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Appellate Court upholds village's contractual right to indemnification for its own alleged negligence

By Michael Bersani, Itasca

In representing municipal clients, city and village attorneys often negotiate, draft and/or review contracts with other public agencies and private parties. The nature of the contract may require inclusion of an indemnity and hold harmless provision. In two recent cases of interest, the Illinois Supreme and Appellate Courts have addressed the validity and enforceability of indemnification provisions, specifically provisions that require indemnification for one's own negligence.

In *Nicor Gas Co. v. Village of Wilmette*, No. 1-07-1041 (February 29, 2007), Nicor Gas Company sued the Village of Wilmette for negligence stemming from a broken water main which allegedly punctured one of Nicor's gas mains. The gas main was located within a permanent easement that had been granted by the Village to Nicor via an ordinance in exchange for Nicor providing gas for use by the Village. The Village moved to dismiss the complaint and argued, in part, that Nicor could not recover damages because the ordinance granting the easement contained a provision providing that Nicor would indemnify the Village for any damages resulting from Nicor's occupation of the easement premises. The circuit court granted the Village's motion to dismiss, finding that the indemnity provision was valid and enforceable and, therefore, barred the action for damages.

The appellate court affirmed the dismissal. Citing the Illinois Supreme Court's recent decision in *Buenz v. Frontline Transp. Co.*,[1] the Appellate Court reaffirmed that Illinois law allows contracts of indemnity against one's own negligence so long as the parties' intent is clear and explicit. The Supreme Court in *Buenz* had held that when a contract contains a provision purporting to provide indemnity for "any and all negligence," such a phrase, absent any limiting language expressly restricting indemnification liability, was sufficient to indemnify a party for its own negligence.[2] The Supreme Court noted that the phrase "any and all" must be read in conjunction with the entire contract in order to determine whether the contract provides indemnification for a party's own negligence.[3] The court concluded that such broad language "may indeed indicate that the parties intended an indemnitee be indemnified, even for the indemnitee's own negligence."[4]

In the *Nicor* case, the ordinance granting the permanent easement stated as follows:

> The Grantee [Nicor] shall indemnify, become responsible for and forever save harmless the Municipality from any and all judgments, damages, decrees, costs and expenses, including attorney fees, which the Municipality may legally suffer or incur, or which may be legally obtained against the Municipality, for or by reason of the use and occupation of any Public Place in the Municipality by the Grantee pursuant to the terms of this ordinance or legally resulting from the exercise by the Grantee of any of the privileges herein granted.

Applying the holding in *Buenz*, the appellate court agreed with the circuit court that the ordinance did not contain any language limiting Nicor's indemnification liability and, therefore, clearly and unambiguously provided indemnification for the Village's own negligence. The court also rejected Nicor's argument that the ordinance was void under the Construction Contract Indemnification for Negligence Act, 740 ILCS 35/1, because the ordinance was not a construction contract.

1. 2008 WL 217169, Slip Op. at p. 5 (Ill. Sup. Ct. 1/25/08).
2. Id. at p. 9.
3. Id. at p. 11.
4. Id.

IN THIS ISSUE

Prosecution of municipal ordinances violations and a preview of the proposed Supreme Court Rules addressing them

By Mark C. Palmer, Champaign

On January 28, 2008, the Illinois Supreme Court Rules Committee held its annual public hearing and included on the agenda was the proposal to create new Illinois Supreme Court Rules 570-581 ("Proposed Rules").[1] The Proposed Rules would help clarify the applicable law and procedures for the prosecution of municipal ordinance violations. This article is intended to walk you through the process of a typical municipal ordinance violation and examine how the Proposed Rules would apply.

Authority

Municipalities are granted authority under the Illinois Municipal Code to "pass all ordinances and make all rules and regulations proper or necessary, to carry into effect the powers granted to municipalities, with such fines or penalties as may be deemed proper."[2] The Proposed Rules would be applicable to ordinance violations, except for traffic or jailable offenses, and specifically apply the Illinois Code of Civil Procedure.[3] Due to their quasi-criminal nature, courts have struggled with what procedural rules to apply to ordinance violations. As long as a municipality does not seek a term of imprisonment as a penalty, courts have routinely applied the Code of Civil Procedure.[4]

Issue Violation

Police officers in municipalities are conservators of the peace.[5] Police officers have flexibility and discretion in their duties of enforcing laws, keeping order and protecting the public. Officers may issue an ordinance violation rather than make an arrest under state criminal laws as a law enforcement tool under various circumstances. For example, an officer may issue a suspect a Notice to Appear ("NTA") for violating a local ordinance under a City Ordinance for possession of cannabis when the amount is small, especially if the suspect has cooperated with the officer. This may allow the officer to gain further compliance from suspected offenders while increasing patrol service time due to avoiding the time constraints of arresting, transporting and booking the suspect.

The Illinois Municipal Code provides in general that "in all actions for the violation of any municipal ordinance, the first process shall be a summons or a warrant."[6] Proposed Rules 572 through 575 are intended to provide various methods of instituting the violation. The charging documents for an ordinance violation would include an NTA,[7] Citation, Ticket, or Complaint or any combination thereof.[8] The charging document would be required to include:[9] (1) the name of the prosecuting entity;[10] (2) the name of the defendant and his address, if known; (3) the nature of the offense or a reference to the relevant ordinance; (4) execution by the person authorized to issue the charging document; (5) whether the defendant is required to appear in court at a certain date, time and place; and (6) a statement that the information is true and correct to the best of the issuing person's knowledge, information or belief. Although quasi-criminal in nature, municipal ordinances are civil in form and, as such, the charging document does not "need to be drawn with the precision of an indictment or information."[11] Likewise, the prayer for relief may be for the penalty range between the minimum and maximum amount authorized under the ordinance.[12] Most municipalities create customized NTA forms listing the common ordinance offenses and the required basic information for the issuing officer to quickly and easily fill out.

Along with designating who may sign the charging document and what is sufficient for a prayer for relief, Proposed Rule 575 allows for multiple violations to be stated in a complaint. Municipal parking or property code violations are examples where a municipality may opt not prosecute the offender until the violations become habitual. For example, the Village of Oak Park filed a single complaint charging the defendant with violating a total of 87 unpaid village parking ordinance summonses.[13] The defendants contended that such a joinder of multiple violations, each with separate recoveries, was improper.[14] The Court disagreed by stating that pleadings shall be liberally construed by view of doing substantial justice between the parties, and the complaint, with a computer print-out of the details of the tickets as a bill of particulars, was legally sufficient to inform the defendant as to the nature of the offenses and allow him to challenge each violation as he would so chose.[15]

A violation may be determined to occur on a daily basis, such as for a continuing violation of a particular property maintenance ordinance.[16] The Committee Comment notes for Proposed Rule 575(b) state that the allowance for multiple violations "is not meant to contravene the one act/one crime rule identified in Village of Sugar Grove v. James Rich."[17] As property code violations customarily impose a fine for each day the violation occurs (continues) in order to promote swift compliance, property owners may face extraordinary fine amounts. However, the imposition of a significant fine can constitute an abuse of discretion if defendant's cooperation or compliance has occurred and such a fine amount would not aid in enforcement measures.[18] Such a finding may persuade a Court to reduce a total fine amount, as was the case when the Life Changers International Church was found to be in violation of provisions of the Village of Barrington Hills Municipal Code.[19] The trial court fined the Church $100,000 based on a $100 per day fine provision and ordered affirmative steps to bring the Church into compliance.[20] The appellate court affirmed but modified the trial court's fine amount to $70,800

to account for the time period that the Church came into compliance.[21] The Court noted that the cooperation and compliance were achieved, and an imposition of a further fine would not aid in enforcement, citing *Village of Glenview v. Ramaker*.[22]

Most ordinance violations are issued in person by hand delivery service from the peace officer or code enforcement officer to the person charged. Furthermore, service by mail is allowed.[23] Service of summon for an ordinance violation may be mailed by the municipal clerk via certified mail, return receipt requested, as long as the fine is not in excess of $750 and no jail term could be imposed for the violation charged.[24] Service by mail is frequently used when initiating ordinance violations against property owners for code violations because the city or village officer typically observes the violation outside the presence of the owner.

Appearance

Settlement of an ordinance violation may come before, and in lieu of, a court appearance, similar to a traffic ticket. Proposed Rule 574 allows for such an opportunity to settle.[25] In fact, the "pre-pay" option can be a very useful tool for both the suspect and the municipality. The municipality can avoid further paperwork, court appearances and other expenses such as paying officers overtime for trial, if the person charged follows the time and manner of payment requirements typically explained in detail on the NTA.[26] Furthermore, uncontested violations do not congest courtroom calendars and violators can save themselves both court time and costs,[27] not to mention a "conviction" on their record.[28]

Proposed Rule 576 concerns the appearance and plea of the party responding to an ordinance violation charge and allows for a warrant to issue if appearance is required and the person is not otherwise excused.[29] The NTA issued to the defendant will state the date, time and place that the defendant is required to appear. If pre-pay of the violation is an option, a pay-by-date will be given that will be far enough in advance of the court appearance date to allow the municipality time to file a formal complaint.[30] The first appearance usually will be for entering an admission of guilt, a not guilty plea or a request for more time to hire an attorney.

Defendant's failure to appear may result in a warrant issued or, under Proposed Rule 576, an ex parte or default judgment entered.[31] If a default judgment is entered, notice of the order, including the fine amount and when it is due, must be mailed to the defendant.[32] This notice should coincide with Section 2-1302 of the Code of Civil Procedure and should include a statement that a warrant may issue if payment of the default fine amount is not received by the date ordered.[33] Prosecutors should note that the most current address for the defendant will likely be the one the defendant himself gives authorities when the NTA is issued, so subsequent notice to that address should provide further proof of adequacy of notice if a judge is resistant to issuing a warrant in such a situation.

Pre-Trial

Proposed Rules 577 through 579 cover defendants' right to counsel,[34] right to trial by jury[35] and discovery issues.[36] The drafting Committee cites several cases in its commentary comments to Proposed Rule 577, which give an ordinance violation defendant the right to counsel, but not by the court's appointment or public expense.[37] The Illinois Supreme Court held that defendants, including minors, are not entitled to appointed counsel in defense of municipal ordinance violations.[38] The Court reiterated the notion that ordinance violation prosecutions are quasi-criminal in character, but formally they are civil actions.[39] Also, the Court refused to equate "fine only" ordinance violations with proceedings under the Juvenile Court Act[40] where there is a statutory requirement that a guardian ad litem be appointed if no parent, guardian, custodian or relative appears for the minor.[41]

The Illinois Supreme Court recently revised this issue with *City of Urbana v. Andrew N.B.*[42] after juveniles (two similarly situated minors' appeals were consolidated) were sentenced to detention once found in contempt for violating court supervision for ordinance violations in the cities of Urbana and Champaign.[43] The trial court stood on its inherent contempt powers and its ability to enforce its orders without a juvenile petition filed [under the Juvenile Court Act].[44] The minors appealed on grounds of equal protection, due process and sixth amendment violations, but the appellate court maintained that precedent controlled with no right to appointed counsel existing due to no possibility of imprisonment under the ordinance.[45] However, the Illinois Supreme Court reversed under an analysis that the appellate court missed the "root problem" which was that "prosecuting minors for contempt when they violate the terms of their court supervision misapprehends the nature of supervision and abuses the power of contempt."[46] The court emphasized that the imposition of "court supervision" is not a sentencing, but a form of continuing the case or deferral of a judgment.[47] Therefore, failure of the minors to complete court supervision conditions for the required term in their respective cases should have been met by the City requesting to proceed to sentencing, not a petition for contempt.[48]

Proposed Rule 578 gives the defendant a right to a trial by jury, as long as the appropriate jury fee is paid to the clerk of the circuit court.[49] This right is currently codified in the Illinois Code of Criminal Procedure, which states that "every person accused of an offense shall have the right to a trial by jury unless…the offense is an ordinance violation punishable by fine only and the defendant either fails to file a demand for a trial by jury at the time of entering his or her plea of not guilty or fails to pay to the clerk of the circuit court at the time of entering his or her plea of not guilty any jury fee required to be paid to the clerk."[50] Since many defendants are not aware at their arrangement that a fee is required for a jury trial, judges often allow a continuance for payment, but a subsequent failure to show payment should be regarded as a waiver.

Discovery in ordinance violation cases is currently addressed in Illinois Supreme Court Rule 201(h), "where the penalty is a fine only[,] no discovery procedure shall be used prior to trial except by leave of court."[51] Proposed Rule 579 mirrors this Rule, but purposefully excludes the "fine only" language as to be applicable to cases in which penalties may include public service work, restitution, or other conditions allowed by the ordinance.[52] The Proposed Rule allows the court to exercise discretion to limiting discovery by a defendant.[53]

Trial

Under the Municipal Code, "every person arrested upon a warrant, without unnecessary delay, shall be taken before the proper officer for trial."[54] While courts have refused to literally apply the speedy trial statute of the Code of Criminal Procedure to municipal violations, prosecuting municipalities may not control the case at its own convenience, as excessive delays have been determined unconstitutional.[55]

Proposed Rule 580 restates what case law has long held, that the burden of proof to prove a violation of an ordinance violation is by a preponderance of the evidence (i.e., it is more likely than not that the defendant committed the violation).[56] Aside from the municipality carrying the burden of proving the elements of the ordinance charged, ordinance violations typically require proof that the violation was committed within the corporate limits of the municipality in order to show jurisdiction.[57]

Trial courts should take judicial notice of the ordinances of a municipality located within the court's jurisdiction.[58] While it may not be necessary to file an official copy of the ordinances with the clerk of the court, it is prudent to provide the judge with an organized binder for quick reference from the bench. This practice can save the prosecutor time and effort in handing up ordinance copies to the judge. Still, even if the defendant is charged with only one section of an ordinance, it is recommended that you have the entire ordinance copied for admission, especially if it is helpful for a jury to understand the offense charged.[59]

A defendant who challenges the validity of an ordinance must prove by clear and affirmative evidence that the ordinance constitutes arbitrary, capricious, and unreasonable municipal action, that there is no permissible interpretation which justifies its adoption or that it will not promote the safety and general welfare of the public.[60] The validity of an ordinance is presumed when it is passed pursuant to a legislative grant of power.[61] Hence, the legislative judgment of the municipality should prevail when the ordinance has any reasonable impact on the health and safety of the community.[62] Also note that an ordinance is not rendered invalid by the failure of a municipality to enforce it.[63]

Under the Proposed Rules, if the municipality seeks a default judgment, then the charging document must contain a statement that a default or ex parte judgment may be entered in the event the person fails to appear in court or answer the charge made on the date set for the defendant's court appearance[64] and that statement must include the amount of the default or ex parte judgment.[65] This default amount would likely be the same as the pre-paid option amount on the NTA, but now that a court file has been opened and the pre-paid option has not been taken advantage of by the defendant, court costs and further expenses should be allowed in the judgment balance.

Summary judgment is permissible in a prosecution for violation of a municipal ordinance.[66] In view of the fact that default judgments are not encouraged due to their drastic nature and their usual relegation to a last-resort disposition, tacit approval by the Illinois Supreme Court in *Buford v. Chief, Park District Police* of a default judgment in a municipal ordinance prosecution weighed in favor of allowing summary judgment in such proceedings.[67] Thereafter, in *Village of Beckmeyer v. Wheelan*, the court gave direct authority to a municipality to use summary judgment proceedings for prosecution of violations of a municipal ordinance.[68]

Additionally, while court appearances for municipal ordinance violations rarely catch the media's eye, the municipal prosecutor should be mindful of the ethical obligations that the position carries with it. Not only may there be a risk to the fairness of a pending adjudicative proceeding, but the door to the attorney's personal liability may be opened. Therefore, a municipal prosecutor, like any prosecutor, should be familiar with Illinois Rules of Professional Conduct Rule 3.6 (Trial Publicity) and Rule 3.8 (Special Responsibilities of a Prosecutor).[69] For example, a prosecutor may not give an opinion of guilt or discuss any information that she knows or should know will be inadmissible as evidence at trial.[70] Furthermore, prosecutors are only entitled to qualified, not absolute, immunity from civil rights liability based on public statements.[71] Therefore, if you suspect media involvement beforehand, be appropriately prepared with what your statement will be, if any.

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Disposition

Lastly, Proposed Rule 581 attempts to clarify the fundamentals of the disposition in a municipal ordinance violation case.[72] Proposed Rule 581 states that the court determines the amount of the fine at or above the minimum fine authorized by ordinance and must impose court costs as well.[73] The requirement that the fine be at least the minimum amount authorized by ordinance enshrines an Illinois Appellate Court's decision in *City of Chicago v. Alessia*.[74] In *Alessia*, the Court remanded the case to the trial court for resentencing to strictly impose the daily minimum fine for an ongoing offense (in this case, property code violations).[75] However, a subsequent holding by the same First District Illinois Appellate Court in *City of Chicago v. RN Realty, L.P.* determined minimum fines were not required and favored case-by-case discretion where compliance is the goal and the imposition of fines would not aid in enforcement.[76] Further take note that vesting the fine determination solely with the court would overrule holdings that the jury, not the trial judge, should determine the amount of the penalty in a jury trial.[77]

In lieu of or in addition to a fine, additional conditions may be imposed on the defendant such as abatement or injunction (e.g., typical for property code violations) and public service work ("PSW") (e.g., useful for juveniles or unemployed defendants).[78] Municipalities should take advantage of creative judgment orders when conditions other than fines are imposed. For example, the prosecutor may want to ask the judge to enter an order requiring that PSW or a specific fine amount be completed or paid by a date specific. This may save future time and effort if a Rule to Show Cause is filed against the defendant for failure to follow the court's order. As for property or nuisance violations, cleaning up the violation or abating the nuisance should take precedence over the municipalities monetary gain in the matter, and orders may be drafted to encourage expedited compliance or face significantly higher fine amounts.

Municipalities often spend just as much time, if not more time, collecting judgment fines from ordinance violations than initially prosecuting them. This process may be guided, in part, by how the court manages the collections, such as by a rotating court "payment call" where the defendant is required to return to court repeatedly to show the judge proof of continued payment until the judgment is paid in full. If the defendant fails to appear at the payment call as ordered, a warrant may be issued. This method may weigh heavy on the court's time. Alternatively, the judge may order the fine to be paid within a specific time period. Here, the court does not set a return date; rather it is up to the municipality to file a Rule to Show Cause asking the defendant to be ordered to appear to explain non-compliance with the order. Nevertheless, the municipality may find it beneficial to enter into a Payment Order with the defendant to better secure routine payments down a path to a satisfied judgment. Regardless of the method, final satisfaction should come by determination of the municipality that the fine and conditions have been settled or compromised,[79] i.e., "the power to prosecute [ordinance violations]…includes the power to settle the same."[80]

A municipal ordinance violation conviction for some offenders may be their only contact with the criminal justice system, and not even equate to a misdemeanor on an otherwise spotless criminal record. However, repeat offenders may find a history of such "petty" convictions catching up with them. For example, the United States Sentencing Guidelines ("USSG"), used in federal criminal sentencing, allow up to four points from "local ordinance violations" in calculating an offender's criminal history category, as long as the violations have parallel state criminal statutes (e.g. theft, battery, etc.).[81] Sentences for such convictions are to be treated as if the defendant had been convicted under state law.[82] Theoretically, an offender's criminal history category can go up two levels with four convictions for "local ordinance violations" and add over five additional years to an offender's minimum guideline range.[83] While this is an extreme example and the USSG are now advisory,[84] it demonstrates the possible seriousness of such convictions and might call into question due process issues (e.g. ordinance violation convictions determined by a lesser burden of proof measured the same in criminal history examination as state convictions).

Conclusion

Clearly, the Committee of Municipal Attorneys comprised of local government counsel and advisory judges from around the State have put a lot a work into researching and drafting these Proposed Rules 570-581. The sui generis nature of these quasi-criminal proceedings justifies the need for clarification and standards while maintaining due process and efficiency. Hopefully the Illinois Supreme Court will adopt these Proposed Rules to help lessen disparities among courts and judges, as well as the prosecution and defense bars.

Postscript

Experienced prosecutors from the cities of Champaign, Urbana, Normal, Downers Grove and Peoria were included on the Committee that helped draft the Proposed Rules. The ISBA Local Government Section Council took a position in support of the Proposed Rules and submitted comments to ISBA's counsel in December, 2007. As of early 2008, an ISBA Subcommittee composed of members from various Section Councils continue to review and provide recommendations on the Proposed Rules. We await the outcome of the Proposed Rules from the Illinois Supreme Court Rules Committee.

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1. Proposal No. 06-05; P.R. 0151; The text of the Proposed Rules are posted on the Supreme Court Web site at: <http://www.state.il.us/court/SupremeCourt/Public_Hearings/2008/Prop06-05.pdf>.
2. 65 ILCS 5/1-2-1.
3. Ill. Sup. Ct. R. 570-571 (Proposed).
4. See *City of Danville v. Hartshorn*, 53 Ill.2d 399, 292 N.E.2d 382 (Ill. 1973); *City of Park Ridge v. Larsen,* 166 Ill.App.3d 545, 519 N.E.2d 1177, 117 Ill.Dec. 10 (1st Dist. 1988).
5. 65 ILCS 5/11-1-2.
6. 65 ILCS 5/11-2-9.
7. A Notice to Appear is the notice form from the Code of Criminal Procedure, 725 ILCS 5/107-12.
8. Ill. Sup. Ct. R. 572 (Proposed).
9. Id.
10. 65 ILCS 5/1-2-7. "All actions…under any ordinance…shall be brought in the corporate name of the municipality, as plaintiff."
11. *City of Chicago v. Brown*, 61 Ill. App.3d 266, 272, 377 N.E.2d 1031, 1035, 18 Ill.Dec. 395, 399 (1st Dist. 1978).
12. Ill. Sup. Ct. R. 575(c) (Proposed); the notes under this Proposed Rule state that

such a penalty range is "sufficiently specific" to meet the requirement under Section 2-604 of the Code of Civil Procedure that a prayer for relief be "specific."

13. *Village of Oak Park v. Flanagan*, 35 Ill.App.3d 6, 8, 341 N.E.2d 16, 17 (1st Dist. 1975).

14. Id.

15. Id.; 735 ILCS 5/1-106.

16. *Village of Franklin Grove v. Chicago & N.W. Ry. Co*., 196 Ill.App. 167, 1915 WL 2559 (2d Dist. 1915).

17. Ill. Sup. Ct. R. 575 (Proposed); *Village of Sugar Grove v. James Rich*, 347 Ill.App.3d 689, 808 N.E.2d 525, 283 Ill.Dec. 559 (2d Dist. 2004).

18. *Village of Glenview v. Ramaker*, 282 Ill.App.3d 368, 668 N.E.2d 106, 217 Ill. Dec. 921 (1st Dist. 1996).

19. *Village of Barrington Hills v. Life Changers Intern. Church*, 354 Ill.App.3d 415, 820 N.E.2d 1068, 290 Ill.Dec. 1 (1st Dist. 2004).

20. Id.

21. Id.

22. Id. at 416.

23. 65 ILCS 5/1-2-9.1; Ill. Sup. Ct. R. 573 (Proposed).

24. Id.

25. Ill. Sup. Ct. R. 574 (Proposed).

26. Id.

27. Court costs may be substantial and even greater than the fine amount in some cases.

28. The pre-paid NTA settles the violation before a formal complaint is ever filed with the court.

29. Ill. Sup. Ct. R. 576(a) (Proposed).

30. The NTA itself is not the commencement of the court action, so court costs may be avoided when a offender takes advance of pre-complaint settlement. See *Village of Mundelein v. Ollivier*, 93 Ill.App.3d 324, 326, 417 N.E.2d 180, 182, 48 Ill.Dec. 778, 780 (2d Dist. 1981).

31. Ill. Sup. Ct. R. 576(a) (Proposed).

32. Id.

33. Id.; 735 ILCS 5/2-1302.

34. Ill. Sup. Ct. R. 577 (Proposed).

35. Ill. Sup. Ct. R. 578 (Proposed).

36. Ill. Sup. Ct. R. 579 (Proposed).

37. See Committee Comments to Ill. Sup. Ct. Rule 577 (Proposed).

38. *City of Danville v. Clark*, 63 Ill.2d 408, 413, 348 N.E.2d 844, 846 (Ill., 1976).

39. Id.

40. Formally Ill.Rev.Stat.1975, ch. 37, par. 701-1 et seq., now the Illinois Juvenile Court Act of 1987, 705 ILCS 405/1-1 et seq.

41. Supra note 38.

42. *City of Urbana v. Andrew* N.B., 211 Ill.2d 456, 813 N.E.2d 132, 286 Ill.Dec. 75 (Ill., 2004).

43. Id.

44. Id. at 460.

45. Id.

46. Id. at 474.

47. Id. at 471. See Illinois Unified Code of Corrections, 730 ILCS 5/5-6-3.1.

48. Id. at 476.

49. Ill. Sup. Ct. R. 578 (Proposed).

50. 725 ILCS 5/103-6.

51. Ill. Sup. Ct. R. 201(h).

52. Ill. Sup. Ct. R. 579 (Proposed); It is this author's opinion that the phrase "upon good cause shown" should be added to the end of Proposed Rule 579 to help clarify the court's discretion.

53. Supra note 11. Trial judge, in prosecution for battery, a misdemeanor, and resisting peace officer in violation of municipal ordinance, properly exercised his discretion in limiting defendant to discovery required by precedents governing discovery in misdemeanor cases, and convictions would not be overturned on theory that defendants' right to reciprocal discovery was violated.

54. 65 ILCS 5/1-2-9.

55. See *City of Chicago v. Wisniewski*, 54 Ill.2d 149, 152, 295 N.E.2d 453, 454 (Ill., 1973) (City's 17-month delay was excessive and required reversal of conviction).

56. Ill. Sup. Ct. R. 580 (Proposed). See *City of Mattoon v. Mentzer,* 282 Ill.App.3d 628, 635, 668 N.E.2d 601, 605, 218 Ill. Dec. 117, 121 (4th Dist. 1996) citing *City of Chicago v. Joyce*, 38 Ill.2d 368, 373, 232 N.E.2d 289, 291 (Ill., 1967).

57. *City of Chicago v. Brent*, 356 Ill. 40, 42 (Ill., 1934).

58. *City of Greenville v. Willman*, 44 Ill. App.2d 156, 194 N.E.2d 552 (4th Dist. 1963).

59. *Aaron Weinberg v. Village of Augusta*, 116 Ill.App. 423, 1904 WL 2026 (3d Dist. 1904).

60. *City of Decatur v. Chasteen*, 19 Ill.2d 204, 210, 166 N.E.2d 29, 33 (Ill., 1960).

61. Id.

62. *Schuringa v. City of Chicago*, 30 Ill.2d 504, 515, 198 N.E.2d 326, 332 (Ill., 1964).

63. *Nolan v. City of Granite City*, 162 Ill. App.3d 187, 191, 514 N.E.2d 1196, 1199, 113 Ill.Dec. 185, 188 (5th Dist. 1987).

64. Ill. Sup. Ct. R. 572(b) (Proposed).

65. Ill. Sup. Ct. R. 576(a) (Proposed).

66. *Village of Beckmeyer v. Wheelan,* 212 Ill.App.3d 287, 569 N.E.2d 1125, 155 Ill.Dec. 514 (5th Dist. 1991).

67. Id. at 293, citing *Buford v. Chief, Park Dist. Police*, 18 Ill.2d 265, 164 N.E.2d 57 (Ill., 1960).

68. Id.

69. IRPC 3.6, 3.8.

70. IRPC 3.6(b).

71. *Buckley v. Fitzsimmons,* 509 U.S. 259 (1993).

72. Ill. Sup. Ct. R. 581 (Proposed).

73. Ill. Sup. Ct. R. 581(a) (Proposed).

74. 348 Ill.App.3d 218, 807 N.E.2d 1150, 283 Ill.Dec. 309 (1st Dist. 2004).

75. Id.

76. *City of Chicago v. RN Realty, L.P.*, 357 Ill.App.3d 337, 827 N.E.2d 1077, 293 Ill.Dec. 196 (1st Dist. 2005).

77. *Village of Algonquin v. Berg*, 120 Ill. App.2d 184, 185, 256 N.E.2d 373, 374 (2d Dist. 1970) vesting determination in fine amounts in the jury; See also *City of Highland Park v. Curtis*, 83 Ill.App.2d 218, 226 N.E.2d 870 (2d Dist. 1967).

78. Ill. Sup. Ct. R. 581(b) (Proposed); 65 ILCS 5/1-2-1: "A penalty imposed for violation of an ordinance may include…some reasonable public service work such as but not limited to the picking up of litter in public parks or along public highways or the maintenance of public facilities."

79. *Caldwell v. Wright*, 25 Ill.App. 74, 1887 WL 5734 (3d Dist. 1886).

80. *President, etc., of, Town of Petersburg v. Mappin*, 14 Ill. 193, 1852 WL 4430 (Ill., 1852).

81. United States Sentencing Commission, Guidelines Manual, §§4A1.1(c);4A1.2(c)(2) (Nov. 2007).

82. USSG §4A1.2, comment. (n.12(B)).

83. For example, an offender with an Offense Level 37, Criminal History Points 9 (Category IV) before adding 4 Criminal History Points for local ordinance violations has a USSG Range of 292-365 months; after adding 4 Criminal History Points gives the offender a USSG Range of 360-life or a minimum range difference of 68 months (five years, eight months).

84. *United States v. Booker*, 543 U.S. 220 (2005).

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