ILLINOIS MUNICIPAL LEAGUE
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Ancel Glink | Diamond Bush DiCianni & Krafthefer

Your Local Government Attorneys

MAIN OFFICE:
140 S. DEARBORN STREET, 6TH FL.
CHICAGO, ILLINOIS 60603

PHONE: 312-782-7606
FAX: 312-782-0943
WWW.ANCELGLINK.COM

OTHER OFFICE LOCATIONS:
175 E. HAWTHORN PARKWAY
VERNON HILLS, ILLINOIS 60061
(847) 247-7400

4 E. TERRA COTTA AVENUE
CRYSTAL LAKE, ILLINOIS 60014
(815) 477-8980

1979 MILL STREET, SUITE 207
NAPERVILLE, ILLINOIS 60563
(630) 596-4610

207 NORTH JEFFERSON, SUITE 402
BLOOMINGTON, ILLINOIS 61701
(309) 828-1990

SATURDAY, OCTOBER 19, 2013
1:30 P.M. – 3:45 P.M.

COUNCIL WARS AND POWER PLAYS
(QUESTIONS & ANSWERS)

PRESENTERS:

STEWART H. DIAMOND

ROBERT K. BUSH

KERI-LYN J. KRAFTHEFER

JULIE A. TAPPENDORF

About the Firm:

Ancel Glink, now in its 82nd year, is a law firm with offices in the Chicago Metropolitan Area and in Bloomington. The law firm employs approximately 35 attorneys who principally represent municipalities, park districts, school districts, townships, fire protection districts and intergovernmental entities. The law firm pioneered in the creation and the representation of governmental self-insurance pools and continues to represent many pools and other intergovernmental entities and to provide legal defense work for these clients.

About the Presenters:

Stewart H. Diamond is a partner and shareholder with Ancel, Glink, Diamond, Bush, DiCianni and Krafthefer, P.C. He has represented dozens of Illinois governmental bodies as regular or special counsel. Stewart received his undergraduate and law school degrees from the University of Chicago and has taught law at The John Marshall Law School and Northwestern University Law School. He has served as the Chairman of the Local Governmental Section council of the Illinois State Bar Association. He has represented both home rule and non-home rule municipalities and he has been asked to speak in municipalities considering home rule referenda. Stewart is the primary editor of the Illinois Municipal Handbook. He has been named by Illinois Super Lawyers as one of the top attorneys representing cities and municipalities each year that distinction has been awarded. Stewart currently serves as the Village Attorney for the Village of University Park. He advises municipalities, counties, park districts, townships, fire protection districts, library districts, water agencies and many intergovernmental agencies.

Robert K. Bush is a partner and shareholder with Ancel, Glink, Diamond, Bush, DiCianni and Krafthefer, P.C. Rob has significant experience representing numerous Illinois municipalities, both in a corporate and litigation setting in a wide range of issues. He has represented Illinois municipalities before numerous federal and state courts, and has represented local liquor commissions, zoning commissions and other administrative bodies. Rob has been named by Illinois Super Lawyers as one of the top attorneys representing cities, municipalities and other local governments each year since the inception of such awards. Mr. Bush presently serves as Village Attorney for the Villages of Harwood Heights and Lisle, and as Park District Counsel to the Cary Park District, the Hoffman Estates Park District, among others. Rob works closely with the many self-insured pools represented by Ancel Glink and is the corporate counsel for various self-insurance risk pools throughout Illinois. Rob serves as the firm's supervisor of its workers' compensation practice. He regularly presents before state and national organizations on workers' compensation, ADA and FMLA issues.

Keri-Lyn J. Krafthefer is a partner and shareholder with Ancel, Glink, Diamond, Bush, DiCianni and Krafthefer, P.C. Keri-Lyn has spent her entire career representing municipal

officials and municipal entities in day-to-day corporate matters, procedural issues, election matters, labor and employment issues and litigation. In October 2013, Keri-Lyn was spotlighted in Chicago Magazine's article on "The Top Women Attorneys in Illinois." She has also been named by Illinois Super Lawyers as one of the top attorneys practicing law related to cities and municipalities every year since that honor was first awarded. Keri-Lyn is an editor of the Illinois Municipal Handbook. Keri-Lyn currently serves as the Village Attorney for the Villages of Worth and Wadsworth. Keri-Lyn also serves as one of the primary attorneys for the Municipal Clerks of Illinois. When she is not practicing municipal law, she serves as a Kindergarten room mother and chases around her five-year old son, Kyle.

Julie Tappendorf is a partner with Ancel, Glink, Diamond, Bush, DiCianni & Krafthefer, P.C. in Chicago. She practices in the area of local government, land use, and zoning litigation. Julie is a frequent speaker at local and national conferences on issues such as social networking by government bodies, sunshine laws, ethics, and a variety of land use topics. Julie has also published on a variety of local government issues, including a land use casebook, books on development agreements and exactions, and chapters and articles on social media, annexation and subdivisions, and regulating distressed properties. The American Bar Association recently published a book she co-authored titled Social Media and Local Governments: Navigating the New Public Square (ABA Section of State & Local Government, 2013).

Julie currently serves as Village Attorney for Gilberts, Lindenhurst, and Wadsworth and counsel to the Glencoe Police Pension Fund. She is an Adjunct Professor at The John Marshall Law School. Julie earned her J.D. from the University of Hawaii and her B.A. from Illinois State University. Prior to her law career, she served in the U.S. Army, Military Intelligence Branch, as a Korean cryptologic-linguist. Julie is also the author and moderator of the local government blog, Municipal Minute, and the social media blog, Strategically Social.

DIAMOND'S 30-MINUTE -- 30 RULES OF ORDER

Thomas Jefferson developed a set of Rules of Order for the United States Congress. In part, he based his draft on rules which had been used in the British Houses of Parliament. Rules of this nature were developed for large legislative bodies, which are usually continuously in session. Such rules are far too complicated, and do not deal with the procedural issues that generally occur in municipalities that have small legislative bodies, and frequently meet only once or twice a month. It is, therefore, not surprising that General Henry M. Roberts decided, in 1876, that it was time to develop another set of rules of procedure. Robert's Rules of Order have been widely used in Illinois, and across the Country. With regards to Illinois governments, however, Robert's rules and other similar 19th and 20th Century rules are simply unnecessarily complex for usage in most Illinois governmental bodies. The rules are lengthy, subject to interpretation and not easy to understand. In some governmental bodies, one or two members of the legislative body or the executive claim to be an expert on these rules, and lord over those who do not have the time or interest in becoming parliamentarians.

My experience is that in almost every case, the procedural issues and problems that occur at the legislative level of Illinois governmental bodies are very direct and simple. For that reason, I have prepared Diamond's 30-Minute -- 30 Rules of Order. It is my hope that these rules can be read through and put into use in 30 minutes or less. The Rules deal with all common problems and issues raised during a typical meeting of the Corporate Authorities of an Illinois governmental body. Rule 23, called "The Problem Solver," is intended to deal with unusual or difficult problems. It allows the governmental body to decide by majority vote of a quorum how to resolve any new problem not otherwise covered in these simple rules. The main purpose of a set of rules of order is to allow for fairness and certainty. A vote of the majority of a quorum, however, provided it is otherwise lawful, should prevail after brief and fair debate. In the one out of a hundred situations in which the other simple rules of order do not deal with a question before the legislative body, the Problem Solver will allow for a motion to be made to resolve the problem. Once seconded and with limited debate the legislative body can make a decision and move on. In most cases, that decision will be made very quickly.

Because the Illinois statutes contain few mandatory rules of order for any governmental body, almost any set of rules adopted, will be upheld by the court systems both State and Federal. I hope that your government will consider adopting Diamond's 30-Minute -- 30 Rules of Order. These Rules are intended to simplify the mysteries of procedures and should allow the legislative process to take place more quickly and with less drama. If you adopt these rules, I would be pleased to hear how they work in your community. The rules are available on our website: www.ancelglink.com.

I. Meetings & Procedures

Q1. We have a lot of disgruntled mean (and ugly!) people that come to our meetings. Public comment takes two hours at each meeting. These mean, ugly people always complain and say the same mean nasty things. We have "Coffee with the Mayor" at Village Hall available for the residents to come and chat with public officials every Saturday. Can we refuse to allow citizens to speak at our public meetings, tell them to go to a neighboring town's meetings (we'll give them free maps on how to get there) or tell them to go to Coffee with the Mayor?????

A1. No. The Open Meetings Act requires that any person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body. (5 ILCS 120/206(g)). While the Open Meetings Act does not explicitly state that they have the right to address public officials at a public meeting, we believe it is likely that the Public Access Counselor's office will find that you are required to. Your reasonable rules can include a time limit on individual speakers and a limit on the total time expended for public comment. You cannot require them not to be ugly.

Q2. Can trustees of a Village Board schedule a special meeting to conduct public business and exclude the mayor (who doesn't vote anyway) so long as a quorum of the Village Board is in attendance at that special meeting?

A2. No, trustees of a Village Board cannot exclude the mayor from a special meeting of the Village Board. On a 7 member Village Board, 3 trustees have the authority to schedule a special meeting, and 4 trustees would constitute a quorum for purposes of transacting public business. However, a Village Board consists of the 6 trustees and the mayor. In scheduling a special meeting of the Village Board, the trustees must invite all 7 members of the Village Board and permit all 7 members to attend the special meeting.

Q3. What can a Board, Council or Committee do if no quorum is present?

A3. Not much. A City Council or Village Board can seek to compel the attendance of absent members or adjourn to a later time or day when a quorum is expected to be present. A bit unclear is whether the members present, if they constitute a majority of a quorum, can simply tell the members of the public in attendance that they are prepared to listen to comments or questions from the public without providing answers. If less than a majority of a quorum is present, for example in the case of two Trustees, no official meeting has occurred, and the two Trustees can listen to the public and share their views.

Q4. Can the Board limit the comments from a member, including the presiding officer?

A4. Yes. Any legislative body, if it administers the rules equally and fairly, can reasonably limit the comments of any member of that body. Such limitations often involve the time allowed for comment, whether the member is not allowed to comment twice until all other members have been given an opportunity, and limiting the number of times a member can address the Board or Council.

Q5. Is there a way to compel a governmental body to vote?

A5. Citizens cannot compel a governmental body to vote on an issue although a petition seeking such action may be presented. If a motion is made and seconded, and reasonable discussion has taken place, a motion can be taken to end the debate and "call the question."

Q6. Who establishes the Agenda for a meeting?

A6. In most municipalities, the Mayor and the Clerk jointly establish the Agenda. By a motion or ordinance, the legislative body can establish another method by which the Agenda is set.

Q7. How many votes are required to approve a consent agenda which contains an annexation agreement?

A7. Section 3.1-40-40 describes the procedural and substantive requirements for using a consent or omnibus agenda. In this section, it states that acting on the consent agenda is equivalent to and will have like effect as if the vote in each case had been taken separately on the question of the passage of each ordinance, order, resolution, and motion included. As a result, to pass all of the items on the consent agenda you must have enough votes to pass any one of the items separately. Since Section 11-15.1-3 requires an annexation agreement be adopted by a 2/3 vote of the corporate authorities, that is the minimum vote required to adopt the entire consent agenda. For this reason, some communities will exclude items from the consent agenda when a super majority vote is required.

Q8. Can a Board or Committee act on a matter which does not appear on the Agenda?

A8. No. Although it is a strange result, an Appellate Court case, never overruled, provides that, even in a regular meeting, while new items may be added to the Agenda, they cannot be acted upon. At a special meeting, the only items that can be discussed and acted upon are those contained on the Agenda. If the matter must be acted upon as an emergency, the law allows an emergency meeting to be called with notice to the Board or Council, the Committee, the public and the press given with as much notice as possible. To be valid, it really must be an emergency.

Q9. If a Mayor engages in disorderly conduct during a Board meeting, may the City Council vote to expel the Mayor from that meeting?

A9. No. Although Section 3.1-40-15 of the Municipal Code authorizes City Councils to establish rules and expel their members from a meeting for disorderly conduct following a vote of concurrence by 2/3 of the alderman then holding office, the Illinois Supreme Court has held that a City Council has no authority to expel a Mayor. *People ex rel. Iddings v. Dreher,* 302 Ill. 50, 134 N.E. 22, Ill. 1922

Hypothetical Scenario Giving Rise to Q10-14:

A Village with six trustees and a Village President discovers in advance that the Village President and two trustees and will be unable to attend the upcoming meeting. Because a four member quorum will be in attendance, the Village elects to proceed with the meeting as scheduled. Because the President is not in attendance, the first order of business after the Village Clerk opens the meeting is to appoint one of the trustees a temporary chairman to run the meeting. A motion is made to appoint Trustee Montague. The motion is seconded. A roll call vote is taken on the motion. Two trustees vote "aye," Montague's archrival, Trustee Capulet, votes "nay," and Montague, prone to modesty, abstains from the vote. The resulting vote is therefore 2 – 1 – 1.

Q10. Is Trustee Montague duly appointed to serve as temporary chair?

A10. Probably. Section 3.1-35-35 of the Illinois Municipal Code does not stipulate whether an affirmative or concurring vote of the majority is required to appoint the temporary chair, stating only that the corporate authorities "may elect one of their members to act as a temporary chairman." In the absence of such a specification, the result of *County of Kankakee v. Anthony,* 304 Ill.App.3d 1040 (3d Dist. 1999), suggests that an abstention is simply a nullity, not counting towards the 2 "aye" votes or the single "nay" vote. The two supporting votes do not constitute a majority of those present, but do make for a majority of those that cast votes. Thus, by a narrow 2 – 1 margin, Trustee Montague becomes Temporary Chair Montague.

Q11. Did Trustee Montague have to refrain from voting?

A11. No. He has no conflict of interest within the meaning of Illinois statutes, which focus primarily on prohibiting elected officials voting or participating in matters in which they have pecuniary interests that rise above certain threshold.

Q12. Should the Village Board have appointed Trustee Montague as President pro tem instead?

A12. No, since the Village President was only temporarily unavailable for the night, the proper motion is to appoint a temporary chair, as opposed to a president pro tem or a temporary

president. Pursuant to 65 ILCS 5/3.1-35-35, a mayor or president pro tem is appropriate when the mayor or president is unable to perform his or her official duties due to an absence, illness or other incapacity that lasts longer than a single meeting, but does not rise to the permanent incapacitated status (determined generally by the corporate authorities, frequently pursuant to a doctor's certification or court appointment of a legal guardian) that gives rise to an actual vacancy in office. Where the president or mayor is simply unavailable to attend a particular meeting due to a previous commitment, the appointment of a temporary chair is the proper procedure. An acting mayor or president serves in place of the mayor or president in the case of an actual vacancy in office, until a successor is chosen. Generally speaking, progressing from shortest replacement stint to longest, the replacements are as follows: temporary chair, president pro tem, acting president.

In terms of relative power, the essential distinction is that a temporary chair simply runs the meeting, possessing only the powers of a presiding officer, while a president pro tem actually temporarily acquires the powers of the chief executive, including the veto power, make appointments, and authority to execute documents in place of the mayor or president.

Q13. The meeting continues under the stewardship of Trustee Montague. Trustee Capulet, seething with hatred for Trustee Montague and miffed at the Village Attorney for confirming that Trustee Montague was properly installed as temporary chair, decides that he has to use the washroom and that he simply cannot wait. He departs, leaving three trustees. He returns. A few minutes later, he departs again. This pattern continues until Capulet eventually storms out of the meeting for good, announcing that he will have no part of any meeting run by nemesis-turned-Temporary Chair Montague. Can the three remaining trustees continue the meeting in his various absences?

A13. Sort of, albeit not smoothly. Understandably, there is no case law directly on point. While a quorum is needed to convene a lawful meeting and at the time of any votes or other final business, it is not clear that the meeting must grind to a complete halt when temporary circumstances leave less than a quorum in the room. The discussion of public business can probably continue, absent votes or other final action being taken that could be subject to later challenge. Voting and other final actions may only take place upon Trustee Capulet's return from the lavatory, the hallway, the parking lot, or wherever it is that Trustee Capulet keeps disappearing. As for the final, permanent exit of Capulet, leaving only three trustees with no reasonable prospects of being able to conduct business, the remaining members should adjourn the meeting to a later date. Perhaps a date on which Trustee Capulet has other plans.

Q14. A Board of Trustees for a Village has moved and voted to enter executive session for the purpose of discussing "the appointment, employment, compensation, discipline

performance or dismissal of specific employees for the public body" under Section 2(c)(1) of the Open Meetings Act. Upon conclusion of this discussion and as a result of matters raised during that discussion, the Board wishes to extend the closed session to include a discussion of certain collective negotiating matters between the Village and its employees, a permissible topic for closed session discussion under Section 2(c)(2) of the Act. May the executive session conversation proceed immediately to this topic?

A14. No. Section 2a of the Illinois Open Meetings Act provides, "A public body may hold a meeting closed to the public, or close a portion of a meeting to the public, upon a majority vote of a quorum present, taken at a meeting open to the public for which notice has been given as required by this Act…The vote of each member on the question of holding a meeting closed to the public and a citation to the specific exception contained in Section 2 of this Act which authorizes the closing of the meeting to the public shall be publicly disclosed at the time of the vote and shall be recorded and entered into the minutes of the meeting. At any open meeting of a public body for which proper notice under this Act has been given, the body may, without additional notice under Section 2.02, hold a closed meeting in accordance with this Act. Only topics specified in the vote to close under this Section may be considered during the closed meeting." 5 ILCS 120/2a. While "collective negotiating matters between a public body and its employees" is a permissible topic for closed session discussion under Section 2, in this instance, the vote to close the meeting only specified that discussion would be had under the Section 2(c)(1) exception. As such, the closed session discussion in this instance is limited to that particular subject. If the Board of Trustees wishes to entertain closed session discussion on the collective negotiating issue in this instance, it will need to conclude the original closed session, reenter open session, and vote to enter a second closed session citing Section 2(c)(2) as the basis for discussion. While it has been commonly-believed that it would suffice as corrective action for the Board to specify upon its return to open session that the additional topic permissible for closed session discussion had been discussed (provided no final action was taken), a recent non-binding opinion from the Public Access Counselor has clarified that when a public body properly votes to enter closed session under a particular Section 2(c) exemption, it may not discuss a different matter which arises during the discussion which does not fall within the cited exception, but would be appropriate for closed session discussion under a different Section 2(c) exception, in that particular closed session.

Q15. Can a concealed carry licensee carry a handgun to a Village Board meeting?

A15. No. If the meeting takes place in a "building or portion of a building under the control of a unit of local government," firearms are not permitted. 430 ILCS 66/65(a)(5). However, licensees may store a handgun in the glove compartment or console within a locked vehicle in the parking lot. 430 ILCS 66/65(b).

Q16. A City Council comprised of six aldermen and the Mayor hold a special meeting to adopt an ordinance authorizing residents to raise chickens in their backyards. Five of the aldermen were present at that meeting. The sixth alderman, who was not present, is a vegan and wants the issue to be reconsidered. He requests a special meeting to reconsider the ordinance. Four aldermen and the Mayor attend the special meeting and vote to rescind the ordinance. Is the vote to rescind effective?

A16. No, under Section 3.1-40-55 of the Municipal Code, no vote of a City Council may be rescinded at a special meeting unless at least as many aldermen were present at the special meeting as were present when the original vote was taken.

Q17. True or false, non home rule municipalities can require a 2/3 super majority vote of their boards of trustees to approve special use permits that fail to get a favorable recommendations from their plan commissions.

A17. True. Sec. 11-13.1-1 of the Municipal Code specifically authorizes a municipality to adopt an ordinance to increase the required vote to 2/3 of all trustees then holding office.

Q18. True or false, a board of trustees can approve any variation by ordinance by a simple majority vote?

A18. False. Sec. 11-13-10 of the Municipal Code requires a 2/3 super majority vote of all trustee for variations that fail to obtain a favorable recommendation from zoning boards of appeals in municipalities that approve variations by ordinance.

Q19. True or false, a municipality may vacate any alley or street by a simple majority vote of the board of trustees without a public hearing?

A19. False. Sec. 11-91-1 of the Municipal Code requires that any street or alley vacation occur with a ¾ super majority vote of the trustees then holding office. In addition, any street or alley under the jurisdiction of a municipality, but located in an unincorporated area, may only be vacated after a public hearing.

Q20. At our last meeting, the Mayor was absent. One trustee was serving as acting Village President. We voted on an ordinance to establish compensation for the next Village Board. Three trustees voted in favor of the ordinance. One trustee voted against it. One trustee was absent. The trustee serving as acting Village President abstained from voting. The passage of this type of an ordinance requires "the concurrence of a majority of all Board members holding office." Did the ordinance pass?

A20. Yes. Because only a concurrence was required, the abstention counted with the majority. However, had an "affirmative" vote been required, nothing less than a majority

of yea or aye votes would have resulted in the enactment. See *Prosser v. Village of Fox Lake*, 91 Ill.2d 389 (1982).

Q21. One of our Village Trustees is a pilot and he is rarely in town for Village Board meetings because of his job. Does this create a vacancy in office?

A21. No. For municipalities under 500,000 in population, a vacancy may occur by resignation, death, permanent mental or physical disability rendering the persona in capable of performing the duties of his or her office, abandoning the office, removal from office, failure to qualify, more than temporary removal of residence from the municipality, conviction or admission of a disqualifying crime, or the election being declared void. 65 ILCS 5/3.1-10-50; 10 ILCS 5/25-2. There are many jobs that require public officials to be temporarily absent from the Village and to miss Village board meetings. The Open Meetings Act permits officials who are absent to participate in board meetings electronically if they are absent for employment purposes, provided that the municipality as previously adopted a remote participation ordinance. See 5 ILCS 120/7.

Q22. I am going out of town on a cruise for my 20th anniversary, but I will miss a Village board meeting where there will be a controversial vote, and I want to participate. Our Village has already adopted a remote participation ordinance. Can I participate remotely if approved by the Village Board? P.S. A majority of the Board will support this, and they need my vote for the measure to pass. It will be a close vote on the controversial issue.

A22. No. An absence caused by a vacation does not qualify for a request to participate electronically. Change your anniversary date.

Q23. If the Mayor is out-of-state for an extended period of the time and the Mayor Pro Tem is ill, who presides over the meeting?

A23. In the absence of the Mayor or Mayor Pro Tem, the corporate authorities may elect one of their members to act as a temporary chairman. (65 ILCS 5/3.1-35-35)

Q24. The Village Board approved the mayor's selection for chief of police. However, over time the majority of the board has lost confidence in the chief. Under the auspices of "cost cutting", the majority places on the agenda a motion not to allow the chief to take a police car home at night. They then make statements at the meeting about how important it is to have extra cars at the station, "just in case". Can they vote to do this?

A24. Yes

II. Elected & Appointed Officials

Q25. Can an elected official be removed from office by a recall petition?

A25. In home rule municipalities only, an ordinance can be passed which allows either the corporate authorities on its own or when supported by a petition to order a recall election. If the voters vote for recall, that seat becomes vacant and is generally subject to an appointment by the Mayor and confirmation by the Council until the next general election.

Q26. I don't like my committee assignment. Can that power be taken away from the Mayor or President?

A26. Yes. Although in most municipalities, committee members and their chairmen are chosen by the Mayor or President, the Council or Board by ordinance can choose a different method for selection, including a vote by the Corporate Authorities and perhaps by the Aldermen or Trustees themselves.

Q27. Can a Village Trustee comment during a public hearing on an application before the Planning and Zoning Commission?

A27. The Trustees are Village residents and, as residents, are entitled to comment on the application pending before the PZC. However, Trustees should avoid any appearance that they have prejudged the law or the facts of the application, before the application comes before the Village Board. If Trustees choose to comment, they should be careful to avoid suggesting how they might vote.

Q28. Can the Mayor use a municipal newsletter to urge the passage of a referendum or to outline his successes around election time?

A28. No. A newsletter can give facts about a coming referendum, but public funds cannot be used in support of or in opposition of a public issue or a candidate.

Q29. I am a new mayor of almost a year in a non home rule community with a population of 6,000. The police chief is a beloved member of the municipality. Even though I agreed to reappoint him when I took office, I want to go in a different direction now. He doesn't have a contract and I want to replace him with someone else from the department. I sent him a letter telling him that he is officially removed as police chief. Now lawyers are calling me. Did I do something wrong?

A29. Yes. In order to remove the police chief, you have to inform the Board in writing of the reasons for his removal and obtain their consent by a majority vote. In a community

without a Board of Fire and Police Commission a discharge would involved another procedure

Q30. Can the salary of an elected official be increased during his or her term?

A30. Salaries can be increased only in those situations where the salary is established at least six months before the person takes office and calls for such a "typically annual increase." Absent such a provision, the salaries of elected officials are frozen for the term. Actual expense allowances can be increased or decreased during an official term, but they must be fully justified by receipts.

Q31. Can a Clerk who is appointed as the Collector be removed from office during the Clerk's term?

A31. It depends. If the ordinances of the municipality, prior to an election provide that the Clerk shall be the Collector, then the person selected is entitled to serve in both offices and receive the established salary. If the ordinances provide that the Clerk may be the Collector or are silent on that subject, the Clerk who is appointed to that position by the Mayor can be removed and the salary of the Collector can be changed.

Q32. In a commission form of government, does the Mayor have the right to vote on all matters?

A32. Yes. In a commission form of government, the Mayor and each commissioner shall have the right to vote on all questions coming before the council. Three members of the council shall constitute a quorum, and the affirmative vote of three members shall be necessary to adopt any motion, resolution, or ordinance, unless a greater number is required by law. (65 ILCS 5/4-5-12)

Q33. If the Mayor is absent from meeting, who should sign the ordinances?

There are 3 options:

A33. A) Under Sec. 3.1-35-30 of the Municipal Code, the mayor may designate in writing another person to affix the signature of the mayor to any written instrument or instruments required to be signed by the mayor. The mayor shall send written notice of this designation to the corporate authorities, stating the name of the person who has been selected and what instrument or instruments the person will have authority to sign. A written signature of the mayor executed by the designated person, with the signature of the designated person underneath, shall be attached to the notice. The notice, with the signatures attached, shall be recorded in the journal of the corporate authorities and then filed with the municipal clerk. When the signature of the mayor is placed on a written instrument at the direction of the mayor in the specified manner, the instrument or

instruments, in all respects, shall be as binding on the municipality as if signed by the mayor in person.

B) The Mayor can sign it anyway, since there is no requirement for the Mayor to be present at the meeting for the Mayor to exercise the power to approve or veto an ordinance. See Sec. 3.1-40-45.

C) The Mayor can choose not to sign an ordinance in which case it takes effect after the time during which it could have been voted has passed.

Q34. A Mayor in a home rule municipality has a neighbor who is in the County jail for violating a municipal ordinance. The neighbor has never been in jail before and the Mayor knows him to be an upstanding citizen who has never been convicted of a serious crime. The neighbor is a member of the municipal volunteer fire department. He also is scheduled to play in the Mayor's poker game this week. Can the Mayor have his neighbor released from jail?

A34. Yes, under Section 3.1-35-15 of the Municipal Code, mayors are granted authority to release any person who has been imprisoned for violation of a municipal ordinance. The mayor must report the release and the reasons for the release at the first meeting of the corporate authorities after the release.

Q35. After successfully campaigning on a message— "No Wal-Mart Now, No Wal-Mart Ever!" –four new Trustees (out of seven) took office to find an ironic item on the agenda.

Wal-Mart had applied for a variance to building a new supercenter in town. In this Village (as in many), variance requests are heard by the ZBA but ultimate approved by the Board. Do the "No Wal-Mart" Four need to recuse themselves from the up-coming variance vote?

A35. Maybe not. There is no statutory or constitutional conflict of interest that would require recusal. Assuming that the Trustees are not hearing officers for the variance (that authority is usually reserved for the ZBA), the Trustees are acting as legislators and can have pre-existing opinions about projects. In this case, the Board will vote to approve or deny the variance after the applicant received a fair, impartial hearing from the ZBA. The Board must establish a rational basis for the ultimate decision, but does not need to ignore their legislative agenda when approaching the issue. Wal-Mart can appeal to the Circuit Court

Q36. If a board member moves to a home outside the corporate limits for six months does that mean that he or she has vacated the office and must be replaced?

A36. Not necessarily. The applicable section of the Illinois Municipal Code, 65 ILCS 5/3.1-10-50, related to vacancy of office does not set a specific time by which an elected official who moves away from municipal limits has effectively vacated an office and must be replaced. Instead, the Code leaves it to the Board on which the official sits to determine whether a removal of residence is "temporary" or constitutes a permanent vacancy. A lawsuit called a quo warranto can also be filed to determine whether the office can no longer be held.

Q37. Can a person circulate nominating petitions for a political party candidate and for an independent candidate in the same election cycle?

A37. Yes and no (it depends on where you are). The Fourth District Illinois Appellate Court, which is located in 30 counties across central Illinois, recently ruled that section 10-4 of the Election Code does *not* prohibit such dual circulation. *Sandefur v. Cunningham Township Officers Electoral Bd.*, 2013 IL App (4th) 130127 (March 15, 2013). However, less than three months later, the First District Appellate Court, which is located in Cook County, ruled that section 10-4 of the Election Code *does* prohibit such dual circulation within a an election cycle. *Wilson v. Calumet City Officers Electoral Bd.*, 2013 IL App (1st) 130957 (June 5, 2013).

Until such time as the Illinois Supreme Court tells us which of these two conflicting appellate decisions is correct, they will remain binding law on candidates seeking office within those appellate districts. Candidates seeking offices outside of the First and Fourth appellate districts could be subject to either one of those decisions, depending on how the local electoral boards and courts decide to rule. The relevant statutory language states: "...no person shall circulate or certify petitions for candidates of more than one political party, or for an independent candidate or candidates in addition to one political party, to be voted upon at the next primary or general election, or for such candidates and parties with respect to the same political subdivision at the next consolidated election." 10 ILCS 5/10-4.

Which court do *you* think is correct?

Q38. Does the Mayor have the power to designate another person to sign documents on his/her behalf?

A38. Yes. The Mayor/President may designate in writing another person to affix the signature of the Mayor/President to any written instrument or instruments required to be signed by the Mayor or President. The Mayor/President shall send written notice of this designation to the corporate authorities, stating the name of the person who has been selected and what instrument or instruments the person will have the authority to sign. A written signature of the Mayor/President executed by the designated person, with the signature of the designated person underneath shall be attached to the notice. The notice,

with the signatures attached, shall be recorded in the journal of the corporate authorities and then filed with the municipal clerk. (65 ILCS 5/3.1-35-30)

III. Public Records and Communications

Q39. What are the legal implications if a Trustee sends an e-mail about municipal business to all of the members of the Village Board?

A39. A recent Appellate Court decision tells us that if the material went to a quorum (4) of the Village Board, it would be subject to FOIA. If the e-mail begins a contemporaneous interactive electronic communication among at least a majority of a quorum, (3 Board members), you might find yourself violating the Open Meetings Act.

Q40. Can a municipality charge a reasonable fee for the production of electronic records under FOIA?

A40. No. According to the Illinois Appellate Court in *Sage Information Services v. Humm*, 2012 IL App (5th) 110580 (October 5, 2012), electronic records must be released at no additional fee beyond the cost of production. The court found that Section 6 of FOIA prohibits a fee for reproduction of electronic records in excess of the cost of the electronic medium, unless such a fee is expressly provided by another statute. The court held that the language in FOIA allowing for cross-referencing to other statutes only exists for paper records. The court stated that it has a duty to liberally construe FOIA to allow interested citizens easy access to public records.

Q41. Can the Village remove negative comments on a Village Facebook page?

A41. Maybe not. Comments on social media could be considered protected speech under the First Amendment. For example, a commenter who posts that he or she disagrees with a particular policy of the Village is probably protected speech, just as if the commenter had made the same statement at a public meeting. However, not all comments on the Village's Facebook page would be similarly protected. Municipalities can adopt social media comment policies that ban certain comments such as advertising, threats or personal attacks, profanity, or hate speech. Then, if comments are posted that violate the social media policy, they can be removed. If there are any questions about removal of a particular comment, a municipality should consult with its attorney.

Q42. Can a municipality ban an employee from using his or her private cell phone to discuss public business?

A42. Yes, a municipality could adopt a cell phone policy that requires employees to use employer-provided devices to conduct public business. Such a policy is not unreasonable, particularly given recent court and PAC rulings that communications on private cell phones and other devices are subject to FOIA if the communication relates to public business.

Q43. Can a home-rule community substitute its own provisions for controversial parts of the Open Meetings Act or FOIA?

A43. No.

Q44. In the middle of a Village Board meeting discussion, a trustee "tweeted" that she was going to vote against the contract being discussed. Four of the seven Village Board members have Twitter accounts, and two of them saw the Trustee's "tweet" during the board's discussion. Later, all four of the Board members who are on Twitter voted against the contract. Did the Trustee's actions in tweeting during the meeting, or the vote, violate the Open Meetings Act?

A44. Maybe. Although an Illinois court has not ruled whether social media activities are subject to OMA, a court could find that tweets are contemporaneous electronic communications and subject to OMA.

Q45. I am the municipal clerk. Council members want me to change my minutes to include things that they never said. Can they do that?

A45. The minutes are supposed to be an accurate record of what transpired at a meeting, not a complete rewriting of history. The council has the right to approve its own minutes although someone may want to try to prevent the creation of a work of fiction. If a majority of the council votes to amend the minutes in a certain way, that motion will prevail. If that happens, since the clerk's office is generally the repository for all minutes, the clerk can add his or her note at the end of the minutes if the clerk believes they are incorrect.

IV. Labor & Employment Issues

Q46. Why are there so few secret ballot elections for employees to join labor unions?

A46. The law was changed a number of years ago to permit employees and officers to require the governmental body to negotiate with a labor union on their behalf based upon a request signed by a majority of the bargaining unit. Fellow workers can "urge" their colleagues to sign the request. When a governmental body learns that a Union organizing operation is going on, it can take measures, even under these circumstances, to provide information regarding the negative consequences of union membership.

Q47. Our police and fire employees belong to unions. We negotiated new collective bargaining agreement (CBA) with them but between the time of our last negotiation and the contracts coming to the board for approval, our finance director told us that we really can't afford to give them the wage increases that we agreed to in bargaining. Can we just not approve the collective bargaining agreements?

A47. If you fail or refuse to approve the CBA's for the reason that you now think you can't afford the agreed upon wage increases, you will most probably commit an unfair labor practice. The unions will most likely file a charge with the Public Labor Relations Board who will probably order you to approve the CBA's and abide by their terms. The decision would be different if some catastrophic financial event had just taken place. Rather than refusing to sign the agreements, you might consider approve the contracts and immediately inform the unions that you will have to reduce the workforce in order to pay for the wage increases. They might be willing to renegotiate.

Q48. The same scenario as above but instead of reaching an agreement with the unions, the parties went to interest arbitration. The arbitrator awarded the union's last wage offer. The Board feels it would be irresponsible to approve the award because of the village's finances. Can it reject the award?

A48. Yes, the board can reject the award, but if it does, the parties must return to the negotiation/arbitration process at the sole expense of the village.

Q49. Does the mere fact that an employee is salaried rather than paid hourly make her an exempt employee under the FLSA?

A49. Not necessarily. Being paid on a salary basis is a necessary but not sufficient condition for exempt status. An employee must also fall within one or more of the categories for exempt status, the principal ones being the "white collar" exemptions -- executive, administrative, and professional. If a salaried employee does not meet the other criteria for exempt status, the employee is a salaried, non-exempt employee.

Q50. Do employers have to offer health insurance to employees working 30 or more hours a week during 2014?

A50. No. The effective date of Affordable Care Act guidelines defining a "full-time employee" as anyone working 30 or more hours a week has been deferred to January 1, 2015.

Q51. A petitioner for a full disability pension presented evidence to my pension board and we convened to executive session to consider the evidence and reach a decision. We then reconvened in open session and a majority voted to deny the pension. Are we done? Is the denial a valid legislative act?

A51. No, the pension board cannot take final action until it reviews and votes in open session on a written decision explaining the reason for the decision.

Q52. A police officer in our Village just received a duty-related police pension from our Village Police Pension Board. He has now applied to the Village for health insurance benefits for him, his spouse, and his children. Are we required to pay health insurance premiums for him and his family?

A52. It depends. Under the Public Safety Employee Benefits Act ("PSEBA"), an employer who employs a full-time law enforcement officer, correctional officer, or firefighter, who suffers a catastrophic injury or who is killed in the line of duty shall pay the entire premium of the employer's health insurance plan to the injured employee, the employee's spouse, and for each dependent child of the injured employee until the child reaches the age of maturity or until the calendar year in which the child reaches 25 years old, if the child continues to be dependent for support or if the child is a full- or part-time student and is dependent for support (820 ILCS 320/10(a)). "Catastrophic injury" has been construed by case law to be synonymous with an injury resulting in a line-of-duty pension. However, the injury or death must have occurred as the result of: (a) the officers' response to fresh pursuit; (b) the officer or firefighter's response to what is reasonably believed to be an emergency; (c) an unlawful act perpetrated on another; or (d) during the investigation of a criminal act. (820 ILCS 320/ 10(b)) The legal meaning of what constitutes an emergency or a criminal act has generated much litigation, and may require legal counsel to determine whether benefits under PSEBA are available to the police officer.

Q53. I am a mayor. I have just heard a rumor that my public works department is considering unionization. Can I have my public works supervisor hold a meeting with the employees and let them know that if this is true, I will be contracting out all public works functions and they will all be terminated?

A53. No. You cannot do this. Engaging in activities to organize a bargaining unit is what is known as "protected concerted activity." You cannot discourage such activity by threatening, intimidating, promising or conducting surveillance on your employees.

Q54. I am a mayor who is now annoyed by your answer to the previous question. If I can't fire these ungrateful and disloyal employees, what can I do about the attempt to organize?

A54. You can tell your employees the truth about their employment. Most employees do not know the total value of their current compensation package. They do not know the monetary value of their benefits such as health care, life insurance, disability insurance (if you provide a separate policy) etc. You can compile this information and provide it. You can also tell them the truth about the union, because the union won't. You can tell them that while you will now have to bargain with the union before you can give them anything (wages, increased benefits etc.), the union cannot guarantee wage increases, job security or better benefits. You can also tell them that the one thing the union can guarantee is that they will be collecting dues every month.

Q55. I am a Village Manager. My Village is non-home rule and we have a Board of Fire and Police Commissioners. I just met with my police chief and he informed me that we have a sergeant who is simply incompetent. He was a very good police officer and still is, but when it comes to managing subordinates, he is a disaster. Can we demote him back to the rank of patrol officer?

A55. No. There is no mechanism for demotion in the Board of Fire and Police Commission Act. Unfortunately, the only thing that you can do is either attempt to make him a better supervisor or document his short comings and seek to have the Board of Fire and Police Commissioners terminate his employment. Good luck. If you were a home rule community you could add demotion as a permitted personnel method.

Q56. If a public employee's speech relates to his official duties, is it protected under the First Amendment?

A56. No. Under *Garcetti,* First Amendment protection depends on whether that employee made the statements pursuant to his official duties. If yes, then his speech is not protected. Cases have allowed the firing of employees who spoke up at a public meeting to criticize their employer if the "free speech" really related to the complaints which had to be addressed under personnel policies.

V. Contracts

Q57. Can a municipality enter into multi-year contracts?

A57. Home rule municipalities are free to enter into multi-year contracts. Non-home rule municipalities are granted by statute the power to enter into multi-year contracts for certain services or pertaining to certain things, such as union contracts. Also, contract with the manager or the municipal attorney. Such contracts often contain severance provisions to allow a government to more easily discharge such an individual, but with the obligation of paying some amount of severance charges.

Q58. Can a municipality generally authorize the purchase of goods or services by a council member?

A58. Yes. By a motion, a Board can authorize a specific person, such as the Mayor, a Manager or Administrator, the Chairman of a Committee or, for example, the Police Chief, to make purchases not in excess of an individual and sometimes a collective dollar amount during a particular period of time. Such purchases should be reported to the Board.

Q59. A City wants to move towards a new community center based on the visionary design of world-famous architect Santiago (too famous for a last name). Can the City Council skip competitive bidding and approach Santiago directly with an agreement to hire the architect?

A59. No. While with a 2/3 vote of the Board, the Village can waive most competitive bidding for public works projects, different rules applying for contracts for engineers, architects or surveyors. For them there is a separate statutory process that require demonstrated competence and qualifications and negotiations over price with the selected professional 30 ILCS 535/1 et seq.

Q60. Can an Alderman who attends an auto auction take advantage of a great bargain on a backhoe?

A60. At the Alderman's risk. The Council or Board can confirm such a purchase, but if it does not choose to support the instinct of the purchasing official, that alderman owns his or her own backhoe.

Q61. A municipality has a construction project where the contract amount is over $5000 but under $50,000. Does the municipality have to require the procurement of a payment bond for the project?

A61. No, under these circumstances a payment bond is not required. The Illinois Bond Act was recently amended (effective August 9, 2013) by increasing the cost of construction threshold for a construction project from "over $5000" to "over $50,000" before a municipality must require a payment bond. (30 ILCS 550/1, *et seq.*).

Q62. My village owns some commercial property that is currently of no use to us. The mayor wants to rent the property to a local business owner, but the trustees are divided as to how they would vote on the issue. Can we lease village-owned real estate to a private person or business without having to pass an ordinance?

A62. Yes, but only for lease terms of two years or shorter, and the board will still have to take formal action to approve the lease. The Illinois Municipal Code requires an ordinance approved by a three-fourths vote of the corporate authorities in order to lease municipal-owned real estate to third parties for terms that are longer than two years and not exceeding 99 years. However, that statute has an exception for leases of two years or less: "[T]he corporate authorities have the power to authorize any municipal officer to make leases for terms not exceeding 2 years in such manner as they may determine." 65 ILCS 5/11-76-1. (There are a few kinds of property to which this law does not apply, so consult with your village attorney before taking any action pursuant to this statute.)

VI. Litigation

Q63. A former village employee is now an elected alderman. He still has a workers' compensation case pending against the City. Is he entitled to receive any reports from defense counsel and/or sit in on executive session when his case is discussed?

A63. No. It is ongoing litigation, and pursuant to attorney/client privilege, he is not entitled to look at any defense reports nor listen to any discussions regarding ongoing litigation involving his case. He should step out of executive session for the time that his case is being discussed.

Q64. I'm named as a defendant in a lawsuit against my village. The complaint contains a prayer for compensatory damages as well as punitive damages against me personally. Should I get my own lawyer, and should the village pay for him or her?

A64. Plaintiffs routinely ask for punitive damages against individual defendants. Trial judges do not make a determination whether the case is one which warrants a jury instruction regarding punitive damages until far down the line, quite near the time for actual trial. In the meantime, there is no need to retain a different attorney other than the counsel who is defending the City as well as any individual defendants from the City. If that defense counsel makes a determination that there is a good chance that the issue of punitive damages will go before the jury, he or she will advise you of that fact (as soon as possible) and advise that other counsel be retained to represent you. Depending on the terms of any insurance policy, such counsel is usually paid for by the village or its insurer. However, if you were acting outside the scope of your office or your employment with the City, you may be responsible for your own attorney's fees. And of course, punitive damages are the responsibility of the person against whom the jury awards them. It is against public policy, and therefore not allowed, for the City to reimburse any finding of punitive damages.

Q65. Our City is named as a defendant in a lawsuit. I'm not too thrilled with the defense counsel assigned by the insurer, and would prefer that Ancel Glink defend the case because of their high rate of success and competitive rates. Can I demand the case be sent to Ancel Glink to handle?

A65. Yes, and by all means you should. If your City is self-insured, you can choose your own counsel. If your City is part of a risk pool, tell your TPA that you would specifically like Ancel Glink to handle the case. Often that is enough to ensure that your request is honored. Some insurance companies and pool use only defense attorneys on an "approved attorney list."

Q66. If a recreation department employee accidentally knocks over a bucket of marbles while cleaning up a recreational center, and five vision-impaired senior citizens

suddenly come flying down the hallway on roller skates – without helmets – and after hitting the marbles, crashes into the security desk, can the City be held liable?

A66. Probably not. Section 3-106 of The Illinois Tort Immunity Act provides that:

Neither a local public entity nor a public employee is liable for an injury where the liability is based on the existence of a condition of any public property intended or permitted to be used for recreational purposes, including but not limited to parks, playgrounds, open areas, buildings or other enclosed recreational facilities, *unless such local entity or public employee is guilty of willful and wanton conduct* proximately causing such injury. 745 ILCS 10/3-106

Q67. We are having lots of problems with the "press" in our town. One newspaper prints things that are true - but only one side of the story, so it is very slanted. We also have a crazy blogger in town who prints only his opinion and things that are false. Can we sue for defamation? What are our options?

A67. This questions raises two issues - one about newspapers and one about the Internet. Now that you are a public official, you have undoubtedly learned about the dark side of what remains of the print press. Even if the press is not printing false things about you, it may not be presenting you in the most favorable light. The best thing you can do it try to get to know your reporters and help them get the information they need to have. For other ideas, see our section on Press and the Media in the Illinois Municipal Handbook. However, remember, their job is to sell papers, not to make you look good. Sensational stories about controversies sell more papers than meetings about happy City Council meetings where everyone held hands and sang "Kumbaya" (although, that WOULD be an interesting story, so put it on your agenda and let us know how it goes...). If you are the subject of an unfair attack in the press, you can attempt to contact the reporter to make sure they have the facts correct. If they know the facts but simply will not report them, you can try to bypass them and meet with the editor of the paper. However, you have to be very careful. And remember, Mark Twain once said, "Never pick a fight with someone who buys ink by the barrel."

You really have to assess the situation to determine whether you will make the situation better or worse by pursuing it further. With respect to insane bloggers, the Internet has only exponentially expanded the potential for very bad behavior. As far as defamation, to prevail in an action for defamation, you need to prove that something is published/spoken, false, injurious and unprivileged. Public officials have a harder time proving defamation because you must also prove that the false statement was made with actual malice and that you have sustained actual damages. It has been our experience that responding to insane bloggers only further provokes their crazy responses or incites their fellow Kool Aid drinkers to write even worse things. Remember, there are only 10 people reading the blog, anyway. If there is a blog devoted to bashing you, you are not

going to win their readers over by trying to convince them how great you are. So, stop reading the blog and go out and do great things.

Q68. One of our Village Board members tripped and fell on the torn carpet of the dais in Village Hall during a Board meeting and, as a result broke her arm. Now she wants the Village's workers' compensation insurance carrier to pay for her lost wages, bills for medical treatment of her broken arm, and a settlement. Can an elected Board member make a workers' compensation claim against the Village?

A68. Yes. Under the Illinois Workers' Compensation Act, ("Act") elected and appointed members of cities towns, townships, incorporated villages or school districts are considered "employees" for purposes of the Act (820 ILCS 305/1(b)). Under these facts, she can recover benefits including lost wages, medical bills and even a permanency settlement for her arm injury.

Q69. What is the Tort Immunity Act and why should I care?

A69. The Illinois Legislature enacted the Local Governmental and Governmental Employees Tort Immunity Act ("Tort Immunity Act") almost 50 years ago to protect local governments and public employees from civil liability for certain acts and omissions arising from the operation of government. It provides various immunities and defenses to state law tort claims seeking monetary damages for injuries to a person or loss of property. The Act expressly defines "public employee" to include any "present or former officer, member of a board, commission or committee, agent, volunteer, servant or employee, whether or not compensated."

Q70. How can I learn more about the Tort Immunity Act and how it applies to me?

A70. Refer to Ancel Glink's Tort Immunity Handbook available on our website or contact one of Ancel Glink's tort immunity specialists.

Q71. Can a City be sued under Section 1983 for the actions of its employees?

A71. Yes, but only if the plaintiff can show that some action of the entity itself, rather than the actions of its individual employees, proximately caused the constitutional violation. The plaintiff must show his constitutional rights were violated by the City's express policy, a City's custom or practice, or by final policymaker for the City.

Q72. What are our obligations regarding the maintenance of documents related to a lawsuit?

A72. Pursuant to the Federal Rules of Civil Procedure, every party to a lawsuit has a duty to segregate and protect from destruction certain documents and data that are, or arguably may be, relevant to a threatened or pending litigation, regulatory investigation, or audit.

This includes the duty to preserve all electronic evidence, such as emails discussing the incident or related to matters at issue in the suit.

This duty to preserve evidence is broad and extends to all documents, regardless of whether the document is stored electronically (such as email) or in hard-copy and regardless of the type of document. For example, reports, spreadsheets, photographs, videotapes, calendars, telephone logs, and databases are all considered "documents" that must be preserved. "Sources" include all hard copy files, computer hard drives, removable media (*e.g.,* CDs and DVDs), laptop computers, smart phones, and any other locations where hard copy and electronic data is stored. Keep in mind that any of these sources of relevant information may include personal computers employees use or have access to at home, or other locations. Think outside the box when undertaking your efforts to preserve these materials.

Q73. When does our obligation to preserve documents begin?

A73. The duty to preserve this documentary evidence extends to all documents in existence as of the time you reasonably anticipated the litigation. All of these rules are shorter for governments which have a specific obligation to preserve records under FOIA. "The obligation to preserve evidence arises when the party has notice that the evidence is relevant to litigation or when a party should have known that the evidence may be relevant to future litigation . . . While a litigant is under no duty to keep or retain every document in its possession . . . it is under a duty to preserve what it knows, or reasonably should know, is relevant in the action, is reasonably calculated to lead to the discovery of admissible evidence, is reasonably likely to be requested during discovery and/or is the subject of a pending discovery request." *Zubulake v. UBS Warburg LLC*, 220 F.R.D. 212 (S.D.N.Y. Oct. 22, 2003) ("*Zubulake IV*"). The analysis will always be made on a case-by-case basis, with a focus not only on the quality and quantity of the evidence establishing notice of potential litigation, but the relevance of the employees on notice. The key is that the trigger event for the duty to preserve often occurs prior to the filing of the lawsuit or initiation of a formal investigation. Department heads, etc. should be vigilant about alerting counsel to threats of legal action, or the anticipated need to pursue a remedy through legal action, so that the critical trigger date is recognized and hold procedures are initiated.

Q74. What steps should we take to ensure that we comply with our obligations?

A74. To ensure that all relevant documents are preserved, the entity should communicate directly with all employees who have possession or control of potentially relevant evidence, including but not limited to, personnel who deal with email retention, deletion, and archiving. The notice should be sent to the persons directly involved in the events relevant to the litigation or investigation and those responsible for maintaining the entity's computer system (including archiving both hard copy and electronic records).

You should advise employees to preserve any relevant documents in their custody. You should also advise all such persons that any regularly scheduled and/or automatic deletion of email or other electronic documents must be discontinued with respect to any relevant data. All relevant documents, both electronic and on paper, must be preserved for the duration of the litigation.

Q75. What does it mean for an action to be willful and wanton as opposed to simply negligent?

A75. The Illinois Supreme Court concluded that willful and wanton conduct carries a degree of contempt not found in negligent behavior, which requires an actual intention to harm or a conscious disregard for the consequences when the safety of others in involved. *See Burke v. 12 Rothschilds Liquor Mart, Inc*. 148 Ill. 2d 429, 593 N.E.2d 522 (1992). 745 ILCS 10/1-210.

Q76. A plaintiff sued the City alleging a violation of his civil rights under § 1983 after two police officers purportedly roughed him up and unlawfully detained him after making a routine traffic stop. The plaintiff alleges the officers broke two of his ribs and is now seeking a sundry of damages, including punitive damages against the City. Can the plaintiff recover punitive damages against the City?

A76. No. The United State's Supreme Court has expressly held that a municipality is immune from punitive damages under 42 U.S.C. § 1983 as "the considerations of history and policy do not support exposing a municipality to punitive damages for bad faith actions of its officials." *City of Newport v. Fact Concerts, Inc*., 453 U.S. 247, 101 S. Ct. 2748 (1981). That does not prevent a plaintiff from seeking punitive damages from the individual officers however.

Q77. The plaintiff brought a retaliatory discharge claim against the City, alleging he was discharged because he filed a workers' compensation claim against the City. The plaintiff, who was ambivalent about suing his employer, waited to file his retaliatory discharge claim until approximately one year and one day from the date of his termination. Does the Tort Immunity Act's one (1) year statute of limitations bar the plaintiff's retaliatory discharge claim?

A77. No. The Illinois Appellate Court has held that claims alleging that a local public entity employer discharged an employee for filing a workers' compensation claim are based on the Workers' Compensation Act and therefore not affected by the Tort Immunity Act. Consequently, the one (1) year statute of limitations of section 8-101 (a) of the Tort Immunity Act does not apply to plaintiff's claim. *Collins v. Town of Normal*, 351 Ill. Dec. 621, 951 N.E.2d 1285 (4th Dist. 2011).