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Welcome to *Ancel Glink Defense E-News*, our electronic newsletter. In this newsletter, we focus on the latest court decisions and legislative changes in litigation which may affect you.

Ancel Glink Defense E-News is a publication of the defense litigation group of Ancel, Glink, Diamond, Bush, DiCianni & Krafthefer, P.C.

For more information about this edition of the *E-News*, please contact litigation partner, [Lucy Bednarek](#).

CASES YOU SHOULD KNOW ABOUT

Governmental Immunity: Duty of Care

School district owed plaintiffs a duty to report accurate information to a second school district about a teacher accused of sexual abuse.

Doe-3 v. McLean County Unit Dist. No. 5, 2012 IL 112479 (Aug. 9, 2012).

A grade school teacher at McLean County District No. 5 was removed from his classroom twice during a school year for sexual abuse allegations and, ultimately, resigned before the end of the school year. The teacher moved to Urbana School District No. 116, where he abused more children. McLean County District officials failed to disclose this information to Urbana District when they filled out an employment verification form of the teacher's employment history. McLean County District falsely indicated the teacher had worked the entire school year. Plaintiffs brought a claim for willful and wanton misconduct against McLean County District for "passing" the teacher to Urbana. The Illinois Supreme Court held there was no affirmative duty to warn Urbana about the abusive teacher or report his conduct to authorities. However, once McLean County District filled out the teacher's employment verification form, they had a duty of care to plaintiffs to provide accurate information on that form.

School Districts: Bus Transportation

Public schools are not required to provide bus transportation to private school students on days the public schools are not in session.

C.E. and C.L. v. Bd. of Education of East St. Louis School Dist. No. 189, 2012 IL App (5th) 110390 (June 18, 2012).

Plaintiffs are elementary school students that reside within the East St. Louis School District No. 189, but attend a local parochial school. During the 2009-2010 school year, the public School District provided bus service to the parochial school on all days that it was in session, including those days the public schools did not have classes. Toward the end of the 2009-2010 school year, the School District informed the parochial school that it would only provide bus transportation on the days the public schools were in session. The Illinois Appellate Court affirmed the trial court's finding that the School District had no duty to provide transportation on days when the public schools were not in session.

Governmental Immunity: Statute of Limitations

Statute allowing third party actions does not extend the Tort Immunity Act's one year statute of limitations.

Ponto v. Levan, 2012 IL App (2d) 110355 (June 27, 2012).

An injured driver sued the oncoming driver for injuries arising out of a car accident between the two. The defendant driver filed a claim for contribution against third-party defendant, the City of Dixon, alleging the City's negligent

maintenance of its water mains created an ice patch that caused the defendant's car to skid into plaintiff's car. Two years later, plaintiff moved for leave to file an amended complaint to add the City as a defendant. The trial court denied plaintiff's motion to add the City, finding the statute that allows actions against third-party defendants does not extend the Tort Immunity Act's one-year statute of limitations. At trial, the jury found the defendant 65% liable and the City 35% liable. The Illinois Appellate Court affirmed the trial court's finding regarding the one-year statute of limitations and also held that unless the defendant paid more than 65% of verdict, the City did not owe anything. Finally, the Court held the water department superintendent's decision regarding maintenance following the water main leak was not a discretionary policy decision which would grant the City immunity under Section 2-201 of the Tort Immunity Act.

First Amendment Rights

Legal argument cannot create official City policy.

Teesdale v. City of Chicago, 2012 WL 3240696 (7th Cir. Aug. 10, 2012).

A Baptist minister and his parishioners attended a Catholic Church summer festival. The minister was arrested for trespassing after he and his church members began preaching to the festival goers and handing out gospel tracts. The police officer who arrested the minister was an off-duty Chicago police officer, who was a parishioner of the Catholic Church and volunteered to provide festival security. The officer also told the Baptist church members they could not preach at the festival. The Baptist church, its minister and four of its members sued Chicago and its officer, alleging the arrest violated their First Amendment rights and the minister's Fourth Amendment rights. In response to plaintiffs' motion for a temporary restraining order, the City argued plaintiffs did not have an unlimited First Amendment right to preach at the festival and the Catholic Church could exclude them. The Seventh Circuit held the City's legal argument did not constitute an official City policy that threatened plaintiffs' rights at future festivals. The Court explained a legal argument, without more, cannot create an official City policy giving rise to Section 1983 liability.

Driver's Privacy Protection Act: Parking Tickets

A parking ticket containing too much information can be a violation of the Driver's Privacy Protection Act.

Senne v. Village of Palatine, 2012 WL 3156335 (7th Cir. Aug. 6, 2012).

A Village police officer left a parking ticket on the windshield of an illegally parked car. The ticket had personal information about the car's owner, including his full name, address, driver's license number, date of birth, sex, weight and height. The car owner sued the Village, alleging the parking ticket disclosed personal information in violation of the Driver's Privacy Protection Act (DDPA). The DDPA prohibits the disclosure of certain personal information contained in a motor vehicle record. The Seventh Circuit held that placing protected personal information on a motorist's windshield in view of the public constituted a disclosure under the DDPA. The Court explained that while the statute contains various exceptions, the personal information included on the ticket contained more than was necessary.

NEW LAWS THAT MAY AFFECT YOU

Eavesdropping Exemption for Undercover Drug Investigation: PA 97-0846

PA 97-0846, effective January 1, 2013, allows eavesdropping only in situations where police officers are working in an undercover capacity and investigating violations of the controlled substances and cannabis acts. Any evidence obtained in the recordings may be used only in drug crime prosecutions or forcible felonies committed during the investigation of a drug crime. Judges and juries will be able to hear actual conversations of those suspected of committing drug crimes, rather than relying on witness testimony that may be unreliable.

Expansion of Mandated Child Abuse Reporters: PA 97-711

PA 97-711, effective June 27, 2012, makes higher-education personnel, athletic-program personnel, and early-intervention providers mandated reporters of child abuse.

Law Enforcement May Share Certain Confidential Information About Students: PA 97-1104

PA 97-1104, effective January 1, 2013, amends the Illinois School Code and Juvenile Court Act to allow law enforcement agencies to provide certain confidential information of a student arrested or taken into custody to school officials for certain offenses. This information is only to be shared if law enforcement believes there is an imminent threat of physical harm to students, school personnel, or others in the school or on school grounds.

Changes to Health Care Services Lien Act Limits Subrogation Claims: PA 97-1042

PA 97-1042, effective January 1, 2013, makes three changes to the Health Care Services Lien Act. First, it provides that petitions filed under the amended adjudication section of the Act may be served upon interested adverse parties by personal service, substitute service, or registered or certified mail. Second, it diminishes subrogation claims or other rights of reimbursement for medical expenses in the same proportion that the claimant's recovery is reduced because of comparative fault or inability to collect. Finally, it requires that a party asserting a subrogation claim or other right of reimbursement to bear a pro rata share of the personal injury or death estate claimant's attorneys' fees and litigation expenses. The Act exempts liens by health-care providers or under the Workers' Compensation or Workers' Occupational Diseases Act.

Code of Civil Procedure Amendment Makes it Easier to Examine the Medical Records of Deceased Family Members: PA 97-0867

PA 97-0867, effective July 30, 2012, amends 735 ILCS 5/8-2001 regarding the examination of health care records to provide that patients and their personal representatives are not to be charged a handling fee to obtain copies of records under Section 2001.5. Only a reasonable per page fee may be charged. Section 2001.5, regarding authorization for release of a deceased patient's records, is amended to provide that a deceased person's health care records must be released upon written request of the executor or administrator of the estate or an agent appointed under a power of attorney, or in the absence of an executor or administrator a personal representative, including a spouse, adult child, or adult brother or sister. Finally, the Act requires the personal representative seeking the records to certify under penalty of perjury that he or she is authorized to seek the records.

ANCEL GLINK DEFENSE VICTORIES

Ancel Glink's litigation team recently defended and won the following notable cases:

Civil Rights: Race Discrimination**Attorneys Lucy B. Bednarek and Darcy L. Proctor**

Nash v. Bd. of Educ. of Dolton West Sch. Dist. No. 148, Seventh Circuit, 2012 WL 3575254 (Aug. 21, 2012).

Plaintiff, an African-American, alleged the School Board and its superintendent racially discriminated and retaliated against her by not approving her contract for community and media relations work for the School District. The Seventh Circuit Court of Appeals held there was no evidence the decision not to approve her contract was motivated by racial discrimination. The Court further explained that plaintiff was unable to show she was meeting the legitimate expectations of the

School Board, or that she complained about retaliation before the Board made its decision.

Civil Rights: Due Process and Race Discrimination

Attorneys Gregory S. Mathews and Jody Knight

Parvati v. City of Oak Forest, Northern District of Illinois, Eastern Division.

Plaintiff filed suit alleging constitutional violations arising from the City's denial of a business license to a prospective purchaser of plaintiff's property, raising due process claims and race discrimination claims arising under Sections 1981, 1982 and 1983. Ancel Glink represented the individual City defendants named in the case. On March 30, 2012, the individual defendants and the separately represented City prevailed on a summary judgment motion finding there was no question of material fact supporting plaintiff's claims.

Civil Rights: False Arrest

Attorneys Gregory S. Mathews and Jody Knight

Stoller v. Village of River Grove et al., Northern District of Illinois, Eastern Division.

Plaintiff filed suit in state court arising out of his arrest and incarceration. Defendants removed the case to federal court and plaintiff filed a motion to remand back to state court. The motion to remand was denied due to plaintiff's failure to timely file the motion to remand, which was based on procedural as opposed to jurisdictional grounds.

Governmental Immunity: Statute of Limitations

Attorneys Darcy L. Proctor and Jody Knight

Wantuch v. City of Des Plaines, Circuit Court of Cook County.

The pro se plaintiff sued the City based on a July 31, 2010 police response to her home, with claims for battery and violation of privacy. Ancel Glink moved to dismiss the case based on the one year statute of limitations in the Tort Immunity Act because the lawsuit was filed on December 14, 2011. The case was dismissed with prejudice.

FIRM NEWS, BLOGS AND ARTICLES

Litigation partner Darcy Proctor was a contributing author to the IDC Monograph: Balancing First Amendment Rights with Interests of Public Employers: the Origins and Legacy of Garcetti v. Ceballos, published in the IDC Quarterly, Third Quarter 2012.

Partner Julie Tappendorf co-authored a new book published by the ABA Section of State and Local Government Law: "Development by Agreement: A Tool Kit for Land Developers and Local Governments," released in August, 2012.

Remember to visit our blog produced by Ancel Glink partner Julie Tappendorf - *Municipal Minute* at <http://municipalminute.ancelglink.com>. The blog includes regular updates about recent cases, new and pending legislation, and other topics of interest to local governments.

RISK MANAGEMENT SEMINARS AND EVENTS

Illinois American Planning Association Conference

Possibly the Greatest Law Update of All Time: Review of Zoning Laws and Cases

Julie A. Tappendorf, David S. Silverman, Brent O. Denzin and Daniel J. Bolin
September 19-21, 2012
Champaign, Illinois

International Municipal Lawyers Association Conference
Legal and Ethical Issues with Government Use of Social Media
Julie A. Tappendorf
October 21-23, 2012
Austin, Texas

National Business Institute
School Bullying: A Legal Primer
Lucy B. Bednarek and Darcy L. Proctor
December 7, 2012
Oak Brook, Illinois

National Business Institute
Police Liability Claims: Legal Issues Involving Local Governments
Darcy L. Proctor
February 4, 2013
Oak Brook Illinois

ABOUT ANCEL GLINK DEFENSE

The attorneys who comprise Ancel Glink's defense litigation group are dedicated almost exclusively to defending governmental entities in tort, civil rights, employment, business and other claims and lawsuits. In addition to defending municipalities, school districts, park districts, townships and other entities in lawsuits in state and federal courts, Ancel Glink's litigation group handles appeals, administrative hearings, critical incident crisis management, loss control training and seminars, file audits, and special consultation. Visit our web-site at www.ancelglink.com or email us at e-news@ancelglink.com.

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