

# **2013 IAPD/IPRA Soaring to New Heights Conference January 24-26, 2013 Hyatt Regency, Chicago**

## *Your Local Government Attorneys*

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**FRIDAY, JANUARY 25, 2013**

**3:00 P.M. TO 4:15 P.M.**

**SESSION #120**

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## **NEGOTIATING DIRECTORS' CONTRACTS: WHAT'S GOOD FOR THE GOOSE? WHAT'S GOOD FOR THE GANDER?**

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### **PRESENTERS:**

**KERI-LYN J. KRAFTHEFER, ESQ.**

**ROBERT T. MCCABE, ESQ.**

**ROBERT A. PORTER**

**Ancel  
Glink**

DIAMOND BUSH  
DiCIANNI  
& KRAFTHEFER

## NEGOTIATING DIRECTORS' CONTRACTS: WHAT'S GOOD FOR THE GOOSE? WHAT'S GOOD FOR THE GANDER?

2013 IAPD/IPRA Conference  
Friday, January 25, 2013  
3:00 p.m. - 4:15 p.m.  
Session 120

Keri-Lyn J. Krafthefer, Esq.  
Robert T. McCabe, Esq.  
Robert A. Porter  
Ancel Glink Diamond Bush DiCianni & Krafthefer, P.C.



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### Why Should A Director Have A Contract?

- ▶ Provides some job protection
- ▶ Ensures benefits important for the Director
- ▶ Provide Director with some peace of mind
- ▶ Provides an "escape route" when separating from employment



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### How Does The Board Benefit From A Contract With The Director?

- ▶ Provides stability in position
- ▶ Allows different benefit package than other employees
- ▶ Provides a method for terminating employment when the relationship is over



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## Executive Director's Duties

- ▶ Title
- ▶ Exhibit A – job description
- ▶ Who provides direction?
- ▶ Performance goals?
- ▶ Evaluation Framework
  - When
  - Who
  - Criteria
  - Self-evaluation




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## Important Terms of a Director's Contract

- ▶ Term of Employment
  - Probationary Period? If yes, terms?
  - Fixed term – 1 year or 3 years?
  - What happens at the end of the set time period?
    - Terminate
    - Renew
    - What is the process for renewal?




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## Important Terms of a Director's Contract

- If it is a multi-year contract, and nobody gives an intent to renew, what happens?
  - Does it automatically roll over for another one year? (Evergreen?) or
  - Does the clock keep ticking towards the contract's expiration?
- If the parties want to change the terms, who has to give notice?




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## Issues Related to Compensation

- ▶ Base salary
- ▶ Withholdings
- ▶ Raises
  - Fixed?
  - Merit-based?
  - Cannot lower pay?
  - Fixed plus merit?
  - Timing – Annual on anniversary/fiscal year?
- ▶ Expense reimbursement
  - Travel
  - Seminars
  - Memberships



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## Other Benefits

- ▶ Insurance
  - General liability
  - Errors and omissions
  - Public officials' liability
- ▶ Medical
  - Co-payments
  - Deductibles
- ▶ Dental/optical insurance plan
  - Co-payments
  - Deductibles
- ▶ Group life insurance plan
  - Amount?
  - 1 year's salary
  - Specify employee bears burden of tax liability for benefits
- ▶ Disability plan
  - Deferred compensation
- ▶ Other employee benefit plan
- ▶ IMRF



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## Other Benefits

- ▶ Vacation
- ▶ Holidays
- ▶ Personal Days
- ▶ Leave
  - Funeral
  - Court
  - Disability
  - Emergency



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## Automobile

- ▶ Will the District provide one?
- ▶ Value
- ▶ Monthly auto allowance in lieu of use of auto?
- ▶ Nominal personal use?
- ▶ Who can use the vehicle?
- ▶ Auto insurance?
- ▶ Gas allowance?
- ▶ No alterations
- ▶ Director responsible for tax liability for personal use of vehicle.



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## Cell Phone

- ▶ Issued by district or reimbursed?
- ▶ Reasonable personal use



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## Professional Development

- ▶ Subject to prior Board authorization
- ▶ Reimbursement for transportation, lodging, meals and registration fees, within reason
- ▶ NPRA
- ▶ IPRA
- ▶ Workshops, seminars and meetings where it will benefit the District
- ▶ Memberships in usual and customary professional and service organizations

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## Other Considerations For Boards

- What will it take to hire the Director?
- Will it impact morale of other employees (nothing is confidential)



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## Termination

- ▶ Just Cause
- ▶ Performance deficiencies
  - Failure to meet mutually agreed upon goals
- ▶ Contract just ends
- ▶ Resignation



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## Just Cause

- ▶ List of specifics, such as conviction of a crime
- ▶ Really, really bad things...violating any rule of the District,
- ▶ Insubordination
- ▶ Written notice and a reasonable opportunity to respond in writing, or in person at a closed session of the Park Board
- ▶ No official "hearing"
- ▶ If hearing, specify process
  - Adversarial
  - Non-adversarial
  - No witnesses
  - No cross-examination, etc.

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## Termination Based Upon Performance

- ▶ Written notice of deficiencies
- ▶ Opportunity to cure within reasonable time period
- ▶ Consequences for failure to cure, up to and including termination



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## Evaluation



- ▶ Performance objectives/measures
- ▶ Timing
  - When?
- ▶ Who will do evaluation?
- ▶ Self-evaluation?
- ▶ Opportunity to respond to evaluation?
  - How?
  - In writing?
  - Included in personnel file or not?

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## Employee's Ability To Terminate

- ▶ Time period
- ▶ Notice



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## General Issues upon Cessation of Employment

- ▶ Payment of all earned and accrued but unpaid compensation
- ▶ Unused vacation days
- ▶ Other personnel policy benefits?



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## Severance Pay

- ▶ Usually only for termination without cause
- ▶ Compensation and benefits
  - What is reasonable?
  - How much will be paid?
  - How will it be paid?
  - Insurance coverage?
  - No severance for just cause termination or resignation
  - Full release

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## “Confidentiality”

- To the extent allowable by law
- FOIA



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## Legalese...

- ▶ How/where will notices be given to parties?
- ▶ Assignment
- ▶ Procedure for Amendment and Waiver
- ▶ Severability
- ▶ Choice of Law
- ▶ Binding on successors



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## Who should negotiate the contract?

- ▶ Should both parties use the board attorney?



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## Contact us...

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