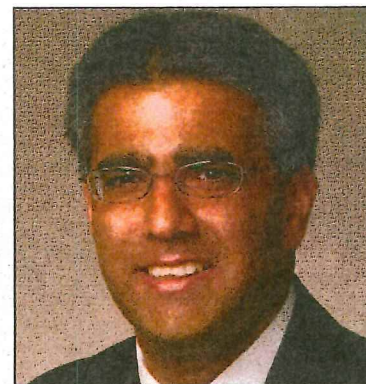
Cook County Associate Judge Sanjay T. Tailor found the police department must publicly disclose the officers' photos because the department failed to prove that it has legitimate exemptions under the law.

Rob Warden, co-director of the nonprofit media organization Injustice Watch, sued the police

department in 2016 when the agency refused to release the photos of nine police officers that Warden requested under the state's Freedom of Information Act.

The police department argued that there are two sections in the state FOIA that protects the officers' photos from being released.

First, the department claimed that they are exempt under Section 7(1)(c), which allows information to be withheld when it "would constitute a clearly unwarranted invasion of personal privacy."



Sanjay T. Tailor

The department argued that public release of the officers' photos would prevent them from

working undercover in the future.

The police department also cited Section 7(1)(d)(vi), which provides information can be exempt from disclosure if the release would endanger the life or physical safety of law enforcement personnel or any other person.

With respect to the police department's privacy argument, Tailor found that this "position is at odds with [the department's] practice of publishing photographs of its officers on its Facebook social media account to

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The panel overturned O'Malley's ruling, finding the civil procedure language the estate and O'Malley cited requiring the petitioners to revive the settlement within 20 years of its execution applied only to money judgments, not a mandatory injunction.

The requirement that Pigott draft a will granting the six children from his first marriage at least 50% of his net estate is a mandatory injunction "as it re-

quires Kenneth to perform a positive act," Justice Mary K. Rochford wrote in the 10-page opinion.

The 1st District panel remanded the case back to the trial court for further proceedings.

This ruling created law, according to a news release issued by Clark Hill PLC, whose attorneys represented the petitioners. The finding that those provisions of the Illinois Code of Civil Procedure — Sections 12-108(a) and 2-1601 — applied "only to money judgments against judgment debtors" is "important to at-

torneys practicing divorce law and trust and estate law," the firm said in its release.

"The provisions that are the subjects of the probate claims at issue here are not uncommon," the firm said. "To have clear law that these provisions are enforceable and need not be revived like money judgments is important to divorce practitioners. Divorce lawyers can continue to use these provisions and know that Illinois courts will recognize and enforce them. Trust and estate attorneys faced with the question of enforceability

to similar claims also now have the answer."

The 1st District ruling comes four months after the 2nd District Appellate Court made a similar finding in *In re Marriage of Peck*, 2019 IL App (2d) 180598 — the provisions on reviving judgments applies to money judgments, not mandatory injunctions.

The settlement between Kenneth and Donna Pigott was enacted alongside their divorce. He established the trust in 1989. He later married Jane DiRenzo Pigott and they had a child, Shelby Pigott. Jane DiRenzo Pigott



Mary K. Rochford

is one of the independent co-executors of Kenneth Pigott's estate who argued against the petitioners.

The petitioners were represented by Mason N. Floyd, Ray J. Koenig III and Eric J. Dorkin of Clark Hill. They

declined to comment.

Clark Hill's news release stated that, since Kenneth Pigott's death, their clients have been involved in a number of lawsuits with Jane DiRenzo Pigott.

The estate was represented by Lauren J. Wolven and Christopher M. Heintskill of Levenfeld Pearlstein LLC. They did not return requests for comment.

Justices Thomas E. Hoffman and Bertina E. Lampkin concurred with the opinion.

The case is *In re: Estate of Kenneth G. Pigott*, 2019 IL App (1st) 181716.