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ILLINOIS STATE BAR ASSOCIATION

ADMINISTRATIVE LAW

The newsletter of the Illinois State Bar Association's Section on Administrative Law

Editor's comments about this issue

By J.A. Sebastian

This April 2011 issue of the Administrative Law newsletter includes a guest article written by two practitioners, Richard D. Boonstra and John C. Lillig, who decided to take on city hall. On behalf of a client, Downtown Disposal Services, Inc., that provided Chicago-area businesses with refuse containers on a contract basis, cited by the City of Chicago for four alleged violations of City ordinances, and found liable in the City's Department of Administrative Hearings ("DOAH"), was intent upon seeking administrative review in the Circuit Court of Cook County. In a unanimous decision released on February 3, 2011, written by Justice Lavin, with Justices Gallagher and Pucinski concurring, the First District Appellate Court reversed and remanded the case, holding that the Circuit Court's application of the "nullity rule" against Downtown Disposal did not further the purposes of the rule. See *Downtown Disposal Services, Inc. v. City of Chicago*, No. 1-10-0598 (1st Dist. App. Ct., Feb. 3, 2011) available at <www.state.il.us/court/Opinions>, for a discussion of the nullity rule.

In this issue, we provide the Chair's column and the case summaries compiled by the Honorable Edward J. Schoenbuam. A summary of recent legislation, captioned News you can use.

We invite you to attend the May 5th CLE, Municipal and State Administrative Law Judge Educational Program, at the Chicago regional office of the ISBA. A copy of the CLE program is included in this issue. We also invite you to go green when you attend the 135th annual meeting of the ISBA. See the ad on page 7 of this issue. ■

Chair's column

By Hon. Ann Breen-Greco

From February 10 to 13, I attended the American Bar Association's midyear meeting in my capacity as Chair-elect of the National Conference of the Administrative Law Judiciary. Prior to the meeting many of us spent a great deal of time working on an issue regarding Central Panels. Although Illinois does not yet have a Central Panel, the issue is of great interest because of the due process concerns raised by the publication of the 2010 *Model State Administrative Procedure Act (MSAPA)* for both existing and potential Central Panels.

Over half the states currently have separate entities known as Central Panels or Offices of Administrative Hearings composed entirely of Administrative Law Judges whose sole function is to conduct administrative hearings for other agencies. The ABA House of Delegates adopted a Model Act for states to follow in creating such agencies in 1997. However, Article 6 of the 2010 *Revised Model State Administrative Procedure Act (MSAPA)* recommended by the Uniform Law Commissioners did not follow the Model Act. Article 6 of the MSAPA instead places all final decisional authority on both facts and law ultimately in the agency. This largely negates the advantages of separating the litigating agency from the ALJ and is contrary to existing federal practice and existing ABA policy. In NCALJ's opinion, this weakens the authority of the Central Panels to administer impartial justice in cases in which agencies are litigants and deprives them of much of the authority granted under the 1997 ABA Model Act to reach decisions independently

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INSIDE

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Chair's column

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of the agency litigants.

Fortunately, the midyear meeting culminated in the passage by the ABA House of Delegates of Resolution 112, proposed by NCALJ, reaffirming American Bar Association support for the creation of state administrative central panels to adjudicate disputes:

> RESOLUTION
>
> RESOLVED, That the American Bar Association continues to support the judicial independence and authority granted to the Central Panel Administrative Law Judges in the Model Act Creating a State Central Hearing Agency (Office of Administrative Hearings), adopted by the ABA House of Delegates on February 3, 1997.

While this does not change the MSAPA, it is an important step for future action with respect to the creation of Central Panels.

Marc Loro also attended the ABA midyear as a Judicial Fellow of the National Highway Traffic Safety Association (NHTSA)/American Bar Association (ABA) Judicial Fellowship Program. As a Fellow, he is representing the ABA's National Conference of the Administrative Law Judiciary (NCALJ). Marc attended the NCALJ executive committee meeting and will work closely with the ABA's Judicial Division, of which NCALJ is a part, on projects and programs that are the subject of the NHTSA/ABA cooperative agreement. He will also be representing NHTSA at ABA functions and meetings in addition to participating in Judicial Division committee activities to accomplish the objectives of the Judicial Fellowship. Marc will report to our Section/Counsel regularly on these activities. ■

News you can use… The Illinois Open Meetings Act adds a "right to speak" provision

Effective January 1, 2011, Public Act 96-1473(HB5483) amended the Illinois Open Meetings Act. The legislature authorized a new provision to the statute, at 5 ILCS 120/2.06(g), which provides:

> (g) Any person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body.

In addition, the legislature amended the existing law to require action on business minutes within 30 days of the public body's meeting:

> (b) A public body shall approve the minutes of its open meeting within 30 days after that meeting or at the public body's second subsequent regular meeting, whichever is later.
>
> The minutes of meetings open to the public shall be available for public inspection within 10 ~~7~~ days after ~~of~~ the approval of such minutes by the public body.

Effective December 21, 2010, Public Act 96-1483 (HB5154) amended the Illinois Personnel Records Review Act to prohibit disclosure of performance evaluations. See 820 ILCS 40/11. ■

Downtown Disposal Services, Inc. v. City of Chicago

By Richard D. Boonstra and John C. Lillig

You can't fight City Hall. It may have been understandable if that cliched maxim had been our initial advice to our client, Downtown Disposal Services, Inc., a family-owned corporation, when its president approached us for representation on a new matter in early 2009. The client, which operated a refuse removal business that provided Chicago-area businesses with refuse containers on a contract basis, had been cited by the City of Chicago for four alleged violations of City ordinances, and found liable in the City's Department of Administrative Hearings ("DOAH") but was intent upon seeking administrative review in the Circuit Court of Cook County.

As part of our practice, we represent individuals, corporations, limited liability companies and partnerships and defend our clients in hearings at the DOAH and in the Circuit Court arising from the City's allegations of ordinance violations. In such cases, and others we have observed, we have traditionally seen the City emerge victorious. Sometimes it has seemed that the City's process of citing and prosecuting ordinance violations seems to vindicate the power of the City rather than the rights of the defendant individual or corporation.

With each hearing and appeal costing hard-working business clients time and attorney fees, it might have seemed prudent to advise Downtown Disposal to simply pay fines rather than contest liability for the alleged violations. However, as the client shared more facts with us, we began to view the case differently: the Downtown Disposal's president, Peter Van Tholen, said it had no notice of the alleged violations for several months. Van Tholen also said that the administrative law officer ("ALO") had not credited his unrebutted testimony about such lack of notice. Ultimately, we agreed to represent Downtown Disposal in its pursuit of administrative review. As it turned out, the case that Downtown Disposal brought us in early 2009 turned out not to be an ordinary case. For one thing, Downtown Disposal's

struggle against the City was only beginning. Additionally, the case has had a surprising history, and may not yet have reached its final outcome.

Downtown Disposal is a long-time client of our firm. It was originally owned by two business partners, and in the course of doing business sought and obtained numerous permits from the City to place refuse containers outside their clients' places of business. In 2003, one of the business partners shockingly committed suicide by shooting himself on Memorial Day. As the surviving partner, Van Tholen endeavored to continue the business, but relocated the company headquarters to a different address.

For four years, Van Tholen sought to notify the City of the new address of the business, both by mail and in person. Additionally, he attempted to change the address using the electronic system by which the City issues its permits. However, the system did not allow him to change the address, and because the permits were originally issued using the old address, the City continued to send permits to the old address.

In August, 2008, Van Tholen learned from an acquaintance who worked at a business located at the old address that the City had earlier sent notice of four citations to the old address. The citations were issued by the City on December 26, 2007 and on January 2, January 25, and March 19 of 2008. Because Downtown Disposal had not appeared at the DOAH hearings on the four citations, default judgment had been entered against it on each of the citations, each requiring it to pay a total of $1,540. Van Tholen filed four motions with DOAH to set aside the default judgments because of the lack of notice of the hearings to Downtown Disposal.

DOAH held a hearing on the motions on September 18, 2008. Despite Van Tholen presenting unrebutted testimony that notice was sent to the incorrect address and that he had attempted to change the address on file with the City for several years, the DOAH denied Downtown Disposal relief, finding that the City had sent notification to the "address on file" for Downtown Disposal and that Downtown Disposal had failed to provide "documentation" that it had contacted the City in an attempt to change the address prior to the issuance of the citations. *Downtown Disposal Services, Inc. v. City of Chicago*, No. 1 10 0598, at 3.

The DOAH found thus despite the fact that the City's own ordinance requires it to serve notice of alleged ordinance violations directed against a corporation to either the address of its registered agent or that of its principal place of business—not to whatever address may appear in the City's electronic permitting system. See Mun. Code of Chicago 2-14-74.[1] Furthermore, notice does not satisfy due process where the party's correct address is readily ascertainable or the government could easily learn it, but still mails notice to the wrong address. *In re Forfeiture of $2,354.00 United States Currency*, 326 Ill. App.3d 9,14 (2nd Dist. 2001).

Furthermore, a fact finder may not discount witness testimony unless it was impeached, contradicted or found to be inherently improbable. *Sweilem v. Illinois Dept. of Revenue*, 372 Ill.App.3d 475, 485 (1st Dist. 2007) Testimony is inherently improbable if it is contradictory to the laws of nature or universal human experience so as to be incredible and beyond the limits of human belief or if facts stated by the witness demonstrate the falsity of the testimony. *Id.* Nonetheless, the ALO did not credit Van Tholen's unrebutted testimony as to the lack of notice to Downtown Disposal of the alleged violations.

At the end of the administrative hearing, the following exchange occurred:

> ADMINISTRATIVE LAW OFFICER HARRIS: However, you do have a right to appeal the decision
>
> MR. VAN THOLEN: I will.
>
> ADMINISTRATIVE LAW OFFICER HARRIS: to the Circuit Court. That's fine, sir. You have a right to appeal the decision to the Circuit Court within 35 days of today's date, and you would do that in Room 602 of the Daley Center."

Downtown Disposal Services, Inc. v. City of Chicago, No. 1-10-0598, at 3.

Van Tholen filed four fill-in-the-blanks form complaints for administrative review on behalf of Downtown Disposal, and the cases were set for hearing in the Circuit Court. At this point, Van Tholen contacted our office, and attorney Rick Boonstra filed an Appearance on behalf of Downtown Disposal. After Boonstra filed his Appearance, the City moved to dismiss Downtown Disposal's Complaints, alleging that the "nullity rule," which prohibits a non-attorney from representing a corporation, required that the Circuit Court dismiss the complaints because Van Tholen, a non-attorney, had filed them. Boonstra responded by filing motions for leave to file amended complaints, contending that the lack of an attorney signature was

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a technical, rather than substantive defect which Downtown Disposal sought to correct by filing amended complaints signed by Boonstra, its attorney.

In addition, Boonstra filed responses to the City's motions to dismiss, contending that the "nullity rule" should not be applied automatically, and certainly not where, as here, no legal expertise was required to complete the fill-in-the-blanks form complaints that Van Tholen had filed.

The City responded by contending that Downtown Disposal could not amend its complaints, as the 35-day window during which it could amend had long passed.

As this pleading process unfolded, we realized what was really going on: the City's DOAH had allowed Van Tholen to represent Downtown Disposal at its administrative hearing, and informed Van Tholen of his right to appeal. The City doubtless knew, however, that it would move to dismiss the complaints under the "nullity rule" if Van Tholen were the one who signed the fill-in-the-blanks form complaints seeking administrative review. The City also doubtless knew that such motion would be heard after the 35-day window during which Downtown Disposal could amend its complaints. Thus the City was aware that were Van Tholen to sign and file the form complaints, the City would prevail against Downtown Disposal.

Boonstra was waiting for the case to be called at one hearing when he observed a sight that gave him pause: a small business owner, an immigrant from Poland, went before the judge with a familiar story—like Van Tholen, he had signed form complaints seeking administrative review of ordinance violations in the circuit court, and the City had moved to dismiss, citing the "nullity rule" and the closing of the 35-day window for amendment. The judge dismissed the business owner's case. Boonstra, who has represented numerous immigrants from around the world during his 27 years in practice, was struck both by the apparent injustice of this scenario and the apparent frequency with which it occurs in the Circuit Court of Cook County. He realized that if Downtown Disposal were to prevail against the City, it could result in a level playing field—via a fair hearing and due process—for dozens, if not hundreds of small business owners in the City of Chicago. He resolved that if Downtown Disposal did not prevail in the Circuit Court that he would appeal to the Appellate Court.

At the hearing on the City's Motions to Dismiss on January 29, 2010, the trial judge, the Hon. James McGing, discussed the City's regular application of the "nullity rule" to administrative review plaintiffs like Downtown Disposal, whose complaints are dismissed for lack of attorney representation—even when they have subsequently retained attorneys—and who do not have the opportunity to amend because the 35-day window has passed. The judge found that "this is a troubling issue for the Court" and stated that in administrative review cases, the trial court was "confronted with non-attorneys filing pleadings" on a daily basis. *Downtown Disposal Services, Inc. v. City of Chicago*, No. 1 10 0598, at 5. He indicated that he believed that the Appellate Court should revisit the issue. Id. at 6-7. However, he asserted that as a trial judge, he had no option but to follow what he believed was 1st District precedent, and grant the City's Motions to Dismiss. As a result, he declared Downtown Disposal's Motions to Amend moot. Id. at 5.

Downtown Disposal appealed. On appeal, Downtown Disposal first noted in its briefs that on an appeal from the Circuit Court in an administrative review case, the Appellate Court must review the administrative proceeding, not the Circuit Court proceeding. Downtown Disposal contended that it had been denied due process in the DOAH because it had not received timely notice of the alleged violations and because the ALO had not credited Van Tholen's unrebutted testimony as to, among other things, the lack of notice. Downtown Disposal further argued that the application of the "nullity rule" to it and to other corporate administrative review plaintiffs violated its rights to Due Process under the 5th and 14th Amendments of the United States Constitution and under Article 1, section 2 of the Illinois Constitution and contended that such application does not advance the purposes of the "nullity rule:" to protect parties from the schemes of the unscrupulous and the mistakes of the ignorant.[2] Downtown Disposal cited the Third District case, *Pratt Holdampf v. Trinity Medical Center,* 338 Ill.App.3d 1079 (3rd Dist. 2003) (appellate court reinstated complaint dismissed under "nullity rule" where "risks to individual clients and to the integrity of the legal system ... [were] not present"). and the Fourth District case, *McEvers v. Stout*, 218 Ill. App.3d 469 (4th Dist. 1991) (appellate court allowed plaintiffs to amend complaint earlier dismissed with prejudice under "nullity rule" because '"[The] nullity rule appears to punish the litigant rather than the offending attorney"[3] who signed complaint despite not being licensed to practice law in Illinois). Downtown Disposal also noted that other jurisdictions do not punish technical errors in such a draconian manner, citing as illustrative cases from twelve other states where courts allowed corporations or other parties to cure defects based on lack of attorney representation.

In its briefs, the City failed to address the administrative proceeding at all. Instead, the City defended the application of the "nullity rule" against Downtown Disposal. The City rejected Downtown Disposal's argument that the application of the "nullity rule" against it did not further the purposes of the rule, asserting somewhat cynically that just because the rule may be ineffective does not mean that such ineffectiveness makes it invalid. The City also rejected Downtown Disposal's citations to out-of-state authority, contending in a footnote that, "it is neither unusual nor inappropriate for the Illinois judiciary to adopt a minority position."

The City further attacked Downtown Disposal's constitutional arguments, claiming that because it had failed to notify the Attorney General that it was "challenging" two statutes that deal with lack of attorney representation, it had waived its constitutional "challenges." Downtown Disposal responded by noting that its mention of the two statutes was merely a precautionary measure, and that its briefs made clear that it was challenging what it perceived as the unconstitutional application of the "nullity rule," which is derived from Illinois case law to deny corporate litigants due process.

Finally, the City emphasized the First District's ruling in *Siakpere v. City of Chicago*, 374 Ill.App.3d 1079 (1st Dist. 2007), which upheld the dismissal of a complaint in a case containing almost identical facts to those of Downtown Disposal's case. The City found it "[n]otabl[e]" that Downtown Disposal "makes no effort" to distinguish *Siakpere*. Downtown Disposal responded by asserting that the City had missed the point of its arguments: far from needing to distinguish *Siakpere*, Downtown Disposal pointed to *Siakpere* as the classic example of the unjust application of the "nullity rule" as it is currently applied in the Circuit Court. Downtown Disposal respectfully asked the First District to reconsider its ruling in *Siakpere* and overrule it if necessary.

In a unanimous decision released on February 3, 2011, written by Justice Lavin, with Justices Gallagher and Pucinski concurring, the First District reversed and remanded the

case, holding that the Circuit Court's application of the "nullity rule" against Downtown Disposal did not further the purposes of the rule. In so holding, the court relied on *Pratt Holdampf* and *McEvers* as well as the Illinois Supreme Court's decision in *Applebaum v. Rush University Medical Center*, 231 Ill.2d 429 (2008) (nullity rule "permits"dismissal of the cause where non-attorney attempts to represent party). The court noted that had the trial judge recognized that under *Applebaum*, the application of the "nullity rule" is not automatic, he likely would not have applied it, given his questions about the application of the rule in this case. *Downtown Disposal Services, Inc. v. City of Chicago*, No. 1-10-0598, at 19. Furthermore, the court indicated that it did "not see how the purposes of the nullity rule here would be furthered by its application under this specific set of facts." *Id*. at 20. Noting that the City failed to challenge Van Tholen's representation of Downtown Disposal until Boonstra filed his appearance, some six months after the complaints were filed, the court stated, "until that point, the City was not suffering from the schemes of the unscrupulous or the mistakes of the ignorant." *Id*. The court further noted that the City had failed to explain how—if at all—the purposes of the "nullity rule" would be implicated in this case. *Id*. The court stated, "we find that under these circumstances, permitting DD to file an amended complaint curing the defect in the original complaint is more appropriate than the harsh result of dismissing the original complaint with prejudice." *Id*. at 21.

While the court found in Downtown Disposal's favor, it dodged the constitutional issues, most notably Downtown Disposal's argument that it was deprived of due process in the administrative hearing due to the lack of notice of the alleged violations and the ALO's failure to credit Van Tholen's unrebutted testimony. The First District held that these issues were not properly before it, because Downtown Disposal had not raised them at the trial court level. *Id*. at 7-8. In so ruling, the First District was apparently untroubled by the fact that the reason why Downtown Disposal had not raised the arguments at the trial court level was that its complaint had been dismissed in a manner that the Court had deemed unfair in the same opinion. As to the rule that the Appellate Court must review the administrative hearing, not the circuit court decision, the First District asserted that such "rule is generally applied . . . to review of an agency's resolution of a claim on its merits." *Id*. at 7.

On March 11, 2011 the City filed a Petition for Leave to Appeal the Appellate Court's decision to the Illinois Supreme Court.

We are glad that our advice to Downtown Disposal did not begin and end with the old cliche that "you can't fight City Hall." We are glad that we pursued an appeal on behalf of our client. In doing so, we not only helped the client but may have also helped stop the unfair application of the "nullity rule" in the Circuit Court of Cook County that affects an unknown number of family businesses and other corporate litigants each year. ■

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1. In the DOAH hearing, the City's attorney improperly characterized the incorrect address in the electronic permitting system as the address Downtown Disposal was "providing" to the City, and incorrectly stated that because the address was in the system, service was proper at that address. The ALO incorrectly stated that the City was "required" to serve Downtown Disposal at the address in the electronic permitting system, and incorrectly stated that the burden was on Downtown Disposal to alert the city if its address was other than that contained in the system.

2. Downtown Disposal also argued that the Circuit Court's application of the "nullity rule" violated corporate parties' right to equal protection under the U.S. and Illinois Constitutions and that the City had waived its right to contest Downtown Disposal's representation by a non-attorney by failing to raise it at the administrative level.

3. The *McEvers* court noted that such punishment "might be advisable, if we could legitimately assume that litigants are aware of the rules relating to the practice of law. Assuming such would be unreasonable." *McEvers v. Stout*, 218 Ill.App.3d 469, 472 (4th Dist. 1991).

Richard D. Boonstra is a partner in the litigation practice group at Hoogendoorn & Talbot LLP in Chicago. He was admitted to practice in Illinois in 1983 after earning his J.D. from the John Marshall Law School.

John C. Lillig is an associate in the litigation practice group at Hoogendoorn & Talbot. He was admitted to practice in Illinois in 2010 after earning his J.D. from DePaul University College of Law.

Case summaries

Compiled by Hon. Edward J. Schoenbaum

Elections 1st Dist.

***Stinson v. The Chicago Board of Election Commissioners*, No. 1-11-0346 (February 25, 2011) Cook Co., 5th Div. (FITZGERALD SMITH) Affirmed.**

Candidate for alderman was found to be in debt to City for $600 in parking tickets, and was thus ineligible for candidacy under Section 3.1-10-5(b) of Municipal Code. That section contains no requirement that a candidate must have received sufficient notice of debt, and thus Board of Elections erred in allowing candidate's name to appear on ballot by reason of insufficient notice. (HOWSE and EPSTEIN, concurring).

***Jackson v. Board of Election Commissioners of The City of Chicago*, No. 1-11-0361 (February 18, 2011) Cook Co., 4th Div. (PUCINSKI) Reversed.**

Candidate for alderman who is in arrears on property taxes is also in arrears in payment of taxes due to the City, due to her improperly claiming homeowner's exemptions on multiple properties for previous tax years, and candidacy is thus prohibited by Section 3.1-10-5(b) of Illinois Municipal Code which bars candidacy of any person in arrears in payment of tax or other debt due to the municipality. Even though City stated in letter that candidate did not owe any debt to City, the statutory enactments of property tax collection system establish that portions of property tax levied by City, even though collected by County, are taxes due to the City. (GALLAGHER and LAVIN, concurring).

***Stinson v. The Chicago Board of Election Commissioners*, No. 1-11-0346 (February 25, 2011) Cook Co., 5th Div. (FITZGERALD SMITH) Affirmed. (Court opinion corrected 3/1/11).**

Candidate for alderman was found to be in debt to City for $600 in parking tickets,

and was thus ineligible for candidacy under Section 3.1-10-5(b) of Municipal Code.

That section contains no requirement that a candidate must have received sufficient notice of debt, and thus Board of Elections erred in allowing candidate's name to appear on ballot by reason of insufficient notice. (HOWSE and EPSTEIN, concurring).

Pensions 2d Dist.

***Wabash County, Illinois v. Illinois Municipal Retirement Fund*, No. 2-10-0025 (February 28, 2011) Du Page Co. (HUTCHINSON) Affirmed in part and reversed in part; remanded.**

Plaintiff County filed complaint alleging that IMRF made erroneous decision by granting City Attorney (who was later State's Attorney) pension credits for the years he served as City Attorney while in private practice, charging him a contribution charge as a result of the credited years, and charging Plaintiff $540,990 as a result of those credits. Plaintiff's request for correction of records. Seeking declaratory judgment against IMRF's decision is an impermissible independent attack on IMRF's administrative decision, and IMRF has broad authority for administrative decisions as to participation and coverage and to authorize contributions. Plaintiff sufficiently alleged cause of action for administrative review, and IMRF's dismissal of Plaitniff's request for correction of records, pursuant to laches, was against manifest weight of evidence. (McLAREN and HUDSON, concurring).

Pensions 4th Dist.

***Adams v. The Board of Trustees of the Teachers' Retirement System of the State of Illinois*, No. 4-10-0568 (February 18, 2011) Sangamon Co. (KNECHT) Affirmed.**

Monies paid to director of alternative high school in illegal kickback scheme, where regional superintendent agreed to a pay raise for director on condition that she pay him half of her net pay raise, did not constitute salary for pension purposes, and thus her pension benefits were properly reduced by the amount of monies paid in scheme.

Director would not have received salary raise and enhanced pension benefits but for her kickbacks to superintendent; monies were in consideration for participation in scheme and not additional compensation for performing extra duties. (STEIGMANN and McCULLOUGH, concurring).

Pensions 1st Dist.

***Collins v. The Retirement Board of the Policemen's Annuity and Benefit Fund of the City of Chicago*, No. 1-10-0994 (February 10, 2011) Cook Co., 6th Div. (McBRIDE) Affirmed.**

Court properly found that Plaintiff's position as a police dispatcher aide, for several years prior to her work as a police officer, was not "investigative work" as required for pension credit under Section 5-214(c) of Illinois Pension Code. Plaintiff did not participate in legal inquiries, and did not make systematic inquiries or examinations to gather evidence, but instead prepared initial card of information from 911 call and passed it on to dispatcher. (GARCIA and CAHILL, concurring).

Tax 1st Dist.

***DTCT v. The City of Chicago Department of Revenue*, Nos. 1-09-2272, 1-09-2274, 1-09-2275 Cons (February 18, 2011) Cook Co., 6th Div. (CAHILL) Affirmed.**

City Department of Revenue imposed tax assessment against a group of corporations under the employer's expense tax which applies to businesses with 50 or more full-time employees, based on Department's finding that it could combine the employees of commonly owned, though separately incorporated, McDonald's restaurants. Consolidation of employees of restaurants was proper, as plain language of Chicago Municipal Code indicates that City intended that employer's tax would apply to Plaintiffs' business arrangements, given ordinance's broad definition of "business." (McBRIDE, concurring; GARCIA, dissenting.)

Workers' Compensation 1st Dist.

***Metropolitan Water Reclamation District of Greater Chicago v. Illinois Workers' Compensation Commission*, No. 1-09-2546WC (February 22, 2011) Cook Co., WC Div. (HOFFMAN) Reversed.**

Accounting clerk employee fractured both wrists when she stumbled and fell on a six-inch dip in an inclined commercial driveway while walking to bank to deposit checks in employer's account. Claimant established that her job duties exposed her to a risk greater than that faced by the general public, as dip in driveway was a street hazard and a job risk to claimant, who was required to use the public way to make bank deposits two or three times per week. Thus, injuries sustained arose out of and in course of her employment, entitling her to worker's compensation benefits. (McCULLOUGH, HUDSON, and STEWART, concurring; HOLDRIDGE, specially concurring).

Aliens

***Kiorkis v. Holder*, No. 10-1397 (February 28, 2011) Petition for Review, Order of Bd. of Immigration Appeals Petition denied.**

Record contained sufficient evidence to support Bd.'s determination that alien, who had conceded removability based on his drug-possession conviction, had failed to establish that he had well-established fear of future persecution based on his Assyrian Christian religion.

Section 1252(a)(2)(C) of INA limits review of alien's appeal to only legal determinations of Bd., and record did not support alien's claim that: (1) Bd. failed to acknowledge his Hezbollah-related fear of future persecution; (2) Bd. ignored alien's fear of future persecution claims that were unrelated to his religion; and (3) Bd. applied wrong evidentiary standard when determining likelihood of future persecution.

School Law

***Zamecnik v. Indian Prairie School Dist # 204*, Nos. 10-2485 & 10-3635 Cons. (March 1, 2011) N.D. Ill., E. Div. Affirmed.**

Dist. Ct. did not err in granting plaintiffs-students' request to enter permanent injunction against defendants-School District officials that essentially allowed instant plaintiffs and other students ability to wear clothing or personal items bearing slogan "Be Happy, Not Gay" even though defendants believed that such slogan violated school rule forbidding derogatory comments pertaining to sexual orientation. Defendants allowed some students to participate in day of silence in support of homosexual students, and thus defendants could not stifle criticism of homosexuality where instant slogan was not inflammatory. Moreover, Ct. rejected defendants' argument that it had reasonable belief that slogan posed threat of substantial disruption in view of evidence that some homosexual students experienced harassment in school and one plaintiff experienced harassment from other students sympathetic to homosexual students.

Also entry of permanent injunction was not moot even though both plaintiffs no longer attended school since injunction covered all students at instant high school. ■

Save the date: May 5, 2011

Municipal and State Administrative Law Judge Educational Program

Presented by the ISBA Administrative Law Section

Chicago—ISBA Regional Office
20 South Clark Street, Suite 900
8:00 a.m. - 5:00 p.m.

Learn general procedural rules and regulations for conducting administrative hearings, focusing on hearing structure and dealing with Pro Se respondents, Judicial Demeanor/Conduct and Effective Communication. We will also identify the principles and importance of effective case flow management and how to apply those principles in order to provide prompt and affordable justice, and improve public trust & confidence in government.

PROGRAM AGENDA

8:00-8:30 a.m.: Registration and Coffee

8:30-10:00 a.m.: Rules of Procedure in Administrative Adjudication

Participants will learn general procedural rules and regulations for conducting administrative hearings, focusing on hearing structure and dealing with Pro Se respondents, Judicial Demeanor/Conduct and Effective Communication.

— *Hon. Michelle McSwain, Division Chief, Senior Administrative Law Judge, Chicago Department of Administrative Hearings*
— *Hon. Camela Gardner, Bureau Chief, Illinois Department of Human Service*
— *Hon. Timothy C. Evans, Chief Judge, Circuit Court of Cook County (invited but not confirmed)*

10:00-10:10 a.m.: Break

10:10-11:10 a.m.: Case Flow Management in Administrative Adjudication

Participants will learn the principles and importance of effective case flow management and how to apply those principles in order to provide prompt and affordable justice, and improve public trust & confidence in government

— *Hon. Sheila Harrell, Bureau Chief/Chief Administrative Law Judge, Bureau of Administrative Hearings, Illinois Department of Human Services.*
— *Hon. Edward J. Schoenbaum, Administrative Law Judge, Cook County Department of Administrative Hearings*
— *Hon. Claudia Sainsot, Administrative Law Judge, Illinois Commerce Commission*
— *Hon. Peter Plummer, Michigan Central Panel*

11:10 a.m.-12:10 p.m.: Evidence in Administrative Adjudication

Participants will: 1) become familiar with the Illinois Supreme Court Rules of Evidence as they apply to administrative law hearings; and 2) improve their ability to apply the rules in actual cases.

— *Professor Allen Shoenberger, Loyola University School of Law*

12:10-1:15 p.m.: Lunch

1:15-2:45 p.m.: Decision Making and Issuing Orders in Administrative Adjudication

Participants will learn: 1) different decision-making styles and identify theories of reasoning; 2) recognize the use of judicial discretion and analyze conflicts of interest and ethical dilemmas; 3) assess the weight of the evidence; 4) recognize how governing ordinances/statutes and municipal status may affect the decision and order; and 5) clearly write and communicate decisions.

— *Hon. David Eterno, Administrative Law Judge, City of Chicago, Department of Administrative Hearings*
— *Hon. Denis Guest, Administrative Law Judge, City of Chicago and Cook County Department of Administrative Hearings*
— *Hon. Peter Plummer, Michigan Central Panel*

2:45-3:00 p.m.: Break

3:00-4:00 Hypothetical cases and Mock hearings (including rulings on evidence)

Participants will: 1) be able to rule accurately on hearsay, foundation, privileges and burden of proof; 2) make correct determinations concerning lay and expert witness; and 3) become familiar with the residuum rule, and official/judicial notice.

— *Hon. Peter Plummer, Michigan Central Panel*
— *Hon. Laura Parry, Administrative Law Judge, City of Chicago, Department of Administrative Hearings and Hearing Officer, City of Chicago, Human Resources Board*
— *Patti Gregory-Chang, Senior Assistant Corporation Counsel, City of Chicago Law Department*

4:00-5:00 Judicial Review of Administrative Decisions

Participants will be able to understand their responsibilities to develop an adequate record and to write clear decisions that will be affirmed on judicial review.

— *Hon. Alexander P. White, Circuit Court of Cook County*
— *Hon. Shelvin Louise Marie Hall, Justice Illinois Appellate Court, First District*
— *Hon. Nathaniel Howse, Justice, Illinois Appellate Court, First District*

Go to www.isba.org/cle for more details and registration information.

The members of the ISBA Administrative Law Section Council met on April 2, 2011, at Starved Rock State Park, reviewed legislation and discussed revision of the ISBA Administrative Law Handbook. The members present include, in the front row, left to right, Jewel Klein with granddaughter Ellen Murray; Sheila J. Harrell, Ann Breen-Greco, and Yolaine M. Dauphin. In the back row, Julie Ann Sebastian, Michael B. Weinstein, William A. Price, and Carl R. Draper. Not pictured but participating by phone were Patti S. Gregory and Lynne Davis, ISBA staff liaison.

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