



**Ancel
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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: Applicability of the Illinois Vehicle Code

The Illinois Vehicle Code does not trump the Tort Immunity Act.

Harris v. Thompson and Massac Co. Hospital Dist., 2012 IL 112525 (June 21, 2012).

The plaintiffs' vehicle collided with a county ambulance in an intersection, and the plaintiffs sued the ambulance driver and hospital for negligence and willful and wanton conduct. On June 21, 2012, the Illinois Supreme Court held the Illinois Vehicle Code and the Tort Immunity Act were not in conflict because each addressed different actors under different circumstances. As a result, the ambulance driver was immune from liability under Section 5-106 of the Tort Immunity Act, which provides immunity for negligence responding to an emergency call - despite the requirement of the Vehicle Code which imposes a duty to refrain from negligence.

Civil Immunity: Emergency Medical Services Act

EMS Act does not extend to the negligent operation of a motor vehicle resulting in injury to a third-party.

Wilkins v. Williams, 2012 IL App (1st) 101805 (1st Dist. March 20, 2012).

The plaintiff motorist was involved in a collision with a private ambulance that was engaged in the nonemergency transport of a patient. The ambulance company argued it was immune from liability under the Emergency Medical Services Act (EMS Act) because they were providing medical services to a patient at the time of the accident. The Illinois Appellate Court first held the EMS Act applied to the ambulance driver's nonemergency transport of a patient. However, the Court found the EMS Act did not extend to the driver's negligent operation of the ambulance as it affected a third party like the plaintiff motorist.

Section 1983: Qualified Immunity for Private Lawyers

Private lawyer retained by government is entitled to qualified immunity.

Filarsky v. Delia, 132 S.Ct. 1657 (April 17, 2012).

Nicholas Delia, a firefighter employed by the City of Rialto, California, was the subject of an internal investigation involving his extended absence. During his absence, Delia was seen purchasing building supplies. The city hired a private attorney, Steve Filarsky, to interview Delia as part of the investigation. Filarsky ordered Delia to go to his home and produce the building supplies. Delia

complied with this order but then sued the city and Filarsky for violating his right to be free from unreasonable search and seizure under the Fourth and Fourteenth Amendments. The United States Supreme Court held that Filarsky was entitled to assert qualified immunity as a defense, even though he was a private attorney.

Section 1983: Qualified Immunity for Secret Service Agents

Secret Service Agents entitled to qualified immunity for allegedly arresting a suspect in retaliation for his political speech when the agents had probable cause to arrest him.

Reichle v. Howards, 132 S.Ct. 2088 (June 4, 2012).

Vice President Cheney was visiting a shopping mall when Secret Service Agent Doyle agent overheard Steven Howards say into his cell phone, "I'm going to ask [the Vice President] how many kids he's killed today." Agent Doyle and other agents then observed Howards approach the Vice President, tell him that his "policies in Iraq are disgusting," and touch his shoulder with an open hand. After being briefed by Agent Doyle, Agent Reichle interviewed and arrested Howards, who was charged with harassment. After the charge was dismissed, Howards brought a Section 1983 claim against the agents, claiming he was arrested and searched without probable cause and in violation of his Fourth and First Amendment rights. The United States Supreme Court ruled the agents were entitled to qualified immunity. The Court explained that when Howards was arrested it was not clearly established that an arrest supported by probable cause could give rise to a First Amendment violation.

Section 1983: Qualified Immunity for Warrantless Entry into Home

Police officers had qualified immunity for entering the home of a high school student rumored to be threatening others at school with a gun.

Ryburn v. Huff, 132 S.Ct 987 (Jan. 23, 2012).

Police officers went to the home of student Vincent Huff, after he allegedly threatened to "shoot up" his school. When the officers asked Huff and his mother whether there were any guns in the house, the mother began to act oddly and tried to close the door and run into the house. The officers entered the home, but did not search the Huffs or their house. The Huffs alleged the entry into their home violated their Fourth Amendment rights. The United States Supreme Court held the officers were entitled to qualified immunity because they had a reasonable basis for fearing that violence was imminent.

Section 1983: Testimonial Immunity for Grand Jury Witnesses

Grand jury witness has same absolute immunity under Section 1983 as a trial witness.

Rehberg v. Paulk, 132 S.Ct. 1497 (April 2, 2012).

The chief investigator for a district attorney's office testified at a grand jury proceeding that resulted in the petitioner's indictment. After the indictments were dismissed, the petitioner brought an action under Section 1983, alleged the investigator conspired to present and did present false testimony to the grand jury. The United States Supreme Court held a witness in a grand jury proceeding is entitled to the same absolute immunity from suit under Section 1983 as a witness who testifies at trial. The Court explained the factors justifying absolute immunity for trial witnesses apply with equal force to grand jury witnesses.

Section 1983: Cell Phone Searches

Warrantless search of a cell phone incident to arrest to obtain its number is reasonable.

United States v. Flores - Lopez, 670 F.2d 803 (7th Cir. Feb. 29, 2012).

The defendant appealed his drug conviction after police officers searched his cell phone without a warrant to obtain its telephone number. The information was later used to subpoena the defendant's call history from the telephone company to use as evidence at trial. The Seventh Circuit held that looking in a cell phone to determine its number was a valid warrantless search incident to arrest. The Seventh Circuit explained that a cell phone's number can be found without searching the phone's contents in an intrusive manner.

Section 1983: Strip Searches

Strip searches of individuals arrested for minor offenses do not violate their privacy rights.

Florence v. Burlington, 132 S.Ct. 1510 (April 2, 2012).

The plaintiff was pulled over for a traffic violation. He was then arrested because the officer believed the plaintiff had a bench warrant for failing to pay a prior fine. The plaintiff spent more than six days in jail and was strip searched twice. He was released once it was determined the fine had been paid. The plaintiff brought a Section 1983 action against the counties that ran the jails, arguing the strip searches violated his Fourth and Fourteenth Amendment rights. The United States Supreme Court held the strip-searches did not violate the plaintiff's constitutional rights, even absent a reasonable suspicion of a concealed weapon or other contraband, because the searches struck a reasonable balance between inmate privacy and the needs of institutions to maintain safety and order.

Section 1983: GPS Tracking Devices

Attaching a GPS tracking device to a vehicle is a search.

United States v. Jones, 132 S.Ct. 945 (Jan. 23, 2012).

Law enforcement agents placed a GPS tracking on a car registered to the defendant's wife pursuant to a warrant. The warrant allowed for the installation of the device within 10 days. The GPS was not installed until the 11th day, and the vehicle's movements were tracked for 28 days. The defendant was later indicted on drug trafficking conspiracy charges. The United States Supreme Court held that attaching a GPS device to a vehicle to monitor the vehicle's movements was a search under the Fourth Amendment. The Supreme Court explained that by attaching the GPS to the vehicle, the officers encroached on a protected area.

NEW LAWS THAT MAY AFFECT YOU

Criminal Code Amended to Protect Victims of Sex Crimes Against Harassment - PA 97-468

PA 97-468, effective January 1, 2012, expands the definition of aggravated stalking to a person who is required or previously required to register under the Sex Offender Registration Act and commits the offense of stalking, when the stalking victim is also the victim of the offense for which the sex offender is required to register, or a family member of the victim.

PENDING LEGISLATION THAT MAY AFFECT YOU

Imposes Eavesdropping Exemptions on Law Enforcement Officers - HB 1263

HB 1263 would permit a person to record the conversation of a law enforcement officer who is performing a public duty in a public place and any other person

who is having a conversation with that law enforcement officer if: (1) the conversation is at a volume audible to the unassisted ear of the person who is making the recording; and (2) there is no reasonable expectation of privacy. If the person recording is a law enforcement officer, the person must notify the parties that the conversation is being recorded. For the purposes of the section, "public place" means any place to which the public has access and includes, but is not limited to, streets, sidewalks, parks, and highways (including motor vehicles), and the common areas of public and private facilities and buildings.

Constitutional Amendment to add to Crime Victim's Rights - HJRC A 29

HJRC A 29 would amend the Illinois Constitution to add certain rights to Section 8.1, defining crime victims' rights. It would provide for twelve additional rights, including, for example, the right to be "free from harassment, intimidation, and abuse" throughout the criminal justice process. However, the changes would specify that the new rights do not create a cause of action against the state and do not form a basis for vacating a conviction. The Amendment is currently tabled.

Changes to Health Care Services Lien Act to Limit Subrogation Claims - HB 5823

HB5823, which passed both houses on May 31, 2012, would make three changes to the Health Care Services Lien Act. First, it provides that petitions filed under the amended adjudication section of the Act may be served upon interested adverse parties by personal service, substitute service, or registered or certified mail. Second, it would diminish subrogation claims or other rights of reimbursement for medical expenses in the same proportion that the claimant's recovery is reduced because of comparative fault or inability to collect. Finally, it would require a party asserting a subrogation claim or other right of reimbursement to bear a pro rata share of the personal injury or death estate claimant's attorneys fees and litigation expenses. The bill exempts liens by health-care providers or under the Workers' Compensation or Workers' Occupational Diseases Act.

Code of Civil Procedure Amendment Would Make it Easier to Examine the Medical Records of Deceased Family Members - SB 3171

SB 3171, which passed both houses on May 30, 2012, would amend 735 ILCS 5/8-2001 regarding the examination of health care records to provide that patients and their personal representatives are not to be charged a handling fee to obtain copies of records under Section 2001.5. Only a reasonable per page fee may be charged. Section 2001.5, regarding authorization for release of a deceased patient's records, would be amended to provide that a deceased person's health care records must be released upon written request of the executor or administrator of the estate or an agent appointed under a power of attorney, or in the absence of an executor or administrator a personal representative, including a spouse, adult child, or adult brother or sister. Finally, the bill would require the personal representative seeking the records to certify under penalty of perjury that he or she is authorized to seek the records.

ANCEL GLINK DEFENSE VICTORIES

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

Civil Rights

Attorney Darcy L. Proctor

Milton v. Village of Gurnee, Northern District of Illinois, Eastern Division.

The plaintiffs filed a federal civil rights lawsuit alleging that the Village of Gurnee had a policy and practice of unreasonable searches and seizures in purported violation of the Fourth Amendment. In addition, the plaintiffs alleged claims under 42 U.S.C. Section 1981, the due process clause of the Fourteenth

Amendment and a state law claim of intentional infliction of emotional distress. Ancel Glink moved to dismiss these claims for failure to state a claim under any of these legal theories. The District Court granted the motion in its entirety, finding the plaintiff failed to allege sufficient facts to state any of these claims.

Civil Rights - Equal Protection and Free Exercise of Religion

Attorneys Gregory S. Mathews and Jody Knight

Chicagoland Baptist Church v. Lansing, Northern District of Illinois, Eastern Division.

The plaintiff purchased a structure formerly occupied as a VFW post and submitted incomplete construction plans which the Village rejected. The plaintiff filed a complaint and motion for preliminary injunction alleging the Village violated its constitutional rights to free exercise of religion and equal protection by applying the provisions of the International Building Code (2006). The Building Code required an upgrade of fire protection systems and handicap accessibility, which the plaintiff church could not afford. The plaintiff sought an order allowing it to hold services limited to 50 occupants or less without installing the safety and accessibility improvements. The District Court granted the Village's motion to dismiss, finding the lawsuit was premature and the plaintiff had not submitted plans adequate for the Village to make a final determination.

FIRM NEWS, BLOGS AND ARTICLES

Litigation partners Darcy Proctor and Lucy Bednarek were recently contributing authors to the 2011 Survey of Municipal Law Cases, published by the Illinois Association of Defense Trial Counsel. To download a copy of the article, please [click here](#).

Remember to visit our blog produced by Ancel Glink partner Julie Tappendorf - *Municipal Minute* at <http://localgovernmentlawyer.blogspot.com>. The blog includes regular updates about recent cases, new and pending legislation, and other topics of interest to local governments.

RISK MANAGEMENT SEMINARS AND EVENTS

National Business Institute Handling the Police Liability Claim

Darcy L. Proctor and Ellen K. Emery
June 21, 2012
Chicago, Illinois

ICLMA Summer Conference A DIY Guide to Drafting Ordinances & Resolutions...Minus the Hourly Rate

Julie A. Tappendorf
June 27-29, 2012
Eagle Ridge, Galena, IL

ALI-ABA Land Use Institute Planning, Regulation, Litigation, Eminent Domain and Compensation

Julie Tappendorf
August 8-10, 2012
Chicago, Illinois

National Business Institute School Bullying: A Legal Primer

Lucy B. Bednarek and Darcy L. Proctor

December 7, 2012
Oak Brook, Illinois

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 or email us at e-news@ancelglink.com.

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

Contributors: Lucy B. Bednarek, Jody Knight, and Christy Michaelson

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

140 S. Dearborn St. Suite 600, Chicago, IL 60603 | 312-782-7606 | www.ancelglink.com
Contact our Litigation team