

Bench & Bar

The newsletter of the Illinois State Bar Association's Bench & Bar Section

Absolute Immunity – Well, Not Quite

BY MICHAEL CORTINA

Many a litigant, and even some attorneys, likely desired to sue a judge for money damages when rulings were made against them in their case. While quick online legal research will reveal many such cases, that same search will also reveal that judges generally enjoy absolute immunity from such cases for their actions on the bench. The general rule of thumb is that so long as a judge had subject matter jurisdiction over a particular case, that

judge was absolutely immune from suit relating to the court's rulings. But as with most rules, there are exceptions.

In 1984, the United States Supreme Court ruled that a state Magistrate Judge was liable for over \$80,000 in attorneys' fees because some criminal defendants obtained injunctive relief, not a money judgment, against Magistrate Pulliam for violating their civil rights. Because they

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Becoming the First Black Woman Judge in DuPage County: The Honorable Judge Chantelle Porter

BY KENYA JENKINS-WRIGHT



On December 12, 2022, Supreme Court Justice Mary Kay O'Brien appointed Chantelle

Porter as the first Black Woman Judge and first Black Circuit Judge in DuPage County.¹ Judge Porter is fully aware of the significance of this opportunity to serve the DuPage community noting, "I'm very honored. I think a diverse bench that reflects the citizens we serve is always a positive. I'm just happy that our county is

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prevailed in obtaining injunctive relief, the defendants were entitled to attorneys' fees under 42 U.S.C. 1988. Surely to the surprise of Magistrate Pulliam, the Supreme Court found that judicial immunity did not preclude injunctive relief or the statutory award of fees generated in obtaining such relief. See *Pulliam v. Allen*, 466 U.S. 522 (1984). However, Congress effectively reversed the *Pulliam* decision for all judges when it enacted the Federal Courts Improvement Act of 1996 which amended 42 U.S.C. 1983 to provide for judicial immunity to suits seeking injunctions, unless a declaratory decree was violated or declaratory relief was unavailable, as well as for money damages. Despite being called the "Federal Courts Improvement Act," the legislation amended the federal civil rights statute and extended judicial immunity to all judges (state and federal) for injunctive relief sought under § 1983.

In Illinois, there are two recognized exceptions to absolute judicial immunity: 1) Actions not taken in a judge's judicial

capacity, and 2) actions taken in the complete absence of all jurisdiction. These are extremely narrow exceptions with limited application. Judicial immunity is not overcome even by allegations of bad faith or malice.

While the two exceptions to the doctrine are narrow, they are still exceptions to the rule. The rule also does not protect judges against complaints that their actions violated a declaratory decree, which was an exception written-in to the Federal Courts Improvement Act. In addition, jurists can still be called to respond to complaints about their conduct filed by the Judicial Inquiry Board, or torts committed outside of their judicial capacity, or to defend against complaints alleging criminal conduct.

The notion of absolute immunity may create in judges a sense of security, and it should, but it may be a false sense of security because absolute immunity does not cover absolutely. ■

Becoming the First Black Woman Judge in DuPage County: The Honorable Judge Chantelle Porter

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growing and moving forward to reflect all that we serve. My goal is to be a good and fair judge for all of DuPage."

Judge Porter graduated from the Ohio State University, with a bachelor of science in political science and government, and DePaul University College of Law. Prior to her current position, Judge Porter worked as a family law attorney at A. Traub & Associates. As an attorney at a firm owned by a woman of color, Judge Porter stated, "[h]aving a work environment that allowed me to be myself was so valuable. I was able to thrive without dealing with competition, microaggressions, implicit bias, etc., or other things that might have held me back. It was an environment that affirmed me as a black

woman and saw me for who I am. All I had to worry about was being a good lawyer and serving my clients. It allowed me to just focus on the work."

However, although her work environment was supportive, as a young, female lawyer of color, Judge Porter still faced outside challenges and had to stay focused to persevere. "As a young black female attorney, it was important that I set myself up to succeed. I would often get questioned if I was a litigant and would be passed over. It is a lot of pressure to know that I had to overcome bias and stereotypes before even presenting my case. I made sure to assert myself, speak up, make myself known to opposing counsel and the judge,

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and know my case and the law. I knew I had no room for error,” Judge Porter said.

In order to obtain this prestigious appointment, Judge Porter believes she had to maintain the highest reputation amongst the various judges, attorneys, and community members throughout DuPage County. Judge Porter noted that “[f]ocusing on excelling in my legal practice is most important to becoming a judge. Also, being a good lawyer and knowing and understanding the law. Finally, building a good reputation and making positive connections with colleagues and judges.”

One way that Judge Porter earned her reputation was through her participation and leadership in state and local bar associations. Judge Porter explained, “I am a huge supporter of bar associations. My

involvements with DuPage County Bar Association, DuPage Association of Woman Lawyers and Illinois State Bar Association were so valuable. It allowed me to network and make connections. It allowed me to find mentors and peers that I could work with in enhancing my practice. I think being an active member of bar associations really helped give me exposure to more attorneys and judges that might not be in my practice area.”

For any young attorneys interested in becoming a judge, Judge Porter recommends that you do the following, “Focus on your current practice. Learn and absorb as much as you can. Find good mentors. Take opportunities to write articles, attend conferences, serve on committees, and present at CLEs.”

The ISBA Standing Committee on Racial & Ethnic Minorities & the Law congratulates the Honorable Judge Chantelle Porter and the County of DuPage on a *her*-storic achievement. ■

This article was previously published in the April 2023 issue of The Challenge, the newsletter of the Illinois State Bar Association's Standing Committee on Racial and Ethnic Minorities and the Law.

1. <https://www.illinoiscourts.gov/News/1194/Illinois-Supreme-Court-appoints-Chantelle-Porter-as-1st-African-American-female-judge-in-DuPage-County/news-detail/>.

Michael G. Bergmann Receive Certificate of Appreciation



Senior Travels

BY JUDGE BARB CROWDER (RET.)

Retired, working, or just gazing out a window, it would be the rare person who doesn't think about packing up for an adventure. Some of us can just toss a few items in a duffel bag and leave. But some have a few more challenges to solve before venturing out. And as we age, some of us have short-term issues following knee or hip surgery. As an individual with mobility issues, allow me to reflect on recent travel. First, of course, as a retired attorney, I have general knowledge of the Americans with Disabilities Act. But experience would illustrate the point that law and reality are not the same.

The first step is the travel itself. Are you taking public transportation? Amtrak, for instance, is wonderful. The passenger selects the 'passenger with a disability' option and answers a series of questions about needs and what mobility devices, if any, will be on the train. It is important to do this when bringing an aid as Amtrak needs to account for the space for wheelchairs or walkers. Once at the station, it has been my experience that station personnel will either provide a platform or otherwise assist the passenger. Airlines are so accustomed to travelers with limited abilities that they also allow the passengers to check a wheelchair (tho be careful to check it for damage). So, although there are some exceptions due to staffing shortages or other issues, my experience has been that the reality of public transportation is increasingly in line with the law.

Hotel accommodations are the next step. Accessible bathrooms are limited in number. Of course, for some of us if there were grab bars in every bathtub or shower we could manage. And really—as those of us who are seniors sometime have balance issues, one would think the addition of grab bars in most bathroom showers and tubs would be useful. And there is no need for the rooms with accessible bathrooms to sometimes cost more. Arriving at your hotel is sometimes fraught with challenges as main doors are

often rotating ones with a door next to them. Some of the doors have buttons to get the door to swing open. When they work. Or are there. And the doors are quite heavy if trying to open them and maneuver your wheelchair or walker and a bag through them. It is also disappointing to check in and be told your request for an accessible bathroom could not be honored. Some fun is when you check in to discover either the elevator is down or is going to be down for 'maintenance' during some of your stay. "Is that going to be a problem?" So, either get out for your day before 9 a.m. or stay in your room until 1 p.m. Neither may have been your original plan, so remember to be flexible. And nice. The hotel may give you a complimentary bottle of wine (though don't drink it at 9 a.m.).

So, once you get checked in, the next fun part of travel is going to a bar or restaurant. Why are there no low-top tables in many bars? The challenge of getting on a tall bar stool is not always doable. One feels so much a part of the group sitting lower than the rest and being unable to hear or reach the drinks or snacks. And some happy hour specials are only available in the bar, leading to the pointed request of: "Can I just be seated in the dining room but order happy hour items?" Some places will agree—others not. Plus, if you are meeting others—do you go off alone to another area? Even for cheaper oysters? And try fitting your wheelchair between tables in the packed restaurant to be seated. Some establishments are wonderful and immediately start trying to accommodate your needs (sometimes by making a spectacle of you in clearing the way, but they mean well). And for ingress and egress issues—see the hotel door discussion. Restaurants have the same rotating door and difficulty accessing issues.

Social outings also require advance planning for the newly challenged to consider. You may have to call the theater rather than being able to buy tickets on-line. Generally, live-theatre venues have seating

areas for those with mobility aids. And of course, for entering. The ADA requires ramps be one inch of elevation for every 12 inches in length, sometime leading to a long-winding road. Or those with a portable 'ramp' clearly not in compliance and terrifying to consider should not say they are accessible. How badly did you want to hear that jazz music? Regular shopping can also be a problem. Aisles in stores are supposed to allow 36 inches wide in their aisles for a wheelchair to access. Piling extra 'sale' displays that block the aisles or leave the shopper to determine a maze around the store is just frustrating for the shopper. And may lead them to be surly. But please persevere. And ask for a manager if it is totally hopeless to shop in the store to discuss their understanding of complying with the Americans with Disabilities Act. After all, education is a good thing.

Is it worth planning ahead for trips? Yes, of course. Calling and planning will eliminate last-minute challenges. And seeing that minor-league baseball game, enjoying Steve Martin and Martin Short interact, or just enjoying the happy hour oysters are experiences one should have. And there can be a certain satisfaction that as senior citizens we can still organize our own trips and do what we want to do. So make your reservations, call ahead, and get traveling. Don't let short-term or perhaps permanent restrictions on your ability to leap tall buildings lead you to stop—I am here to tell you that wonderful experiences are still to be had. ■

Recent Appointments and Retirements

1. Pursuant to its constitutional authority, the supreme court has appointed the following to be circuit judge:

- Leah D. Setzen, 18th Circuit, April 10, 2023
- Christopher H. Hantla, 4th Circuit, April 21, 2023
- Sarah Johnson, Cook County Circuit, April 24, 2023
- Deidre M. Dyer, Cook county Circuit, April 28, 2023
- Katherine D. Watson, 6th Circuit, May 2, 2023
- Philip J. Fowler, Cook County Circuit, 4th Subcircuit, May 5, 2023
- Chloe G. Pedersen, Cook County Circuit, May 12, 2023
- Owens J. Shelby, Cook County Circuit, 7th Subcircuit, May 19, 2023

2. Pursuant to its constitutional authority, the supreme court assigned the

following to the appellate court:

- Hon. Margaret J. Mullen (reinstated), 2nd District, May 11, 2023

3. The circuit judges have appointed the following to be associate judges:

- Ruth H. Lofthouse, 19th Circuit, April 3, 2023
- James Newman, 19th Circuit, April 3, 2023
- Christopher L. Wetzel, 5th Circuit, May 1, 2023
- Andrew J. Purcell, 21st Circuit, May 11, 2023
- Zachary P. Boren, 8th Circuit, May 26, 2-23

4. The following judge is deceased:

- Hon. Donald C. Hudson, 16th Circuit, assigned to the Appellate Court, 2nd Dist., April 11, 2023 ■

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