



**Ancel  
Glink** | DIAMOND BUSH  
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First Quarter 2013

## CASES YOU SHOULD KNOW ABOUT

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](#).

### Governmental Immunity

#### **Sheriff's department immune from liability for the failure to provide police protection or prevent a murder.**

*Prough v. Madison County*, 2013 IL App (5<sup>th</sup>) 110146 (February 25, 2013)

Plaintiff sued the Madison County sheriff's department and its dispatcher after plaintiff's grandson was released from custody and then the grandson murdered his father. Plaintiff alleged the defendants were liable for failing to provide adequate police protection by retaining the grandson in custody, failing to prevent the commission of his crime, and/or for releasing the grandson. The Illinois Appellate Court found the sheriff's department and dispatcher were absolutely immune from liability under the plain language of sections 4-102 and 4-107 of the Tort Immunity Act. These sections specifically immunize public entities and employees for the failure to provide adequate police protection, failure to prevent the commission of a crime, and for releasing a person in custody.

### First Amendment

#### **Principal's speech about her supervisor's alleged misconduct not protected.**

*McArdle v. Peoria School Dist. No. 150*, 705 F.3d 751 (7th Cir. Jan. 31, 2013)

A former middle school principal alleged she was terminated in order to prevent her from publicly disclosing her supervisor's financial misconduct, in violation of her First Amendment rights. The Seventh Circuit held the principal's report of her supervisor's misconduct was not protected by the First Amendment because such a report was speech as a public employee. The court explained the school's reputation, its adherence to district policies, and its finances were all matters within plaintiff's oversight as the school's principal, and were all allegedly impacted by the supervisor's misconduct. In reporting on the alleged misconduct, plaintiff spoke about matters that directly affected her area of responsibility.

### Eighth Amendment

#### **Failure to order MRI to diagnosis an inmate's shoulder pain is not deliberate indifference.**

*Ray v. Wexford Health Sources, Inc.*, 706 F.3d 864 (7th Cir. Feb. 7, 2013)

A state prison inmate brought a Section 1983 action against the prison physician and the physician's employer, alleging his Eighth Amendment rights were violated because the physician failed to treat the inmate's shoulder

pain. The prisoner claimed the physician should have ordered a MRI to diagnosis his shoulder condition. The defendant-physician believed plaintiff's pain stemmed from arthritis, and, therefore, an MRI would not be useful in helping to diagnose and treat plaintiff's pain. The Seventh Circuit held plaintiff did not produce evidence that the standard of professional conduct calls for an MRI in diagnosing arthritis and, therefore, the physician did not display deliberate indifference to the prisoner's serious medical condition.

#### Fourteenth Amendment

##### **Failure to provide a lifeguard during a class outing did not constitute reckless indifference.**

*Slade v. Board of School Directors of the City of Milwaukee*, 702 F.3d 1027 (7<sup>th</sup> Cir. Dec. 27, 2012)

Plaintiffs' son drowned while at a class outing. Plaintiffs sued the student's school and its administrators, alleging defendants deprived them of their son's life in violation of the due process clause of the Fourteenth Amendment. The Seventh Circuit held that while defendants may have been negligent in allowing the student to go into a lake without a lifeguard, this negligence was insufficient to state a due process claim. There was no evidence that defendants recklessly endangered the student. The court explained that no violation of the Fourteenth Amendment exists merely because defendants failed to prevent the student from dying.

#### Statute of Limitations

##### **Two-year statute of limitations applies to claims involving failure to protect from childhood abuse.**

*Woods v. Illinois Department of Children and Family Services*, 2013 WL 1197855 (7<sup>th</sup> Cir. March 25, 2013)

Plaintiff, who was placed in a residential treatment program as a child while under state custody, brought a Section 1983 claim against IDCFS and its employees, alleging defendants failed to protect him from sexual abuse. Plaintiff claimed he was sexually abused when he was eight years old by another minor at the treatment facility. First, the Seventh Circuit held that plaintiff's claim against IDCFS was barred by sovereign immunity. Second, the court held plaintiff's remaining claims were time barred by the two-year statute of limitations for Section 1983 actions. The court explained the two-year personal injury statute of limitations under Illinois law, rather than the 20 year limitations period under the Illinois Childhood Sexual Abuse Act, applied here because plaintiff's claim under Section 1983 was most closely analogous to a state tort claim for personal injuries resulting from childhood sexual abuse.

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## NEW LAWS THAT MAY AFFECT YOU

### **Temporary Visitor Driver's License: PA 97-1157**

Public Act 97-1157 provides that undocumented immigrants who cannot obtain a Social Security card may apply for a Temporary Visitor Driver's License. The Secretary of State's office expects to begin accepting applications for TVDLs in approximately November, 2013. The license will be valid for a maximum of three years, with no renewal option. The temporary visitor will have to reapply as a new applicant upon the expiration of the license. The license will be valid for driving only - it is not valid for identification. This means the license holder cannot use it to board an airplane, enter a federal building, register to vote, or apply for a Firearm Owner Identification Card.

## PENDING LEGISLATION THAT MAY AFFECT YOU

### **Bills Would Define Catastrophic Injury in PSEBA: HB 2224 and SB 1245**

Two bills were recently introduced in the General Assembly to attempt to define what it means to have a "catastrophic injury" under the Public Safety Benefits Act -- House Bill 2224 and Senate Bill 1245. Both offer definitions relating to employment, not whether a public safety employee received a line of duty disability pension. HB 2224 would define a "catastrophic injury" as a "grievous or serious injury or impairment of a nature that is sufficient to permanently preclude the injured employee from performing any gainful work." SB 1245 would define a "catastrophic injury" to mean the "consequences of an injury that permanently prevents an individual from performing any gainful work." Both mean that if a public safety employee is injured and can no longer perform public safety functions, but can still work in another capacity, then he or she would not be entitled to receive benefits under PSEBA.

### **Statute of Limitations of Sex Offenses: SB 1399**

Senate Bill 1399 would amend the current statute of limitations in the Illinois Code of Civil Procedure, 735 ILCS 5/13-202.2. It would replace the provisions concerning actions for damages for personal injury based on childhood sexual abuse with language providing that such an action may be commenced at any time. The changes would apply to actions already pending on the effective date of the Act and also to actions commenced on or after that date.

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## ANCEL GLINK DEFENSE VICTORIES

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

### **Civil Rights: Conspiracy**

#### **Attorneys Lucy B. Bednarek and Ellen K. Emery**

*Maniscalco v. Simon*, Seventh Circuit Court of Appeals (April 5, 2013)

Plaintiff alleged Gurnee police officers conspired with McDonald's employees to have him arrested, after the Gurnee police obtained statements from McDonald's employees that plaintiff was verbally abusive to them at the drive-through window and grabbed one of the employees through the window. Ancel Glink filed a motion for summary judgment on behalf of the Gurnee police officers. The Seventh Circuit affirmed the granting of summary judgment in favor of the officers and McDonald's. The court held there was probable cause to arrest plaintiff for disorderly conduct and there was no evidence of a conspiracy.

### **Premises Liability: Willful and Wanton Supervision**

#### **Attorney Gregory S. Mathews**

*Nielsen v School District 87*, Eighteenth Judicial Circuit, DuPage County (March 14, 2013)

Plaintiff, attending her son's first freshmen football game at Glenbard West, used the running track to access the visitor's bleachers and claimed she was run off the track by a jogger and tripped over the edge of the track surface set three inches higher than its base. Plaintiff claimed the District was willful and wanton in directing plaintiff to use the track while at the same time allowing

runners on the track during a football game. She also claimed the District was willful and wanton for failing to warn her of the hazardous change in level between the track and base. The trial court ruled there was no evidence of willful and wanton conduct as the District had no notice of a dangerous condition because there had never been a similar accident and no notice of the runner who was only seen by plaintiff and plaintiff's family.

#### Civil Rights: Due Process and Race Discrimination

##### **Attorneys Gregory S. Mathews and Jody Knight**

*Parvati v. City of Oak Forest*, Seventh Circuit Court of Appeals (March 1, 2013)

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 under Sections 1981, 1982 and 1983. Ancel Glink represented the individual City defendants named in the case and prevailed on their motion for summary judgment. Plaintiff appealed. On March 1, 2013, the Seventh Circuit, with Judge Posner writing the opinion, upheld the decision of the trial court, holding there was no evidence of discriminatory conduct on the part of the defendants and that alleged irregularities in the zoning process were not actionable.

#### Civil Rights: False Arrest and Malicious Prosecution

##### **Attorneys Gregory S. Mathews and Jody Knight**

*Thomas v. City of Woodstock*, Northern District of Illinois, Western Division (February 12, 2013)

Plaintiff alleged constitutional violations under Section 1983 and state law arising from her arrest for illegal use of a stolen credit card when it was later proven that she had not been involved in the theft or used the card but had been mistakenly identified based on photographic stills taken from a surveillance camera. Ancel Glink filed a motion for summary judgment on behalf of defendants, arguing that even if plaintiff was misidentified by witnesses, the investigating officer had probable cause to make the arrest. Plaintiff filed her own cross-motion for summary judgment, asserting the photographs were of such poor quality that plaintiff could not have been reasonably identified. On February 12, 2013, the Northern District granted summary judgment to defendants and denied plaintiff's motion.

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## FIRM NEWS AND RECENT EVENTS

Thomas DiCianni and Robert Bush presented at the Defense Research Institute's Civil Rights and Governmental Tort Liability Seminar in January, 2013 in Phoenix, Arizona. Tom and Rob spoke on EEOC Guidance for Use of Convictions in Employment and ADA Direct Threat Cases.

On February 28, 2013, Stewart Diamond served as the moderator, and Thomas DiCianni served as a presenter at a webinar on sponsored by the Illinois Institute for Continuing Legal Education entitled Suing and Defending Governmental Entities. Stewart introduced the program and raised a number of practical questions that attorneys should consider when suing local governments or defending such suits. Tom spoke on Injunctions, Mandamus & Declaratory Judgments.

Darcy Proctor recently spoke about Police Liability Claims: Legal Issues Involving Local Governments for the National Business Institute on February 4, 2013.

Julie A. Tappendorf published a new book in January called "Social Media and Local Governments: Navigating the New Public Square" (ABA Press, 2013).

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#### 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](http://www.ancelglink.com) or email us at [e-news@ancelglink.com](mailto:e-news@ancelglink.com).

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