

2017 Mid-Year Seminar

APRIL 21 • FRIDAY

7:00am – 5:00pm	<p><u>Registration</u> Blue Room Pre-Function</p>
8:00am – 12:00pm	<p><u>Board of Directors Meeting</u> Governor's Room</p>
11:45am – 12:45pm	<p><u>§1983: General Principles – Understanding the basics – including municipal / supervisory liability</u> Blue Room</p> <p><i>Moderators: Monica Joiner</i> <i>Speakers: Arthur Larkin, Anne Turner</i></p> <p>This presentation will cover an introduction to liability under section 1983. The discussion will provide an overview of the legislative history of the Civil Rights Act of 1971 and discuss individual, supervisory and municipal liability under section 1983; the definition of a “person” and “acting under color of state law;” immunities (absolute and qualified); proximate causation and intervening causes; scope of rights that can be asserted; who can bring claims; and damages generally.</p>
1:00pm – 2:00pm	<p><u>Seminar – Ensuring Preemption is not Synonymous with Deregulation: The Threats and Opportunities of the Trump Administration</u> Hampton Room</p> <p><i>Moderators: Gerard Lavery Lederer</i> <i>Speakers: Deborah Cox, Jennifer Imo, Laura Waxman</i></p> <p>Speakers to address federal-local relations on the following issues: immigration reform, medicaid issues (repeal / replacing the affordable care act), tax reform / municipal bonds, WOTUS, changes in policing under the new administration, broadband and infrastructure.</p>
1:00pm – 2:00pm	<p><u>Qualified Immunity: What's New and What is Happening?</u> Blue Room</p> <p><i>Moderators: Kimberly Banks</i> <i>Speakers: Patricia Miller</i></p> <p>This presentation will cover two areas in the land of Qualified Immunity: 1) a review of recent QI decisions and, 2) a discussion on how District Court Judges are addressing the QI defense during jury trials.</p>
2:05pm – 3:05pm	<p><u>Seminar – Employment Law: Navigating the Fair Labor Standards Act with Police and Fire Employees</u> Hampton Room</p> <p><i>Moderators: Patricia Beety</i> <i>Speakers: Amber Eisenschenk, Tim Norris</i></p>

Learn about special issues in applying the FLSA to police and fire employees such as the legal and practical aspects of using an extended work period under Section 207(k) with an emphasis on common pitfalls and the ways to avoid potential liability, FLSA application to small departments, and different ceilings on accrual of compensatory time. The presentation will be applicable to jurisdictions both with and without collective bargaining agreements.

Understanding Taser Use of Force post Armstrong v. Pinehurst

Blue Room

Moderators: Lori Grigg Bluhm

Speakers: Commander David Gillespie, Heather Mulloy

This presentation will cover the 4th Circuit opinion and its effects on police department taser usage around the country and examine ways to improve policy, training as well as liability prevention. A law enforcement official will also be present to discuss these issues. Use of force video will be shown for discussion purposes.

2:05pm – 3:05pm

Break

Blue Room Pre-Function

3:05pm – 3:20pm

Supreme Court Update & Amicus Awards

Blue Room

Moderators: Lisa Soronen

Speakers: Paul Clement, Gregory Garre, Amy Howe

This term's otherwise lean Supreme Court docket includes many cases of interest to local governments, including a case involving the City of Miami suing big banks over reverse-redlining as well as a number of First Amendment cases. Moderator Lisa Soronen of the State and Local Legal Center will lead a discussion of the current cases and the post-election future of the Supreme Court with Supreme Court specialists Paul Clement, Kirkland & Ellis, Gregory Garre, Latham & Watkins, and Amy Howe, SCOTUSblog reporter.

3:20pm – 4:50pm

AMICUS SERVICE AWARDS

Blue Room

4:50pm – 5:30pm

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APRIL 22 • SATURDAY

Registration

Blue Room Pre-Function

7:00am – 4:00pm

State/Province Breakfast

Empire Ballroom

Separate Registration Required

7:30am – 8:55am

Seminar – Regulating Public Spaces in a manner that Balances the Rights of Homeless Individuals with Preservation of Public Spaces for their other Intended Purposes

Hampton Room

Moderators: Jeff Dana

Speakers: Valerie Flores, Janet Graham

Recent case law has explored and defined the rights of homeless people who reside in public spaces. The first part of this presentation will discuss how the City of Los Angeles, home to the nation's largest homeless population, has used innovative regulations to comply with recent case law, defining the rights of homeless persons to dwell and store personal property in the public spaces, while maintaining clean and accessible streets, sidewalks and open space. Los Angeles regulates dwelling in public spaces, dwelling in vehicles on public streets, and storage of personal property on public property. The City's recent amendments to its municipal code decriminalize the fundamental attributes of homelessness, provides alternatives to criminal prosecution for certain violations and opens up certain street segments to homeless vehicle dwellers. The second part of this presentation will discuss one municipality's experience with a Fair Housing Complaint that arose from a zoning dispute involving a homeless shelter. The presenter will describe the process of proceeding through a mediation and conciliation with the Department of Justice and the efforts to find a suitably zoned location. The City was able to locate the homeless shelter through the sale of a government building. This resolution was agreed to by all parties and the Fair Housing complaint was dismissed.

9:00am – 10:00am

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§1983 – Trials Part 1– Voir Dire and Juror Bias

Blue Room

Moderators: Craig Straw

Speakers: Brock Atkins, Mark Maguire

The discussion of this topic will cover what inquiries should be made of panel members in 1983 cases with a focus on the appropriate level of inquiry into deeply held beliefs regarding police officers in light of the prevalence of examinations of police conduct in traditional and new media.

9:00am – 10:00am

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Seminar - Reducing Police and Fire Disciplinary and Liability Exposure

Hampton Room

Moderators: Robin Cross

Speakers: Mark Iris, Suzanne Sangree

Suits alleging misconduct by police officers constitute a major liability exposure for the affected jurisdictions; costing hundreds of millions of dollars annually. Additionally, efforts to discharge or otherwise discipline police and fire employees often are unsuccessful, resulting in both substantial back pay awards as well as forcing the reinstatement of problematic employees.

This presentation will address ways in which municipalities can reduce their exposure, based on the premise that municipal attorneys need to be proactive in helping their clients (the police and fire departments) avoid costly damages, rather than reactive and simply representing the client whenever a suit is filed. In terms of

10:05am – 11:05am

Liability exposure, topics to be addressed include proactive, preventive measures (e.g., rigorous recruit screening) and early intervention systems. In terms of

disciplinary exposure, topics to be addressed include the need for specialized, experienced counsel (including outside counsel) in arbitration/civil service proceedings, educating arbitrators/civil service commissioners on the unique disciplinary requirements for public safety employees, the jurisdiction's stance on punitive damages, and challenging arbitration if feasible.

One of the presenters will focus on Baltimore's experience pre and post Freddie Gray. For the past ten years, the City's Law Department has taken a proactive role in advising the City's police and fire departments with the aim of encouraging best practices and reducing civil liability—an approach the City calls “preventive lawyering.” This presenter will discuss the successes and challenges of this approach, the pivotal role of effective police discipline, and the impact of the U.S. Department of Justice consent decree for police reform.

§1983 - Trials Part 2 – Excluding Experts, Finding dirt on Experts

Blue Room

Moderators: Mark Hayes

Speakers: Brock Atkins, Mark Maguire

The discussion of this topic will cover the types of prior conduct is relevant to impeach police practice or forensic experts and the methods available to attain information about an expert's professional history that is not revealed on his or her CV.

10:05am – 11:05am

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Break

Blue Room Pre-Function

11:05am – 11:20am

Seminar - Telecommunications Policy in the New Administration – How It May Affect You

Hampton Room

Moderators: Joseph Van Eaton

Speakers: Gail Karish, Mike Watzka

Speakers to address: How will broadband deployment be affected? The latest on controlling wireless facilities, including Mobilitie, and big issues to watch for in Washington (and how you can affect them)

11:20am – 12:20pm

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Wrongful Convictions Part 1 - Overview of the law

Blue Room

Moderators: Rosemary Humway-Warmuth

Speakers: Lisa Maki, Susan Weise

This presentation will provide an overall summary of the wrongful conviction area of the law, including an overview of a police officer's obligations under Brady; prosecutorial immunity; standard of proof / elements of a claim; qualified immunity; and Monell claims for wrongful convictions. The presenters will also discuss the wrongful conviction cases they have handled for the City of Boston over the years, noting what worked, what did not work, and why most of these cases settled.

11:20am – 12:20pm

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Seminar – Employment Law: Fitness for Duty exams: A Sword and a Shield in ADA Litigation

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12:25pm – 1:25pm

Moderators: Joy Hulton

Speakers: Kelly Madrid, Deidra Norris Sullivan

Fitness-for-duty evaluations are a practical tool that can be used to either validate, or disprove, an employer's contention that an employee may lack the physical and/or mental capacity to perform the essential functions of the job. Such an evaluation is of critical importance in the public-safety sector, particularly with law enforcement officers, because of their constant engagement with citizens, which is both highly visible and heavily scrutinized. While fitness-for-duty exams are a useful preventative measure that can reduce the employer's exposure and provide a legitimate basis for removing unsuitable employees from the workforce, the benefits coexist with risks in light of 42 U.S.C. § § 12101-12213—the American's with Disabilities Act, as amended ("ADA").

This presentation will analyze the interplay between the right of the employer to require fitness-for-duty evaluations and the employer's obligations under the ADA to refrain from disability discrimination, in the context of litigation.

Section 1983 – Wrongful Convictions Part 2: Practice Pointers in Defending Against Claims

Blue Room

Moderators: Nancy Thompson

Speakers: Lucy Bednarek, Thomas DiCianni

Wrongful conviction cases present significant challenges to defense counsel representing law enforcement agencies and prosecutors. This session will provide practice pointers about how to defend these highly fact specific claims, including intake and initial handling, pleading practice, discovery tips, and expert witnesses.

The session will also discuss available defenses, such as absolute and qualified immunity.

12:25pm – 1:25pm

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Lunch

On Your Own

On your own

1:25pm – 3:00pm

Seminar – Land Use: Environmental Insurance

Hampton Room

Moderators: Timothy Hollister

Speakers: Aaron Levy, Joseph Quarantello

This presentation will provide an overview of the types of environmental insurance policies and coverages available in the market, key issues to consider when evaluating environmental insurance, "tips and tricks" for enhancing coverages, and a few real world examples of how environmental insurance can "box in" certain risks. The presenter will also touch on the potential benefits of "aligned interest" or "guaranteed fixed-price remediation contracts," which, together with environmental insurance, can under the right circumstance be used to successfully transfer environmental risks and liabilities to a third-party remediation contractor.

3:00pm – 4:00pm

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3:00pm – 4:00pm

§ **Section 1983 – Constitutional Implications of Crowd Control in the Aftermath of an Officer Involved Shooting**

Blue Room

Moderators: Patrick Baker

Speakers: Mark Newbold, Daniel Peterson

This presentation will provide an examination and review of current First, Fourth and Fourteenth Amendment concerns during a large scale demonstration.

State League Meeting

Hampton Room

Speakers: Sean O'Day, Chair: Jodie Woods

The agenda for the meeting is as follows:

I. Introductions & Sign-in Sheet

II. Approval of Minutes of Meeting in San Diego, September 28, 2016

III. Sean O'Day, General Counsel, League of Oregon Cities, Speaking on League's Tax Exempt Status and Its Provision of Legal Services

IV. Report from IMLA Board of Directors Meeting – Robert Croom

V. Report from IMLA Executive Director and General Counsel – Chuck Thompson

VI. Meeting the New Director of NLC Lobbying

VII. League Counsels' Q & A, Hot Topics or Other Issues

VIII. Adjourn

4:05pm – 5:05pm

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§1983 – Fourth Amendment Update

Blue Room

Moderators: Drew Whalen

Speakers: Kimberly Baucom, Anne Turner

This course will examine recent Fourth Amendment caselaw across the federal circuits, including the U.S. Supreme Court, with a focus on search and seizure cases as well as use of force cases. Presenters will focus on new cases and cases that have had a significant impact on Fourth Amendment law for law enforcement officers, including cases dealing with use of force against mentally ill individuals.

4:05pm – 5:05pm

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Welcome Reception

6:00pm – 7:30pm

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7:00am – 5:00pm	<p><u>Registration</u> Blue Room Pre-Function</p>
7:30am – 8:55am	<p><u>WONK Breakfast</u> Empire Ballroom</p> <p>Separate Registration Required</p>
9:00am – 10:30am	<p><u>CLOF Program – Benchmarking / Law Practice Management</u> Diplomat Ballroom</p> <p><i>C Speakers: Chip Fletcher, Foster Mills</i></p>
9:00am – 10:30am	<p><u>Seminar -The Bay: Forced MS4 Reductions and Storm Water Utility Trends in 2017</u> Hampton Room</p> <p><i>Moderators: Iris Jones</i> <i>Speakers: Ade Bakare, Scott Gould</i></p> <p>The session will discuss the increased regulations of stormwater discharges from MS4 systems, potential impacts of the new administration on stormwater regulation, and compliance and litigation concerns impacting stormwater utilities. The Chesapeake Bay will be used as a case study for the environmental law portion. It represents the largest TMDL ever, and much of the focus in Pennsylvania is on creating and demonstrating sediment and nutrient reduction from small MS4s. The session will also discuss formation of stormwater utilities as a means to fund municipal improvements, including a look at recent legal trends and issues facing municipalities.</p>
9:00am – 10:30am	<p><u>S §1983: Trial Weapons: Tips and stories for opening statements, direct examination and cross-examination</u> Blue Room</p> <p><i>Moderators: Kristin Bronson</i> <i>Speakers: Thomas Donohue, Jack Ryan</i></p> <p>This 90 minute seminar will provide practical trial tips highlighted by illustrative anecdotes from police misconduct trials. Among the techniques addressed: the importance of using visual aids during opening statements, the necessity of addressing an officer's training before the "action testimony" in direct examinations, and the use of constructive cross examination. Practitioners will take away practical trial techniques for use in their next trial</p>
10:30am – 10:45am	<p><u>Break</u> Blue Room Pre-Function</p>
10:45am – 11:45am	<p><u>CLOF Program - Policing in America: What Cities can do Right Now to Make it Better</u> Diplomat Ballroom</p> <p><i>C Speakers: Brent Gurney & Debo Adegbile</i></p>

Avoid a Ferguson moment. Assess your approach to policing, training, uses of force and accountability. Creating a strategic reform and response plan. Adopting national best practices and examining trends. Engaging the community to resist a trust gap. What every city lawyer should know to bridge any gaps between the police department and city hall. Why DOJ civil rights investigations could be less frequent under the new administration. Why it still makes sense to act like policing practices could be scrutinized or sources of liability. Crisis management - what to do if it all goes south.

Seminar – Recent developments in municipal securities law

Hampton Room

Moderators: Robert Doty

Speakers: Saliha Olgun, Ivonia Slade

The panel will discuss current developments in municipal securities law, including the status of the SEC's MCDC Initiative, other enforcement activities, legislative municipal securities law proposals, and the outlook given the new majority on the Commission. In addition, the panel will discuss MSRB developments important to local governments, including the status of municipal advisor regulation.

10:45am – 11:45am

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§1983- Advanced Topics in Use of Force Trials

Blue Room

Moderators: Rusi Patel

Speakers: Peter Keith, Deidra Norris Sullivan

This course will explore topics of interest to new and experienced attorneys alike on issues trending in trials of use of force cases, including suicide by police, evidentiary considerations in presenting the decedent's background in a deadly force case, and trying multiple claims against multiple officers.

10:45am – 11:45am

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CLOF Program: Refugee Resettlement

Diplomat Ballroom

11:50am – 12:50pm

C *Speakers: Phil Nadeau*

Seminar – Solving the Mystery of P3 Procurement and Best Value Selection: A Municipal Attorney's Primer

Hampton Room

Moderators: Lara Simon

Speakers: Jillian Jagling, Teno West

This program will assist municipal attorneys to transition from the traditional "low-bid" procurement model to the Qualifications Based Selection [QBS] process that is the hallmark of drafting Public-Private-Partnership [P3] offerings. Practitioners will be introduced to the philosophy, rationale and mechanics of drafting P3 procurement documents, including Requests for Expression of Interest [RFEI's], Requests for Qualification, [RFQ'S], Requests for Proposals [RFP's] and Requests for Qualifications and Proposals [RFQP's]. Each procurement model will be defined, differentiated and matched to the project type that is best suited for the particular

11:50am – 1:20pm

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project requirements. Instructors will delve into the deep base of knowledge and experience program participants have in government procurement, and translate that experience into successful base of P3 knowledge. Participants will leave the program ready to tackle their first, or next P3.

§1983 - Defending Section 1983 and other Attorney's Fees Claims

Blue Room

Moderators: Greg Priamos

Speakers: Hilary Taylor, Patricia Via

This presentation will cover the following: Relevant statutory authority; When a party has "prevailed?"; Reasonableness of fees – The Lodestar Approach;

11:50am – 1:20pm

§ Reasonableness factors considered; and Tips to Oppose Fee Petitions/Defenses.

Lunch

On Your Own

1:20pm – 2:45pm

On your own

CLOF: Leadership through Crisis and Values Based Practice

Diplomat Ballroom

2:15pm – 3:15pm

C Speakers: George Nilson

International Committee Meeting

Calvert Room

Speakers: Ben Griffith

The business meeting of the IMLA International Committee will include the following agenda:

1. Recap of World Jurist Association Cybersecurity Conference held in Barcelona, Spain in May 2016;
2. Hot topics noted during the International Steering Committee's January 2017 St. Petersburg, Florida retreat.
3. Overview of presentation by Sven Kohlmeier and Ben Griffith on local government best practices in the Cybersecurity field, particularly with respect to individual privacy and susceptibility to cyberattacks. The full presentation on this will follow in the next hour.
4. Request from IMLA member Samuel Pearson of Liberia for help with respect to specific election-related issues that may arise in the coming presidential and parliamentary elections in Liberia.

2:45pm – 3:45pm

Seminar –NextGen Transportation Grants and Pilot Programs: Ridesharing and the Gateway to Automation

Hampton Room

Moderators: Barbara Adams

2:45pm – 3:45pm

S Speakers: Gregory Rodriguez and Ruben Duran

The future of transportation is operating on our roads today! In conjunction with the release of the Federal Automated Vehicles Policy, more “innovative” grant funding is going towards subsidized ridesharing programs and pilot projects to test connected and automated vehicles. This presentation will provide (1) best practice guidance for ridesharing programs subsidized by public agencies, including procurement and contract issues, and compliance with grant requirements; (2) an overview of pilot projects using ridesharing to test automated vehicles; and (3) an update on the federal regulation of automated and connected vehicles, including a summary of comments to the Federal Automated Vehicles Policy.

§1983- Prayer, Prisons, and Public Fora: Flashpoints at the Intersection of Religion and Municipal Practice

Blue Room

Moderators: Roger Horner

Speakers: Elise Bruhl, Robert Higgason, Ayesha Khan

The intersection of religion and municipal operations is rife with seemingly intractable legal questions. Legislative prayer has been approved but if a municipality relies on outside prayer-givers to deliver the prayers that open deliberative-body meetings, must clergy from all religions be allowed to pray? Are there limitations that arise when government employees do the praying? How many objects need to be alongside a Ten Commandments monument or a crèche for the display to pass muster? When must religious speakers be given access to public fora? And what about statutory protections in this area, such as those provided by the Religious Land Use and Institutionalized Persons Act (RLUIPA)? In these and other contexts not only is the devil in the details, but municipal attorneys may reasonably feel that any choice -- either to recognize religion or to ignore it -- will get the client ensnared in litigation by one "side" or the other. And because the outcome in many of the cases are highly fact-intensive and arguably politically driven, it can be difficult to predict how any particular situation will fare. The panel will canvas some of the trickier areas of the law in this context, clarify what is clear and what remains undecided, and offer some practical advice for steering clear of liability.

2:45pm – 3:45pm

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CLOF: Sanctuary Cities Presentation

Diplomat Ballroom

Speakers: Debo Adebile, Molly Jennings

Executive Order 13768, “Enhancing Public Safety in the Interior of the United States,” directs the Attorney General and DHS Secretary to ensure that sanctuary cities are not eligible to receive federal grants. This presentation will explore what it means to be a “sanctuary city” covered by the Order and provide an overview of the lawsuits brought by San Francisco and Santa Clara in California and Lawrence and Chelsea in Massachusetts seeking to enjoin the Order.

3:15pm – 3:45pm

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Break

Blue Room Pre-Function

3:45pm – 4:00pm

CLOF - Round Table Discussion on Executive Orders

Diplomat Ballroom

4:00pm – 5:00pm

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Discussion will include recent executive orders that impact municipalities, including sanctuary cities and travel restrictions

4:00pm – 5:00pm

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Seminar - Open Data, Government Transparency, Cybertheft and Individual Privacy

Hampton Room

Moderators: Mary Ellen Bench

Speakers: Ben Griffith, Sven Kohlmeier

Speakers from Germany and the USA will provide an informative comparison of the EU's Data Protection Directive 95/46 EG, the fundamental right of privacy under U.S. Constitutional law, and the Cybersecurity Information Sharing Act (CISA) as applied to government on the local, state and international level. We will explore role of government in protecting the right of privacy while protecting vulnerable local, state and national infrastructure from cyber intrusion. Local government attorneys can gain a balanced perspective on such issues as data protection, restrictions on governmental surveillance, the "smart city" technology market, access to personally identifiable data, and best practices and safeguards to prevent deterioration of personal privacy rights in an increasingly internet-dependent world.

§1983-Specific Focus: First Amendment and social media issues for government employers

Blue Room

Moderators: Leah Hayes

Speakers: Cynthia Peltzman, Haley Roberts

This presentation will cover social media in government employment, with a focus on social media use by public safety employees. The discussion will include the ability of a government employer to access social media information of its employees, the applicable legal standard for disciplinary action for social media use, use of government employee social media posts in civil litigation, and considerations in drafting policies governing social media use by government employees.

4:00pm – 5:00pm

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APRIL 24 • MONDAY

Registration

7:45am – 12:00pm

Blue Room Pre-Function

Expect the Unexpected: Dealing with the Press and Legal Issues in the Aftermath of the Pulse Shooting

Blue Room

Moderators: Shauna Billingsley

Speakers: Jody Litchford

Dealing with the press can be tricky even in the best of times. In the aftermath of a high visibility case or incident, good planning is essential to protecting your client.

8:10am – 9:10am

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These and other legal issues encountered in the aftermath of the largest mass shooting in modern U.S. History will be discussed.

Case law update by circuit

Blue Room

Moderators: Rebecca McCuaig

9:15am – 10:15am

S *Speakers: Douglas Haney*

This perennial favorite will provide an overview of highlighted Supreme Court and Circuit Court cases from around the country that are relevant to local governments including everything from employment law cases to First Amendment and police misconduct cases.

10:15am – 10:30am

Break

Blue Room Pre-Function

Ethics and Government Practice: Navigating the Dangerous Waters of Defending A Governmental Entity

Blue Room

Moderators: Chuck Thompson

Speakers: Liza Franklin, Wynetta Massey

This presentation will offer two case studies of important ethics lessons for municipal attorneys while also discussing the model rules. Attorneys who represent governmental agencies, particularly police departments, are held to high standards. Not reaching those standards has far-reaching implications for the attorney, the other attorneys in that office, and attorneys in other agencies. The first presentation will focus on one incident in Chicago, and the long-term consequences of that single incident. The presenter will discuss the incident and various rules of professional conduct, including the following: 1) Rule 3.3, Candor toward the Tribunal; Rule 3.4, Fairness to Opposing Party and Counsel; and 3) 4.1, Truthfulness in Statements to Others. The second presentation from a situation every municipal lawyer has asked themselves, “Who is the client?” When the City of Colorado Springs Charter was amended to abandon the Council-Manager form of government (FOG) in favor of a Council-Mayor FOG, the City Attorney was no longer appointed by the City Council, but instead by the Mayor with the consent of the City Council. This presentation will use the model rules to discuss a fresh, in-depth look at the roles and ethical considerations for representing a municipal entity in the context of a change in the FOG and also highlights the need for a clear understanding of the municipal attorney’s role. The presenter will outline the circumstances leading to the promulgation of the “Office of the City Attorney Legal Ethics Guidelines,” and evaluate its effectiveness in restructuring the attorney’s relationship with the municipal client.

10:30am – 12:00pm

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