Cases



ADA
Threats to Co-Workers

Bodenstab was employed as an anesthesiologist at Cook County Hospital in Chicago. He called a friend to say that he had been diagnosed with cancer, and, that if the cancer metastasized, he was going to kill his supervisor and other co-workers. He allegedly further stated that he might die in the resulting gun battle with police. Out of concern for the safety of Bodenstab and his co-workers, his friend alerted the Chicago Police Department and the local FBI office. These, in turn, contacted the hospital's director, advising him that they considered the death threats credible. The hospital reviewed the police reports and decided to suspend Bodenstab, with pay, and told him to consult a forensic psychiatrist for a fitness for duty evaluation. The resulting assessment concluded that Bodenstab suffered from "paranoid and narcissistic personality features and occupational and interpersonal stressors." He was admitted to a day treatment program. Upon discharge, the recommendation was that, although Bodenstab was fit to return to practice, he could not work in an environment that was "emotionally, politically, or interpersonally charged, as [this] would likely strain his ability to work with others in a consensual and cooperative manner," and he should continue to be monitored by a psychiatrist. Given these concerns, Cook County asked its own psychiatrist to examine Bodenstab. After this psychiatrist advised that he felt concerned for his own safety, with Bodenstab exhibiting "paranoia and interpersonally charged issues," the hospital held a pre-disciplinary hearing, which concluded in a recommendation for discharge. This was confirmed on appeal by a hearing officer, who ruled that the hospital management was justified in not wishing to place Bodenstab's co-workers in harm's way. Bodenstab sued, claiming that his firing violated the First Amendment, the Americans with Disabilities Act (ADA), and his due process rights, and downplaying his threats as "conditional syllogisms." The district court granted the defendants' motion for summary judgment, and Bodenstab appealed.

The U.S. Court of Appeals for the Seventh Circuit affirmed. The ADA claims (including disparate treatment, failure to accommodate, and retaliation) failed. Under the ADA, an individual was not qualified if he presented a "direct threat" to his own health and safety or that of others. The undisputed evidence supported the County's belief that Bodenstab made the murder-suicide threats. Even if the County had improperly determined that he presented a "direct threat" within the meaning of the ADA, summary judgment on the termination claim was appropriate because the County had a legitimate, nondiscriminatory reason for firing Bodenstab – the threats he had already made. Likewise, the failure to accommodate claim failed because the evidence established that Bodenstab was fired for making threats to harm co-workers, and there was no legal obligation to "accommodate" conduct, as opposed to a disability, even if the conduct was somehow related to a disability. Dealing with the retaliation claim – that the firing was related to his writing a letter asking to be reinstated, his complaints about being forced to undergo psychiatric examinations, and his identifying reasonable accommodations – the court held that Bodenstab did not present sufficient evidence that he was fired for engaging in these activities. The First Amendment claim was dismissed for the same reason as his ADA claims: the County fired him for a legitimate, non-discriminatory reason – threats to co-workers – which defeated any First Amendment claim. Lastly, because Bodenstab was provided with adequate pre- and post-termination hearings, his due process claim was dismissed as well. *Bodenstab v. County of Cook*, 569 F. 3rd 651 (7th Cir. 2009).

Civil Rights
Kyle, Texas Prevails in FHA Price Increase Case

Following the article that appeared in the March/April 2009 *Municipal Lawyer* (*A New Twist on the Fair Housing Act*, by Bradford Bullock), the federal trial court's judgment in *NAACP et al. v. City of Kyle, Texas,* No. A-05-CA-979-LY (W.D. Tex. Mar. 30, 2009) has now been released. The ruling comes as a welcome reminder that federal courts are not particularly interested in sitting as super-zoning authorities. The plaintiffs in this case – including the National Association for the Advancement of Colored People, the National Association of Home Builders, and the Home Builders Association of Greater Austin – claimed that the City of Kyle had violated the federal Fair Housing Act when it passed a comprehensive zoning and subdivision ordinance amendment. Specifically, they claimed that, by increasing certain minimum standards in these ordinances, the City allegedly caused the price of new, single-family detached homes built to the revised standards to increase. Because minorities in Texas tend to have lower median incomes than whites, the plaintiffs asserted that this created a "disparate impact" and denied housing to minorities who would move to Kyle in the future. However, in ruling against the plaintiffs, the trial court concluded that the plaintiffs had conducted an "incomplete analysis" by failing to demonstrate that the amended ordinances would cause an *actual* shortage in housing available to the area's minorities. The court went on to find that, by failing to take into account other low-cost housing options permitted by Kyle's ordinances, the demand for the housing in question, and the number of grandfathered lots not subject to the amended ordinances (approximately