HGSUW News & Views

Hasselberg Grebe Snodgrass Urban & Wentworth Attorneys and Counselors

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LAW FIRM TEMPORARILY RELOCATED TO FORMER COMMERCE BANK BUILDING

As many of our clients may have learned, on December 26, 2022, there was a significant fire in one of the parking decks of the Becker Building where our office is located, this resulted in a long-term power outage for the entire building. We are very fortunate no damage was done to our office and, to our knowledge, no injuries were reported. Since the holidays, our office did not skip a beat and continued to provide quality service to our clients by shifting our operations to our Lacon office.

While we continued to adapt to the situation, we explored temporary office space in Peoria and successfully secured a convenient location in downtown Peoria. As of January 23, 2023, our law practice has been operating out of the 6th Floor of the former Commerce Bank Building located at 416 Main St., Suite 601, Peoria, Illinois 61602. Our new temporary location is conveniently located directly across the street from our office. Our mailing address remains the same.

We sincerely appreciate the patience and support of our clients during this time. We look forward to seeing many of you soon, and hopefully back in the Becker Building within the month. If you need to contact our office to schedule an appointment to talk about your pending matter or discuss a new legal issue, please contact us at our same phone number (309) 637-1400.

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MEET OUR NEW ATTORNEYS

Hasselberg Grebe Snodgrass Urban & Wentworth is pleased to announce three (3) associate attorneys joined our law office in 2022. These attorneys bring diverse backgrounds and experiences which are invaluable to our team approach to the practice of law.

Ean R. Albers grew up in San Jose, Illinois, and graduated from Illini Central High School. He then attended the University of Illinois Urbana-Champaign majoring in Political Science, where he graduated in 2017. He graduated from Southern Illinois University Law School in May 2020. During law school, Ean was actively involved in the SIU Civil Practice Clinic, providing supervised estate planning services as an Illinois Rule 711 licensed student attorney. After passing the COVID-delayed Illinois Bar Exam in October 2020, Ean was admitted to practice law in the State of Illinois, being sworn in on January 14, 2021. Prior to joining our firm, Ean worked for a North Central Illinois firm specializing in education law, estate planning, and real estate law.

Ean is a member of the Illinois State Bar Association, the Peoria County Bar Association, the Illinois Real Estate Lawyers Association, and the Young Professionals of Greater Peoria. As a member of the Peoria County Bar Association, he serves on the Young Lawyers' Committee and Health and Wellness Committee. He practices in the areas of estate planning, real estate, business law, and agriculture law.

Outside of work, Ean enjoys researching his ancestry, trying new restaurants throughout Central Illinois and afar, participating in trivia competitions, supporting Fighting Illini athletics, watching as many St. Louis Cardinals baseball games as he can, and spending time with friends and family. Ean is a member of the Tazewell County Genealogical and Historical Society and an alum of Nabor House Fraternity, a cooperative agricultural fraternity at the University of Illinois Urbana-Champaign.

Taylor D. Cascia grew up in Pekin, Illinois, and graduated from Pekin Community High School. After receiving her Bachelor's of Science degree at the University of Illinois at Urbana-Champaign in 2017, Taylor attended Southern Illinois University School of Law. While at Southern, Taylor was active in the domestic violence clinic and the Federal Bar Association. She received her Juris Doctorate in 2020 and returned to the Peoria area. Taylor was sworn in as a licensed attorney and counselor in Illinois in May 2021.

Taylor is currently a member of the Illinois State Bar Association and the Peoria County Bar Association, where she also serves on the Young Lawyers Committee. She practices in the areas of workers' compensation defense, environmental law, and personal injury.

Outside of work, Taylor enjoys hiking in central and southern Illinois, beating local and distant escape rooms, rooting on the Fighting Illini basketball team, supporting the Chicago Blackhawks, and spending time with friends, family, and her dog, Phoebe.

Adam M. Casson grew up in Pontiac, Illinois, and graduated from Pontiac Township High School. He was a student athlete at Parkland College and Eastern Illinois University, playing baseball while majoring in finance. After receiving his Bachelor's degree from Eastern Illinois in 2015, Adam attended Northern Illinois University College of Law. He received his Juris Doctor from Northern Illinois in May of 2019.

Prior to joining our firm, Adam worked for the Livingston County Public Defender's Office and his father's law firm specializing in criminal law.

REMOTE APPEARANCES IN THE POST-COVID ERA: RULE 45 AMENDMENTS

Following the COVID pandemic and difficulties appearing before a judge, the Illinois Supreme Court has embraced technological advances and amended Rule 45, which provides guidelines for future remote appearances in circuit court proceedings. Rule 45, previously called "Participation in Civil or Criminal Proceedings by Telephone or Video Conferences," is now titled "Remote Appearances in Circuit Court Proceedings." The amended rule delineates two types of court proceedings and provides guidelines for different types of court proceedings. Some court proceedings must automatically offer case participants the option to appear remotely via video or phone without court approval while others require approval of the judge presiding over the matter for a remote appearance.

Ultimately, the amended rule, via two provisions, allows local circuits and individual judges to control how parties may appear. In person court appearances may be necessary when a judge presiding over a case requires such appearance for reasons particular to the specific case. The second provision allows the Chief Judge of a circuit, by local rule, to exempt a particular type of case or a particular type of proceeding from the automatic option to appear remotely where necessary. These exceptions are intended for narrow and limited use.

The amended rule also contains general provisions, including the requirement that all circuits adopt local rules which implement the amended rule, that all summonses and notices shall include information about the option to appear remotely and that each circuit share information plainly and clearly with the public about appearing remotely.

The amendments are effective January 1, 2023, but circuits have 90 days from that date to file their local rules with the Administrative Office. A model local rule is in development to assist the circuits in meeting the 90 -day deadline. Other Illinois Supreme Court Rules are being evaluated for consistency with amended Rule 45 and will be updated accordingly.

At Hasselberg Grebe Snodgrass Urban & Wentworth, our experienced attorneys stay informed about developments in the local rules of the Tenth Judicial Circuit and how our clients' cases may be affected. If you have any questions about these local rules changes and how they may impact your case, please contact us at (309) 637-1400.

REQUIRED MINIMUM DISTRIBUTIONS (RMDS) RULES CLARIFIED FOR INHERITED IRAS

On January 1, 2020, The Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act) went into effect bringing about sweeping changes to long-standing rules applicable to qualified retirement assets such as IRAs. These tax-preferred assets allow individual employees to make certain tax-deductible contributions towards their future and allow those contributions to grow without immediately realizing income tax on such growth. However, income taxes are not entirely eliminated through most qualified retirement asset plans but rather deferred. Once these qualified assets are withdrawn (after age 59½ without penalty), the recipient then realizes the income and must pay the applicable amount of income tax on such distributions. At some point, retirees are required by law to start taking out a certain minimum amount based upon life expectancy from their retirement accounts each year resulting in income tax, which is known as a required minimum distribution (RMD).

In a prior edition of HGSUW News & Views, we touched on some significant changes made to how IRAs, and other qualified retirement assets are treated by the SECURE Act such as extending the RMD age to 72 and eliminating "stretch" rules for most beneficiaries of inherited accounts. The IRS has now issued additional regulations under the SECURE Act some of which specifically relate to RMDs for inherited retirement assets that were to go into effect no earlier than January 1, 2023.

These proposed regulations provide that RMDs apply even under the 10-year rule now applicable to designated beneficiaries. Under the prior interpretation of the SECURE Act by many practitioners, designated beneficiaries could withdraw inherited retirement benefits as they wish depending on their own income tax circumstances so long as the entire amount was withdrawn by the 10th year following the calendar year of the account owner's death. The IRS has now clarified that taxpayers with qualified inherited retirement accounts do not have as much control over their tax bills owed to the IRS. Rather, taxpayers should understand they must withdraw a certain amount each year, or more, each year until the 10th year following the account owner's death. Otherwise, inherited retirement account owners may be subject to certain excise taxes up to 50% of the RMD amount.

If you have any questions regarding inherited retirement accounts, or any other issues concerning loved one's estate, please feel free to contact our talented Trusts & Estates team led by James R. Grebe, David B. Wiest, and Kyle M. Tompkins at (309) 637-1400.

UP A RIVER WITHOUT A PADDLE? A BRIEF LOOK INTO *HOLM V. KODAT* (2022 IL 127511)

For many lifelong residents of Central Illinois, the unrelenting humidity and heat of muggy Illinois summers can really take an annual toll. For some more adventurous residents, the solution to beating the heat may be taking a recreational float down a slow-moving creek all afternoon. However, a recent Illinois Supreme Court case has us reevaluating whether these refreshing float trips were necessarily on the right side of the law.

On June 16, 2022, the Illinois Supreme Court issued its decision in *Holm v. Kodat*, 2022 IL 127511, ruling that when a river or stream is not navigable, then the river or stream is not subject to an easement for navigability, and the riparian owner owns the bed of the stream "free from any burdens in favor of the public." In layman's terms, the public is barred from accessing and traversing non-navigable rivers or streams.

As a matter of background, the litigating parties in *Holm* each operated competing fossil hunting businesses based out of Grundy County. The origin of the case appears to stem from the defendant's alleged trespass of the property. The defendants countered the trespass allegations by stating that the Mazon River provided an access point to their landlocked property. Naturally, a dispute arose as to the parties' property rights along the Mazon River . . . and in a much greater sense, the rights of the public when traversing non-navigable rivers or streams. It is also worth noting that it was not just fossils these litigants were hunting, but rather valuable gems that had been discovered along the riverbed, which gave rise to this unique case.

Critics of the holding in *Holm* argue that the case law supporting the decision is both archaic and extremely limits the public's recreational use of non-navigable rivers and streams throughout the State.

In response to the court's decision in *Holm*, a northern Illinois legislator proposed House Bill 8544, which sought to amend the Rivers, Lakes, and Streams Act. House Bill 5844, if passed, would have provided, among other things, that any segment of a lake, river, or stream that is capable of supporting use by commercial or recreational watercraft for a substantial part of the year, or that is actually so used, shall be deemed navigable, and shall be open to public access and use, unless the contrary is proven in litigation by a preponderance of the evidence.

While the proposed bill prohibits a person on a river or stream from leaving the river and walking onto private property, it is a substantial deviation from the hardline rule affirmed in *Holm* that the public has no easement rights in a non-navigable river or stream.

While the initial bill failed to gain any muster before the last legislative session ended, the bill has now been reintroduced in the House. Our office continues to monitor the status of the proposed bill and will promptly evaluate the bill's potential repercussions on our clients, if passed. The lesson at this time for property owners is they continue to be within their legal rights to bar the public from accessing portions of non-navigable rivers and streams that the property owner holds. The lesson for the public is to cautiously evaluate whether their recreational use of a river or stream is permitted.

If you have any questions regarding your property rights or other legal issues, please contact our experienced attorneys at (309) 637-1400.

Student Loan Relief on Pause: A Lesson in Civil Procedure within a Complex Regulatory Framework

On August 24, 2022, the Biden Administration announced a sweeping student loan forgiveness plan for individuals with eligible Federal student loans implemented through the Department of Education. The plan proposed forgiveness of up to $10,000.00 per student with eligible loans, and $20,000.00 for students that received a Federal Pell Grant while in school provided certain income eligibility requirements were met.

On November 14, 2022, the United States Court of Appeals for the 8th Circuit granted an injunction temporarily pausing any student loan debt relief. The 8th Circuit heard an appeal from the United States District Court for the Eastern District of Missouri in which the district court ruled that the six (6) plaintiff States (Nebraska, Missouri, Arkansas, Iowa, Kansas, and South Carolina) lacked standing to challenge the proposed student loan debt relief. Standing is a legal principle that requires the party bringing a law suit to have a legally cognizable interest in its outcome. Unlike the district court that had initially dismissed the matter, the 8th Circuit found the plaintiffs had standing, specifically the State of Missouri through the Missouri Higher Education Loan Authority ("MOHELA"), one of nation's student loan servicers in the secondary market. By finding that Missouri would potentially be harmed by the discharge plan either directly through MOHELA as an arm of the state, or due to financial losses that it may incur if MOHELA would be unable to meet certain statutory financial obligation, the 8th Circuit determined Missouri has a likely injury in fact that is concrete and particularized.

Having found the plaintiffs had standing, the 8th Circuit next addressed the merits of the requested preliminary injunction (an order prohibiting a party from taking a certain action). In any civil matter in which an injunction is requested, the court is asked to weigh certain equities in light of the likelihood of success on the merits of the claim. The 8th Circuit ultimately determined the irreversible harm the student loan forgiveness plan may cause the plaintiffs, particularly the State of Missouri, outweighed the burden of issuing the injunction on the Department of Education, especially in light of the payment pause and interest freeze currently in place through executive action. Therefore, while acknowledging there were substantial issues of law and fact that have yet to be resolved, the 8th Circuit granted the preliminary injunction.

Underlying the injunction, the plaintiff states allege the forgiveness plan is unlawful because the administration failed to follow certain federal procedures, including allowing for public comment under the Administrative Procedures Act. Another lawsuit was also filed by two student loan borrowers in the U.S. District Court of Northern Texas on substantially similar bases. This district court has also now ruled that the proposed debt relief plan is unlawful, which was upheld by the U.S. Court of Appeals for the 5th Circuit.

Next up in the appellate process for the injunction issued by the 8th Circuit: the Supreme Court of the United States will make a decision based upon arguments made before it in February 2023. Until then, the Biden administration has extended the student loan repayment freeze until the litigation has been resolved or 60 days after June 30, 2023.

If you have any questions regarding complex statutory and regulatory framework of governmental programs, such as student loan forgiveness, please contact our experienced attorneys at Hasselberg Grebe Snodgrass Urban & Wentworth at (309) 637-1400.

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Hasselberg Grebe Snodgrass Urban & Wentworth is a 12-attorney full service law firm with individual lawyers concentrating in particular areas of the law. The firm serves clients throughout the State with a focus on Central and Southern Illinois. Practice areas include: Adoption Law, Administrative Law, Agricultural Law, Bankruptcy, Commercial Law, Corporate Law, Criminal Law, DUI/DWI, Elder Law, Estate Planning, Environmental Law, Family Law, Federal Taxation, Governmental Law, Insurance Law, Labor and Employment, Land Use, Litigation, Personal Injury, Planning, Probate, Real Estate, Traffic Violations, Trusts and Estates, Wills, Workers' Compensation, and Zoning.

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