INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION



Work Session: IMLA'S 72ND ANNUAL CONFERENCE
OCTOBER 28-31, 2007
NASHVILLE, TENNESSEE

Title: TERRIFIC TRAINING ON A SHOESTRING BUDGET

by

Presenter: Beth Anne Wilkening

Presenter's Title: City Attorney

Presenter's Office: City of Broken Arrow, Oklahoma

© 2007 International Municipal Lawyers Association. This is an informational and educational report distributed by the International Municipal Lawyers Association during its 2007 Annual Conference, held October 28-31, 2007 in Nashville, Tennessee. IMLA assumes no responsibility for the policies or positions presented in the report or for the presentation of its contents.

INTRODUCTION

Many public employers have seen an increase in employment actions over the last few years. Unfortunately, many of these actions serve to emphasize the lack of training provided by public employers. Comprehensive training programs seem to be standard in large corporations throughout the United States. Despite their increased exposure, municipalities and other public bodies seem to have fallen behind on this trend. In Oklahoma, most public body training programs seem to fall into one of three categories: largely non-existent, very out-dated, or somewhat canned and ineffective. Employment law cases that I have researched seem to focus more on evidence (or lack thereof) of employee interaction such as incomplete or ineffective documentation of employee discipline. However, implementation of comprehensive policies, documented dissemination and receipt of policies, and meaningful regular training should certainly reduce the number of meritorious litigation. The purpose of this paper is to provide practical suggestions for municipalities and other public bodies who lack sufficient funds to retain outside companies to conduct training.

CASES DISCUSSING THE IMPORTANCE OF COMPREHENSIVE POLICIES AND TRAINING

The case of *Silvia G. Duhe' v. United States Postal Service*, 2004 WL 439890. (E.D.La. March 9, 2004), primarily involved a claim of hostile work environment sexual harassment. The Court granted the Defendant's Motion for Summary Judgment. Importantly, the Postal Service had a comprehensive sexual harassment policy and provided routine training. The Court noted that:

> The undisputed evidence shows that prior to Duhe's employment, the USPS established and maintained an anti-sexual harassment program which contains a "zero-tolerance" policy with respect to both quid pro quo and hostile environment sexual harassment. The program consists of both preventative and remedial components. USPS managers and supervisors are trained in methods to prevent and handle sexual harassment complaints and the process for referring such complaints. The anti-sexual harassment policy as well as information relating to how to report harassment appear in the form of a "stop sign" poster which, by direct order of the Postmaster General, was posted in every USPS work area, including the Destrehan post office prior to and during Duhe's employment. Additionally, a pamphlet entitled, "An Employee's Guide to Understanding Sexual Harassment," has been periodically sent by the USPS directly to employees' homes. Sexual harassment prevention has also been the subject of "service talks" given to the employees at the Destrehan post office during the workday. New employees of the USPS receive information about sexual harassment prevention and reporting when they are hired,

> including information on how to file a complaint, where to file a complaint, and avenues of redress for harassing behavior.

The Postmaster's commitment to eliminate sexual harassment in the workplace was evidenced by a comprehensive policy which specifically described the process for filing complaints. The Postal Service went to great lengths to educate their employees, not only through posters and pamphlets, but also through service talks. The aggressive training provided by the Postal Service not only aided in the defense of this particular action, but most certainly reduced the incidents of sexual harassment in their workplaces throughout the United States. Even the Plaintiff in this case was forced to admit that the Postal Service took reasonable care to prevent and correct sexual harassment.

Comprehensive policies and training programs were also discussed in the case of *Casiano v. AT&T Corporation,* 213 F.3d 278 (5th Cir. 2000), which involved allegations of *qui quo pro* sexual harassment. In *Casiano,* the Plaintiff alleged that his supervisor sexually harassed him and that he suffered retaliation for filing a complaint. In upholding the grant of summary judgment to Defendant, the Fifth Circuit discussed the importance of comprehensive policies. The Court noted that:

> AT&T's Personnel Guide, Employee Reference Guide, and "Common Bond" all articulate the company policy that forbids sexual harassment and encourages both those who believe they are being harassed and those who witness harassment to notify supervisors as well as the "applicable" AT&T EO/AA representative. *Casiano* concedes awareness of these publications and the policies they embody, and further acknowledges that supervisors reviewed them with him both initially and during the course of his employment. He acknowledges familiarity with the procedures for lodging complaints, yet the evidence shows he did not effectively avail himself of those procedures. *Id.* at 286.

This case emphasized the benefit of comprehensive sexual harassment policies, particularly with regard to reporting requirements. It also emphasized the importance of review of the policies not only at the time of employment, but also on an ongoing, regular basis. The defense of these types of cases can be tremendously bolstered if a Plaintiff admits, as occurred in this case, that they were aware of the respective policies, received training on the policies, and were familiar with the process for lodging complaints.

The granddaddy of all sexual harassment cases is *Faragher v. City of Boca Raton,* 524 U.S. 775, 118 S.Ct. 2275, 139 L.Ed.2d 867 (1998). In this case, the evidence revealed that the City of Boca Raton had adopted a sexual harassment policy. Unfortunately, the evidence also revealed a complete failure on the part of the City to ensure that all departments received the policy. In emphasizing the importance of disseminations of policies, the Court noted that:

> In February 1986, the City adopted a sexual harassment policy, which is stated in a memorandum from the City Manager addressed to all employees. In May 1990, the City revised the policy and reissued a statement of it. Although the City may have actually have circulated the memos and statements to some employees, it completely failed to disseminate its policy among employees of the Marine Safety Section, with the result that Terry, Silverman, Gorden and many lifeguards were unaware of it. *Id.* 781-782.

Faraghar not only represents the importance of having comprehensive policies, it also emphasized the importance of disseminating the relevant policies to ALL employees. Training, of course, is integral to success of policy implementation.

GENERAL EMPLOYEE TRAINING

Public bodies often have a very broad employee base. There are significant variations in education, life experience, and employee functions. Training sessions must be tailored to reach all employees, not just those assigned to a particular area. To this end, I have found it very beneficial to utilize programs which can be understood by a broad range of employees. I have also found it beneficial to combine employees from all Departments during general employee and supervisor training. Employees are generally on their best behavior when separated from their regular co-workers and will therefore receive more benefit from the training.

In Broken Arrow, the City Council adopted the BASE Training Program. This program is comprised of four phases, two for supervisors and two for all employees. The general sessions include topics such as sexual harassment, workplace violence, how to complete incident reports, ethics training, customer service, and a review of current cases. Training for supervisors include understanding the American's with Disabilities Act, Worker's Compensation, the Family and Medical Leave Act, completion of employee evaluations, and methods of effectively documenting employee discipline.

Each phases is four hours in length and runs from 10:00 a.m. until 2:00 p.m. Lunch and snacks are provided. There is some cost involved with the provision of lunch, but I have found that lunch provides a nice incentive that employees would not otherwise receive and it breaks up the training. Also, the mid-day training allows employees time to report to their workstations and complete any outstanding tasks in preparation for the next workday.

Although the primary format is lecture, I have found it tremendously beneficial to encourage employee participation. One of the best ways to do this is to divide the employees into groups of five or six and provide them with a short

scenario with questions. Each scenario is based upon a recent case. I divide them into groups by passing out candy with numbers on it. Unless you have employees who try to manipulate the system, this generally ensures a diverse group for discussion purposes. After each section has had sufficient time to review the scenario, it is then reviewed with the larger group.

TRAINING SESSIONS FOR INDIVIDUAL GROUPS

Due to the diversity of roles and functions, training for individual departments, boards and commissions can be very effective. While the Police Department has been the source of regular training for years, other Departments and Divisions rarely provide regular training. The following are some suggestions to tailor training based upon need and function.

As the former City Prosecutor, I had been involved with training for the Police Department for years. I found it increasingly difficult to capture their attention on general legal issues, as their ongoing training is quite extensive. As a result, I frequently incorporate games into training to keep their attention. Some of my favorites were Name that Crime, Grade the Report, and Defend the Case. Second only to the provision of candy, gum and current scenarios, games have proven to be an effective instruction tool.

About every other year, I provide training to the City Council, Board of Adjustment, Planning Commission, Downtown Advisory Board, and Convention and Visitor's Board. This training is conducted in an Open Meeting and focuses on the current status of the law. I also talk about ways to preserve the record and identify issues which could be beneficial in defending a final action.

In Broken Arrow, the Fire Department is also the Emergency Services provider. Defense of medical malpractice claims create a whole other specialty with which our lawyers must be familiar. In addition to reviewing the current status of the law, we also discuss scenarios on medical malpractice issues and methods of avoiding liability.

IMPORTANCE OF REGULAR STAFF MEETINGS

In all training, it is vital to emphasize the need for regular staff meetings. These meetings provide an invaluable, regular opportunity to discuss issues in the department and review new cases. Review of policies at staff meetings not only serves to remind employees of acceptable protocols (particularly for Police and Fire), but can reap tremendous benefits in a lawsuit alleging a failure to train or follow policy. A recent case out of the 10th Circuit discussed an employee's failure to read a pursuit policy. While this admission did not seem to affect the overall outcome, it certainly could have.

Regular staff meetings also provide an opportunity to review current articles and treatises. Often, I will ask an employee to make a brief presentation

on an issue of relevance to our Department. Occasional snacks or rewards for answering trivia questions can make staff meetings less mundane.

SUGGESTIONS FOR SUCCESSFUL TRAINING

- Come up with a snappy name
- Create a "holy mackerel" list
- Have a paralegal or legal intern research cases
- Research other programs
- Use local talent
- Create a training notebook
- Encourage continuing education
- Encourage review of policies and procedures in staff meeting
- Create topical files
- Disseminate the applicable policy during training
- Use photographs and video clips
- Require execution of sign-in sheets and ensure placement in personnel files
- Encourage employees to create drop down files
- Begin your program with basic training videos
- Be prepared for the difficult employee
- Use food whenever possible
- Incorporate games (see attachment "A")
- Utilize scenarios based on actual cases (see attachment "B")

POLICE LEGAL UPDATE

1. Noodling is:

   a. The intentional harassment of another person
   b. The taking of fish by use of hands only
   c. The premature removal of pasta from a cooker

2. TRUE or FALSE - Whoever purchases or receives, except for the purposes of burial, any dead body of a human being shall be guilty of a crime.

3. Is this a FELONY or MISDEMEANOR?

4. Martin Medstudent needs some extra practice for his anatomy class. However, there aren't any dead bodies around, so he heads to Hayhurst Funeral Home to "borrow" a corpse. Mr. Jones, deceased, and quietly resting in a casket becomes the subject of Martin's autopsy. The most appropriate crime for which Martin should be charged is:

   a. Trespassing
   b. Unlawful removal of the dead
   c. Unlawful interference with places of burial

5. During the "autopsy," Martin accidentally pushes the casket off the rollers and onto the floor where it breaks into a million pieces. The most appropriate crime for which Martin should be charged is:

   a. Destruction of Private Property
   b. Willfully Causing Damage to a Casket or Burial Vault
   c. Burglary

6. Farrah Fruitpicker was invited over to her friend's house for lunch. After lunch, Farrah returned to her car, grabbed a tennis racket and took to whacking at her friend's apples and peaches (which were attached to trees, of course). The most appropriate crime for which Farrah should be charged is:

   a. Trespassing
   b. Destruction of Private Property
   c. Injuring fruit, melons or flowers in the day time

7. Much to everyone's surprise, Farrah's friend not only posted her bond, but actually invited her over for a nightcap. On her way home she again attacked the fruit trees only this time using a golf club, as her tennis racket remained in property custody. The most appropriate crime for which Farrah should be charged is:

   a. Trespassing
   b. Destruction of Private Property
   c. Injuring fruit, melons or flowers in the night time

8. Aaron Arsonist set a house on fire. Fortunately, the occupants were on vacation. What crime is Aaron guilty of:

   a. 1st Degree Arson
   b. 2nd Degree Arson
   c. 3rd Degree Arson

9. After being released from prison, Aaron returns to the same residence. This time, he sets the shed behind the residence on fire. Unbeknownst to him, a transient had fallen asleep inside and was killed. Aaron should be charged with:

   a. 1st Degree Arson
   b. Murder
   c. Manslaughter

10. Several years ago, Michael Douglas starred in a movie known as the Star Chamber. This title was derived from the 15th Century and describes:

   a. A court wrought by secrecy
   b. An area of the prison similar to today's death row
   c. The area where prisoners were executed

11. In this movie, who actually comprised the star chamber and why was it formed?

12. The Latin terms "mala prohibita" and "mala en se" refer to:

   a. Types of pleas
   b. Phrases that lawyers use to make people think they know what they are talking about
   c. Types of crimes

13. "Mala en se" actually means a crime which is bad in and of itself. An example of "mala en se" crime is:

    a. Murder
    b. Trespassing
    c. Possession of Marijuana

14. "Mala prohibita" actually means a crime which isn't naturally bad, but that society has prohibited by law. An example of a mala prohibita crime is:

    a. Breaking and Entering
    b. Arson
    c. Speeding

15. TRUE or FALSE - A person who has sex with an individual mentally incapable of giving consent is guilty of rape.

16. Seth Sleezbag wants to have sex with his girlfriend, but she refuses to acquiesce until after they are property married. Seth enlists the help of his friend Bob, the mechanic, who performs a "faux" marriage ceremony. Afterwards, Seth is successful in consummating the "faux" marriage. Seth should be charged with:

    a. Rape
    b. Sexual Battery
    c. No Crime

17. Horse tripping is:

    a. The laying down of a horse for medical purposes
    b. The legal calculation of a horse racing handicap
    c. Causing an animal of the equine species to fall or lose its balance with any object

18. TRUE or FALSE-It is illegal for any person to engage in a horse tripping event.

19. TRUE or FALSE-Upon the arrest of any person pursuant to the provisions of this section, the law enforcement officer may seize the animal in question.

20. In order to prosecute someone under the age of 21 for Driving Under the Influence, the suspect must blow at least:

    a. .02
    b. .03
    c. .05

21. The 6th Amendment to the United States Constitution guarantees which of the following rights:

a. Freedom of speech
b. No excessive fines or bail
c. Speedy and public trial

22. The 8th Amendment to the United States Constitution guarantees which of the following rights:

a. No cruel or unusual punishment
b. Freedom of religion
c. Right to counsel

23. The 4th Amendment to the United States Constitution Guarantees which of the following rights:

a. Prohibition of unlawful searches and seizures
b. Freedom of the press
c. An impartial jury

24. In order to seek the death penalty in Oklahoma, the District Attorney must file:

a. a Petition
b. an application to the Criminal Court of Appeals
c. a Bill of Particulars

25. Which of the following crimes can be used to prosecute First Degree Felony MURDER

a. Kidnaping
b. Escape From Lawful Custody
c. 2nd Degree Burglary
d. Rape

26. Which of the following crimes can be used to prosecute Second Degree Felony Murder:

a. 1st Degree Arson
b. 2nd Degree Arson
c. Trafficking
d. 2nd Degree Burglary

27. Darin Drugdealer sells a hit of crank to Vicki Victim. Vicki promptly overdoses and dies. TRUE or FALSE, Darin should be charged with First Degree Murder.

28. Darin has a meth lab in the Sleezebag Motel. One night, he accidentally combines the wrong chemicals and blows up the room next door killing Sarah Sleeper. TRUE or FALSE, Darin should be charged with First Degree Murder.

29. Paul Pushemoff forces his lover off the roof of a 24-story building. Paul's wife, Kate, angry about the affair, pulls out a shotgun and shoots the lover on her way down. Kate should be charged with:

    a. 1st Degree Murder
    b. 2nd Degree Murder
    c. No Crime

30. Upset by his wife's actions, Paul takes Kate up to the roof to discuss her actions. As he neared the edge of the roof, Paul accidentally (although yelling and screaming) trips and pushes her off the roof. He should be charged with:

    a. 1st Degree Murder
    b. 2nd Degree Murder
    c. No crime

31. What is the main difference between 1st Degree Murder and Second Degree Murder?

32. TRUE or FALSE-In a death penalty case, if the jury cannot agree on punishment, the judge must dismiss the jury and impose the death penalty.

33. TRUE or FALSE-In a death penalty case, if the jury cannot agree on punishment, the judge must dismiss the jury and impose a sentence of life, with or without the possibility of parole.

34. What are the three sentencing options that are available for someone charged with First Degree Murder?

35. TRUE or FALSE-An example of an aggravating circumstance in a death penalty case would be if the murder was especially heinous, atrocious or cruel.

SCENARIO NUMBER 2

In May of 1990, three persons were killed when a GMC Safari Minivan struck their Ford Escort station wagon. The minivan had run a red light while being pursued by members of the Tulsa Police Department. The sole reason for the police pursuit was for a stolen vehicle offense. There was no information that the suspects in the fleeing van had committed any violent felony or were known for violent behavior. The minivan ran at least eight stop signs as one of the officers pursued it through residential areas of central Tulsa, passing a high school, a park and coming within blocks of the University of Tulsa. This portion of the pursuit involved speeds in excess of sixty miles per hour with the fleeing van traveling though stop signs at major intersections without slowing. The officers were aware of the likelihood of encountering traffic during the pursuit. No supervisor or watch commander was notified of the pursuit, nor was the pursuit supervised, although the TPD's written vehicle pursuit policy then in force required that all pursuits be supervised and directed officers to terminate such pursuits when the hazards outweigh the benefits.

1. In your opinion, was the pursuit justified in these circumstances?
2. How would you have handled the situation?
3. What do BAPD Policies and Procedures say about high speed pursuits?
4. What was the outcome of this civil case?