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54 pages in 3 sections

While good on a resume, 'expert' not always a plus in court

BETTER PRACTICE, PAGE 4

TRIAL NOTEBOOK

Steven P. Garmisa
Hoey & Farina

Non-custody not a bar to child support

In re Marriage of Turk

Specially concurring with the Illinois Supreme Court's decision that Section 505 of the Marriage and Dissolution of Marriage Act authorizes judges to order custodial parents to pay child support to non-custodial parents, Justice Mary Jane Theis (joined by Justice Robert R. Thomas) wrote a separate opinion because she deemed the majority opinion to be "at best, incomplete, and at worst, misleading as to how Section 505 operates." *In re Marriage of Turk*, 2014 IL 116730 (June 19, 2014).

Iris and Steven Turk had two young sons when their marriage was dissolved. She initially had custody of the children; he was ordered to pay child support. Under the guidelines provided by Section 505, the amount of support for two children is 28 percent of the non-custodial parent's net income, though judges are permitted to adjust the statutory payments based on the circumstances.

Steven eventually got custody of the children. Yet Iris had such extensive visitation rights with one son that she and Steven spent almost the same amount of time with the child.

As custodial parent, Steven asked the trial judge to terminate his obligation to pay child support. But Steven reportedly made $150,000 a year — while Iris' annual income was less than $10,000 — and the judge ordered Steven to pay Iris $600 a month in child support.

Unanimously concluding that judges have authority to order a custodial parent to pay child support to a non-custodial parent, the high court agreed with the 1st District Appellate Court's decision that the trial judge needed to do a better job of explaining why Steven should pay $600 a month to Iris.

Here are highlights of Justice Lloyd A. Karmeier's opinion for the court and Theis' special concurrence (both with omissions not noted in the text):

Justice Karmeier

In Illinois, the support of a child is the joint and several obligation of both the husband and the wife. If the couple's marriage dissolves, the court may apportion child support obligations between them.

The standards governing court-awarded child support are set forth in Section 505 of the Illinois Marriage and Dissolution of Marriage Act.

Steven interprets Section 505 to mean that the obligation to pay child support may be imposed only on non-custodial parents and that a custodial parent may never be ordered to pay child support to a non-custodial parent.

The terms of the statute do not support such a view. In contrast to the child support laws of some states which single out non-custodial parents for payment of child support,

NOTEBOOK, *Page 5*

IN THE NEWS

BY CHRISTINE M. PUSATERI

Charles Hawkins (center) shares his excitement over finishing the bar exam with other classmates from The John Marshall Law School at a post-test party at Theory Bar on July 31. *Chandler West*

IN THE LAW FIRMS

Kelley, Kronenberg added attorney **Kimberly W. Hibbard**. Hibbard focuses her practice on prosecuting foreclosure actions in Illinois and Wisconsin as well as defending federal claims arising under the Defense Base Act and Longshore and Harbor Workers' Compensation Act.

She was previously with Johnson, Blumberg & Associates LLC.

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Lipe, Lyons, Murphy, Nahrstadt & Pontikis Ltd. added **Lindsey T. Millman** as an associate.

She received her law degree from Vanderbilt University Law School in 2013. She was previously with Parrillo, Weiss & O'Halloran.

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Thomas H. Murphy joined Cogan & Power P.C. as a partner.

Murphy will concentrate on medical-malpractice, wrongful-death and general personal-injury cases.

He spent the past 11 years with Vrdolyak Law Group LLC.

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Thompson, Coburn LLP partner **David J. Kaufman** will be a presenter at a webinar, "Preparing for Success: How to Position Your Company for a Liquidity Event," from noon to 1 p.m. Sept. 17.

Kaufman is a corporate legal architect and legal strategist, developing and implementing strategies to assist clients in accomplishing their business and financial objectives.

For more information, call (314) 552-6000 or e-mail info@thompsoncoburn.com.

AROUND TOWN

The 20th annual Race Judicata, a 5K run and walk that raises money for the Chicago Volunteer Legal Services Foundation, starts at 6:30 p.m. Sept. 4 at Roosevelt Road and Columbus Drive in Grant Park.

IN THE NEWS, *Page 2*

Kimberly W. Hibbard

Thomas H. Murphy

David J. Kaufman

TURN INSIDE

LAW FIRM LEADERS

After stint in business, Duwe looked to law

PAGE 3

"Until instruction is provided with a roadmap to navigating Title IX issues, expect litigation ..."

SPORTING JUDGMENT, PAGE 5

E-cigarettes light a fire under AGs

FDA urged to ban sweet flavors for nicotine alternative

BY JACK ROONEY
Special to the Law Bulletin

Flavors of vanilla, orange, chocolate, cherry and coffee conjure images of an ice cream shop.

They're also varieties of electronic cigarettes.

And a group of government lawyers wants to keep them away from children.

In a letter to the Food and Drug Administration this month, 29 attorneys general, including Illinois' Lisa M. Madigan, urged the FDA to strengthen its regulations of e-cigarettes by banning all flavors other than tobacco and menthol.

The 21 Democrats, seven Republicans and one independent also pressed the FDA to restrict e-cigarette marketing and include health warnings on e-cigarette packaging similar to those found on packages of combustible cigarettes.

In April, the FDA proposed initial regulations on the approximately $2 billion e-cigarette industry, which included banning sales to anyone under 18. Currently, 39 states, including Illinois, forbid e-cigarette sales to minors.

Following the FDA's initial proposal, it opened a comment period during which anybody could submit feedback. By the Aug. 8 deadline, more than 70,000 people had responded.

If adopted, the suggestions from the attorneys general would lead to the FDA essentially regulating e-cigarettes the same as cigarettes and other tobacco products.

Locally, politicians are already headed in that direction.

The Chicago City Council passed an ordinance in January categorizing e-cigarettes as "tobacco products," thus banning their use in restaurants, bars and other buildings.

On Sunday, Gov. Patrick J. Quinn signed a law requiring e-cigarettes to be sold behind the counter or in a sealed display case. It takes effect Jan. 1.

"If it has nicotine, put it behind the counter," said Sen. John G. Mulroe, a Chicago Democrat who sponsored the bill. "The point is to make it less accessible. If it's behind the counter, maybe kids won't see it and won't be as attracted to it."

Requests for comment from several e-cigarette lobbying organizations — including the Smoke-Free Alternatives Trade Association, the Consumer Advocates for Smoke Free Alternatives Association, the Electronic Cigarette Industry Group and the Tobacco Vapor Electronic Cigarette Association — were not returned.

A Center for Disease Control and Prevention study last year found that the percentage of middle and high school students using e-cigarettes jumped from 4.7 percent in 2011 to 10 percent in 2012, totaling about 1.78 million students.

To try to reverse that trend, the attorneys general seek to prohibit e-cigarette advertisements on TV and the Internet.

E-CIGARETTES, *Page 23*

Insurance company settles bad-faith suit over med-mal verdict

BY MARC KARLINSKY
Law Bulletin staff writer

An insurance company has agreed to pay $1 million to settle a bad-faith lawsuit filed by the plaintiffs of a prior medical-malpractice case.

The plaintiff attorney in the underlying case said it's the first time ISMIE Mutual Insurance Co. has agreed to a bad-faith settlement without a confidentiality stipulation.

The bad-faith action arose out of a 2013 medical-malpractice trial in DuPage County Circuit Court in which Jaime Francisco sued ISMIE policyholders Dr. Gregory Kozeny and Oak Brook-based Nephrology Associates of Northern Illinois over the death of his wife, Maria Francisco.

Kozeny and NANI had $2 million in coverage under ISMIE policies that gave ISMIE the sole authority to defend and settle the case.

In February 2013, a DuPage County jury awarded a $5.1 million verdict, leaving about $1.1 million in excess of the policies after set-offs.

Francisco started collections after ISMIE's post-trial motions were denied by DuPage County Circuit Judge Ronald D. Sutter.

ISMIE paid its $2 million policy plus interest, but the remaining $1.1 million paid by NANI made the defendants unable to make payroll, said Jerome A. Vinkler, a partner at Vinkler, McArdle & Frost in Burr Ridge who represented Francisco.

Kozeny and NANI assigned their cause of action to Francisco in exchange for further collection from the defendants' personal assets.

Francisco filed the current complaint against ISMIE and Illinois State Medical Insurance Services in Cook County Circuit Court in September, alleging breach of duty of good faith and negligence in failure to settle the case.

In the complaint, Francisco alleged that he had made several settlement demands for the $2 million policy limits ahead of the trial but never received responses from ISMIE.

He also alleged that ISMIE did not follow the recommendations of its defense attorney, Mary M. Cunningham of Kominiarek, Bresler, Harvick & Gudmundson LLC, to settle the case due to a high risk of a verdict above policy limits.

ISMIE, *Page 23*

Judge: 'Generic' motive doesn't bind fraud counts

BY PATRICIA MANSON
Law Bulletin staff writer

A defendant's alleged desire for financial gain and his purported use of lies to fulfill that desire do not warrant holding a single trial on unrelated criminal charges, a federal judge has held.

In a written opinion, U.S. District Judge Harry D. Leinenweber granted Michele DiCosola's motion to divide the counts against him into three groups and try each group separately.

One group of charges accuses DiCosola of bank fraud, another of tax fraud and the third of bankruptcy fraud.

Leinenweber conceded that Federal Rule of Criminal Procedure 8(a) allows prosecutors to seek to bring multiple counts in a single indictment under certain circumstances.

Those include when the offenses charged "are of the same or similar character" or when they "are connected with or constitute parts of a common scheme or plan," Leinenweber wrote, quoting Rule 8(a).

Quoting *United States v. Freland*, 141 F.3d 1223 (7th Cir. 1998), he wrote that the rule "should be broadly construed in order to increase judicial efficiency and to avoid costly and duplicative trials."

But Rule 8(a) can be stretched only so far, Leinenweber wrote.

And tying disparate charges together because they all are based on a "generic" motive such as a bid for financial gain would be too much of a stretch, he held.

DiCosola is accused of using false tax returns from 2006 and 2007 to obtain two business loans and a home equity loan. He defaulted on the loans.

DiCosola also is accused of filing two false tax returns — one for himself and the other for another taxpayer — in 2009 that claimed entitlements to refunds totaling more than $5.8 million.

And he is accused of making misrepresentations on two separate petitions he filed in 2010 under Chapter 11 of the U.S. Bankruptcy Code.

In a written response to DiCosola's motion to sever the counts, prosecutors argued that the alleged offenses have the same or similar character because each "involves a knowingly false representation made to deceive a specified victim."

Prosecutors also argued that DiCosola's alleged offenses were part of a common scheme.

DiCosola combined the fraudulently obtained loans with his other debts to claim he was entitled to a tax refund, prosecutors contended, and then tried to discharge his responsibility to repay those loans in bankruptcy court.

Leinenweber rejected those arguments.

SEVER, *Page 23*

FROM THE FRONT PAGE

E-cigarettes

"The FDA should act promptly to prevent the advertising and marketing tactics of the e-cigarette industry from initiating a new generation of youth into nicotine addiction," the letter from the attorneys general says.

In a statement, Madigan said e-cigarette manufacturers and advertisers "are targeting young people with flashy marketing campaigns.

"We appreciate the FDA's first step toward regulating e-cigarettes, but the agency must strengthen its proposal to make sure more young people do not become addicted to nicotine."

The attorneys general also want the FDA to make health warnings on e-cigarette packaging more visible and compelling in order to prevent more children and teenagers from using them.

David L. Applegate — a partner at Williams, Montgomery & John Ltd. who often writes and speaks in support of individual liberties — said "it's pretty clear the direction we're headed" is more government regulation of e-cigarettes.

"I'm fairly confident that with the support of 30 or so state attorneys general, the FDA will implement these new regulations," he said.

Such regulations, Applegate said, would also follow a growing public consensus on the detrimental effects of nicotine use.

"I think it is a societal movement and perception that nicotine is bad for you, and so anything with nicotine should be controlled and discouraged," Applegate said. "Nobody thinks cigarettes are good for you, so the popular perception seems to be that e-cigarettes are also bad for you."

Some people view e-cigarettes as beneficial because they don't contain tar, as conventional cigarettes do. Others consider e-cigarettes a gateway to other tobacco products.

Either way, Applegate said, both sides of the debate "recognize there is not enough data on (e-cigarettes). Even the FDA says we really don't have full data on this yet."

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ISMIE

In May, ISMIE moved to compel mediation under the circuit court's rule authorizing the court to refer any pending matter in the Law Division to mediation. Circuit Judge John C. Griffin granted that motion on June 4.

The two parties conducted mediation before Hollis L. Webster of Michael J. Gallagher Mediation Services. ISMIE agreed last week to pay $1 million.

Vinkler said that in the 12 to 14 bad-faith cases against ISMIE he is aware of in the past 20 years, the company always demands settlements that are confidential.

ISMIE was represented by James J. Stamos of Stamos & Trucco LLP. He declined to comment.

The case is *Jaime Francisco v. ISMIE Mutual Insurance Co., et al.*, 13 L 10442.

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Sever

The similarities among the offenses charged "are more superficial than substantial," he wrote.

The alleged misrepresentations were related to separate transactions, he wrote, and were separated in time.

Also, Leinenweber wrote, the alleged offenses involved different victims.

Under that circumstance, he wrote, the fact that the alleged offenses involved fraud or were aimed at obtaining money does not justify joining the charges in one indictment.

"The indictment charges different types of fraud based on different misrepresentations made to different victims to obtain different monetary benefits in separate transactions," Leinenweber wrote.

The alleged offenses also were not part of a common scheme, he wrote, quoting *United States v. Woody,* 55 F.3d 1257 (7th Cir. 1995), because one offense did not serve as the "logical precursor" for another.

The bank fraud charges stem from DiCosola's alleged misrepresentations on loan applications, Leinenweber wrote, while the tax fraud charges are based on his use of a purportedly bogus tax theory.

And DiCosola "could have made the exact same misrepresentations regarding his financial affairs in his bankruptcy petition" even if he had not allegedly made misrepresentations in the loan applications or tax returns, Leinenweber wrote.

He issued his opinion last week in *United States v. Michele DiCosola,* No. 12 CR 446.

The lead attorney for DiCosola, Leonard C. Goodman, could not be reached for comment.

The lead prosecutor is Assistant U.S. Attorney Matthew F. Madden.

Spokesman Randall A. Samborn of the U.S. attorney's office declined to comment because the case is pending.

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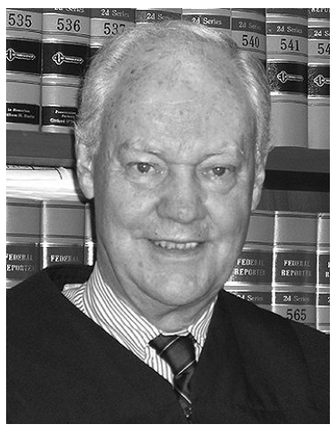

Harry D. Leinenweber

FROM PAGE 3

Duwe

battle," Barnard said.

He said Duwe shows good judgment and is thoughtful and creative.

"He's not afraid to speak up and tell you when something's a bad idea," Barnard said.

Skadden's Chicago office is celebrating its 30th anniversary by focusing on 30 acts of giving, both by in-kind and money contributions. The details are still being finalized.

"The goal is to have 30 discrete charitable- and community-focused events to give back to the community that has embraced us as one of its own these past 30 years," Duwe said.

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Limits

limits did not comply with the constitution.

According to that decision, the idea impacts neither the structure nor the procedure of the legislature. A valid referendum to the legislative article of the constitution would have to contain both types of changes.

J. Timothy Eaton, a partner at Taft, Stettinius & Hollister LLP who is representing the Committee for Legislative Reform and Term Limits, argued that the current proposal is different from the one the court rejected in the 1990s.

In addition to implementing term limits, the current plan would increase the threshold to override a governor's veto from three-fifths of the members of each chamber to two-thirds.

It would also increase the size of the House from 118 to 123 members and decrease the size of the Senate from 59 to 41 members.

Eaton also argued the term limits idea itself was a structural and procedural change.

The plan necessitates that senators run only for four-year terms instead of either four- or two-year terms, and since legislators couldn't stay in office indefinitely, it would mandate that the Senate's leadership change hands every so often.

That makes a procedural change to the way members of the Senate are elected as well as a structural change to the composition of the Senate, Eaton argued.

"Our initiative does have both of those components," Eaton told the panel. "Term limits ... relates to the composition of the Senate. It affects both the seniority system, by having term limits, (and) it affects the procedure in which the senators are elected by eliminating the two-year terms."

Justice Thomas E. Hoffman responded by saying the precedent in *Chicago Bar Association* would still make term limits questionable.

"(That decision) says the eligibility or qualifications of an individual legislator does not involve the structure of the legislature as an institution," Hoffman said.

"Then it goes on to say, likewise, the eligibility or qualifications of an individual legislator does not involve any of the General Assembly's procedures. The process by which the General Assembly adopts a law would remain unchanged.

"Now, if one accepts those words at face value, we have a little bit of a problem."

Eaton said later that case should be read narrowly.

"What we are saying is that (the decision) was limited to the facts in that case. It was a very bare-bones term limits initiative that only dealt with term limits," he said.

"OK, so you say that because your initiative is larger, includes more things, it becomes OK?" asked Justice Maureen E. Connors.

Eaton responded that every single change in the plan makes either structural changes, procedural changes or both.

"Term limits deal with individual legislators," Hoffman later said, emphatically. "They don't deal with the institution."

Eaton responded: "Your honor, that's where I disagree with you. They do deal with the institution. Term limits (are) going to have a dramatic effect on the composition of the legislature, with respect to the seniority system, with respect to its makeup, with respect to the institution as a whole."

Michael J. Kasper, a partner at Fletcher, O'Brien, Kasper & Nottage P.C. who represents a group of Chicago business and community leaders that are challenging the idea, declined to comment while the matter is pending.

He told the justices during arguments that the term-limits plan is "virtually indistinguishable" from the one the court invalidated in the 1990s and that it "runs afoul" of the language in the constitution that says changes to the legislative article "shall be limited to structural and procedural subjects."

The deadline for a measure to get on the ballot is technically Friday.

That's partially why Eaton and supporters of the term-limits plan are hoping for an appellate court decision soon.

"Our hope would be that the appellate court would rule quickly, then we'll be prepared to file — if we're unsuccessful — an emergency (appeal) with the Illinois Supreme Court and hope they take it," Eaton said.

If the court ultimately takes up the matter, the seven justices could rule on it swiftly by simply using the appellate court briefs and oral arguments to make a decision.

But the court could also wait until after the Friday deadline to make a decision and, if it upholds the plan, order the elections board to place it on the ballot.

Connors and Hoffman were joined on the panel by Justice Terrence J. Lavin.

The case is *Clark v. Illinois State Board of Elections*, 2014 IL App (1st) 114937.

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Ethics

that this is not the way I wanted to practice law. It was the beginning of a journey away from what had been a fairly aggressive personal style I maintained."

Camson — a 2010 graduate of the University of Pittsburgh School of Law — recalls an instance when he and a client were in a prosecutor's office with a police officer. The prosecutor kicked off the meeting by looking at Camson and remarking, "I have underwear older than you."

To which Camson replied: "You should buy more underwear."

It was the only thing Camson could say to keep his cool.

"They're using it as an intimidation tactic, and you just have to deal with it," he said. "You have to take it, nod, agree and move on."

On the matter of fees, Camson said the challenge for young lawyers is learning how to value their time, while the subject of problem clients is about screening clients, managing them and, when necessary, disengaging.

Eee said that one way young lawyers get tripped up with clients is by becoming too collegial. She recommends that young lawyers should be cautious about letting clients call them on their cellphones.

"It blurs the lines and makes it harder to maintain the boundaries," Eee said.

"And then at discharge, the overfamiliar nature of the relationship when it was good comes back to haunt the lawyer, because now the client knows where the lawyer lives (and) how to reach him day and night. That's stressful, particularly when you're just starting out."

To sign up or get more information, go to goo.gl/JH2AV1.

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FROM PAGE 4

Judge

"Camasta's admittedly non-exhaustive list illustrates that JAB offered a number of sales promotions to its customers over a two-year period. Camasta's list actually reduces the effect of his argument because it shows that there were a variety of sales for different periods of time, under different terms, and that included different types of merchandise. The fact that JAB has frequent sales does not support an inference that those sales were fraudulent."

Next, Bauer addressed Camasta's contention involving a $475,000 fine Jos. A. Bank paid in September 2004 as part of a deal with the New York attorney general, who was investigating whether the clothier's merchandise was "perpetually on sale." Under the agreement, Jos. A. Bank admitted to no wrongdoing. Bauer wrote:

"Camasta failed to explain how the New York advertising practices that were the subject of the 2004 investigation are the same or similar to practices employed by JAB in Illinois between 2009 and 2012. Camasta argues that he sufficiently proved this simply by stating in his complaint that the practices were 'the exact type of fraudulent sales practices complained of here.' Simply stating that the sales practices are the same in two different states during two different time periods without any factual support is insufficient to satisfy the pleading requirement."

Finally, Bauer ruled that the plaintiff failed to plead he sustained any damages:

"When the plaintiff is a private party as Camasta is here, an action brought under the ICFA requires the plaintiff to show he suffered 'actual damage' as a result of the defendant's violation of the act. 815 ILCS 505/10a. The district court correctly found that Camasta failed to allege facts showing he suffered actual damage.

"Central to Camasta's argument is the claim that the advertised 'sale prices' were in fact just the normal or regular retail prices being promoted as temporary price reductions. Camasta claims that this sales technique encourages a sense of urgency and makes customers feel 'pressure' to make purchases before an expected deadline. However, Camasta failed to provide any evidence that he paid more than the actual value of the merchandise he received.

"Camasta asserts that he could have shopped around and found the same shirts for a lower price. Yet, he fails to assert that he did, in fact, shop around and find the same shirts for a lower price. Camasta's statement was insufficient to prove actual damages."

CASE SUMMARIES

See the full text of each case on our website.

Sentencing — relevant conduct, attributable acts

Where a defendant was sentenced for crack cocaine distribution, the relevant conduct — the acts of others the defendant helped further — not simply foreseeable quantity of drugs sold factored into the sentence.

United States v. William J. Davison

No. 14-1158

Writing for the court: Judge Richard A. Posner

Concurring: Judges Michael S. Kanne and John Daniel Tinder

Released: July 30, 2014

The 7th U.S. Circuit Court of Appeals reversed a decision by U.S. District Judge James T. Moody, Northern District of Indiana.

William Davison, a member of the Concord Affiliated street gang in Gary, Ind., was convicted of two counts of having distributed at least 50 grams of crack cocaine in 2003. At sentencing, Davison was sentenced to 360 months in prison. On appeal, Davison's sentence was affirmed.

After the initial denial, Davison moved for a sentencing reduction under 18 U.S.C. Section 3582, on the basis of the Sentencing Commission's retroactive reduction in the base offense level for offenses involving crack. Davison conceded responsibility for the sale of 4.5 kilograms of cocaine, but argued that he was not responsible for 8.4 kilograms, the new floor for a base offense level of 38.

The U.S. District Court denied Davison's motion, finding him responsible for at least 16.9 kilograms of crack cocaine. That amount represented the entire quantity of sales of the drug conspiracy of which Davison was a member. Davison appealed.

The appellate panel began by stating that the district court's interpretation of "relevant conduct" was incorrect. The panel stated that Application Note 1 to the sentencing guideline emphasizes a focus on acts that are reasonably foreseeable to the defendant even though committed by others.

Therefore, the panel reasoned, whether Davison was liable for sales in excess of 8.4 kilograms depended on not just whether the sale quantity was foreseeable to him, but whether he joined with other conspirators in a joint undertaking of which the making of those sales was an objective.

On remand, the panel found that the district court would have to determine whether the defendant engaged in any conduct designed to assist in the crack sales of other members of the conspiracy, which would bring his total sales above the 8.4 kilogram threshold.

The panel noted that this determination could include evaluation of whether the Davison's likely participation in a series of murders while part of the gang were undertaken to further the sales efforts of co-conspirators.

As a result, the panel reversed the decision of the district court and remanded the case for further proceedings consistent with the opinion.

FROM PAGE 5

Marijuana

relaxing the marijuana rules could be linked to a deal that would bring in HGH testing.

"I've heard that in conversations," said Wiley, a plaintiff in the painkiller lawsuit. "And I think it's despicable that you'd pit them against each other."

The NFL drug policy has come under even more scrutiny this summer after the NFL handed down a season-long suspension of Browns receiver Josh Gordon for multiple violations of the NFL substance-abuse policy. That suspension, especially when juxtaposed against the two-game ban Ray Rice received for domestic violence, has led some to say the league's priorities are out of whack.

In June, Harvard Medical School professor emeritus Lester Grinspoon, one of the forefathers of marijuana research, published an open letter to Goodell, urging him to drop urine testing for weed altogether and, more importantly, to fund a crash research project for a marijuana-based drug that can alleviate the consequences of concussions.

"As much as I love to watch professional football, I'm beginning to feel like a Roman in the days when they would send Christians to the lions," Grinspoon said. "I don't want to be part of an audience that sees kids ruin their future with this game, and then the league doesn't give them any recourse to try to protect themselves."

The league does fund sports-health research at the NIH to the tune of a $30 million donation it made in 2012. But the science moves slowly no matter where it's conducted and, as Vandrey said, "the NFL is in business for playing football, not doing scientific research."

Meanwhile, marijuana becomes more and more acceptable across America every day. But even with the issue hanging heavily over the NFL, the league has shown no signs of quick movement.

The league's threshold for a positive test remains 10 times lower than that of WADA, which changed its limit last year in a nod to the reality that the drug is not a performance enhancer.

The NFL's conundrum is figuring a graceful way to keep tabs on those who use marijuana recklessly — or recreationally — while giving others a legitimate form of pain relief.

"I'd like to see us advance the subject to where we're all mature and we get it," Wiley said, "and we let players make the decision for themselves."

AP sports writer Joseph White in Washington contributed to this report.

Konkel

nancial assistance that institutions can and will provide to student-athletes.

However, because this figure is merely a minimum floor, and not a mandated amount paid to all student-athletes, there could be a discrepancy between the amount paid to male student-athletes and female student-athletes.

Institutions are likely to award money based upon the estimated NIL value of the student-athlete, and male basketball and football student-athletes will undoubtedly receive a greater proportion of this money, especially with the market forces at play in the realm of major college recruiting.

The difficulty is that there is no precedent to provide guidance on dealing with this issue. Congress and courts alike have never contemplated Title IX compliance in the context of this new era of NCAA amateurism, where student-athletes earn different levels of compensation. The ruling could require legislative changes to Title IX, or at minimum, guidance from the U.S. Office of Civil Rights on how to comply with Title IX, as currently construed, under the new NCAA structure.

Interestingly, when Title IX was first enacted, some lawmakers foresaw issues with compliance in collegiate athletics. Former Sen. John Tower, R-Texas, introduced a bill to have revenue sports excluded from Title IX compliance. It is possible that a similar bill could be introduced to ensure that payouts to male basketball and football players do not affect compliance with the financial assistance prong of Title IX.

Another possible remedy would be an amendment to the NCAA bylaws that adjusts the grant-in-aid provided to female student-athletes in order to ensure that financial assistance is provided proportionally and in compliance with Title IX. Nothing in Wilken's ruling would prevent this.

It is also possible that the money placed into the NIL trust could be deemed outside the reach of Title IX, since the student-athlete would not be eligible to receive the funds until after he or she leaves the institution. However, it is unlikely that a court will rule that NIL funds paid to student-athletes are anything but financial aid falling within the purview of Title IX.

In any event, until further guidance is provided, the burden of ensuring Title IX compliance will fall upon the institutions, and it will be up to their respective offices of legal counsel, and possibly the NCAA, to provide guidance on meeting the requirements.

Until instruction is provided that provides a roadmap to navigating new Title IX issues, expect to see litigation on this issue.

FROM PAGE 6

Perry

of people who have discussed this issue, and I'm talking about both Republicans and Democrats, I find this prosecution both outrageous and inexplicable," Burchfield said.

Some Democrats disagreed. The head of the Texas Democratic Party, Will Hailer, said Perry was indicted "by a Republican-appointed prosecutor and a jury of his peers because of coercion and abuse of power."

A grand jury in Austin, a liberal bastion in otherwise largely conservative Texas, indicted Perry for carrying out a threat to veto $7.5 million in funding for the state's public integrity unit after Travis County District Attorney Rosemary Lehmberg, a Democrat, refused to resign following a drunken driving arrest. The ethics unit is housed under Lehmberg's office.

No one disputes that Perry has the power to veto measures approved by the legislature, but his threat to do so before actually carrying it out prompted a complaint from a left-leaning watchdog group.

The grand jury met for months before handing down its indictment, and Perry's $450-per-hour defense attorney, David L. Botsford, was paid using state funds.

Aides said the case wouldn't prevent Perry from maintaining his packed upcoming schedule, which includes visits to the key presidential battleground states of Iowa, New Hampshire and South Carolina in the next two weeks.

Perry also has a Thursday speech on immigration at the Heritage Foundation in Washington, D.C.