

Reach Higher!

by Chuck Thompson,
IMLA Executive Director and General Counsel



From our youngest days, we know that if we are to grow in knowledge and skill, we must stretch. Some of us are born with talent and innate skills and need little work to succeed in our professions. Others, folks like Tiger Woods, LeBron James, Lance Armstrong, and Michael Phelps, work hard to succeed. When I managed local government law offices, nothing irritated me more than complacency.

At IMLA, I admit that I feel the same. Without doubt, there are few records that cannot be broken, and there are few systems that cannot be improved with effort. Over the years, as a participant in change, I can remember having residents of communities I served telling me, "If it ain't broke, don't fix it." My response was that a mule and a plow worked, and it was not because they were broken that folks sought to improve this method of productivity. Obviously, the analogy could work with the Model T, the propeller plane, the slide-rule, the pen, and the typewriter. When my father passed away, I remember thinking about the changes he saw in his life, and, with my mother turning 93, I amaze myself with reflecting on the changes she has seen: barely into the age of the automobile when she was born, she watches the space shuttle blast into orbit from a launch site just a few miles from her home. She can use the Internet to talk with her great-grandchildren; yet, as a child, the telephone was not common. Doctors can enable her to hear and to see well beyond what was thought possible not that many years ago. Scientists now can even grow human skin on animals, and recreate animals from single cells.

As attorneys, we, too, are seeing changes in our practices. Aside from the incessant television ads for personal injury lawyers and daily notices of class-action opportunities, changes in technology require that we adapt to more demanding client expectations. Clients more often expect a lawyer to respond immediately to emails and phone calls. Technologically-proficient clients often know more about recent decisions and regulatory changes than many of their attorneys, and want (and sometimes need) immediate help in understanding their effect. In short, the days of a staid practice of law are mostly in the rear-view mirror.

Changes are also coming in the way local government attorneys interact with their clients while rendering legal advice. In June, Mark Hayes invited me to come to Arkansas to speak at the meeting of the Arkansas Municipal Attorneys Association. We picked a program I do on ethics and privilege while practicing under Rule 1.13. As I prepared my presentation, I discovered that a local government practitioner in Arkansas could pretty much expect that attorney-client privilege does not exist in the government context. Shortly, afterwards, I gave a similar presentation in Florida, where privilege survives but may be on life-support. Is this the direction in which we are heading? Can we stem the tide?

At IMLA, we are looking at the changes in the practice of law and changes in technology to see how we can serve our members better. During her presidency, Susan Rocha formed a Committee called Vision 2020, designed to protect the organization from becoming complacent. Already, we are working on some good ideas that we hope will enable local government law offices to better serve their clients. We expect to use Twitter and social-networking tools to deliver timely and important information to members. We have been increasingly engaging members through conference calls to provide information in substantive or practice areas, and adding value to membership. We have also been implementing CLE through interactive teleconferences and webinars to provide low-cost educational programming. Each time we implement a new idea or concept, we get valuable feedback from our members and try to make improvements based on the suggestions – so keep the ideas coming!

As we move forward, you will see changes. We hope you will value all of these, but recognize that some change may be difficult to accept. To make sure we are headed in the right direction, you must let us know how you think we are doing. Please take a few minutes to email me, call me, or write me and let me know what you think we've gotten right, wrong, or need to do.

Speaking of suggestions, one of our members gave me a call recently and offered a couple of excellent suggestions and comments. One point that was well made involved our too-frequent emails or entreaties to members. We will try to limit them. In addition, he said their frequency and tone seemed to make us appear that we were "desperate." Well, I am desperate, but not because of any problems at IMLA – I think it is fair to say that we continue to be reasonably well-positioned despite the terrible economic conditions most local governments face, and in keeping with the prospect that conditions will improve. Rather, I am

desperate because at age 61, I know that I don't have a decade or more to move IMLA forward. I see what we can be and where we can be and how we can get there, but feel pressed for time. My goal is to increase membership so effectively that IMLA can reduce its dues, reduce its fees for programming, and develop ways to deliver better and more valued services to our members.

When I represented a sanitary district in conjunction with being a county attorney, I could see how the methodology worked. With fixed costs that do not change regardless of the number of customers served or gallons processed, if you can increase customers, you can decrease the unit cost for each customer. As IMLA has moved away from providing individual research requests through a large legal staff, its fixed costs have diminished substantially. Depending on the services our members need, if we can increase membership without incremental increases in services, we can reduce our unit costs. In short, when you recruit members for us, we will be able to make our programs less expensive and we can lower the cost of membership. As an example, if we were able to increase membership revenue by $100,000 in FY10, we could: reduce the price of each interactive teleconference we provide by roughly $25 per line, cut the Conference registration fee by roughly $125, cut the Seminar registration fee by half, or we could reduce dues by about five percent. To reach a goal of $100,000 in new membership revenue, we'd need to retain the members we had in FY09 and get between four and ten new regular members from each state.

Let's go viral. Send a letter or an email, or give a call to ten prospective regular members in your state. Let them know that IMLA wants them to join and participate in finding ways to make the practice of local government law more effective. Let them know that IMLA offers some of the best and most cost-effective national CLE for local governments and that, if they have any questions or suggestions, I will try to respond directly and individually. Let them know that IMLA advocates for them and that their membership will enable IMLA to do so more effectively.

This past year, IMLA advocated for local governments in a number of cases and in a number of ways. We intend to do better and more this year. The Supreme Court will be hearing a number of cases important to local government. Congress and federal agencies continue to intrude on the founding principles of federalism in programs affecting local government. More and more frequently, local governments are asking IMLA to participate in cases in their state appellate courts or in the federal circuits. All of these requests have one thing in common: an important issue affecting local government. What follows are just a few of these issues:

- May generally applicable land-use regulations be applied to regulate a megachurch under RLUIPA?
- Does the ADA allow private citizens to challenge a local government's self-evaluation and transition plan?
- Does the False Claims Act allow a person to use a local government's own audit of its implementation of a federal program as the primary basis of a *qui tam* action against the local government?
- Whether a governmental entity can transfer property to a private entity/ third party for valid consideration in an effort to eliminate an Establishment Clause violation?
- Whether private practice city or county attorneys are employees of the local government, or independent contractors?
- Whether Congress can federalize collective bargaining for public safety employees of a local government?
- Whether Congress should reconsider its decision to require local governments to withhold 3% of their payments to contractors and pay that money over to the IRS?
- Whether prosecutors should have prosecutorial immunity for pre-indictment advice to police?

This is just a partial list of issues IMLA will be working on in the coming year, but it represents the broad diversity of important issues that local governments face, either in the courts or in the federal legislative setting. Join us as we band together to advance and protect the interests of local government. **ML**

Correction

In the last issue of the Municipal Lawyer, we listed the name and e-mail address of Stephen J. Smith, the Law Director for the City of Dublin, Ohio incorrectly. The correct e-mail address is ssmith@szd.com. Our apologies for any confusion this may have caused.

Coming in Our Next Issue!

The November/December 2009 *Municipal Lawyer* looks at Supreme Court rulings over the last Term, including employment law cases, the Voting Rights Act ruling, the ruling in *Pearson v. Callahan,* and other decisions of interest.

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To Write for the Magazine – Submissions are welcomed and encouraged. If you are interested in writing, please contact the Editor, Sophia Stadnyk, at sstadnyk@imla.org with a short paragraph describing your topic, and including your contact information. Our magazine publishes bi-monthly, and feature articles are required to be between 2,800 and 3,300 words long, in total. Each article submitted is subject to review by IMLA staff, and IMLA reserves the right to edit all articles (for style, clarity, length, etc.). Articles cannot be used for commercial solicitations or to sell products or services. Submitting a proposal does not guarantee the opportunity to write for the magazine.

Questions? Please e-mail IMLA at info@imla.org or call IMLA at (202) 466-5424, ext. 7108.