

# Bench & Bar

The newsletter of the Illinois State Bar Association's Bench & Bar Section

## Another unfair Chicago enforcement practice

BY MICHAEL J. MASLANKA

Todd parked his vehicle on a Chicago street one evening and saw no signs or any parking restrictions at or near where he parked. About 16 hours later (yes, only 16 hours later!), Todd's car received a parking ticket, saying that the city was going to clean his street and he should not have parked where he did. Todd fought the

ticket and told the administrative law judge that there was no sign posted when he parked. The administrative law judge was unsympathetic. Todd paid the fine under protest and filed a complaint in the Circuit Court of Cook County, Illinois under the state's Administrative Review Law,

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## Recent appointments and retirements

1. Pursuant to its Constitutional authority, the supreme court has appointed the following to be circuit judge:

- Joel J.C. Powless, 4th Circuit, March 1, 2019
- Levander Smith, Jr., Cook County Circuit, March 1, 2019

2. The circuit judges have appointed the following to be associate judge:

- Maureen R. Dunsing, 18th Circuit, March 4, 2019
- George A. Ford, 18th Circuit, March 4, 2019

- Susan L. Alvarado, 18th Circuit, March 11, 2019
- Kenton J. Skarin, 18th Circuit, March 11, 2019
- Michael W. Fleming, 18th Circuit, March 29, 2019
- Bolling W Haxall, III, 19th Circuit, March 29, 2019

3. The following judge has retired:

- Hon. John J. Scully, Associate Judge, 19th Circuit, March 1, 2019 ■

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under docket no. 16 M1 625851. The circuit court judge was also unsympathetic. Todd argued that he did not have adequate notice of a potential ordinance violation and that the ordinance was unconstitutional. The circuit court said that Todd waived the constitutionality issue by failing to raise it in the administrative proceeding. The circuit court also held that the evidence supported the decision of the Chicago Department of Administrative Hearings. Todd appealed.

The appellate court stated that it reviewed the administrative agency's conclusion de novo. The ordinance in question did not specify any length of time that Chicago must leave a prohibitory sign posted before starting to issue tickets. The appellate court stated that the ordinance must provide constitutionally required notice. The appellate court further said it must interpret the ordinance "to require reasonable notice to drivers who park their cars legally prior to the posting of signs that restrict parking." The appellate court said, "We hold that putting up signs less than 16 hours before ticketing does not provide reasonable notice. We find that the ordinance shall be read to require at least 24 hours' notice through the posting of signs. The street cleaning ordinance as a whole clearly contemplates that drivers will be provided with reasonable notice."

The agency's decision was reversed and the appellate court remanded the case to the Department for further proceedings. The circuit court's decision was reversed. Further, the appellate court found that the ordinance is constitutional with reasonable notice. The dismissal of Todd's complaint alleging unconstitutionality was affirmed.

The case is *Kooperman v. City of Chicago, et al.*, 2019 IL App (1st) 171056, decided by the First Division of the First District Appellate Court on March 11,

2019.

**Takeaways:** Argue the unconstitutionality of an ordinance at the administrative hearing level. With regard to ordinances that do not state a specific amount of time for the requirement of reasonable notice to have been met, you can always argue that several days are required. However, be aware that 24 hours might be all the court will deem adequate. As of this writing, the case may still be subject to rehearing and/or a petition for leave to appeal. ■

## Bench & Bar

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