



**Ancel Glink**  
DIAMOND BUSH  
DiCIANNI  
& KRAFTHEFER

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](#).

First Quarter 2014

## CASES YOU SHOULD KNOW ABOUT

### Governmental Immunity: Discretionary Immunity

#### **School District is immune from bullying lawsuit.**

*Malinski v. Grayslake Cmty. High School District*, 2014 IL App (2d) 130685-U (Mar. 10, 2014)

In this unpublished opinion, the Illinois Appellate Court dismissed a student's lawsuit claiming that his high school failed to provide a safe environment against bullying. The student reported to the dean and school counselor that other students subjected him to verbal and physical abuse during school hours and on school property. In dismissing the lawsuit, the Appellate Court found the School District was entitled to absolute immunity under Section 2-201 of the Tort Immunity Act because how a school handles student bullying is a discretionary decision.

### Fourth Amendment: Warrantless Search

#### **Police can rely on roommate's consent for warrantless search.**

*Fernandez v. California*, 134 S. Ct. 1126 (Feb. 25, 2014)

Walter Fernandez was a suspect in a violent robbery. The police saw him run into an apartment building and then heard a woman screaming. When the police knocked on the door, a woman answered and she was bleeding. The police requested entry and Fernandez objected. The police then arrested Fernandez, believing he had assaulted the woman that opened the door. The police left, but then returned and obtained the woman's written and oral consent to search the apartment. The Circuit Court denied Fernandez's motion to suppress the evidence found as a result of the search, and he was convicted of robbery. The United States Supreme Court held the police could conduct a warrantless search of the apartment based on the consent of Fernandez's roommate, even if Fernandez previously objected.

### Civil Rights: Unreasonable Search and Seizure

#### **Search of officer was constitutional when resident accused police of stealing money.**

*Carter v. City of Milwaukee*, 743 F.3d 540 (7th Cir. Feb. 19, 2014)

The plaintiff police officer and other officers were executing a search warrant in an apartment when one of the residents accused the police of stealing money. The commanding officer ordered all of the officers to remain on the scene. The plaintiff officer, in need of a restroom due to a medical condition, asked the commander if he could leave the scene, at which time he was searched for the missing money. No cash was found on the plaintiff officer or any other officer. The plaintiff sued the City, claiming he was the subject of an unconstitutional search and seizure.

The Seventh Circuit affirmed the District Court's granting of summary judgment in favor of the City, finding the plaintiff had no reason to believe he would be arrested or detained if he had refused the request to search for the money. Further, the plaintiff agreed to be searched so he could leave to use the restroom.

#### Fair Labor Standards Act

**Employer is not required to pay overtime under FLSA for employees' time changing clothes.**

*Mitchell v. JCG Industries*, 2014 WL 1027714 (7th Cir. Mar. 18, 2014)

The plaintiff-employees at a chicken processing plant brought a claim under the Fair Labor Standards Act ("FLSA"), claiming the FLSA required their employer to pay them for the time spent changing in and out of their protective clothing before and after lunch. The Seventh Circuit affirmed the District Court's granting of summary judgment in favor of the employer, finding the FLSA did not require the employer to pay the plaintiffs for any time taken during lunch, including the time to remove and put on protective clothing. The Court also pointed out the collective bargaining agreement did not require any time during lunch be compensated, and that the actual time to remove and put on the protective clothing was minimal.

#### Individuals With Disabilities Education Act (IDEA)

**School District required to reimburse student for private school.**

*Jenna R.P. v. City of Chicago Sch. Dist. No. 229*, 2013 IL App (1st) 112247 (Dec. 31, 2013)

A student and her father filed suit against the School District and the State Board of Education under IDEA, seeking reimbursement for the student's tuition and expenses for her placement at a private boarding school. The student began at Lane Tech High School but her performance declined drastically. The father contacted the school during the summer to arrange for and discuss financing long-term plans for the student. The father was informed that because it was the summer, the IEP team was not available until the start of the school year. The father then gave the District a 10-day notice of his intent to place the student in private school and his intent to seek reimbursement for the schooling. Although the School District informed the father that it would not fund the student's unilateral decision to attend a private boarding school, the father enrolled the student and requested reimbursement for tuition and expenses. The Illinois Appellate Court found the student was entitled to reimbursement because private placement was the only alternative at the time.

#### Title IX: Hair Length Policy

**School District's hair length policy applicable only to boys' basketball team violated Title IX.**

*Hayden v. Greensburg Cmty. Sch. Corp.*, 743 F.3d 569 (7th Cir. Feb. 24, 2014)

A male student athlete filed suit under Title IX challenging his school's policy requiring boy athletes to keep their hair cut short. The boys' basketball coach established a hair-length policy requiring each basketball player's hair must be cut above the ears, eyebrows and collar to promote a "clean cut" image. However, there was no similar policy for girls. The Seventh Circuit found the policy violated the equal protection clause and Title IX because it discriminated based on sex. Because the policy only applied to boy athletes, not girls, the School District failed to show any reason or basis for a "sex-specific grooming standard." The case was remanded to the District Court to determine the appropriate relief.

#### Public Safety Employees Benefits Act

**Firefighter's hearing loss injury was covered under PSEBA.**

*Pedersen v. Village of Hoffman Estates*, 2014 IL App (1st) 123402 (March 31, 2014)

The plaintiff suffered a hearing loss injury in the line of duty as a firefighter for the Village of Hoffman Estates. The plaintiff's injury occurred while responding to a

tanker truck fire. A co-worker accidentally activated the fire truck's siren while the plaintiff was standing only two feet away. The plaintiff was awarded a line of duty disability pension but was denied PSEBA benefits following a hearing pursuant to the Village's administrative procedures. The plaintiff challenged the Village's hearing procedures and the denial of benefits. The Illinois Appellate Court held that a home rule unit, like the Village, could establish administrative procedures for assessing claims under PSEBA. In addition, the Appellate Court held that plaintiff was entitled to PSEBA benefits because the injury occurred within the scope of a response reasonably believed to be an emergency.

## NEW LAWS THAT MAY AFFECT YOU

### **Schools are prohibited from Requesting Social Media Passwords and Account Information: Public Act 098-0129**

Effective January 1, 2014, it is unlawful for a post-secondary school (college) to request a student's password or account information in order to access that student's social media accounts or profile *unless* there is a reasonable belief by the school that the student's profile contains evidence of a school disciplinary rule violation. Elementary and secondary schools who intend to request a student's password or other account information must provide notice to students and their guardians. A violation of this rule by elementary and secondary schools will not be subject to criminal charges for making a request. Violation by a post-secondary school, however, will be considered a petty offense.

## ANCEL GLINK DEFENSE VICTORIES

Ancel Glink's litigation team recently defended and won the following notable cases in late 2013 and early 2014:

### **Reversed Conviction**

*Police did not withhold Brady material during murder trial.*

**Attorneys: Thomas DiCianni and Lucy Bednarek**

*Beaman v. Souk*, Central District of Illinois

Alan Beaman was convicted in 1995 of murdering his ex-girlfriend Jennifer Lockmiller in Normal, Illinois. The Illinois Supreme Court reversed his conviction in 2008, finding Beaman's due process rights were violated under *Brady v. Maryland* because the State failed to disclose certain information about a viable alternative suspect. Beaman brought a lawsuit in the Central District alleging both federal and state law claims against prosecutors and police officers for their roles in the investigation and prosecution. Ancel Glink defended the Town of Normal and its police officers in the lawsuit. On January 3, 2014, the District Court granted the motion for summary judgment Ancel Glink filed on behalf of Normal and its officers. Specifically, the Central District held: (1) there was no evidence the Normal police officers intentionally withheld or failed to disclose *Brady* material, (2) certain evidence Beaman claimed was withheld was not *Brady* material, (3) qualified immunity applied to Beaman's claim that officers failed to turn over a polygraph report of the alternative suspect, and (4) there was no evidence of a conspiracy between the Normal police officers and the prosecutors. The case is currently on appeal before the Seventh Circuit Court of Appeals.

### **Land Use: Equal Protection**

*No equal protection violation for denying rezoning application for student housing development.*

**Attorneys: Ellen Emery and Julie Tappendorf**

*1010 S. Main Street v. Town of Normal*, Central District of Illinois

A developer filed suit against the Town of Normal after the Town denied its rezoning application for a proposed student housing development. The developer claimed that the Town violated his equal protection rights when the Town subsequently granted a special use permit to a different developer for a student housing development at the same site. Ancel Glink filed a summary judgment motion on behalf of the Town, arguing the developer failed to show that the two developers were similarly situated and the two zoning applications were substantially identical, as required to establish an equal protection claim. The District Court granted the Town's motion for summary judgment, ruling that the developer did not establish the elements for an equal protection claim because the two developments requested different zoning relief (rezoning vs. special use permit), were subject to different standards, and were reviewed by different hearing bodies (ZBA vs. Plan Commission). The case is currently on appeal before the Seventh Circuit Court of Appeals.

**Governmental Immunity: Executing and Enforcing the Law**

Police officer was executing and enforcing the law when responding to a fight in progress.

**Attorneys: Lucy Bednarek and Ellen Emery**

*Burts v. Village of Streamwood*, Circuit Court of Cook County

The plaintiff was walking in the parking lot of a 7-Eleven when he was allegedly struck by a vehicle driven by a Streamwood police officer. The officer was on duty and in a marked police car. At the time the plaintiff claimed he was struck, the officer was backing out of the parking lot with his emergency lights activated to respond to a dispatch call about a fight in progress. The Circuit Court granted summary judgment in favor of the Village and the officer, finding that because the officer was executing and enforcing the law at the time of the incident, he was entitled to immunity under Section 2-202 of the Tort Immunity Act. The case is currently on appeal before the Illinois Appellate Court.

**Invasion of Privacy**

Plaintiff's invasion of privacy claim dismissed when City had proper interest in information.

**Attorneys: Ellen Emery and Pedro Fregoso**

*Gilstrap v. City of Canton*, Circuit Court of Fulton County

The plaintiff firefighter filed suit against his employer, the City of Canton, alleging the City's Fire Chief inappropriately disclosed confidential health information about the plaintiff to its City Administrator. The plaintiff sought damages against the City for invasion of privacy and intentional infliction of emotional distress (IIED). Ancel Glink filed a motion to dismiss all counts, arguing the City had a natural and proper interest in the allegedly confidential information and the plaintiff failed to plead a legally sufficient claim for IIED. The Circuit Court granted the City's motion to dismiss, dismissing the invasion of privacy claim with prejudice and the IIED claim without prejudice. The plaintiff did not replead his IIED claim.

**Federal Substantive Due Process: Failure to Protect/Willful and Wanton Conduct**

Officer's actions when breaking up a fight were not unconstitutional.

**Attorney: Gregory Mathews**

*McDowell v Village of Lansing*, Northern District of Illinois

The plaintiff and his group of friends met at a local tavern in unincorporated Lansing late at night, and when leaving, the plaintiff and one friend got into a brawl with three unknown bar patrons. A Lansing officer was called to assist the Cook County Sheriff's Police and arrived first at the scene to find the fight had

expanded into the parking lot. He ordered everyone to the ground and the plaintiff did so, but one individual remained standing, and then walked slowly over to the plaintiff and kicked him in the face, causing fractures and permanent numbness and tingling in the jaw. The plaintiff claimed the officer put the plaintiff into peril while in custody with a taser pointed at him and then did nothing but watch as the offender caused the injury. The District Court granted summary judgment in favor of the defendants, holding the officer's conduct under the circumstances did not "shock the conscience" to the level required for a constitutional violation and that the officer's conduct was not willful and wanton.

### **Pedestrian's Negligence Claim Against the City Dismissed**

#### **Attorneys: Darcy Proctor and Ellen Emery**

*Pool v. Village of North Riverside*, Circuit Court of Cook County

The plaintiff Thomas Pool filed suit against the Village for personal injuries he suffered when he stepped into a hole/depression and fell at a railroad crossing in the Village of North Riverside. The Village filed a motion to dismiss the plaintiff's negligence claim arguing that the Village did not owe him a duty of care because it did not own, maintain, inspect, control or occupy the railroad crossing where the plaintiff was injured. The Circuit Court dismissed the plaintiff's negligence claim against the Village.

## **RISK MANAGEMENT NEWS & EVENTS**

Pedro Fregoso has been named to the Super Lawyers Rising Stars list as one of the top attorneys in Illinois for 2014. No more than 2.5 percent of the lawyers in the state are selected to the list. Super Lawyers, a Thompson Reuters business is a rating service of outstanding lawyers from more than 70 practice areas who have attained a high degree of peer recognition and professional achievement.

Julie Tappendorf and Bob McCabe will present a half-day session on Labor Law & Employment at the Communities of Excellence Program at Waubensee Community College on May 7, 2014, from 8:00 a.m. to noon.

Julie Tappendorf will present a social media and ethics program at the IICLE Social Media Program in Chicago on June 6, 2014.

### **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).

Editors: [Thomas G. DiCianni](#) and [Lucy B. Bednarek](#)

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# Ancel Glink

DIAMOND BUSH  
DiCIANNI  
& KRAFTHEFER

Ancel, Glink, Diamond, Bush, DiCianni & Krafthefer, P.C.  
Serving Illinois with offices in Chicago, Vernon Hills, Naperville, Bloomington and Crystal Lake

140 S. Dearborn St. Suite 600, Chicago, IL 60603 | 312-782-7606 | [www.ancelglink.com](http://www.ancelglink.com)  
Contact our Litigation team

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Ancel Glink | 140 S Dearborn St | #600 | Chicago | IL | 60603