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ILLINOIS STATE BAR ASSOCIATION

STANDING COMMITTEE ON GOVERNMENT LAWYERS

The newsletter of the ISBA's Standing Committee on Government Lawyers

(Notice to librarians: The following issues were published in Volume 6 of this newsletter during the fiscal year ending June 30, 2005: September, No. 1; November, No. 2; February, No. 3; June, No. 4).

Committee on Government Lawyers hosts brown-bag luncheon seminar

By Dion Davi, Western Springs

On April 29, 2005, the ISBA's Committee on Government Lawyers co-sponsored, with the Local Government Law and Practice Committee of the DuPage County Bar Association, the brown-bag luncheon seminar, "What's Next for a Government Attorney." The program, held at the DuPage County Bar Center in Wheaton, was attended by 26 of the area's assistant public defenders, assistant state's attorneys, municipal attorneys, and private practitioners.

A panel of three speakers discussed their experiences in both public and private practice. Stacey McCullough, of the Law Office of Thomas & McCullough located in Naperville, spoke extensively on her experiences in leaving the DuPage County Public Defender's Office and starting her own firm. Ms. McCullough prepared an extensive bound handout detailing various aspects and need-to-know items of interest regarding opening a private law practice. The handout included Web sites of interest, business structure information, and ARDC and ethical concerns, to name just a few items.

McCullough was followed by Judge George Sotos of the 18th Judicial Circuit, Domestic Relations Division. Judge Sotos spoke of his various public service roles including two stints at the DuPage County State's Attorney's Office, an appointment by then Attorney General James E. Ryan as Chief Counsel to the Illinois State Toll Highway Authority, and Chief of

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Public Information and Privacy Rights Seminar Scheduled

The Committee on Government Lawyers of the Illinois State Bar Association has scheduled a seminar entitled, "Public Information and Privacy Rights—Issues Under the Open Meetings Act and the Freedom of Information Act." The seminar will be held on Tuesday, November 1, 2005, from 2:00 pm to 5:00 pm in the auditorium of the Howlett Building in Springfield, Illinois. The cost of the program is $25 per person. Scheduled speakers are Michael Luke and Terry Mutchler from the Office of the Attorney General, Roger Huebner from the Illinois Municipal League, and Patricia Crowley from the City of Champaign's Legal Department. The seminar will discuss recent legal developments and exceptions and exemptions under the Open Meetings Act and the Freedom of Information Act. The seminar is open to public officials, lawyers, and any member of the public interested in these topics. To register for the seminar, please call the Illinois State Bar Association's CLE Registrar at (217) 525-1760 or (800) 252-8908 or visit the Illinois State Bar Association's Web site at www.isba.org.

Government Representation for the Illinois Attorney General's Office. Although Judge Sotos intermixed periods of private practice amongst his public service commitments, it was his love for public service that led him to leave private practice and pursue his appointment to the judiciary. Judge Sotos spoke of how he cherishes the variety of issues he hears on the bench and appreciates his opportunity to devote the time necessary to research and tackle those issues.

Following in the sentiments of Judge Sotos, former Illinois Attorney General James E. Ryan discussed his pursuit of and commitment to public service. Mr. Ryan, who served 10 years as the State's Attorney for DuPage County and two terms (eight years) as Illinois Attorney General, spoke of the commitment, made by both his family and himself, that was necessary to pursue a career path in public service. Mr. Ryan articulated the importance and rewards of public service, rewards that included both personal satisfaction and personal growth. Mr. Ryan emphasized the professionalism and skills that he has witnessed new attorneys develop through his service at the State's Attorney's Office, the Public Defender's Office, the Attorney General's Office, and the U.S. Attorney's Office. Though he has refrained from seeking additional government positions, Mr. Ryan continues to give to the public as a Distinguished Fellow at Benedictine University in Lisle, Illinois where he lectures in the area of law and government.

The seminar concluded with Kate Kelly sharing her perspective of federal government work. Ms. Kelly noted that exploring job opportunities at a federal agency or the U.S. Attorney's Office may be beneficial to those who want to stay in public service work, but would like a change or some variety. Her comments were well received by the audience, especially when she mentioned the rather competitive starting salaries for a few of the federal agencies.

The presentation of the first brown bag luncheon seminar in DuPage County was a great success. The Committee is looking forward to presenting other brown bag luncheon programs in DuPage County, as well as the first brown bag luncheon program in Lake County. Watch for announcements through this newsletter and other ISBA publications.

New amendments to the Open Meetings Act require Web site posting

By Galen T. Caldwell, Chicago

Public Act 94-028, effective January 1, 2006, amends the Open Meetings Act (5 ILCS 120/1 et seq.) to require that: (1) notices; (2) agendas; and (3) minutes of regular meetings of a public body be posted on the public body's Web site. The new posting requirements are applicable only to a public body that has a Web site maintained by the full-time staff of the public body. New language within the Act also provides that a public body's failure to post the notice or agenda of any meeting shall not invalidate the meeting or any actions taken during the meeting.

Under subsection 2.02(b) of the revised Act, a public body must post notice of all meetings of its governing body on its Web site in addition to posting the notice at the public body's principal office or at the building where the meetings are to be held. The posted notice must remain on the Web site until the meetings are concluded. Otherwise, if the posted notice is an annual schedule of a public body's meetings, the notice must remain posted on the Web site until a new notice of the regular schedule of meetings is approved by the public body. Additionally, subsection 2.02(a) of the revised Act requires a public body to post the agenda of any regular meetings of its governing body on the Web site at least 48 hours in advance of the meeting. The agenda must remain posted on the Web site until the regular meeting is concluded.

Beginning July 1, 2006, subsection 2.06(b) will require a public body to post on its Web site the minutes of its governing body's regular meetings that were open to the public within seven (7) days of the approval of those minutes. The minutes must remain posted on the Web site for at least 60 days after their initial posting pursuant to this subsection. Public bodies should note that the revised language of subsection (b) provides the Web site posting requirement for minutes is triggered "at the time [a public body] complies with the other requirements of this subsection." Under subsection 2.06(f), minutes of meetings closed to the public are required to be made available to the public upon the public body's determination that the minutes no longer require confidential treatment. Therefore, in reading subsection (f) in light of the revised language within subsection (b), a public body also must post on its Web site the minutes of any closed meeting within (7) days of the public body's determination that those minutes no longer require confidential treatment.

For copies of bills, amendments, veto messages and public acts, contact the ISBA Department of Legislative Affairs in Springfield at 800-252-8908

Attorney-client privilege in the government sector: *United States v. John Doe* (*In re Grand Jury Investigation*)

By Patricia M. Fallon, Chicago

United States v. John Doe (*In re Grand Jury Investigation*), 399 F.3d 527, 535 (2d Cir. 2005) (*In re Grand Jury Investigation*) addresses a grand jury subpoena issued to Anne C. George, former chief legal counsel to the Office of the Governor of Connecticut. The district court entered an order compelling Ms. George to testify in compliance with the grand jury subpoena. The court held that because the testimony was necessary to the grand jury, the governmental attorney-client privilege must yield as the interests served by the grand jury's fact-finding process outweigh the interest served by the privilege. The United States Court of Appeals for the Second Circuit reversed, holding that the attorney-client privilege applied and refused to fashion a balancing test or otherwise establish a rule whereby a generalized assertion of privilege must yield to the demonstrated, specific need for evidence.

George was chief legal counsel to the Governor of Connecticut from August 2000 to December 2002. In February 2004, a federal grand jury subpoenaed her testimony. The U.S. Attorney's Office was investigating whether the Governor and members of his staff received gifts from private individuals in exchange for public favors, specifically the award of state contracts. The grand jury subpoena would also include testimony by George regarding the content of confidential conversations she had with the Governor and members of his staff for the purpose of providing legal advice. The Governor's Office asserted the attorney-client privilege. Further, George refused to submit to a voluntary interview with the U.S. Attorney's Office because she believed that the information the Government was seeking was protected by the attorney-client privilege. On March 3, 2004, the Government moved in the district court to compel George to testify about confidential communications between George, the Governor, and members of his staff. On April 7, 2004, George appeared before the grand jury and asserted the attorney-client privilege on behalf of her client, the Office of the Governor of Connecticut. George refused to answer questions pertaining to the content of conversations regarding the practice of state contracts being sent to the Governor's Office for approval, the receipt of gifts, the meaning of related state ethics laws and other related discussions in which George was providing legal advice to her client. *In re Grand Jury Investigation*, 399 F.3d at 529-530.

The district court entered an order compelling the testimony of George. The court distinguished the government lawyer's attorney-client privilege from the private lawyer's attorney-client privilege finding that the latter involved a duty of loyalty only to an individual client. The court reasoned that a government lawyer's duty does not lie solely with his or her client but also with the public. The court applied a balancing test to the government lawyer's attorney-client privilege and determined that it must yield because the interests served by the grand jury clearly outweigh the interest served by the privilege. The Second Circuit reversed and took a position it said was in conflict with the other circuits. Id. at 536.

Federal Rule of Evidence 501 governs the nature and scope of a privilege asserted in proceedings before a federal grand jury. *In re Katz*, 623 F.2d 122, 124 n.1 (2d Cir. 1980). The rule instructs, "...the privilege of a witness, person, government, State, or political subdivision thereof shall be governed by the principles of the common law as they may be interpreted by the

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OFFICE
Illinois Bar Center
424 S. 2nd Street
Springfield, IL 62701
Phones: (217) 525-1760
OR 800-252-8908

Web site: www.isba.org

Co-Editors
Kathryn A. Kelly
219 S. Dearborn St., Ste. 500
Chicago, IL 60604

Lynn E. Patton
500 S. Second St.
Springfield, IL 62706

Managing Editor/Production
Katie Underwood
kunderwood@isba.org

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courts of the United States in the light of reason and experience." Fed. R. Evid. 501. In determining whether the Office of the Governor may claim a privilege, the Second Circuit reasoned that while it is in the public interest for the grand jury to collect all relevant evidence, it is also in the public interest for high ranking state officials to receive the best possible legal advice. The court held that "it is crucial that government officials, who are expected to uphold and execute the law and who may face criminal prosecution for failing to do so, be encouraged to seek out and receive fully informed legal advice." *In re Grand Jury Investigation*, 399 F.3d at 534. The court found that the attorney-client privilege applies "with special force" in the government context. Further, the court rejected the idea that the privilege is somehow "less important" when applied in the government context and refused to fashion a balancing test. Id. at 535.

Of course, the court distinguished its decision from traditional doctrines such as the crime-fraud exception. The crime-fraud exception "strips the privilege" from attorney-client communications in furtherance of ongoing criminal or fraudulent conduct. *In re John Doe, Inc.,* 13 F.3d 633, 636 (2d Cir. 1994). Further, the court's decision did not merely "extend" the attorney-client privilege to the instant case. Instead, the court held that it "simply refused to countenance its abrogation in circumstances to which its venerable and worthy purposes fully pertain." *In re Grand Jury Investigation,* 399 F.3d at 536. By agreeing that George, as legal counsel to the former Governor, could assert the privilege applied to conversations about a federal investigation into quid pro quos for gifts received by the Governor, the panel admittedly staked out a position it said was in conflict with one other federal appeals court and "in sharp tension" with decisions in two other circuits. Id.

With respect to other federal appeals courts, in 2002, the Seventh Circuit found that government lawyers were under a higher, competing duty to act in the public interest. *In Re: A Witness Before the Special Grand Jury* (Ryan), 288 F.3d 289 (7th Cir. 2002) ("While we recognize the need for full and frank communication between government officials, we are more persuaded by the serious arguments against extending the attorney-client privilege to protect communications between government lawyers and the public officials they serve when criminal proceedings are at issue.") *Ryan*, 288 F.3d at 293. The Seventh Circuit fashioned a balancing test and determined that the "lack of criminal liability for government agencies" and the significant duty of government lawyers to "uphold the law and foster an open and accountable government" outweighs the need for an attorney-client privilege in this context. Id. at 294.

Similarly, in 1998, the District of Columbia Circuit (D.C. Circuit) supported the view that the attorney-client privilege in the government context is weaker than in its traditional form. The D.C. Circuit found that government lawyers have a higher, competing duty to act in the public interest and rectify wrongful official acts despite the general rule of confidentiality. *In Re: Bruce R. Lindsey* (Grand Jury Testimony), 158 F.3d 1263 (D.C. Cir. 1998). The court held that a government attorney is absolutely distinct from a private attorney in the context of a grand jury subpoena for information related to federal crimes. Further, the court found that "when government attorneys learn, through communications with their clients, of information related to criminal misconduct, they may not rely on the government attorney-client privilege to shield such information from disclosure to a grand jury." *Lindsey*, 158 F.3d at 1278.

The Eighth Circuit also fashioned a balancing test in support of the proposition that the "governmental" attorney-client privilege is outweighed by a federal grand jury seeking information or statements that would otherwise be privileged in order to further a criminal investigation. *In re: Grand Jury Subpoena Duces Tecum* (Grand Jury), 112 F.3d 910 (8th Cir. 1997). Similar to the rationale in Ryan, the Eighth Circuit found that because entities of the government are not themselves subject to criminal liability, a government attorney has the liberty to discuss anything with a government official, except for possible criminal wrongdoing by that official, without concern for later revelation of the discussion. *Grand Jury*, 112 F.3d at 921. However, a government official who may have violated criminal law and needs legal advice should consult with a private attorney and not a government attorney. Id.

Ryan, Lindsey and *Grand Jury* all questioned the significance of the traditional rationale supporting the attorney-client privilege and how that rationale applied to the government context. By upholding the attorney-client privilege, the Second Circuit in *In re Grand Jury Investigation* furthers a culture in which consultation with government lawyers is accepted as a normal and even indispensable part of conducting public business. However, given the tension with other circuits, this court's endorsement of the attorney-client privilege for government officials may be a strong candidate for United States Supreme Court review.

Someone you should know: The Honorable Nancy J. Katz

By Donna Del Principe, Chicago

Judge Nancy J. Katz was concerned with justice long before she became a judge. While pursuing an undergraduate degree in sociology and criminal justice at Northeastern Illinois University, Judge Katz worked in a domestic violence shelter in the Uptown neighborhood of Chicago. As a result of her undergraduate studies and volunteer experiences, she decided to go to law school to better assist under-represented members of

the public. She attended Chicago-Kent-I.I.T. College of Law where she was on the Dean's List and received honors scholarships all semesters. Judge Katz was also the recipient of American Jurisprudence Awards in Labor Law and Criminal Law. She was a staff member of the Chicago-Kent Law Review in 1981-82, and Notes and Comments Editor of the Chicago-Kent Law Review in 1982-83. In addition, in the fall of 1982, she served as an extern to Judge William Hart, Federal District Court, Northern District of Illinois. In 1983, she culminated her stellar performance in law school by graduating second in her class.

After graduation, Judge Katz's continued interest in serving the public led to employment with the Legal Assistance Foundation of Chicago (LAF). At LAF, she represented clients in State and federal court and in administrative hearings. Her areas of concentration included housing law, public benefits, family law, social security, and unemployment compensation law. Her work at LAF heightened her interest in ethics, and in 1986 she accepted a position as Assistant Ethics Counsel for the American Bar Association's Center for Professional Responsibility. After a year and a half, however, she missed representing clients and returned to LAF in a supervisory position where she provided public benefits advocacy for seven years for clients with mental health issues and with HIV/AIDS.

From 1995 through 1999, Judge Katz worked as Assistant General Counsel at the Illinois Department of Children and Family Services (DCFS), supervising attorneys who represented DCFS in child abuse and neglect cases in juvenile court. While working at DCFS, she was inspired by the judges in the juvenile system. Katz noted that the judges in juvenile court were her "model of judges who made a difference in people's lives, who dealt with policy matters that related to the public interest and that were important to people."

Because of the satisfaction she received from public service and out of a desire to make a difference in people's lives, Judge Katz decided to seek a judicial position as the natural next step in her career path in government. In 1999, she was appointed as an Associate Judge for the Circuit Court of Cook County. Always a rising star, Judge Katz quickly moved from traffic court in the First Municipal District, to the Domestic Relations Division. After only nine months as a trial judge in the Domestic Relations Division, she was assigned an individual calendar. Working in Domestic Relations, she sees herself as a problem-solver who helps people transition in very difficult situations, especially where children are involved.

Always striving to do more, Judge Katz frequently writes for and lectures at training programs and seminars for Illinois judges through the Administrative Office of the Illinois Courts. She also speaks at family law seminars for attorneys, mediators, and mental health professionals. Judge Katz has remained an active participant in the Illinois State Bar Association (ISBA). She has been a member of the ISBA's Standing Committee on Government Lawyers and the Standing Committee on Sexual Orientation and Gender Identity, the latter of which she chaired in 2003-2004. She was recently appointed to the ISBA's Family Law Section Council.

Judge Katz has received several awards for her dedication, service, and commitment. In 2000, she was inducted into the Chicago Lesbian/Gay Hall of Fame because she was the first openly lesbian judge appointed in the State of Illinois. She also was one of the first members of the Lesbian Gay Bar Association of Chicago. In November 2000, a coalition of five bar associations awarded Judge Katz the Vanguard Award, an honor bestowed upon individuals who make a difference in diversity in the legal profession. In April 2001, she received the Law School Association of Chicago-Kent College of Law's Professional Achievement Award. In November 2004, she was recognized with the 2004 Court of Honor Award from the Chicago Volunteer Legal Services (CVLS) Foundation because of her sensitivity to pro bono litigants and CVLS volunteers.

When asked what she likes most about being a judge, Judge Katz replied, "what a treat to get to do justice everyday!" What a treat for all of us!

Discipline of public sector attorneys: Some recent dispositions of interest from Illinois and other states

By Rosalyn B. Kaplan, Chicago

In re Nelson, Ill. Sup. Ct. No. M.R. 19657 (November 17, 2004). The Illinois Supreme Court ordered a 90-day suspension of Ms. Nelson's license to practice on the basis of her breach of fiduciary duty to her client and her use of client confidences without the client's consent, in violation of Rule 1.6(a) of the Rules of Professional Conduct. While employed as a senior attorney in the legal department of the Chicago Transit Authority (CTA), Ms. Nelson reviewed other employees' personnel files, which she found while in the CTA offices on two Saturdays. She attempted to use the information from those files in support of a lawsuit that she brought against the CTA alleging violations of the Equal Pay Act. During the course of the litigation, she was terminated from her employment, and a federal magistrate judge ordered her to return the documents to the CTA, finding that the documents were confidential and that Ms. Nelson had acted inappropriately and without the knowledge or consent of the CTA in obtaining them. Her lawsuit was eventually dismissed for want of prosecution.

In re Cosgrove, Ill. Sup. Ct. No. M.R. 19629 (September 27, 2004). The Illinois Supreme Court censured this attorney for conduct that occurred while he was an Assistant State's Attorney. Before the afternoon call

began in the courtroom to which he was assigned, the presiding judge asked Mr. Cosgrove to review a particular case, which involved an overweight truck citation, and to see what he could do to "SOL it or whatever"; the judge explained that a friend of his had telephoned him about the case. When the case was called in court, Mr. Cosgrove stated for the record that he did not believe he would be able to meet his burden of proof, and he asked the judge to strike the matter. At the time, the police officer who had issued the citation in question was present in the courtroom, and his complaints about this conduct reached the State's Attorney's office, which suspended Mr. Cosgrove and eventually terminated his employment. In the disciplinary proceeding, it was found that Mr. Cosgrove had violated Rule 3.3(a)(1) of the Rules of Professional Conduct, by making a statement of material fact or law to a tribunal that he knew or reasonably should have known was false, and that he had engaged in a ex parte communication with a judge, in violation of Rule 3.5(j).

Iowa Supreme Court Board of Professional Ethics & Conduct v. Tofflemire, 689 N.W.2d 83 (Iowa 2004). Ms. Tofflemire was suspended indefinitely, with no possibility of reinstatement for two years. She was a full-time employee of the Labor Division of Iowa Workforce Development (IWD), a government agency and, with permission, also did contract work for the State Public Defender (SPD). A routine cross-match of her earnings was performed by the state Department of Revenue, because of her income from more than one state agency, and an investigation was initiated by the Labor Commissioner based on the revenue department's findings regarding the amount of her income. It was discovered that, on some days, records showed that Ms. Tofflemire had claimed to work for the two agencies for more than 24 hours. Her timekeeping practices were found to constitute conduct prejudicial to the administration of justice; the Iowa Supreme Court also described her actions as "egregious enough to constitute illegal conduct involving moral turpitude." It was also concluded that she had repeatedly over-billed the SPD and had collected an excessive fee. During a nine-month period, she took sick leave from IWD on 26 occasions, but records showed that she had been doing work for the SPD while on sick leave from the IWD. The court rejected her contention that the investigation had disclosed nothing more than "honest mistakes."

In the Matter of Peasley, 208 Ariz. 27, 90 P.3d 764 (2004). Mr. Peasley was a prosecutor in the Pima County Attorney's Office. In an attempt to bolster the credibility of a government informant, who was a key witness in a capital murder prosecution of two defendants, Mr. Peasley knowingly introduced false testimony from the lead detective in the case. The Arizona Supreme Court found that he had violated his duty as a prosecutor to seek justice, that he did so intentionally, and that his conduct caused actual or potential harm. His substantial experience as a prosecutor was found to be a relevant aggravating factor, as was his dishonest motive. The court ordered his disbarment.

In-sites

By Kate Kelly, Chicago and Dion Davi, Western Springs

Legal writing

All too often we take our writing for granted. We're lawyers, we rationalize, we know how to write! Well, for that rare time when you need a little assistance, here are some handy Web sites to help you. For grammar assistance, try <www.protrainco.com/info/grammar> or <www.drgrammar.org>. <http://owl.english.purdue.edu> is an on-line writing lab. While references to the Blue Book may bring back law school nightmares, citation style books are available on line as well. <www.legalbluebook.com> and <www.alwd.org> can help with your citation issues.

Government information

Seeking government information? <http://govtinfo.org> is a pilot program where visitors can receive live, online help from a government information librarian from more than 30 libraries throughout the U.S. They specialize in questions concerning government information.

Product recalls

Is that widget safe? <http://www.recalls.gov> is aimed at providing notice and information about products that have been deemed unsafe, hazardous, or defective by the U.S. Consumer Product Safety Commission, the Food and Drug Administration, the National Highway Traffic Safety Administration, the U.S. Environmental Protection Agency, or the USDA Food and Safety Commission. The list of products includes recalls in the categories of consumer products, motor vehicles, food, medicine, and cosmetics.

Case law update

By Lee Ann Schoeffel, Springfield

Administrative law

Rodriguez v. Sheriff's Merit Comm'n of Kane County., 355 Ill. App. 3d 676 (2nd Dist., February 4, 2005). Trial court erred when it dismissed complaint for administrative review of decision of sheriff's commission for failure to pay for cost of transcript of record pursuant to section 3-109 of the Code of Civil Procedure (735 ILCS 5/3-109 (West 2002)) because: (a) payment was not required while commission's motion to dismiss was pending; and (b) there is no evidence that commission ever informed plaintiff of the cost of the transcript or demanded payment until complaint had been pending more than five months. Further, trial court properly denied motion to dismiss for lack of subject matter jurisdiction because Supreme Court Rule 11 notice of decision was not mailed to plaintiff's attorney, as is required.

Home Depot, U.S.A. Inc. v. Department of Revenue, 355 Ill. App. 3d 370 (2nd Dist., February 8, 2005). Because trial court correctly concluded that Department of Revenue maintains principal offices in only Cook and Sangamon Counties, the majority of its employees and administrative nerve centers being located there, it correctly granted motion to transfer venue of plaintiff's declaratory judgment complaint challenging inclusion of earnings from what department determined were unitary corporations, pursuant to section 2-103(a) of Code of Civil Procedure (735 ILCS 5/2-103 (West 2003 Supp.)) on de novo review.

Morris v. Department of Professional Regulation, 356 Ill. App. 3d 83 (1st Dist., February 18, 2005). Because plaintiff violated Nursing and Advanced Practice Nursing Act (225 ILCS 65/5-1 et seq. (West 2000)) by practicing midwifery without advanced practice nursing license, the Department was entitled to obtain cease and desist order directing plaintiff to stop practicing midwifery; and Department's decision to suspend plaintiff's registered nurse license does not violate plaintiff's due process rights. However, order compelling 12-hour ethics course is not reasonably related to purposes of Nursing and Advanced Practice Act and was vacated.

Berg v. White, 357 Ill. App. 3d 496 (4th Dist., May 12, 2005). After trial court took administrative review of Secretary of State's decision denying rescission of order revoking defendant's driver's license under advisement, docket entry affirming Secretary of State's decision was final order, despite failure of clerk to send a copy of that order to plaintiff's counsel; and subsequent order attempting to fix date of entry of final order at later date, was ineffective to make plaintiff's subsequent notice of appeal timely under Supreme Court Rule 303.

Constitutional law

In Re D.W. Minor, 214 Ill. 2d 289 (March 24, 2005). Section 1(D)(q) of the Adoption Act (750 ILCS 50/1(D)(q) (West 2000)), which contains irrefutable presumption that parent who has been criminally convicted of aggravated battery, heinous battery, or attempted murder of any child, is unfit, violates equal protection because it is not narrowly tailored to serve the compelling State interest of protecting children.

Scachitti v. UBS Financial Services, 215 Ill. 2d 484 (June 3, 2005). Trial court correctly held that private taxpayers lack standing to bring common law actions on behalf of State, it being exclusive province of Attorney General. Further, because Attorney General is constitutional office, which powers may not be abridged by legislature, provisions of section 20-104(b) of the Code of Civil Procedure (735 ILCS 5/20-104(b) (West 2002)) are unconstitutional to the extent they authorize private citizens to file suit to recover public funds where State is real party in interest. However, private persons do have standing to bring suit on behalf of the State under the qui tam provisions of the Whistleblower Reward and Protection Act (740 ILCS 175/1 et seq. (West 2002)), which is constitutional because qui tam plaintiff has real stake in outcome, and Attorney General maintains right to control litigation.

County of Cook v. Bear Stearns & Co. Inc., 215 Ill. 2d 466 (June 3, 2005). Private citizens' complaint against financial institutions alleging excess profits earned on refunding bonds was properly dismissed for lack of standing because: (a) the provisions of section 20-104(b) of the Code of Civil Procedure (735 ILCS 5/20-104 (West 1998)) are unconstitutional to the extent that they purport to give private citizens the right to pursue actions where county is real party in interest, the office of state's attorney being a constitutional office, which duties and responsibilities may not be abridged by statute; and (b) Counties Code (55 ILCS 5/1-1001 et seq. (West 1998)) gives no private right of action for taxpayer claims, where injury is not allegedly result of official misconduct.

Criminal law

People v. Watson, 214 Ill. 2d 271 (January 21, 2005). The only limitation placed on the issuance of a grand jury subpoena for invasive bodily specimens is that it be supported by probable cause; the grand jury's subpoena for extraction and testing of defendant's blood was supported by probable cause.

People v. Cuadrado, 214 Ill. 2d 79 (January 21, 2005). Indictment alleging that defendant "solicited," rather than "procured," another to murder her husband failed to allege essential element of offense. Defendant was not prejudiced by indictment alleging that she "solicited," rather than procured, another to murder her husband, overruling People v. Scott, 285 Ill. App. 3d 95 (1996)).

People v. Norris, 214 Ill 2d 92 (January 21, 2005). Because neither Supreme Court Rule 504 nor Supreme Court Rule 505 guarantee the defendant the right to a trial on the merits at the first appearance date, State could nolle prosequi traffic tickets and refile them. The trial court has discretion to grant a continuance.

People v. Ramirez, 214 Ill. 2d 176 (January 21, 2005). Appellate court cor-

rectly held that trial court erred by proceeding to trial in absentia after defendant was not present when trial was set because the defendant was served with notice of the trial date by ordinary mail, as opposed to certified mail, as mandated by section 115-4.1(a) of the Code of Criminal Procedure of 1963 (725 ILCS 5/115-4.1(a) (West 1992)).

People v. Roberts, 214 Ill. 2d 106 (February 3, 2005). Trial court abused its discretion when it allowed alternate juror to replace original juror after deliberations had already begun because it substantially prejudiced defendant, the remaining jurors having been aware that excused juror had been contacted by witness and was acting nervous, but having failed to immediately apprise court of same, and the remaining jurors had already formed their opinions of defendant's guilt, having taken two votes before juror was excused.

City of Champaign v. Torres, 214 Ill. 2d 234 (February 17, 2005). Although owner or occupier of apartment would have had standing to disobey police officer and slam door as officer was attempting to block it open, defendant, guest, did not. Therefore, he had no 4th amendment defense to municipal charge of obstructing police officer. Neither may he assert defense of section 7-2 of Criminal Code of 1961 (720 ILCS 5/7-2 (West 2002)), as it is not applicable to municipal ordinance violations.

People v. Willis, 215 Ill. 2d 517 (June 3, 2005). Although delay of 87 hours before presenting defendant to court for probable cause hearing is unreasonable and violates 4th amendment, delay alone was insufficient to suppress confession given after 73 hours in detention. Proper test for admissibility of confession made by defendant during the unreasonable delay between his warrantless arrest and probable cause hearing was whether the confession was voluntary.

People v. Alexander, 354 Ill. App. 3d 832 (5th Dist., December 17, 2004). Defendant was properly convicted of murder in Illinois based on evidence that he participated in beating of victim in Illinois, who was semi-conscious or unconscious, and then left along road in Missouri, where he was struck and killed by oncoming vehicle. Because initial conduct, the beating, occurred in Illinois, it has jurisdiction over the murder. Further, any claimed errors committed by his attorney were either legitimate trial strategy or harmless. However, battery conviction must be vacated as lesser included offense of first-degree murder.

People v. Foster, 354 Ill. App. 3d 564 (1st Dist., December 20, 2004). Because identity of building as place of worship can be inferred from use of word "church" in its name, defendant was properly convicted of delivery of controlled substance within 1000 ft. of place of worship. Further, police officer's testimony that he properly inventoried seized substance with identification number was sufficient to establish chain of custody from officer to the lab. In addition, section 5-4-3 of the Unified Code of Corrections (730 ILCS 5/5-4-3 (West 2002)) concerning mandatory collection of DNA samples provision does not violate defendant's constitutional right to be free from unreasonable searches and seizures.

People v. Mendoza, 354 Ill App. 3d 621 (1st Dist., December 22, 2004). Although version of reckless homicide statute in effect at time of defendant's bench trial contained impermissible mandatory presumption (see 720 ILCS 5/9-3(b) (West 2000)) and had already been held unconstitutional by the Supreme Court (*People v. Pomykala*, 203 Ill. 2d 198, 209 (2003)), record contained no evidence that trial court or prosecutor relied upon the presumption. Since trial judge is presumed to know and follow the law, defendant has failed to establish reversible error.

People v. Pickens, 354 Ill. App. 3d 904 (1st Dist., December 28, 2004). Evidence that defendant slammed door on wife's foot is sufficient to support conviction of domestic battery. Further, unavailability of court supervision for finding of guilty of domestic battery (720 ILCS 5/12-3.2(a)(2) (West 2002)) does not violate proportionate penalties clause because domestic battery statute does not have same purpose as battery. Thus, proportionate-penalties clause of the Constitution (Ill. Const. 1970, art. I, §11) was not implicated under identical-elements test.

People v. Hudson, 354 Ill. App. 3d 648 (1st Dist., December 30, 2004). Trial court gave proper modified IPI 7.01 instruction telling jury that defendant was guilty of felony murder if, during the course of a forcible felony, he set in motion a chain of events which resulted in the death, rather than imposing additional requirement that defendant contemplated, or should have contemplated the potential of someone dying in course of felony, as defendant proposed.

People v. Gallano, 354 Ill. App. 3d 941 (1st Dist., December 30, 2004). Trial court erred when it dismissed juror during deliberation after he sent note out to judge indicating that the other jurors were willing to convict, but he had reasonable doubts. Timing of discharge and transcript from trial demonstrate that juror was dismissed because of his hold out position and not because of newly discovered evidence that juror had been untruthful during voir dire. Further, because statement by co-defendant would have been inadmissible hearsay, defendant has established no due process violation by co-defendant invoking privilege against self incrimination and refusing to testify.

People v. West, 355 Ill. App. 3d 28 (1st Dist., January 5, 2005). Although alleged sexual assault victim's statements made to individual to whose residence she ran to for aid and statements made to police officer at that person's house and to the 911 dispatcher with regards to nature of attack on her and injuries she sustained were not testimonial in nature, the statements she made to 911 dispatcher and police officers at the hospital which described the defendant, identified the vehicle, the direction he fled and the personal property he took were testimonial and were admitted in violation of *Crawford v. Washington*, 541 U.S. 36, 124 S. Ct. 1354 (2004). Victim's statements to emergency room nurse and emergency room physician regarding the nature of alleged attack and cause of her symptoms and pain were admissible under the medical treatment exception to hearsay rule. The court properly allowed testimony of prior bad acts by defendant at sentencing hearing.

In re E.H., 355 Ill. App. 3d 364 (1st Dist., January 28, 2005). In adjudicatory hearing of respondent's juvenile delinquency petition for aggravated sexual abuse and assault, hearsay statements of nontestifying child victim to her grandmother were admitted in

violation of respondent's constitutional right of confrontation as described in *Crawford v. Washington*, 541 U.S. 36, 124 S. Ct. 1354 (2004), because statements, although not to governmental official, were testimonial in nature. Further, section 115-10 of the Illinois Code of Criminal Procedure of 1963 (725 ILCS 5/115-10 (West 2000)), under which statements were admitted, is unconstitutional.

People v. Dahlberg, 355 Ill. App. 3d 308 (2nd Dist., February 9, 2005). Jeopardy attached to trial of defendant for domestic battery when trial court, without giving defendant an opportunity to object or consider other alternatives, declared mistrial when defense counsel questioned complaining witness about other complaints she has filed against other men for domestic violence. Defendant's failure to object to mistrial did not constitute an acquiescence to the mistrial. Because there was no manifest necessity for trial court to declare mistrial, defendant may not be retried.

Girard v. White, 356 Ill. App. 3d 11 (1st Dist., March 14, 2005). Illinois law does not permit application for driver's license by new resident whose Florida driver's license has been revoked following four driving under the influence convictions.

People v. Mitchell, 356 Ill. App. 3d 158 (2nd Dist., March 31, 2005). Delay of 14 years between filing of complaint for arrest warrant and arrest and indictment of defendant for attempted murder of his wife did not give rise to speedy trial violation because defendant's right to a speedy trial did not accrue until he was arrested and indicted in 2003. Therefore, trial court erred when it dismissed indictment.

People v. Ingram, 357 Ill. App. 3d 228 (5th Dist., April 7, 2005). Defendant was not entitled to dismissal of his aggravated criminal sexual assault charges based on amended speedy trial provisions (725 ILCS 5/103-5(a) (West 2002)) because he failed to affirmatively object to continuance of case when State moved for additional hair samples and tendered additional discovery. Motion for continuance by State is not required pursuant to amended speedy trial provisions.

People v. Downin, 357 Ill. App. 3d 193 (3rd Dist., April 29, 2005). Aggravated criminal sexual abuse statute, of which defendant was convicted, does not violate equal protection even though persons of same age as defendant and 15 year-old victim may engage in sexual intercourse when married with parental or court permission pursuant to Illinois Marriage and Dissolution of Marriage Act because parental or court permission to marry reduces likelihood of exploitation by virtue of age difference. Further, trial court properly admitted print out of e-mail purportedly sent by defendant despite testimony of computer expert that it could not be definitely authenticated and could be falsified without identification of ip address from which it was sent.

People v. Blakely, 357 Ill. App. 3d 477 (4th Dist., May 26, 2005). Trial court erred when it imposed $1,000 mileage fee for sheriff returning the defendant from Colorado in each of two simultaneously pending cases. Cost assessment must be divided between cases, and defendant is only required to pay the actual costs incurred.

People v. Brener, No. 2-04-0411 (2nd Dist., June 1, 2005). Because defendant's one-hour, alcohol impaired drive through three counties looking for his brother's broken down motorcycle constitutes one continuing offense that is a single act, his guilty plea in Winnebago County to DUI charges properly resulted in dismissal, on grounds of double jeopardy, of aggravated DUI charges in Jo Daviess County, where he accidentally ran over his sister causing serious injuries.

People v. Buckner, No. 3-03-0611 (3rd Dist., June 13, 2005). Trial court erred by failing to conduct Boose hearing to ascertain whether extraordinary security device was necessary before allowing sheriff to force defendant to wear electronic security belt during trial for burglary. Rather than order new trial, trial court is ordered to conduct retrospective Boose hearing.

Criminal counsel

People v. Hart, 214 Ill. 2d 490 (April 7, 2005). There was no Supreme Court Rule 402(f) (177 Ill. 2d R. 402(f)) violation when, after defense failed to object to testimony from detective that defendant attempted to plea bargain. Prosecutor commented on inference of guilt from defendant's statements in closing arguments. Further, any Doyle violation was harmless error; defendant was not deprived of a fair trial.

People v. Lander, 215 Ill. 2d 577 (June 3, 2005). Because court-appointed attorneys are required to comply with consultation and affidavit requirements of Supreme Court Rule 651(c) (134 Ill. 2d R. 651(c)) even when defendant's pro se post-conviction petition was filed beyond statutorily permitted period, defendant was deprived of sufficient representation and dismissal of his post conviction petition must be reversed and remanded. However, defendant's affidavit, that he relied on bad information given by law clerks, law librarian and "jailhouse lawyers," is insufficient to establish delay was not due to defendant's culpable negligence and justify late filing of petition.

People v. Cichon, 354 Ill. App. 3d 200 (3rd Dist., December 14, 2004). It was not error for the trial court to summarily dismiss post-conviction petition alleging that State's Attorney Appellate Prosecutor had no authority to act as special prosecutor in his case. Section 3-9008 of Counties Code (55 ILCS 3-9008 (West 2000)) allows court to appoint any licensed attorney as special prosecutor and motion alleging conflict on part of State's Attorney was made and allowed.

Alexander v. Pearson, 354 Ill. App. 3d 643 (1st Dist., December 16, 2004). State Appellate Defender's office is not required or authorized to represent prisoners in the prosecution of habeas corpus petitions, and plaintiff is not entitled to appointed counsel to represent him in the appeal of the dismissal of his habeas petition. Therefore, the Appellate Defender is given leave to withdraw. Further, because habeas petition raises as its sole basis, the propriety of his extended term sentence, and Apprendi does not apply retroactively and may not be raised in collateral proceedings, plaintiff's habeas petition was properly dismissed by the trial court.

People v. Vaughn, 354 Ill. App. 3d 917 (1st Dist., December 23, 2004). In defendant's jury trial for driving under the influence and driving with a suspended license, the trial judge went beyond role of neutral decision-maker and assumed role of trial strategist when he interrupted defendant's

testimony and made comments sufficient to induce defendant to retract decision to testify and then instructed jury to disregard defendant's previous testimony. Therefore, he should have granted defendant's motion for mistrial. However, although judges conduct affected outcome of DUI charge, it did not affect outcome of driving while suspended charge, which defendant's stricken testimony essentially admitted.

People v. Young, 355 Ill. App. 3d 317 (2nd Dist., January 26, 2005). Trial court erred when it dismissed defendant's pro se post-conviction petition alleging ineffective assistance of counsel when his attorney pressured him into accepting plea agreement by misinforming him about sentence he would be required to serve. Trial court erroneously applied two-year statute of limitations of 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2002)) to conclude that petition was time-barred and failed to inquire whether defendant was indigent and, if so, desired appointed counsel.

People v. Roby, 356 Ill. App. 3d 567 (5th Dist., March 17, 2005). Trial court erred when it conducted hearing on defendant's motion to withdraw his guilty plea despite report of psychiatrist that defendant was unfit to assist his counsel in presentation of motion, particularly since defendant was not competent to waive attorney client privilege in order for counsel at time of guilty plea to testify.

People v. Ogurek, 356 Ill. App. 3d 429 (2nd Dist., March 30, 2005). When defendant expressed dissatisfaction with public defender, trial court properly admonished him and instructed him to put his reasons for wanting a different public defender in writing in the form of a motion. Defendant's waiver of counsel was therefore properly executed. Further, trial court did not impliedly revoke waiver of defense counsel by appointing stand-by counsel.

People v. Pendleton, 356 Ill. App. 3d 863 (2nd Dist., April 13, 2005). Defendant did not receive reasonable level of assistance required by Post-Conviction Hearing Act (725 ILCS 5/122-1 et seq. (West 2002)) when his appointed counsel failed to raise, in amended post-conviction petition, trial court's failure to give proper admonitions pursuant to Supreme Court Rule 605(b) (Official Reports Advance Sheet No. 21 (October 17, 2001)) when accepting guilty plea.

People v. Wooddell, 357 Ill. App. 3d 208 (4th Dist., May 2, 2005). When defendant was released from Department of Corrections on mandatory supervised release, she was no longer subject to speedy-trial provisions of Intrastate Detainers Act (730 ILCS 5/3-8-10 (West 2002)) and was required to file new speedy-trial demand pursuant to Speedy Trial Act (725 ILCS 5/103-5 (West 2002)). Therefore, trial court erred in dismissing the charges against the defendant based on speedy-trial demand made pursuant to Intrastate Detainers Act.

In re Robert S., 357 Ill. App. 3d 214 (4th Dist., May 13, 2005). Trial court committed reversible error when it allowed defense counsel's motion to withdraw and then immediately proceeded to hearing of State's petition to terminate respondent's parental rights without allowing 21-day grace period to obtain alternate counsel or demanding compliance with notice provisions of Supreme Court Rule 13 (c).

People v. Brown, No. 5-03-0489 (5th Dist., May 27, 2005). Defendant was deprived of effective assistance of counsel in his trial for murder when defense attorney failed to move to suppress recordings and documents made while defendant was in custody through the use of a fellow inmate, who regularly induced inculpatory statements from fellow inmates while in custody. That witness' credibility was suspect without corroborating recordings and documents, which were induced in violation of sixth amendment right to counsel.

People v. Sales, No. 2-04-0371 (2nd Dist., June 10, 2005). Although Assistant State's Attorney repeatedly violated order in limine, and trial court granted new trial because of it, double jeopardy does not bar defendant's retrial for sexual exploitation of a child. Grant of a new trial is not the functional equivalent of a mistrial.

Criminal sentencing

People v. Bishop, 354 Ill. App. 3d 549 (1st Dist., December 13, 2004). Because substantial compliance with Illinois State Police Regulations (20 Ill. Adm Code §1286.330(d) (2002)) related to collection of urine sample is sufficient, fact that sample taken from defendant in hospital after accident was not first urine sample taken does not defeat use of its test results for DUI. Further, passage of 15 days before sample was submitted to police lab is not fatal. In addition, because defendant failed to present any evidence that medication that he was administered at hospital affected test results, State was not required to prove that blood alcohol results were not tainted by it, particularly since defense counsel objected to relevancy of questioning of lab technician on that subject during trial. Also, Trauma Center Fund fee and Spinal Cord Injury Paralysis Cure Research Fund fee imposed by court pursuant to statutes enacted after defendant's offense was committed were not fines and not subject to ex post facto prohibitions.

People v. Aleman, 355 Ill. App. 3d 619 (2nd Dist., February 16, 2005). Defendant, who pled guilty to bail bond violation in DuPage County, with underlying charge of armed robbery subject to nolle prosequi, was properly sentenced to six years to be served consecutively with sentence for armed robbery to which he pled guilty in Cook County, pursuant to section 5-8-4(h) of the Unified Code of Corrections (Ill. Rev. Stat. 1991, ch. 38, par. 1005-8-4(h)), because Cook County crime was committed while he was out on bond.

People v. Bonner, 356 Ill. App. 3d 386 (1st Dist., March 1, 2005). Defendant could be convicted of felony of failing to register as sex offender after having pled guilty to sexual exploitation of a child, a misdemeanor, and placement on probation because the Sex Offender Registration Act (730 ILCS 150/1 et seq. (West 2000)) and sexual exploitation of a child statute have distinct legislative purposes and are not subject to proportionate penalty analysis.

People v. Rosenberg, 356 Ill. App. 3d 219 (3rd Dist., March 7, 2005). State was not required to prove that defendant intended controlled substance, which his accomplice was transporting through Illinois, to be delivered in Illinois in order to convict defendant of controlled substance-trafficking. Further, because large-scale interstate drug trafficking poses a unique threat to peace, health and welfare of the citizens of Illinois more severe sentence for

it than possession with intent to deliver a controlled substance does not violate proportionate penalties clause.

People v. Harris, 357 Ill. App. 3d 253 (1st Dist., April 28, 2005). When Governor commuted defendant's death penalty and imposed life imprisonment as sentence, he substituted defendant's judicially imposed sentence for an executively imposed one and rendered defendant's post-conviction petition challenging his death sentence based on ineffectiveness of counsel moot.

People v. Sterling, 357 Ill. App. 3d 235 (1st Dist., May 2, 2005). Trial court properly imposed extended-term sentence of 70 years for murder based on defendant's prior convictions. However, court erred when it imposed additional extended-term for robbery, because extended-term is available only for most serious offense.

People v. Barcik, No. 2-03-1045, 2-04-0476 Cons. (2nd Dist., June 2, 2005). Trial court lacked jurisdiction to modify judgment against defendant by merging multiple driving under the influence (DUI) and driving while license revoked (DWLR) convictions into one, because defendant's filing of a notice of appeal deprived trial court of jurisdiction. Further, trial court should have merged multiple DUI convictions into one conviction and multiple DWLR convictions into second, as result of one-act, one-crime rule. In addition, court erred when it imposed extended-term sentence for both convictions, because only the more serious Class 2 felony, aggravated DUI, was subject to extended sentence. Appellate court lacks jurisdiction to consider appeal from denial of defendant's post trial motion, there being insufficient proof of mailing notice of appeal to establish service within 30 days.

People v. Jennings, No. 1-03-3207 (1st Dist., June 2, 2005). Trial court erred when it sentenced defendant after purported waiver by defendant of presentence investigation report without agreement on the record to the imposition of a specific sentence.

People v. White, No. 3-04-0708 (3rd Dist., June 3, 2005). After defendant was sentenced to five years for forgery, trial court erred when it refused to give him credit for presentence custody, because his conduct violated terms of his mandatory supervised release for prior conviction, and filing of forgery charges several months later. State manipulated defendant's liberty by not charging him until several months after his detention. Defendant is not precluded from raising issue on appeal because of failure to file timely post-trial motion.

Election law

Qualkinbush v. Skubisz, No. 1-03-2528 (1st Dist., March 31, 2005). Exclusion of votes, rather than apportionment, was the appropriate sanction imposed by the trial court on candidate for mayor whose worker committed vote fraud by illegally obtaining and assisting with absentee ballots in violation of section the 19-3 of Election Code (10 ILCS 5/19-3 (West 2002)). In addition, section 19-3 is not preempted by federal Voting Rights Act (42 U.S.C. §1973aa-6 (2003)) and Americans with Disabilities Act of 1990 (42 U.S.C. §12132 (1995)), and does not violate equal protection.

State Board of Elections v. Shelden, 354 Ill. App. 3d 506 (4th Dist., December 15, 2004). In mandamus action by State Board of Elections, trial court should have concluded that the Election Code requires county clerk to submit to State Board, the telephone numbers of registered voters which the clerk has compiled in an electronic format. The court correctly held that the clerk is not required to submit telephone numbers collected on paper records that were never entered in computer registration file.

Green Party v. Henrichs, 355 Ill. App. 3d 445 (3rd Dist., January 21, 2005). Trial court correctly refused to allow petition by new party to place candidates on ballot because petitions failed to include full slate of county candidates, omitting candidates for 13 county board seats, in violation of section 10-2 of Election Code (10 ILCS 5/10-2 (West 2002)).

People v. Baumgartner, 355 Ill. App. 3d 842 (4th Dist., February 16, 2005). Defendant's conviction for perjury for filing a false statement of candidacy when he signed a sworn statement that he resided in Moultrie County, where he successfully ran for county board, must be reversed. Defendant, by maintaining voter registration, driver's license address and family home in Moultrie County, despite 10 years as student and purchase of home in Champaign County, demonstrated choice of Moultrie County as his residence for purposes of Election Code.

McNamara v. Oak Lawn Municipal Officers Electoral Board, 356 Ill. App. 3d 961 (1st Dist., April 11, 2005). Although nominating papers combining two independent candidates for village office—president and clerk—violate section 10-3 of Election Code (10 ILCS 5/10-3 (West 2002)), the names should not have been stricken from ballot because State statute is silent regarding remedy for failure to comply with section 10-3 of the Code.

Salgado v. Marquez, 356 Ill. App. 3d 1072 (2nd Dist., April 20, 2005). Nominating petitions of candidate for alderman were deficient because they did not list municipal office which candidate was seeking, thereby failing to comply with provisions of section 7-10 of the Election Code (10 ILCS 5/7-10 (West 2002)). Therefore trial court erred by affirming dismissal of objection by election board.

Marquez v. Aurora Board of Election Commissioners, 357 Ill. App. 3d 187 (2nd Distr., May 12, 2005). Trial court properly dismissed mandamus complaint filed by plaintiff for alderman seeking to compel election authority to count write-in votes for him because notice of intent was not filed in a timely manner as required by section 18-9.1 of the Election Code (10 ILCS 5/18-9.1 (West 2002)). Pendency of litigation over nomination petitions does not excuse delay in filing, and provisions of section 18-9.1 are mandatory not directory.

Environmental law

Roti v. LTD Commodities, 355 Ill. App. 3d 1039 (2nd Dist., February 9, 2005). Residents of neighborhood could maintain private cause of action before Pollution Control Board against distribution business for noise pollution pursuant to section 24 of the Environmental Protection Act (415 ILCS 5/24 (West 2002)) and its regulations (35 Ill. Adm Code §900.102 (2002)).

Waste Management of Illinois Inc. v. Illinois Pollution Control Board, 356 Ill. App. 3d 229 (3rd Dist., March 23, 2005). Pollution Control Board correctly found, based on undisputed facts, that siting approval by county must

be reversed because petitioner failed to give requisite notice to adjoining landowner of application for expansion of existing landfill pursuant to section 39.2(b) of Environmental Protection Act (415 ILCS 5/38.2(b) (West 2004)). Because statute clearly requires that notice be given by personal service or registered mail, neither posting nor regular mail was sufficient to give county board jurisdiction to consider application.

Valstad v. Cipriano, No. 4-04-0223 (4th Dist., May 10, 2005). Plaintiffs' complaint challenging assessment of additional fees pursuant to the State Budget Implementation Act for 2004 (Public Act 93-32) is subject to dismissal under section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-612 (West 2002)) because trial court properly held, as a matter of law, that fee imposed on aggregate NPDES permit holders does not violate uniformity, equal protection, appropriations, or due process clauses of Illinois Constitution, the classification bearing reasonable relationship to legislative purpose. Further, there is no constitutional prohibition against transferring excess funds to general revenue fund, nor is the statute preempted by federal law.

Labor law

Champaign-Urbana Public Health District v. Illinois Labor Relations Board, 354 Ill. App. 3d 482 (4th Dist., December 13, 2004). ILRB's certification of union as exclusive bargaining unit for combined group of professional and nonprofessional employees based on newly adopted emergency rules was improper. The ILRB's rules were not properly adopted under the Illinois Administrative Procedure Act (5 ILCS 100/1-1 et seq. (West 2002)). Enactment of new legislation with immediate effective date is not sufficient grounds for exercise of emergency rule making authority.

Walters v. Department of Labor, 356 Ill. App. 3d 785 (1st Dist., March 24, 2005). Because section 11 of Wage Payment and Collection Act (820 ILCS 115/11 (West 2002)) gives the Department of Labor no authority to issue adjudicatory orders, but provides for only investigative findings, the Department's determination that plaintiff is responsible employer for purposes of Act is not subject to either administrative review or certiorari, and the circuit court lacked jurisdiction to reverse it.

Illinois Department of Revenue v. Illinois Civil Service Comm'n, 357 Ill App. 3d 352 (1st Dist., April 8, 2005). Illinois Civil Service Commission lacked jurisdiction to order reinstatement of certain employees appointed by previous gubernatorial administration without competitive examination and use of eligibility lists and erred as a matter of law when it ordered reinstatement of seven other employees appointed pursuant to newly enacted rules that contradict the Illinois Personnel Code (20 ILCS 415/1 et seq. (West 2000)).

Municipal law

Village of Glenview v. Zwick, 356 Ill App. 3d 630 (1st Dist., March 31, 2005). Trial court correctly held that village ordinance, that imposes attorney's fees on defendants who are found to have violated municipal ordinance, imposes impermissible burden on the court system. The administration of justice is a matter of statewide concern and does not pertain to local government and affairs. Therefore, a municipality may not exercise its home rule powers to implement a fee-shifting policy for attorney's fees in ordinance violation cases.

People v. Brown, 356 Ill. App. 3d 1096 (3rd Dist., April 25, 2005). Because there is an inherent conflict between the elected positions of city alderman and park district board commissioner, trial court properly granted summary judgment in favor of state's attorney ordering defendant removed from his position as park district board commissioner.

Open Meetings Act

Henry v. Anderson, 356 Ill. App. 3d 952 (2nd Dist., April 18, 2005). Although school board was not required to cite statutory provision before voting to close meeting to the public, and it was sufficient that they cited "to discuss employment matter, specifically the reclassification of employee," the school board violated the Open Meetings Act at second meeting by voting to close meeting to discuss "potential litigation" and employment matters without first making finding that litigation was "probable or imminent."

School law

People v. Wilson, 357 Ill. App. 3d 204 (3rd Dist., April 25, 2005). Trial court correctly concluded that section 1 of the Public Officers Prohibited Activities Act (50 ILCS 105/1 (West 2002)) prohibits simultaneous service on county boards and school district boards in counties with population over 40,000. However, trial court should have ordered defendant's removal from school board, rather than county board, because school board election of sitting county board member is void.

Taxation

Allegis Realty Investors v. Novak, 356 Ill. App. 3d 887 (2nd Dist., April 21, 2005). Trial court erred when it granted summary judgment dismissing objection to highway tax levy because, after court previously held that increase authorized by referendum had expired, section 30-20(b) of the Township Code (60 ILCS 1/30-20 (West 1996)) required referendum to authorize continuation of expired rate to be requested by petitions signed by 10% of voters of township, as it was referendum to "establish or increase" rate, which raises material issue of fact.

Church of Peace v. City of Rock Island, 357 Ill. App. 3d 471 (3rd Dist., May 12, 2005). Churches, which are exempt from property taxes by virtue of use of property for religious and charitable purposes, are subject to an ordinance imposing storm water service charge on property owners. Charge was a fee and not a tax. The charge was for a dedicated purpose; the fee is proportionate to service rendered. The opt out provision, although not practical, makes it voluntary.

Tort immunity and liability

Moore v. Chicago Police Department Officer Green, 355 Ill. App. 3d 506 (1st Dist., December 29, 2004). Section 305 of the Illinois Domestic Violence Act of 1986 (750 ILCS 60/305 (West 2002)) supersedes provisions of section 4-102 and 4-107 of the Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/4-102, 4-107 (West 2002)) and authorizes civil

cause of action against law enforcement authorities for willful and wanton misconduct associated with failure to protect decedent from her husband, after she called "911" to report his presence in her home in derogation of order of protection. Therefore, trial court properly refused to grant section 2-619 motion to dismiss.

Wheaton v. Suwana, 355 Ill. App. 3d 506 (5th Dist., January 11, 2005). Because defendant, physician was an employee of county hospital, it having the ability to control his conduct, and because one-year statute of limitations pursuant to Local Governmental and Governmental Employees Tort Immunity Act had already expired at time statute was amended to provide for two-year statute of limitations period, defendant had vested right in expiration of limitations period, and complaint filed after expiration of one-year period was properly dismissed.

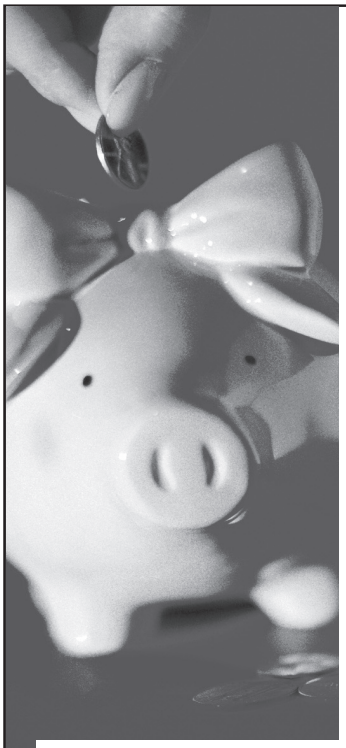
Floyd v. Rockford Park District, 355 Ill. App. 3d 695 (2nd Dist., January 12, 2005). Complaint against park district for allowing belligerent recreational program participant to use metal golf club with which he struck plaintiff is subject to section 2-615 dismissal pursuant to section 3-108 of Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/3-108 (West 2000)), because it fails to allege acts sufficient to state willful and wanton conduct as defined by the Act.

Governmental Interinsurance Exchange v. Judge, 356 Ill. App. 3d 264 (4th Dist., March 16, 2005). In legal malpractice action by county against insurer and attorneys retained by them to defend county for failure to perfect appeal from denial of motion to dismiss based on Local Governmental and Governmental Employees Tort Immunity Act, trial court correctly held that issue of proximate cause is an issue of law. Section 3-104 immunity under the Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/3-104 (West 2002)) does not apply to county for the improper placement of traffic control devices and markings. Defendants were entitled to summary judgment dismissing plaintiff's complaint.

Sandoval v. City of Chicago, No. 1-04-1368 (1st Dist., June 3, 2005). City was entitled to summary judgment dismissing plaintiff's complaint for negligence in maintenance of sidewalk, which contained large crater-like defect, that had existed for four years and in which plaintiff fell. Because defendant in no way created, contributed to, or was responsible for, plaintiff's distraction, distraction exception was not available to impose duty on landowner to warn of open and obvious conditions.

Brooks v. Illinois Central R.R. Co., No. 1-04-2607 (1st Dist., June 2, 2005). Because language of Contribution Act (735 ILCS 5/13-204 (West 2002)) gives it priority, two-year statute of limitations period contained in it, rather than one-year period contained in Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/8-101 (West 2002)) applied to third party plaintiff, railroad's third party complaint against Metra, a municipal corporation, for contribution. Therefore, trial court erred when it dismissed it.

Copeland v. County of Macon, Illinois, 403 F. 3d 929 (7th Cir. Ct. App., April 13, 2005). District court erred in granting plaintiff-pretrial detainee's motion for summary judgment in action seeking indemnification from defendant-county under section 9-102 of Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/9-102 (West 2002)) where plaintiff had previously obtained $400,000 judgment against jailer who had encouraged inmates to severely injure plaintiff. While jailer was working within time and space limits of his employment at time of attack, defendant was not required to indemnify plaintiff for acts of jailer since at time of attack jailer was not acting within scope of his employment in terms of either performing authorized acts or acting with purpose of serving his "master."



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