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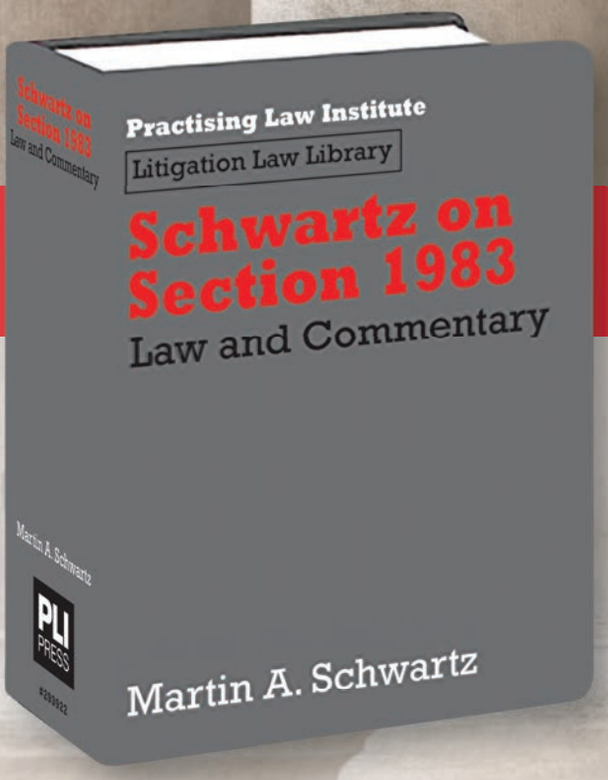
Municipal Lawyer

THE JOURNAL OF LOCAL GOVERNMENT LAW

Ten Tips for Lawyer Well-Being in the Age of Coronavirus

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EDITOR'S NOTE



BY: ERICH EISELT
IMLA Assistant General Counsel

The Eye of the Hurricane

This May-June *Municipal Lawyer* features an article discussing the many stresses faced by attorneys, offering mechanisms for overcoming them. That topic may seem like an exercise in self-absorption during the pandemic; most pressures affecting those who are fortunate enough to practice law pale in comparison to the devastating losses--of jobs, lives and more--endured by so many in the time of COVID. But for municipal lawyers, fulfilling their responsibilities in today's America can create particular challenges, extending well beyond the isolation and logistical limitations of public service under lockdown.

Our writers speak to some of the major problems confronting local governments today, all of which demand the energies and problem-solving skills of their attorneys. Foremost among these is the continuing need to ensure fairness and transparency in local policing. IMLA President Tyrone Cooper addresses the broader implications of the George Floyd verdict, voicing the call for genuine justice in arrest, adjudication, and sentencing policies. That mandate can present complex ethical issues for local government lawyers whose duty is to defend police departments and assert qualified immunity where available. Those challenges were the subject of several excellent sessions at IMLA's recently-concluded virtual mid-year seminar.

Difficult decisions emerge elsewhere in our communities. Makeshift homeless dwellings overrun city throughfares and public parks, pitting the instinct for humane response against the demand to maintain order and preserve already-struggling local commerce. We look at a recent federal court order demanding a near-immediate solution to encampments housing thousands. Local governments see that directive as extreme judicial overreach into an area of executive and legislative discretion; an action which has often triggered involvement by IMLA's amicus program. We also take a deep dive into a more subtle facet of the housing issue, as municipal lawyers are called upon to craft policies which protect a community's aesthetic and density standards without undermining local efforts to expand housing or run afoul of federal law.

Further tension arises in the arena of healthcare, as communities seek to protect their residents against the continuing threat of COVID. Efforts to apply common sense and local police powers struggle in the face of preemptive measures by governors or attorneys general with conflicting political views. As we relate, IMLA's amicus efforts have already twice been directed at such overreach, with the potential for more.

Additionally, we report on an increasingly polarized society which has lost its patience with polite conversation, bringing profanity to Main Street. Tensions could not be greater for local government lawyers who must respond to constituents objecting to profane and offensive expression, while recognizing the First Amendment protections that confound easy solutions.

All of these issues, and more, generate recurring internal dialog about what is right and outstrip available time and resources. As this note is being written, the Supreme Court is announcing that it will be considering a case involving another gun control measure sure to cleave our country even further, regardless of the result. The prospect of unrelenting stress for municipal lawyers seems evident.

Finally, and certainly at the lead in terms of import to the IMLA family, we announce that Chuck Thompson, who has served as IMLA's Executive Director and General Counsel since 2006, will be stepping down at the end of 2021, handing the reins to Amanda Karras, currently Deputy General Counsel and Director of Legal Advocacy. We sincerely thank Chuck for providing his exhaustive knowledge of municipal law, his leadership, and his tireless devotion to the interests of IMLA, and we congratulate Amanda and offer her our continued support. We will have more to say on this subject in coming days.

Best regards - Erich Eiselt

PRESIDENT'S LETTER



BY: **TYRONE COOPER**
IMLA President and City Attorney, Beaumont, Texas

The Pursuit of Justice

As I began to write this letter, the 2021 IMLA Mid-Year Seminar had just commenced. Within days, the jury in the former Minneapolis Police Officer Derek Chauvin trial returned a verdict of guilty on all three counts of second and third-degree murder and manslaughter. Many people in the nation and the world are touting this verdict as justice. But is it really?

One definition in my old Merriam-Webster dictionary describes "justice" as commonly used in this context as a "reward" or "penalty" as deserved. However, another more appropriate legal definition is the use of authority and power to uphold what is right, just, or lawful, the personification of which is typically displayed as the blindfolded goddess holding scales and a sword.

Keith Ellison, the Minnesota Attorney General and lead prosecutor in the Chauvin case cautioned against the use of the word because no jury could restore George Floyd's life. The nation and the world community are declaring this as justice for George Floyd and as an affirmation of an "injustice" that spawned the Black Lives Matter movement. The family of George Floyd by this verdict has received confirmation that their loved one was indeed wrongfully murdered. But there is no true justice for aGeorge Floyd in death. True justice for George Floyd would have been a determination of his rights according to the rule of law played out through the judicial system, not under the knee of Derek Chauvin in the streets of Minneapolis, Minnesota.

Ellison goes on to state "accountability is the first step toward justice." There are those who believe that accountability cannot be accomplished under the present state of legislation and are pushing for policing reform. The U.S. House of Representatives recently passed the George Floyd Justice in Policing Act in an effort toward reform, but the Senate has yet to do so.

Whether the current status of the law is inadequate and in need of change is debatable. We should be careful that the attempt at reform does not swing too far in the other direction so as to create an environment that would cause the officer to hesitate in the performance his or her duties, for fear of being sued or criminally charged.

As municipal and county attorneys, we are on the front line when it comes to police reform. Reform, from our perspective, comes in the form of the review, development, and implementation of police departmental policy. We can also effect change through our relationships with the Police Chiefs, the command staff of the departments, and the Patrol Officers while prosecuting in Municipal Court or litigating other police-related matters. We have the opportunity to experience firsthand police procedure in action and possess the unique responsibility to advise where we identify questionable conduct and/or practices.

IMLA provides to us the best governmental legal minds in the United States and Canada to keep us on the cutting edge of the myriad ever-evolving laws necessary to our municipal and county practices. We are obligated to return to our respective jurisdictions and implement what we have learned, and advise accordingly. We are in a better position to make a difference if legal change is what is in fact needed in the area of local policing. Necessary change is the very essence of reform.

I am honored to serve as the President of this organization, which has long been dedicated to the betterment of local government. IMLA and its members have the resources and the capacity to make a positive difference in America's communities every day, and I join you in our mutual endeavor to pursue transparency, fairness and justice for all.

Ten Tips for Lawyer Well-Being in the Age of Coronavirus

BY: CHRIS RITTER *Director, Texas Lawyers Assistance Program, Austin, Texas*



I. INTRODUCTION.

For those practicing law, it may be no surprise that lawyers suffer from very high rates of mental health and substance use disorders. Lawyers are handed their clients' worst problems and are expected to solve them. They are supposed to be perfect, or their reputations dwindle. If they make a mistake, it can be career changing—or devastating to a client's life. There is little time to smell the roses, and when that opportunity comes, it is hard if not impossible to stop thinking about the fires which need putting out at the office. It is a tremendous understatement to say that the life of a lawyer can be very stressful and difficult.

Enter COVID. In a year when lawyers are already stressed to the hilt, the isolation, technological change, and sheer anxiety of crisis after crisis has left many lawyers at wits' end. It is no surprise that this year has been overwhelming for many of us.

In less dramatic years, experts have discovered extraordinary differences between the mental health and substance use of attorneys compared to people in the general population. A recent law review article noted that attorneys have the highest rate of depression of any occupational group in the United States.[1]

Another study showed that attorneys suffer depression 3.6 times as often as the general population.[2]

With regard to alcohol use, researchers have understood since a major study in 1990 that attorneys have much higher than usual rates of problem drinking and mental health issues.[3] the details of the extent of the legal world's woes are revealed in two major studies regarding the degree to which attorneys and law students suffer from such mental health and substance use disorders.

With regard to attorneys, in 2016 the American Bar Association Commission on Lawyer Assistance Programs and the Hazelden Betty Ford Foundation released a groundbreaking study of almost 13,000 employed attorneys. It showed that 21% of attorneys suffer from problematic drinking, defined as "hazardous, harmful, and potentially alcohol-dependent drinking" (some have referred to these people in the past as "alcoholics"), 28% suffer from depression, and 19% suffer from clinical anxiety.[4] Perhaps even more disturbing, 36% reported drinking alcohol in a quantity and frequency that would indicate "hazardous drinking or possible alcohol abuse or dependence," 46% felt they suffered depression in the past, and 61% reported concerns about anxiety.[5]

As a reference to how these numbers stack up to the norm, about 6% of adults over 26 years of age suffer from problematic drinking[6] (versus 21% of lawyers), and only 15% of doctors reported drinking alcohol in a quantity and frequency that would indicate hazardous drinking or possible alcohol abuse or dependence (versus 36% of lawyers).[7]

Likewise, a 2015 law school wellness study of nearly 4,000 participating law students at 15 law schools across the country showed similar results. In the study, 42% of respondents indicated that in the past year they had thought they needed help for emotional or mental health problems. Furthermore, 25% answered two or more of four questions that comprise the CAGE alcoholism assessment, indicating as many as one-quarter of the law students should be considered for further screening for alcohol use disorder. The study also showed that 43% of law students reported binge drinking in the past two weeks and 25% reported marijuana use in the past year.[8] Additionally, 14% reported using prescription drugs in the past year without a prescription, 27% reported having an eating disorder, and 21% percent reported that they had considered suicide.[9]

One law school study found that before law school, only 8% reported alcohol problems. By the third year of law school, 24% reported a concern about having a drinking problem.[10] Moreover, a 2014 Yale Law School study sent shockwaves across academia when it reported 70% of its law students had symptoms of depression.[11]

Regarding suicide, lawyers have consistently been at or near the top the list of all professionals in suicide rates.[12] They have

been found to be twice as likely as the average person to commit suicide.[13]

Obviously, these are major problems. No one wants to be troubled by thinking about these issues, but they demand real attention. This paper is an effort to provide some basic information and tools to help attorneys and others in contact the legal community understand and address the unique and substantial stress, mental health, and substance use issues from which so many attorneys suffer.

II. DEFINING THE ISSUES.

While there are a large number of hardships faced by attorneys, the following are some of the most common and most serious:

A. Anxiety Disorders.

Disorders relating to anxiety range from a general Panic Attack (which is Panic Disorder with or without Agoraphobia[14]) to specific phobias such as Social Anxiety Disorder (SAD), Obsessive-Compulsive Disorder (OCD), Posttraumatic Stress Disorder (PTSD), Acute Stress Disorder (ASD), Generalized Anxiety Disorder (GAD), Substance-Induced Anxiety Disorder, anxiety due to a medical condition, and anxiety disorder not otherwise specified.

GAD is prevalent in the legal community, although most lawyers would argue that its symptoms sound like what one experiences every day when practicing law:

1. Excessive anxiety and worry (apprehensive expectation) which occurs more days than not for at least six months regarding a number of events or activities (such as work or school performance);
2. Difficulty controlling the worry;
3. The anxiety and worry are associated with three (or more) of the following six symptoms present for more days than not for the prior six months:

    a. restlessness or feeling keyed up or on edge;
    b. being easily fatigued;
    c. difficulty concentrating or mind going blank;
    d. irritability;
    e. muscle tension;
    f. sleep disturbance (difficulty falling or staying asleep or restless unsatisfying sleep);

4. The focus of anxiety or worry is not about another disorder (panic, social phobia, OCD, PTSD, etc);
5. The anxiety, worry or physical symptoms cause clinically significant distress or impairment in social, occupation or other important areas of functioning; and
6. The disturbance is not due to the direct physiological effects of a substance (drug of abuse, medication, etc.) or a general medical condition and does not exclusively occur during a mood disorder or psychotic disorder.[15]

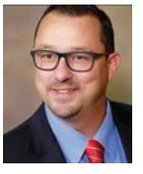
B. Substance Use Disorders and Process Addictions.

Approximately 20% of the lawyers in the United States are affected by substance use disorders compared with about 10% of the general public.[16] The substances used to excess include: alcohol, amphetamines, methamphetamine, caffeine, club drugs, cocaine, crack cocaine, hallucinogens, heroin, marijuana, myriad prescription drugs, nicotine, sedatives, steroids and a combination of all of the above (polysubstance abuse/dependency).

Substance use disorders span a wide variety of problems arising from substance use. The following are the 11 different criteria for diagnosing a substance use disorder under the recently established *Diagnostic and Statistical Manual of Mental Disorders* (DSM-5):[17]

1. Taking the substance in larger amounts or for longer than meant to;
2. Wanting to cut down or stop using the substance but not managing to;
3. Spending a lot of time getting, using, or recovering from use of the substance;
4. Experiencing ravings and urges to use the substance;
5. Not managing to do what should be done at work, home or school, because of substance use
6. Continuing to use, even when it causes problems in relationships;
7. Giving up important social, occupational or recreational activities because of substance use;
8. Using substances again and again, even when it puts one in danger;
9. Continuing to use, even when known that there is a physical or psychological problem that could have been caused or made worse by the substance;
10. Needing more of the substance to get the effect wanted (tolerance); and/or
11. Development of withdrawal symptoms, which can be relieved by taking more of the substance.

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Chris Ritter graduated magna cum laude from Baylor University in 1994 with a B.A. Political Science and Philosophy and was elected Phi Beta Kappa. After law school at the University of Texas School of Law (J.D., 1998), he was a trial lawyer in West Texas for over 15 years until he joined TLAP in 2014. Most recently, Chris obtained a master's degree in Clinical Mental Health Counseling from Lamar University (M.Ed., 2018). He has been recognized by his peers for his legal accomplishments, including being named a Texas Monthly Super Lawyers' Rising Star three times. Chris is also in long-term recovery. During his career, his law practice has included being a solo practitioner, an Assistant Criminal District Attorney, and a partner in two prominent law firms. In his work at TLAP and in pursuit of his master's degree, he has gained significant knowledge and experience pertaining to mental health and substance use disorders and their treatment.

TEN TIPS *cont'd from page 7*

The DSM-5 further provides a measure for determining the severity of a substance use disorder as follows:

> MILD: Two or three symptoms indicate a mild substance use disorder
> MODERATE: four or five symptoms indicate a moderate substance use disorder, and
> SEVERE: six or more symptoms indicate a severe substance use disorder. Clinicians can also add "in early remission," "in sustained remission," "on maintenance therapy," and "in a controlled environment."[18]

Though they are not all classified as substance use disorders, lawyer assistance programs also work in increasing numbers with lawyers who also experience process addictions (compulsive or mood altering behavior related to a process such as sexual activity, pornography – primarily online, gambling, gaming, exercise, working, eating, shopping, etc.). The DSM-5 does now recognize Gambling Disorder as a behavioral addiction.

C. Depressive Disorders.
Texas Lawyers often present with symptoms of depressive disorders, including Major Depression, Persistent Depressive Disorder (formerly referred to as Dysthymic Depression), Compassion Fatigue, and Depression Not Otherwise Specified.
1. Major Depressive Disorder: A major depressive episode is a period characterized by the symptoms of major depressive disorder when five or more of the following are present during the same two-week period:

a. depressed mood most of the day, nearly every day, as indicated by subjective report or observation made by others;
b. markedly diminished interest or pleasure in all or most activities most of the day, nearly every day;
c. significant weight gain or loss (when not dieting) or decrease or increase in appetite nearly every day;
d. insomnia or hypersomnia nearly every day;
e. psychomotor agitation or retardation nearly every day;
f. fatigue or loss of energy nearly every day;
g. feelings of worthlessness or excessive or inappropriate guilt nearly every day;
h. diminished ability to think or concentrate, or indecisiveness, nearly every day; and/or
i. recurrent thoughts of death, recurrent suicidal ideation without a plan, suicide attempt or a specific plan for completing suicide.[19]

2. Persistent Depressive Disorder: This is a disorder involving a depressed mood that occurs for most of the day, for more days than not, for at least 2 years with the presence of at least two of the following six symptoms:

a. poor appetite or overeating;
b. insomnia or hypersomnia;
c. low energy or fatigue;
d. low self-esteem;
e. poor concentration or difficulty making decisions; and/or
f. feelings of hopelessness.

Additionally, for Persistent Depressive Disorder to be diagnosed, the person must not have been without the symptoms above for more than two months at a time during the two-year period of the disturbance and must not have experienced a major depressive episode, manic episode or hypomanic episode in that time.

Finally, the disturbance must not occur exclusively during the course of a chronic psychotic disorder, must not be due to substance use or another medical condition, and must cause clinically significant distress or impairment in social, occupational or other important areas of functioning.[20]

3. Compassion Fatigue and Burnout. Compassion fatigue has been defined as "a combination of physical, emotional, and spiritual depletion associated with caring for persons in significant emotional pain and physical distress."[21] Its components are the presence of Secondary Traumatic Stress (STS) in combination with a condition commonly referred to by lawyers as "Burnout":

a. Secondary Traumatic Stress. STS is the presence of traumatic symptoms caused by indirect exposure to the traumatic material. The following are characteristics of this kind of trauma:
(1) Symptoms are similar to PTSD except the information about the trauma is acquired indirectly from communicating with the person who personally experienced the traumatic event.
(2) The traumatic event is persistently re-experienced in one or more of the following ways: recurrent and intrusive distressing recollections, dreams, acting or feeling as if the event is reoccurring.
3) Persistent avoidance of the stimuli associated with the trauma (the client, the case, the deposition, specific facts, etc.) and numbing of general responsiveness..
(4) Persistent symptoms of increased arousal such as difficulty falling or staying asleep, irritability or outbursts of anger, difficulty concentrating, hyper vigilance, or exaggerated startle response.

(*If you are concerned about suffering from Compassion Fatigue, you may be interested in taking the self-assessment test at http://www.compassionfatigue.org/pages/cfassessment.html*).

b. Burnout. Burnout is the term used by many lawyers to describe the psychological syndrome of emotional exhaustion, depersonalization and reduced personal accomplishment. Burnout symptoms include:

increased negative arousal, dread, difficulty separating personal and professional life, inability to say "no," increased frustration, irritability, depersonalization of clients and situations, diminished enjoyment of work, diminished desire or capacity for intimacy with family and friends, diminished capacity to listen and communicate, subtle manipulation of clients to avoid them or painful material, diminished effectiveness, loss of confidence, increased desire to escape or flee, isolation.

D. Suicide. There is no need to define suicide, but because it is such a serious matter and so prevalent among lawyers, it deserves further discussion. A 2010 study by the Air Force found that suicide prevention curricula included in all military training reduced the mean suicide rate within the population studied by an unprecedented 21%.[22] In light of this recognition of the major impact training and education can have on suicide, it is appropriate that Lawyer Assistance Programs have made it a priority to inform lawyers about this issue. If you want to know how to carry on a conversation about suicide, how and when to get a client, friend or colleague to professional help, or how to handle a suicide emergency, explore the resources on TLAP's website at tlaphelps.org.[23]

Lawyers are slow to utilize professional assistance, perhaps due to fear of what people might think, how it might affect their practice, or being ashamed of not being able to figure it out alone. It has been said that people cannot think their way out of bad thinking. Of all people, lawyers know that using a professional who specializes in solving a particular problem is wise.

III. TEN HELPFUL TIPS FOR LAWYERS DEALING WITH STRESS, MENTAL HEALTH, OR SUBSTANCE USE ISSUES.

When dealing with the spectrum of problems faced by attorneys, there is no single solution which will take care of everything, but many tools are useful for both mental health and substance abuse issues. The following are ten practical tools which any affected attorney should consider using for preventing or helping to solve a problem:

1. Take Action! Whether a lawyer is living in the darkness of depression or lost in a routine of substance abuse, there is a solution but it depends on *action*. Taking action requires courage. By expressing the need for help to someone, the process to peace begins. LAPs are available for any lawyer to confidentially share a desire to change the way he or she is living and to assist the person in getting the help needed. Once an attorney is able to take even the smallest action toward solving their problem, life gets better quickly.

a. Get Professional Help. Lawyers are slow to utilize professional assistance, perhaps due to fear of what people might think, how it might affect their practice, or being ashamed of not being able to figure it out alone. It has been said that people cannot think their way out of bad thinking. Of all people, lawyers know that using a professional who specializes in solving a particular problem is wise. If what you are doing is not working and you would like to confidentially get professional help but do not already know a suited professional, a LAP can help guide you to licensed professionals who are a good fit for you and who are experienced in working with lawyers.

b. Take the Suggested Steps. Having discovered and accepted the fact that a problem exists, it is important to accept help from people who have experience in solving that problem. Once a plan is made, it is important to accept and follow the steps suggested for getting better. Professionals and doctors may prescribe certain actions to address your problem, and which may bring about major changes in the way you function and feel. Likewise, there are many 12 Step programs[24] which provide guidance for recovery from a variety of problems and which suggest specific actions which bring about change in the way a person thinks and lives so as to overcome the "problem."

c. Be Proactive. Know that this profession can wear you out. So, get an annual physical. Take a vacation (or "stay-cation"). Develop a team of experts for yourself: peer support, primary care physician, therapist, and psychiatrist. Act now, do not wait to address your burnout, sense of dread, lingering grief, daily fear, or excessive substance use intended to numb all of the above.

d. Call Your LAP. The only way to ensure that the situation changes for you is to take action. It may be hard to figure out what action to take. If you are wondering what to do, you LAP's experienced and professional staff is available to answer your questions about substance abuse, mental health and wellness issues. Your calls will be to attorneys with resources and helpful ideas to better your life. LAP services most often include confidential support, referrals, peer assistance, customized CLE and education, mandated monitoring, and volunteer opportunities. Without proper intervention and treatment, substance abuse and mental illness are both

Continued on page 10

chronic health conditions that worsen over time. Please call and find out how your LAP can help. You can find your LAP in the directory here: www.americanbar.org/groups/lawyer_assistance/.

2. Set Boundaries. Boundaries are important for a person practicing self-care. Personal or professional boundaries are the physical, emotional, and mental limits, guidelines, or rules that you create to help identify your responsibilities and actions in a given situation and allow you take care of yourself. They also help identify actions and behaviors that you find unacceptable. They are essential ingredients for a healthy self and a healthy law practice. In essence, they help define relationships between you and everyone else.

How does one establish healthy boundaries? Know that you have a right to personal and professional boundaries. Set clear and decisive limits and let people know what you expect and when they have crossed the line, acted inappropriately, or disrespected you. Likewise, do not be afraid to ask for what you want, what you need and what actions to take if your wishes are not respected. Recognize that others' needs and feelings and demands are not more important than your own. Putting yourself last is not always the best – if you are worn out physically and mentally from putting everyone else first, you destroy your health and deprive others of your active engagement in their lives. Practice saying no and yes when appropriate and remain true to your personal and professional limits. Do not let others make decisions for you. Healthy boundaries allow you to respect your strengths, your abilities and your individuality as well as those of others. [25]

Boundaries are important for a person practicing self-care. Personal or professional boundaries are the physical, emotional, and mental limits, guidelines, or rules that you create to help identify your responsibilities and actions in a given situation and allow you take care of yourself. They also help identify actions and behaviors that you find unacceptable. They are essential ingredients for a healthy self and a healthy law practice.

3. Connect with Others. Connecting with others who know first-hand what you are going through can help reduce the fear and hopelessness that is often connected to mental health and substance use disorders. A growing body of research shows that the need to connect socially with others is as basic as our need for food, water and shelter.[26] Fortunately, there are support groups available for lawyers. Contact your LAP to find connection to others who have been through what you are experiencing and find one-on-one and group peer support.

4. Practice Acceptance. Acceptance is a big, meaningful word which encompasses a variety of important tools for a person seeking a positive life change. First, being able to honestly accept the place where you are at present is an important step in making a change. Until a person is able to accept that the future is not here yet and that the past is gone, he or she cannot be present to focus on what is within grasp that day.

Furthermore, accepting that something is wrong is a step many lawyers resist. Perfectionism and pride play a role in learning to be a good lawyer, but the effects of those traits can be limiting on a person who needs to get honest about a difficulty.[27] Acceptance of the fact that you have an issue for which help is needed is a major part of solving the problem.

5. Learn to Relax. For attorneys, relaxing can seem almost impossible. The mind is an instrument, but sometimes it seems that the instrument has become the master. Breathing exercises, meditation, and mindfulness[28] practices have been very effective for attorneys who need to relax, or "quiet the mind." Much has been written to express how impactful these tools can be to bring about peace in the life of an attorney.[29]

There are countless variations of breathing exercises and resources to learn how to build control of your thoughts and worries.[30] TLAP's website includes links to several of these wellness resources at www.tlaphelps.org .

Suggestion: Calendar what you want to do. Wishing and wanting to change are important ingredients for change but action is important. If there is something that you want to do, what would be the first thing to accomplish to move toward that goal? Calendar it. First things really do come first. Try it!

Finally, in order to relax, cultivate interests unrelated to the practice of law. This will provide you with opportunities to take a well-deserved break from your work, and, quite frankly, helps to make you a far more emotionally well-developed and interesting person. You will also meet a host of new friends and contacts who will help give some additional perspective about your life and your choices.

6. Practice Positive Thinking. There is a growing body of research showing the powerful positive effects of positive thinking and positive psychology.[31] The goal of this movement is to help people change negative styles of thinking as a way to change how they feel.

Suggestion: Make a Gratitude List. One way to practice positive thinking is to focus your attention on what is right

in your life. This is a proven and effective way to escape the sometimes overwhelming thoughts of all of the things that may seem to be wrong. Become conscious of your gratitude. Studies have shown that taking the time to make a list of things for which you are grateful can result in significant improvement in the way you feel and the amount of happiness you experience.[32] Try making a list of three to five things for which you are grateful each morning for a week and see what happens.

7. Help Others. Service work sounds like just one more thing to add to the list of things you do not have time for, and it may not be easy to do during the COVID age, but this is something that helps us a lot. Consider really making time to do, even if its online. Obviously, until you secure your oxygen mask, you should not attempt to rescue others, but lawyers have been found to gain "intense satisfaction" from doing service work,[33] and studies show it helps improve mental health and happiness.[34]

For example, a researcher named Dr. Martin Seligman highlighted this theory in an experiment called "Philanthropy versus Fun," Seligman divided up his psychology students into two groups. The first partook in pleasurable past times such as eating delicious food and going to the movies. The second group participated in philanthropic activities, volunteering in feeding the homeless or assisting the physically handicapped. What Seligman found was that the satisfaction and happiness that resulted from volunteering was far more lasting than the fleeting reward of food or entertainment.[35] Even if you feel that it is being done for your own selfish gain, try it anyway and before long you will experience a heightened sense of peace, joy and satisfaction in life.

Service Work Suggestions: Try to do something kind for someone at least once a week. Try something small. If you have the time, volunteer your time to help another. Do not make the activity about you – it should be about giving to others. Whatever measure you take, large or small, remember that it will not only help others, but it will also serve to build your self-esteem, help put your life in perspective, and help to develop and maintain a vital connection with the community in which you live.[36]

8. Live in the Present. This cliché phrase may be one of the most under-appreciated tools for the legal profession of any listed here. As lawyers, this sounds like a joke. Deadlines loom. Trials approach. How can this work?

Try it. Consider during your day the things which you are able to do that day. Live it "only for today." If nothing can be done about something on your mind in the day you are in, return your focus to the things you can do that day. If you are not happy with your circumstance, what incremental thing can you do today about it? Nothing? Then move on and enjoy your today. As one attorney put it, "Be where your feet are." The Serenity Prayer is something which can serve as a means to practice this "one day at a time" method: "God, grant me the serenity to accept the things I cannot change, the courage to change the things I can, and the wisdom to know the difference."

9. Expand Your Spirituality or Consciousness. Whatever the variety, research has shown that expanding this area of life makes a major impact of the wellbeing of people, and particularly lawyers.[37] Spirituality has many definitions, but at its core spirituality brings context to our lives and the struggles within them. For many lawyers dealing with the legal world and its many issues, expanding the spiritual life is invaluable. Other lawyers who do not prefer religion or traditional spiritual practices often find great benefit to expanding their consciousness by means of an expansion of an involvement in natural, philosophical, or other pursuits which bring about the contemplation of the reality of existence.

10. Keep it Real. Recovering from a mental health or substance abuse problem requires honesty. If you begin to feel like you should be better than you are, but you are embarrassed to let others down by admitting your true condition, you are doing yourself a major disservice. Commit to "keeping it real." Be honest with someone about how you are doing so that you do not lose touch with those who can help.

One way to develop or ensure honesty with ourselves is to do an inventory. We all know that any business that fails to take inventory is bound to fail. People are no different. Assessing your life by taking an inventory or snapshot of your daily life can give you an idea of where you are and -- of equal importance -- where you want to go. Small corrections in allocation of time today will help prevent an out-of-balance life tomorrow.

Here is an exercise to help with this type of inventory: Draw a circle and divide the circle into wedges representing the time spent on your daily activities. Are you happy with the allocation of time and energy? Are there areas where you spend the majority of your time and you wish you'd spend less? Are there areas where you devote minimal or no time but wish you did? There is no right or wrong allocation. After all, it is your life and your responsibility. If your inventory highlights areas of concern, what can you do to change them? Or, better said, what would your perfect day's circle look like? Would there be enough time for all-important life activities: work, family, self, exercise, friends, hobbies, spiritual practices, meditation, fun, sex and sleep? What's really important to you?[38]

IV. HELP AND HOPE: LAPS ARE A SAFE PLACE TO GET HELP

Why a LAP Program?

As you know, practicing law can be an awesome adventure, a wonderful walk, a paralyzing fear factory, a sea of depressing doldrums, or all of the above in the same week, depending on your circumstances, lifestyle and perspective. Research shows that perspective and mental wellbeing are paramount to lawyer happiness.[39] Mark Twain once said, "There has been much

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First Amendment Protection of Profanity and Other Offensive Paraphernalia Displayed in the Public's View

BY: SHERRI RUSSELL, *City Attorney, Lake Jackson, Texas*



AUTHOR'S WARNING:
This article quotes and displays potentially offensive language and images. If you do not want to be offended, "turn the page."[1]

Due to the extremes of partisan animosity in the recent presidential election, many election signs contained offensive words and messages. I have placed a photo of one the signs displayed in my town in the endnotes.[2] When residents saw the offensive signs, instead of talking to the person displaying the sign, they called the police department, the Mayor, other council members, and the city manager. Because I am the city attorney for a small town, staff sought legal advice from one me. For once, being a one-person legal department paid off, as everyone who asked for advice received the same answer: the signs are protected by the First Amendment and the city cannot ask that the signs be taken down. The calls also gave rise to this article, which is a short explanation of how the First Amendment pertains to printed words and visual images in areas that can be viewed by the public.

Profanity versus Fighting Words

In 1971, the Supreme Court had the privilege of deciding whether the word "fuck" is a fighting word.[3] In the case, *Cohen v. California*, Mr. Cohen was convicted of disturbing the peace for wearing a jacket that said "Fuck the Draft".[4] Previously, in *Chaplinsky v. New Hampshire*, the Court had defined fighting words "as those which by their very utterance inflict injury or tend to incite an immediate breach of the peace."[5] For example, in *Chaplinsky*, the Supreme Court held that the words "damned fascist" were "fighting words" because they were "face-to-face" words likely to provoke an average person to retaliate.[6] However, Mr. Cohen neither directed his profanity at any person nor directed it into the privacy of a person's home.[7] Therefore, "Fuck the Draft," in the Cohen context, are not fighting words.[8] The Court explained that people are often subject to objectionable speech once outside of the home and the government cannot shut off discourse to protect others from hearing objectionable words or viewpoints.[9] People need only avert their eyes to avoid printed words.[10]

Obscenities

Can a city ban the term "fuck" if the city defines the term as obscene? Obscene material is not protected by the First Amendment.[11] However, in order to enact a law that restricts obscene language in a constitutional manner, the law must be "limited to works which, taken as a whole, appeal to the prurient interest in sex, which portray sexual conduct in a patently offensive way, and which, taken as a whole, do not have serious literary, artistic, political, or scientific value."[12] It would be difficult for one word standing by itself to fit that long, vague, complex definition.[13] In *Cohen*, the court stated that "[w]hatever else may be necessary

to give rise to the States' broader power to prohibit obscene expression, such expression must be, in some significant way, erotic."[14] The Court found that Mr. Cohen's "vulgar allusion to the Selective Service System" was not erotic.[15]

Why are profanity and other offensive expressions protected?

The answer to this question is two-fold: (1) the First Amendment prohibits the government from abridging a citizen's speech; and (2) the very function of free speech is to invite dispute.[16] In 1949, the Court invalidated a city ordinance that defined "breach of the peace" as misbehavior that "stirs the public to anger, invites dispute, [or] brings about a condition of unrest . . . "[18] The Court stated that the function of free speech is to invite dispute and that in order for ideas to be accepted or for ideas to force change, speech sometimes has to create dissatisfaction or stir people to anger. Censoring ideas or allowing public officials to decide which expressions will be permitted stifles the intent of the First Amendment.[19]

Non-profane, but still offensive, examples of protected expressions

The Supreme Court has also found that other objectionable methods of expression are protected. In *Erznoznik*, a town in Florida prohibited drive-in theaters from showing films in which the human "bare buttocks, human female bare breasts, or human bare public [*sic*] areas are shown, if such motion picture . . . is visible from any public street or public place."[20] Mr. Erznoznik, a drive-in movie theater manager, was charged with this offense, but prosecution was withheld while the constitutionality of the ordinance was decided.[21] The Court held that the ordinance was unconstitutional because the prohibition was based on the content of the image and because the erotic images were not being broadcast to captive audiences in the privacy of homes.[22] Also, people on adjoining streets could avert their eyes to avoid inadvertent viewing.[23] Unlike the protagonist in *A Clockwork Orange*, people in public areas are not forced to watch or look at unsettling images.[24]

Six of the cases discussed so far were decided prior to 1980. Does the present, more conservative, Supreme Court still hold that profanity and other objectionable images and terms are protected?

Captive audiences

But what if there is a captive audience in a public area and people cannot simply avert their eyes or stop up their ears? The Supreme Court has drawn a line at aggressive behavior occurring close to an unwilling subject.[25] In *Hill v. Colorado*, patients and others were subjected to "sidewalk counseling" while trying to enter a medical clinic that provided abortions.[26] Sidewalk counseling included yelling, thrusting signs in patients' faces, displaying signs with images of bloody fetuses, and yelling "you are killing your baby."[27] All patients and their companions were subject to this unsolicited counseling, regardless of the fact that only seven percent of patients attended the clinic to obtain abortions.[28] In response, Colorado enacted a statute restricting the proximity of an active protestor to an unwilling listener.[29] The Supreme Court upheld the statute as a valid time, manner, and place restriction.[30]

Our modern Supreme Court

Six of the cases discussed so far were decided prior to 1980. Does the present, more conservative, Supreme Court still hold that profanity and other objectionable images and terms are protected? In 2017, the Supreme Court found, in *Matal v. Tam*, that specific language in the federal trademark law's disparagement clause violated the C=onstitution.[31] Before a trademark can be registered, the Patent and Trademark Office (PTO) must determine if the trademark "Consists of . . . matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, . . or bring them into contempt, or disrepute . . ."[32] Simon Tam attempted to trademark his rock band's name, The Slants. Mr. Tam chose the name to reclaim the term "slants" and remove its racist meaning.[33] No matter the purpose of Mr. Tam's choice, the PTO denied Mr. Tam's application for a federal trademark under the disparagement clause because the term "slants" is a derogatory term for people of Asian ancestry.[34] The Court held that the challenged wording was unconstitutional because the clause leads the PTO to deny trademark registration based on viewpoint.[35]

Two years later, in *Iancu v. Brunetti*, the Court struck down more wording in the disparagement clause due to its overly broad prohibition of registering trademarks that "consist[s] of or comprise[s] immoral . . . or scandalous matter".[36] Mr. Brunetti was seeking trademark protection for his clothing line FUCT.[37] Mr. Brunetti, an avid free speech advocate, chose the name FUCT

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Sherri Russell began specializing in municipal law in 1999 and is currently the City Attorney for Lake Jackson, Texas.

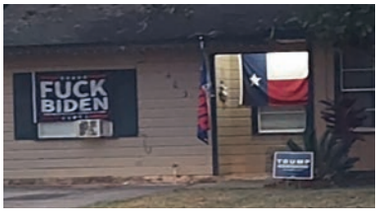
Profanity *cont'd from page 13*

to confuse people who were trying to pronounce the name of his streetwear/skater brand design company.[38] The Court held that "There are a great many immoral and scandalous ideas in the world (even more than there are swearwords) and the Lanham Act covers them all. It therefore violates the First Amendment.[39]

In 1982, The Clash sang "You have the right to free speech, as long as you're not dumb enough to actually try it."[40] As this brief article illustrates, the Supreme Court has consistently attempted to prevent that statement from being accurate. What remains in play are the parameters of the Free Speech clause. "'Your right to swing your arms ends just where the other man's nose begins.'"[41] In the case of free speech and drawing the line between what is said and what is heard, the preservation of individual liberty can and must favor the person who speaks over the person who listens.[42]

Notes

1. Bob Seger, Turn The Page (Capitol Records 1972).
2.



3. Cohen v. California, 403 U.S. 15 (1971).
4. *Id.* at 16.
5. Chaplinsky v. New Hampshire, 315 U.S. 568, 572 (1942); *Cohen*, 403 U.S. at 20 (paraphrasing *Chaplinsky*).
6. *Chaplinsky*, 315 U.S. at 573-74.
7. *Cohen*, 403 U.S. at 20-21; *see also* Rowan v. U.S. Post Office, 397 U.S. 728, 738 (1970) (explaining that resident's statutory right to use postmaster to help exclude objectional materials from home does not violate mailer's right to communicate); *see also* Frisby v. Schultz, 487 U.S. 474, 487 (1988) (explaining that targeted picketing of one residence holds resident captive, leaving no means of avoiding unwanted speech).
8. *Cohen*, 403 U.S. at 20.
9. *Id.* at 21.
10. *Id.*
11. Miller v. California, 413 U.S. 15, 23 (1973).
12. *Id.* at 24.
13. I do not intend for this sentence to be a challenge for my readers to think of such a word.
14. *Cohen*, 403 U.S. at 20.
15. *Id.*
16. U.S. Const. amend. I; Cox v. Louisiana, 379 U.S. 536, 551 (1965).
17. Terminiello v. City of Chicago, 337 U.S. 1, 3 (1949).
18. *Id.* at 4*; Cox*, 379 U.S. at 551-52.
19. *Cox*, 379 U.S. at 557-58.
20. Erznoznik v. City of Jacksonville, 422 U.S. 205, 206-07 (1975).
21. *Id.* at 206 n.1, 207 (the movie was *Class of '74*).
22. *Id.* at 211; *see also* Fowler v. Rhode Island, 345 U.S. 67, 69-70 (1953) (stating that government cannot prevent specific religions from holding services in public park).
23. *Erznoznik*, 422 U.S. at 211.
24. Anthony Burgess, A Clockwork Orange, 116-17 (W.W. Norton and Company, Inc. 1963) ("they put clips on the skin of my forehead, so that my top glazzlids were pulled up and I could not shut my glazzies"); *see also* Hill v. Colorado, 530 U.S. 703, 708-09 (2000) (casually agreeing that signs containing images of bloody fetuses are protected).
25. *Hill*, 530 U.S. at 718 (discussing listeners that cannot avoid unwanted sights or sounds).
26. *Id.* at 710 n.7, 715.
27. *Id.*
28. *Id.* at 711.
29. *Id.* at 707.
30. *Id.* at 730.
31. Matal v. Tam, 137 S.Ct. 1744, 1764 (2017).
32. 15 U.S.C. §1052(a) (2006).
33. *Tam*, 137 S.Ct. at 1751; *see also* Simon "Young" Tam, *The Story of the Slants*, http://www.theslants.com/biography/ (last visited Feb. 18, 2021).
34. *Tam*, 137 S.Ct. at 1751.
35. *Tam*, 137 S.Ct. at 1751, 1764; *see also* Iancu v. Brunetti, 139 S.Ct. 2294, 2297 (explaining *Tam)*.
36. 15 U.S.C. §1052(a) (2006); *Brunetti*, 139 S.Ct. at 2302.
37. *Brunetti*, 139 S.Ct. at 2297 (**F**riends **U C**an't **T**rust).
38. Samuel Hine, *How O.G. Streetwear Brand FUCT Took a Free Speech Case All the Way to the Supreme Court*, https://www.gq.com/story/fuct-erik-brunetti-supreme-court-case (last visited Feb. 24, 2021).
39. *Brunetti*, 139 S.Ct. at 2302.
40. The Clash, Know Your Rights (Epic Records 1982).
41. Zechariah Chafee, Jr., *Freedom of Speech in War Time*, 32 Harv. L. Rev. 932, 957 (June 1919) (quoting fictional judge).
42. *Id.*

TEN TIPS *cont'd from page 11*

tragedy in my life; at least half of it actually happened." This sort of disconnection between perspective and reality is common for attorneys. LAPs are powerful tools for lawyers, law students, and judges to restore or keep wellness to have a hopeful and happy life practicing law.

Currently, approximately half of all assistance provided by LAPs is directed toward attorneys suffering from anxiety, depression, or burnout. Additionally, LAPs helps lawyers, law students, and judges suffering problems[40] such as prescription and other drug use, cognitive impairment, eating disorders, gambling addictions, codependency, and many other serious issues. These problems are very treatable, and LAP staffs of experienced attorneys can connect a person-in-need to a variety of life-changing resources.

If you need help or know someone who does and would like support, click here to you're your local LAP program: https://www.americanbar.org/groups/lawyer_assistance/resources/lap_programs_by_state/

What LAPs Offer.

Once a lawyer, law student, or judge is connected to a LAP, the resources which can be provided directly to that person include:

- direct peer support from staff attorneys;
- self-help information;
- connection to a trained peer support attorney who has overcome the particular problem at hand and who has signed a confidentiality agreement;
- information about attorney-only support groups such as Lawyers Concerned for Lawyers (LCL)–offering weekly meetings for alcohol, drug, depression, and other issues, and monthly Wellness Groups (providing professional speakers on various wellness topics in a lecture format) which take place in major cities across the state;
- referrals to lawyer-friendly and experienced therapists, medical professionals, and treatment centers; and
- assistance with financial resources needed to get help.

Lawyers suffering from mental health and substance use disorders must take action to get better. As Mahatma Gandhi (a lawyer in his younger years) said, "The future depends on what you do today." If you or a lawyer, law student, or judge you know needs help, your state LAP is available to provide guidance and support: https://www.americanbar.org/groups/lawyer_assistance/resources/lap_programs_by_state/

Notes

1. *See* Lawrence S. Krieger and Kennon M. Sheldon, *What Makes Lawyers Happy? Transcending the Anecdotes with Data from 6200 Lawyers*, 83 Geo. Wash. U. L. Rev. 554 (2015), also published as FSU College of Law, Public Law Research Paper No. 667(2014); see also Rosa Flores & Rose Marie Arce, *Why are lawyers killing themselves?*, CNN (Jan. 20, 2014, 2:42 PM), http://www.cnn.com/2014/01/19/us/lawyer-suicides/.
2. *See* William Eaton et al., *Occupations and the Prevalence of Major Depressive Disorder, 32* J. Occ. Med. 1079, 1085 tbl. 3 (1990).
3. *See* Justin J. Anker, Ph.D., *Attorneys and Substance Abuse*, Butler Center for Research(Hazelden 2014)(available at http://www.hazelden.org/web/public/document/bcrup_attorneyssubstanceabuse.pdf)
4. *See* Patrick Krill, Ryan Johnson, and Linda Albert, *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys,* J. Add. Med., Feb. 2016, Vol. 10, Issue 1, pp. 46-52, http://journals.lww.com/journaladdictionmedicine/Fulltext/2016/02000/The_Prevalence_of_Substance_Use_and_Other_Mental.8.asp
5. *Id.*
6. Behavioral Health Trends in the United States: Results from the 2015 National Survey on Drug Use and Health, U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, September 2015,

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PiPR INDEX

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TEN TIPS *cont'd from page 15*

http://www.samhsa.gov/data/sites/default/files/NSDUH-FRR1-2014/NSDUH-FRR1-2014.pdf
7. *Id.*
8. *See* Jerome M. Organ, David B. Jaffe, and Katherine M. Bender, *Helping Law Students Get the Help They Need: An Analysis of Data Regarding Law Students' Reluctance to Seek Help and Policy Recommendations for a Variety of Stakeholders*, The Bar Examiner, Dec. 2015, Vol. 4, Issue 4, http://www.ncbex.org/pdfviewer/?file=%2Fassets%2Fmedia_files%2FBar-Examiner%2Fissues%2F2015- December%2FBE-Dec2015-HelpingLawStudents.pdf
9. *Id.*
10. *See* G.A. Benjamin, E.J. Darling, and B. Sales, *The Prevalence of Depression, Alcohol Abuse, and Cocaine Abuse Among United States Lawyers,* Int'l J. Law & Psych., 1990, Vol. 13, pp. 233-246.
11. *See* Yale Law School Mental Health Alliance, *Falling Through the Cracks: A Report on Mental Health at Yale Law School*, December 2014, http://www.scribd.com/doc/252727812/Falling-Through-the-Cracks
12. According to a 1991 Johns Hopkins University study of depression in 105 professions, lawyers ranked number one in the incidence of depression. *See* William Eaton et al., *Occupations and the Prevalence of Major Depressive Disorder,* 32 J. Occ. Med. 11, Page 1079(1990).
13. A 1992 OSHA report found that male lawyers in the US are two times more likely to commit suicide than men in the general population. *See* http://www.lawpeopleblog.com/2008/09/the-depression-demon-coming-out-of-the-legalcloset/.
14. This is a type of anxiety disorder in which you fear and often avoid places or situations that might cause you to panic and make you feel trapped, helpless, or embarrassed.
15. *See* www.depression-screening.org for self-assessment screening tests for anxiety disorders.
16. *See Benjamin et al, supra* note 10.
17. The Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, abbreviated as DSM-5, is the 2013 update to the American Psychiatric Association's (APA) classification and diagnostic tool. In the United States, the DSM serves as a universal authority for psychiatric diagnosis. See Am. Psych. Ass'n, *Diagnostic & Statistical Manual Of Mental Disorders* (5th ed. text rev. 2013) (hereinafter "DSM-5").
18. *Id. See also* http://www.alcoholscreening.org/ for an alcohol use disorder self-assessment test.
19. *See* www.depression-screening.org for a self-assessment screening test for depression.
20. *See DSM-5*, *supra* note 17.
21. Barbara Lombardo & Carol Eyre, *Compassion Fatigue: A Nurse's Primer*, 16 Online Issues In Nursing 1 (2011).
22. *See* Eric D. Caine, *Suicide Prevention Is A Winnable Battle*, 100 Am. J. Pub. Health S1 (2012).
23. If you or anyone you know is in need, the National Suicide Prevention Hotline is available 24/7 at 1(800)273- 8255(TALK).
24. The following are some of the many 12 Step Programs: AA - Alcoholics Anonymous; ACA - Adult Children of Alcoholics; Al-Anon/Alateen, for friends and families of alcoholics; CA - Cocaine Anonymous; Co-Anon, for friends and family of addicts; CoDA - Co-Dependents Anonymous, for people working to end patterns of dysfunctional relationships and develop functional and healthy relationships; DA - Debtors Anonymous; EA - Emotions Anonymous, for recovery from mental and emotional illness; FA - Food Addicts in Recovery Anonymous; FAA - Food Addicts Anonymous; GA - Gamblers Anonymous; Gam-Anon/Gam-A-Teen, for friends and family members of problem gamblers; MA - Marijuana Anonymous; NA - Narcotics Anonymous; NicA - Nicotine Anonymous; OA - Overeaters Anonymous; OLGA - Online Gamers Anonymous; PA - Pills Anonymous, for recovery from prescription pill addiction; SA - Smokers Anonymous; SAA - Sex Addicts Anonymous; and WA - Workaholics Anonymous.
25. *This section along with many resources herein were originally included in a paper written* by Ann D. Foster, JD, LPC-Intern entitled *Practicing Law and Wellness: Modern Strategies for the Lawyer Dealing with Anxiety, Addiction and Depression*, which is available online at www.texasbar.com/AM/Template.cfm?Section=Wellness1&Template=/CM/ContentDisplay.cfm&ContentID=15158 , and is inlcuded herein with her permission. 26. *See* Matthew Lieberman, *Social: Why Our Brains Are Wired To Connect* (Crown Publishers 2013).
27. *See* Brené Brown's Ted Talk on "*The price of invulnerability*": https://www.youtube.com/watch?v=_UoMXF73j0c&list=PLvzC42i6_rJJkyzWp1hyqUytxBBvNKgI6. Dr. Brown is a research professor at the University of Houston Graduate College of Social Work where she has spent the past 10 years studying courage, shame, and authenticity.
28. *See* Rhonda V. Magee, *Making the Case for Mindfulness and the Law*, 86 NW Lawyer 3 at p. 18 (2014)(available online at: http://nwlawyer.wsba.org/nwlawyer/april_may_2014/?pg=20#pg20).
29. *See* e.g., Steven Keeva, *Transforming Practices: Finding Joy and Satisfaction in the Legal Life* (1999); Leonard L. Riskin, *The Contempla-*

tive Lawyer: On the Potential Contributions of Mindfulness Meditation to Law Students, Lawyers, and Clients, 7 Harv. Negot. L. Rev. 1 (2002); Rhonda V. Magee, *Educating Lawyers to Meditate?*, 79 UMKC L. Rev. 535 (2010).

30. Guided breathing exercises and meditations: http://marc.ucla.edu/body.cfm?id=22; Meditate at your desk: https://www.youtube.com/watch?v=n-QjMJpQyj8E&feature=youtu.be

31. *See* http://www.ppc.sas.upenn.edu/publications.htm.

32. *See* Steven Toepfer, *Letters of Gratitude: Improving Well-Bring through Expressive Writing,* J. Of Writing Res. 1(3) (2009).

33. *See* Lawrence S. Krieger and Kennon M. Sheldon, *What Makes Lawyers Happy? Transcending the Anecdotes with Data from 6200 Lawyers*, Geo. Wash. U. L. Rev. 83 (2015 Forthcoming), FSU College of Law, Public Law Research Paper No. 667(2014) (citing Bruno Frey & Alois Stutzer, *Happiness And Economics: How The Economy And Institutions Affect Human Well-Being,* at 105 (2002)).

34. *See also* the following video of Dr. Charles Raison, the Assistant Professor of the Department of Psychiatry and the Director of the Mind/Body Program at Emory University, in which Dr. Raison talks about happiness and what causes it: http://www.youtube.com/watch?v=0orvsH07zeg

35. *See* Karen Salmansohn, *The Bounce Back Book* (Workman Publ'g 2008), partially available online at http://www.psychologytoday.com/blog/bouncing-back/201003/the-world-taking-it-outta-you-seligman-studyshows-how-you-can-cheergivin. See also Martin E. P. Seligman, *Authentic Happiness* (Simon & Schuster 2002).

36. Ann D. Foster, JD, LPC-Intern entitled *Practicing Law and Wellness: Modern Strategies for the Lawyer Dealing with Anxiety, Addiction and Depression*, which is available online at www.texasbar.com/AM/Template.cfm?Section=Wellness1&Template=/CM/ContentDisplay.cfm&ContentID=15158.

37. *See* Leonard L. Riskin, *The Contemplative Lawyer: On the Potential Contributions of Mindfulness Meditation to Law Students, Lawyers, and Clients*, 7 Harv. Negot. L. Rev. 1 (2002).

38. *See Foster*, *supra* note 36.

39. *See Krieger & Sheldon, supra* note 33.

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Avoiding A Collision When Code Enforcement and Fair Housing Intersect

BY: PATRICIA (TRISH) LINK,
Assistant City Attorney, Austin, Texas



Introduction

Local governments adopt laws and policies that regulate fire safety, public health, nuisance issues, zoning, and structural hazards and other unsafe building conditions and are intended to improve public health, safety, and welfare. Many of these laws and policies apply to residential property and uses. When those laws are violated, a code enforcement officer acts with the goal of achieving compliance, preferably voluntary compliance.

Fair housing choice exists when an individual has the opportunity and options to live where the individual chooses without unlawful discrimination and other barriers related to race, color, religion, sex, familial status, national origin, or disability. The purpose of the Federal Fair Housing Act (the "Act")[1] is to provide for fair housing choice. However, there are times when local government laws, policies, and actions affect fair housing choice, even when intended to protect public health, safety, and welfare. This is particularly true in the code enforcement context because compliance with those laws and policies has the potential to reduce fair housing choice. This potential consequence is where code enforcement and fair housing intersect.

This article will explain the Act, four ways that code enforcement actions can collide with the Act, and how to reduce the likelihood that the collision will result in liability for our local government clients.

THE ACT

Congress passed the Act shortly after the assassination of Dr. Martin Luther King, Jr. and the release of the Report of the National Advisory Commission on Civil Disorders (the "Kerner Report"). The Act, also referred to as Title VIII, prohibits discrimination related to the pursuit and retention of housing. To that end, the Act, as it was passed in 1968, prohibited discrimination based on race, color, religion, and national origin. In 1988, the Act was amended to also prohibit discrimination based on familial status,[2] disability,[3] and sex.

1. Application to Local Governments.

The Act prohibits discrimination by a person. The courts have ruled that a person includes local government.[4] This means that the Act prohibits government practices, policies, and regulations that discriminate based on race, color, religion, national origin, familial status, disability, and sex (collectively "protected classes"). This includes enforcement actions where discrimination is the motivating factor, certain actions with a discriminatory effect, and retaliation. In addition to its prohibitions, the Act also requires a local governmental entity to grant reasonable accommodations to disabled individuals. Lastly, the Act preempts local laws that allow or require actions that constitute housing discrimination.[5]

2. Enforcement of the Act.

The Act is enforced through administrative investigations conducted by the U.S. Department of Housing and Urban Development ("HUD").[6] It can also be enforced in a lawsuit filed by the U.S. Department of Justice ("DOJ") or by a person aggrieved by a discriminatory housing

practice.[7] The filing of a complaint with HUD must occur within one year from the date the discriminatory practice occurred or was terminated.[8]

The DOJ will file a lawsuit during an investigation if the Secretary of HUD believes temporary or preliminary relief is necessary.[9] However, the more likely result is a lawsuit that is filed after an investigation because the Secretary determines that there is reasonable cause to believe the Act was violated and one party to the investigation requests a judicial determination.[10] Additionally, a person aggrieved by a discriminatory housing practice may file a lawsuit within two years from the date the discriminatory practice occurred or was terminated.[11] It is important to note that a person aggrieved by a discriminatory housing practice is not required to file a complaint with HUD before filing a lawsuit.

The consequences for violating the Act include damages, injunctive relief, and payment of costs and attorney's fees.[12] Additionally, if the case is brought by the DOJ, the court may assess civil penalties.[13] Lastly, for local governments who receive federal funding from HUD, a finding that discrimination occurred could result in a loss of that funding and, in some instances, another lawsuit under the False Claims Act.[14]

TYPES OF DISCRIMINATION

An administrative investigation or lawsuit will allege one or more types of discrimination. There are four types that are likely to arise in the code enforcement context. The first is a claim that the local government failed to grant a reasonable accommodation. The second and third types, disparate treatment and disparate impact, are somewhat related in that they claim that the local government's policies or actions were discriminatory. The fourth is retaliation for exercising a right or assisting another with exercising a right.

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1. Failure to Grant a Reasonable Accommodation

One of the most common allegations lodged against a local governmental entity is that it failed to grant a reasonable accommodation. This type of discrimination can arise easily in code enforcement activities. A reasonable accommodation is an exception to or modification of a policy or law that is reasonable and necessary to afford an individual with a disability an equal opportunity to use and enjoy the housing of their choice.[15] It is specific to an individual with a disability.

In code enforcement, a request for a reasonable accommodation typically arises during an investigation. One example is an investigation involving over-occupancy. After sending a notice of violation, the code enforcement officer may receive a letter from an attorney representing the occupants who request an accommodation to the occupancy limit. In such an instance, the reasonable accommodation will bring the property into compliance with occupancy requirements. It can also arise during the remedial portion of the enforcement process. For example, a code officer investigates the exterior of a house for unsanitary conditions and requires the property owner to abate the nuisance condition within a particular timeframe. The code enforcement officer may receive a request for additional time to abate the nuisance condition because the property owner's disability causes delays.[16]

a. Accommodations.

An individual qualifies as disabled under the Act if the individual has: (1) a physical or mental impairment which substantially limits one or more major life activities, (2) a record of such an impairment, or (3) being regarded as having such an impairment.[17] An accommodation is necessary when it provides an individual with a disability an equal opportunity to use and enjoy the housing of their choice. This standard can also be articulated as: "but for the accommodation" the individual with a disability cannot "use and enjoy his or her residence as a non-disabled

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Patricia (Trish) Link Before practicing law in Austin, Trish Link received a Bachelor of Arts from Louisiana State University and received her law degree from Texas Tech University. After law school, Trish worked for the Texas Workforce Commission and Office of the Attorney General. She started with the City of Austin Law Department in 2005 as a municipal court prosecutor and since that time has worked in the Litigation, Land Use-Real Estate, General Counsel, and Municipal Operations divisions. She advises on a variety of subjects, including affordable housing, code enforcement, fair housing, special events, and sound. She is the Chair of IMLA Code Enforcement Section. Trish was designated an IMLA Fellow in 2020.

person could."[18] Also important to this standard is the phrase "housing of their choice", which reflects the unique nature of property and means a specific property, not "an opportunity to live somewhere in the city."[19] Examples of reasonable accommodations include: increasing the number unrelated adults that qualify as a family;[20] increasing impervious cover to allow the homeowner to add an elevator or a ramp; or reducing a side set back to widen the driveway for the individual's disability-accessible van.

b. Process.

The right to a reasonable accommodation is not triggered until a request is made.[21] The purpose of a request is to put a person on notice that the individual is disabled and needs an accommodation. It should be considered on a case-by-case basis. Once a request is made, enforcement process should cease while the request is considered. A request does not need to include any specific language.[22] The request can be made by the individual with a disability or it can be made on behalf of the individual with a disability.[23] If the local government establishes a process, a requestor needs to follow the process.[24] However, failure to follow the process is not a basis to deny an accommodation and a local government should be prepared to work with a requestor. Likewise, the process cannot be overly burdensome.[25]

As the Joint Statements from HUD and the DOJ explain, the amount of information the local government can seek from a requestor is limited.[26] For example, if the disability is obvious, the local government cannot ask for information confirming the disability. But if the disability is not obvious, then the local government can ask about the disability within certain limitations. Sometimes the connection between the disability and the need for the accommodation is not clear. To address that situation, the local government can request information that shows why the accommodation is necessary to allow the individual with a disability an equal opportunity to use and enjoy the dwelling.[27]

c. Denials.

A person violates the Act when they fail to grant a reasonable accommodation (also referred to as "denying the reasonable accommodation"). A local government denies a reasonable accommodation when there is an unreasonable delay in the decision-making process, which is also referred to as a constructive denial, or with an explicit denial. Either situation can result in liability for your client.

Unreasonable delay can occur when there is uncertainty about the request process, indecisiveness about the decision on a request, or the request gets lost in the shuffle.[28] To avoid unreasonable delay, it is important to establish, before a request is received, the decision-making process, timeframes for decision-making, and the decision-maker. This can be accomplished through regulations like those adopted by Laguna Beach, California; Boynton Beach, Florida; and Austin, Texas.[28]

There are three possible reasons why your client may deny a requested accommodation.[30] First, your client may conclude that the requestor is not disabled. Alternatively, the information provided may reveal that there is not a disability-related need for the accommodation. Lastly, your client may refuse to grant an accommodation because it is not reasonable.

There are two standards that determine whether an accommodation is unreasonable. However, establishing one or both standards is difficult. For this reason, determining that a request is unreasonable should be the exception, not the norm.

First, an accommodation under the Act is not reasonable when it will create an undue financial or administrative burden on the local government. To determine whether the accommodation is unreasonable under this standard, the local government should consider "the nature and extent of the administrative burden and the cost of the requested accommodation to the local government, the financial resources of the local government, and the benefits that the accommodation would provide to the persons with disabilities who will reside in home."[31] This means that, depending on the size and resources of the local government, it may be difficult to demonstrate a financial or administrative burden.

The reasonableness of the requested accommodation is also judged against whether it will constitute a fundamental alteration in the nature of the local government's land use and zoning regulations. The court in *Schwarz v. City of Treasure Island* described the fundamental alteration standard as a modification that would "eliminate an 'essential' aspect of the relevant activity."[32] The Court's opinion illustrates this standard using two zoning-related cases.

If the requested accommodation is not reasonable, then the Act requires the parties to discuss whether an alternative accommodation is appropriate.[33] This is typically referred to as the "interactive process." Enforcement should not move forward during the interactive process.

An alternative accommodation should be something that addresses the needs of both parties. An alternative accommodation may be the requested accommodation plus conditions that make it reasonable. For example, an alternative accommodation may grant an increase in the number of unrelated individuals (the requested accommodation) but the limit the number of cars parked at the property (a condition that mitigates the number of individuals residing at the property). If the alternative accommodation is acceptable to both parties, then it should be granted.[34]

To defend a decision that an accommodation is not reasonable when the interactive process fails, your client will be required to demonstrate why the request is not reasonable. For example, your client may receive a request to extend the compliance time frame because

the property owner is disabled and was hospitalized (due to the disability) during the compliance time frame. If your client determines this is not a reasonable accommodation, then your client will need to demonstrate how extending the compliance timeframe creates a financial or administrative burden for the city, or results in a fundamental alteration to the land use or zoning regulations. If your client receives a request to increase the occupancy limit so that six unrelated adults constitutes a family instead of four unrelated adults, your client will need to demonstrate how this modification would result in a fundamental alteration to the city's zoning regulations.

2. Disparate Treatment

Disparate treatment is different treatment because the person (or group of persons) is a member of a protected class. This type of discrimination occurs when the local government enforces its regulations *because* the person (or group of persons) is a member of a protected class. A person is not required to show an express intent to discriminate to prove different treatment. Instead, a person can establish discrimination by showing that it is more likely than not that the government was improperly motivated to act because of discrimination.

When improper motivation is alleged, courts will typically focus on five considerations:[35] (1) historical background of the decision; (2) the specific sequence of events leading up to the decision; (3) departures from the normal procedural sequence; (4) substantive departures;[36] and (5) the legislative history or discriminatory impact of the government's decision.[37] It is important to note that improper motive does not need to be the sole reason for taking action.[38]

The community's role related to the considerations described above will be included in the analysis. This means that the community's fears, prejudices, stereotypes, or assumptions about individuals can be attributed to the government and be evidence of animus (an improper motive). This applies even if the decision-making body does not express those same beliefs. The Second Circuit's decision in *Innovative Health Systems, Inc. v. City of White Plains* shows how community animus supports a finding of improper motivation:

> Although the City may certainly consider legitimate safety concerns in its zoning decisions, it may not base its decisions on the perceived harm from such stereotypes and generalized fears…a decision made in the context of strong, discriminatory opposition becomes tainted with discriminatory intent even if the decision makers personally have no strong views on the matter.[39]

Improper motive can be shown through direct or circumstantial evidence.[40] For this reason, community members and decision-makers are not required to use explicit references to race, national origin, color, religion, sex, familial status, or disability.[41] Instead, a person may use "code words" or euphemisms to demonstrate discriminatory intent.[42] Whether language constitutes discriminatory "code words" is considered in light of local customs and historical usage of the words.[43]

How improper motivation and, therefore, disparate treatment, can occur during code enforcement is best shown through the following example.[44] A city limits the number of unrelated individuals who can reside in a dwelling. However, the city rarely takes enforcement action against over-occupied homes within residential neighborhoods. One day, the city begins to receive multiple complaints from neighbors who reside in the same area as a home used by individuals recovering from substance abuse. The neighbors claim that the property is over-occupied and that it should be shut down.

A code enforcement officer responds to the complaints and confirms that the property is over-occupied because there are eight unrelated adults living there when the occupancy limit is six unrelated adults. During the investigation, the individuals who reside in the home explain they have lived in the home for almost a year, they are disabled, and that it is necessary for eight unrelated adults to live at the home. The code enforcement officer documents this information and informs a supervisor about the investigation. Subsequently, the supervisor receives calls and emails from members of the city council and neighbors demanding the city shut down the house since the neighbors believe there will be an increase in crime and other related ills because the residents are disabled. After further discussions with city council members and neighbors, the code enforcement officer begins proceedings to shut down the home. The residents sue the city for violating the Act and allege disparate treatment based on disability.[45]

When the case goes to trial, the plaintiffs provide evidence of the specific sequence of events leading up to the decision; that, by moving to shut down the house, the city substantively departed from its normal response to over-occupancy; and that the enforcement action had a discriminatory impact on individuals with disabilities. Additionally, the plaintiffs provide evidence of the role the council members and neighbors played in those considerations. In this example, it is likely a judge or jury would find that the evidence shows that enforcement was improperly motivated by discrimination.

Continued on page 22

Code Enforcement *cont'd from page 21*

Conclusion

As shown above, the potential for a collision between code enforcement and fair housing is real. In Part 2 of this article, to be published in the July-August *Municipal Lawyer*, we'll examine disparate impact and retaliation; and ways to reduce the risk when code enforcement and fair housing collide. ML

Notes

1. 42 U.S.C. § 3601 et seq.
2. Familial status means an adult who lives with one or more individuals who have not reached age 18. The adult is a parent, guardian, or other individual with legal custody of the individuals who have not reached age 18. This term also includes the designee of a parent, guardian, or other individual with permission from the individual with legal custody. This status applies to someone who is pregnant or in the process of securing legal custody of any individual who has not attained the age of 18 years.
3. The Act uses the term "handicap." However, this article (and many other publications) use the term "disability" in lieu of "handicap" since the two terms have the same meaning.
4. U.S. v. City of Parma, 661 F.2d 562, 573 (6th Cir. 1981).
5. 42 U.S.C. § 3615.
6. 42 U.S.C. § 3610.
7. 42 U.S.C. §§ 3613, 3614.
8. 42 U.S.C. § 3610(a).
9. 42 U.S.C. § 3610(e)
10. 42 U.S.C. § 3614.
11. 42 U.S.C. § 3613.
12. 42 U.S.C. §§ 3612, 3613, and 3614.
13. 42 U.S.C. § 3614.
14. The consequences for a False Claims Act violation include repaying the funds provided by the federal government and treble damages. 31 U.S.C. § 3729. An example of this type of case is U.S. ex rel. Anti-Discrimination Center v. Westchester County, 668 F. Supp. 2d 548 (S.D.N.Y. 2009.
15. Austin v. Town of Farmington, 826 F.3d 622, 627-628 (2d Cir. 2016).
16. McGary v. City of Portland, 386 F.3d 1259 (9th Cir. 2004).
17. 24 C.FR. § 100.201.
18. Anderson v. City of Blue Ash, 798 F.3d 338, 361 (6th Cir. 2015).
19. Oxford House, Inc. v. City of Baton Rouge, 932 F. Supp. 2d 683, 694 (M.D. La. 2013).
20. Unlike occupancy limits that are based on an overall maximum number of individuals without regard to relationship, occupancy limits that allow a family or a certain number of unrelated individuals will occupy the dwelling are subject to the Act. City of Edmonds v. Oxford House, Inc., 514 U.S. 725 (1995). These limits are also very susceptible to legal challenges.
21. Bhogaita v. Altamonte Heights Condominium Ass'n, Inc., 765 F.3d 1277, 1285-1286 (11th Cir. 2014); Oxford House, Inc. v. City of Virginia Beach, 825 F. Supp. 1251, 1261-1262 (E.D. Va. 1993).
22. Joint Statement of the Department of Housing and Urban Development (HUD) and the Department of Justice (DOJ): State and Local Land Use Laws and Practices and the Application of the Fair Housing Act, November 10, 2016, Q. No. 22, pp. 16-17, https://www.justice.gov/opa/file/912366/download (last visited April 7, 2021).
23. This person may live with the individual with a disability, provide housing to the individual with a disability, or be the individual's representative. The most important part of a request is that an individual with a disability will reside in the residence that is the subject of the requested accommodation.
24. This is true unless a plaintiff can show that following the request is futile. United States v. Vill. of Palatine, 37 F.3d 1230, 1234 (7th Cir. 1994).
25. Joint Statement Nov. 10, 2016, *supra* note 22, Q. No. 23, pg. 17, https://www.justice.gov/opa/file/912366/download (last visited April 7, 2021)
26. *Id*.; Joint Statement of the Department of Housing and Urban Development (HUD) and the Department of Justice (DOJ): Reasonable Accommodations Under the Fair Housing Act, May 17, 2004, Q. Nos. 17 and 18, pgs. 12-13, https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/joint_statement_ra.pdf (last visited April 7, 2021).
27. Joint Statement May 17, 2004, *supra* note 26, Q. No. 18 pg. 14, https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/joint_statement_ra.pdf (last visited April 7, 2021).
28. Groome Resources Ltd., L.L.C. v. Parish of Jefferson, 234 F.3d 192, 199-200 (5th Cir. 2000) and Joint Statement May 17, 2004, *supra* note 26, Q. No. 15 pg. 11, https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/joint_statement_ra.pdf (last visited April 7, 2021).
29. *See* Laguna Beach Code of Ordinances Section 25.05.080; Boynton Beach Code of Ordinances Part III, Chapter 2, Article II, Section 4; and Austin City Code Chapter 2-14.
30. In many instances, drug or alcohol abuse recovery is considered a disability under the Act. However, at least one district court ruled that it is not a *per se* disability. *See* City of Baton Rouge, 932 F. Supp. 2d at 688-689.
31. Joint Statement Nov. 10, 2016 *supra* note 22, Q. no. 21, pg. 15, https://www.justice.gov/opa/file/912366/download (last visited

April 7, 2021).
32. Schwarz v. City of Treasure Island, 544 F.3d 1201, 1220-1221 (11th Cir. 2008).
33. Joint Statement Nov. 10. 2016, *supra* note 22, Q. No. 21, pg. 16, https://www.justice.gov/opa/file/912366/download (last visited April 7, 2021).
34. *Id.*
35. *City of Baton Rouge*, *supra* note 19 (citing to Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 266-268 (1977).) This is not an exhaustive list of considerations. *See* Tsombanidis v. West Haven Fire Dept., 352 F.3d 565, 580 (2d Cir. 2003).
36. This means factors that the decision-making body considers important strongly favor a decision contrary to the one reached. *Village of Arlington Heights, supra* note 35 at 266-268.
37. *Tsombanidis*, *supra* note 35 at 580.
38. Avenue 6E Investments, LLC v. City of Yuma, 818 F.3d 493, 504 (9th Cir. 2016).
39. Innovative Health Sys., Inc. v. City of White Plains, 117 F. 3d 37, 49 (2d Cir. 1997).
40. *City of Yuma*, *supra* note 38 at 504.
41. *Id. at 504-507.*
42. *Id.*
43. *Id.*
44. This is an abbreviated example of how the community can improperly motivate the local government. For additional fact patterns, see *City of Baton Rouge*, *supra* note 19; *Tsombanidis, supra* note 35; and People Helpers, Inc. v. City of Richmond, 789 F. Supp. 725 (E.D. Va. 1992).
45. As discussed under "Failure to Grant a Reasonable Accommodation," this would also likely constitute a constructive denial of a reasonable accommodation.



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PETS

BY: **IMLA,** *Rockville, Maryland and*
BEST FRIENDS ANIMAL SOCIETY,
Kanab, Utah

Pet-Friendly Government Subsidized Housing: Good for Taxpayers and Pets[1]

Introduction

Pets are an ever-present part of our community, and increasingly so. According to the American Pet Products Association, 67% of U.S. households own a pet, or roughly 85 million homes.[2] And the numbers continue to climb, increasing by 11 percent over the last few decades.[3] Unsurprisingly, those millions of pet owners are a huge economic driver for local communities, spending nearly $100 billion annually for pet-related products and services.[4]

Luckily, there is a body of research that bolsters the case for truly inclusive and non-discriminatory pet-friendly housing, disproving the misconceptions about certain types of pets that continue to plague the market.[5] State and local governments have started to require that projects funded with taxpayer dollars be pet-friendly.

California's Pet Friendly Housing Act of 2017 is one example. The state law required the Department of Housing and Community Development to require each housing development that was financed after January 1, 2019 pursuant to the Zenovich-Moscone-Chacon Housing and Home Finance Act, to authorize a resident of the housing development to own or otherwise maintain one or more common household pets within the resident's dwelling unit, subject to applicable state laws and local government ordinances related to public health, animal control, and animal anticruelty.

This chapter details ordinances and resolutions that local governments have utilized to address increasing pet-friendly housing. The solutions-based approach adopted by these municipalities will offer your community models to help keep pets and families together.

Barriers to inclusive public subsidized pet-friendly housing

According to a 2015 Harris Poll, 95% of pet owners consider their pet to be a member of the family.[6] It's no surprise, then, that given the struggles to find pet inclusive housing, research shows that pet owners who do find a place to rent that is welcoming to their family (including their pets) stay in the unit considerably longer than the average pet-free renter.[7] Property owners, too, reap the benefits of inclusive pet-friendly housing, with upwards of 86% of managers agreeing that pet-owners make for excellent tenants with whom they have positive relationships.[8]

In fact, that same research found that 93% of property managers believe that pets are important members of the family and that 81% say they would work to accommodate renters if they discovered an unapproved pet.[9] Yet the data also shows that inclusive pet-friendly housing continues to be elusive in most communities across the country.[10] Nearly a quarter of renters--close to six million people--have had to move at some point in their lives due to a housing restriction related to their pets.[11]

Even beyond the benefits to renters and property owners and managers, municipalities with inclusive pet-friendly housing options will see a dramatic reduction in owner-surrendered pets to their publicly financed animal shelters. Fewer surrendered pets will offer the shelter and municipality cost savings and budget flexibility, both of which are especially welcomed during crisis moments when revenues are strained.

To be clear, the broad scope of the housing crisis for pet owners has been confirmed, most recently with data collected by software company Shelterluv (and subsequently shared with Best Friends Animal Society).[12] Owners cited housing as the second most frequently offered reason for surrendering a pet cat or dog (at nearly 15%). The only reason offered more frequently was owner-requested-euthanasia. That 15% represents tens of thousands of families and pets that were separated because of housing restrictions. And while we do not have the data on the outcomes of those specific pets, the national save rate for shelters hovers around 79%, so it is reasonable to presume that a significant number of these pets were euthanized.

Research conducted by *My Pitbull is Family* (www.mypitbullisfamily.org), a housing advocacy organization that seeks to connect pet owners with inclusive rental properties, further illustrates the front-end problem.[13]

Specifically, the organization contacted 175 self-described "pet-friendly" properties throughout Massachusetts and found that only one of them accepted dogs of any breed, weight or size.[14]

For years, animal shelter workers and housing advocates had received consistent anecdotal evidence that housing was a problem in their communities, but now that we have verifiable research confirming the scope of the problem, there is a renewed urgency to act.

For municipalities, lowering those pet surrender numbers will translate to huge financial savings at local shelters, generating money that can be repurposed towards other lifesaving opportunities.[15] And given that property owners overwhelmingly support pet-friendly housing, a move towards greater inclusivity is likely to be welcomed by all.

All of these barriers are keeping responsible pet owners from securing and keeping housing. The data confirms that they have no correlation to improving the health, safety, or welfare of a community. The only thing they do is make an already tight housing market that much more inaccessible, especially to low-income communities. Inclusive housing will help your residents while also dramatically helping to save the lives of countless pets, and it will have the added benefit of saving money for your municipal shelter.

Encouraging pet-friendly publicly financed housing in your community

There are a number of tools a municipality can employ to help remove barriers to the housing crisis for people with pets, including in the public housing sector. While public housing agencies (PHAs) are governed by an independent board of commissioners (as authorized by state statute), the commissioners are typically appointed in full or in part by the mayor or the governing body of the municipality.[16] This gives municipalities a tremendous amount of influence over the policies enacted by the PHA and the ability to help shape those policies to be more inclusive for people and pets.

The federal government spoke to this issue in 1999, when the United States Housing Act of 1937 was amended to include a "pet ownership" section. The law states Congress' desire to make public housing more pet-friendly: "A resident of a dwelling unit in public housing… may own one or more common household pets or have one or more common household pets present in the dwelling unit of such resident, subject to the reasonable requirements of the public housing agency…"[17] All further policy choices should be made with this legislative intent in mind.

However, the statute and regulations offer individual PHAs flexibility subject to "reasonable requirements." Federal regulation 24 C.F.R. §960.707(b) permits PHAs to prohibit certain types of pets that the PHA classifies as "dangerous" and certain individual pets based on factors "including the size and weight of animals."[18] It also allows PHAs to restrict or prohibit the keeping of pets altogether based on the "size and type of building or project, or other relevant conditions."[19]

The regulations leave it up to the individual PHAs to shape their pet policies, but in effect what we see is many of these agencies contradict the intent of the law by placing onerous restrictions and prohibitions in place. For example, the Boston Housing Authority prohibits any pet over 50 pounds and also prohibits ownership of Doberman Pinschers, Pit Bulls, Rottweilers and "any mixed breed dog with identifiable characteristics specific to one of these breeds."[20] (It is worth noting that in 2012 Massachusetts passed a statewide preemption law prohibiting municipal -level breed-specific legislation).

As with the previously discussed breed, size, weight and type restrictions, the effects of these policies are devastating for pet owners. Many people are denied access to public housing, or those who do rent from a PHA and who own pets that do not align with the restrictions are forced to choose between housing, keeping their pets, or violating the rules. None of those options are just or equitable, and only serve to exacerbate the housing crisis. And as with every other type of restriction discussed, these inevitably lead to an increased number of owner-surrendered pets at the local shelter.

Some PHAs prohibit pet ownership altogether (relying on 24 C.F.R. §960.707(b)(4)). This problem was so widespread in Los Angeles and Los Angeles County that both jurisdictions passed Pet-Friendly Publicly Financed Housing ordinances guaranteeing that a tenant in a publicly-financed rental unit could keep at least one pet.[21] The pets need to be sterilized, microchipped and if required, licensed. Any pet deposit charged must be reasonable and refundable. We encourage municipalities to pass similar legislation to help protect residents and their pets.

Municipalities have the power to shape policy and law for pet-owning residents in public housing. First, ensure that the commissioners appointed to regulate the local PHA are aligned with your mission of creating rules that are inclusive and discrimination -free. If there are rules that restrict a person's right to own certain types of pets or certain breeds, sizes, or weights, make sure these rules are repealed and replaced with breed-neutral policies that focus on the behavior of the pet and the behavior of the owner. Next, consider passing an ordinance that codifies the intent of federal law, to encourage and expressly protect pet ownership in public housing.

Continued on page 26

Pet-Friendly Housing *cont'd from page 25*

These tools will solve for many of the problems that low-income pet-owning residents regularly encounter. Every step taken to remove these outdated limitations is a step toward expanding housing opportunities for an already-vulnerable population. Removing any and all barriers will save money and will result in fewer animals being surrendered and euthanized at the municipal animal shelter. More importantly, it will save families from making the untenable choice of choosing their home or their family pet. ML

Editor's Note: IMLA and Best Friends Animal Society, a non-profit animal welfare organization, recently joined forces to create a manual providing background information, data, guidelines, and policies for dog-and-cat-related issues, and research-assisted solutions for localities nationwide. IMLA supports the mission to derive reasonable solutions to these issues, harmonizing animal welfare with the interests of residents and constraints of municipal budgets.

The manual comprises 10 chapters, discussing topics such as pet-inclusive public housing, empowering animal field officers, integrating animal services into your department, managing feral cat populations, foster care and adoption, public-private partnerships, and breed-neutral policies. The manual will be available in the near future for free download by IMLA members from our Resource Library and by others on Best Friend's website, network.bestfriends.org.

The above article discussing pet-friendly subsidized housing is the first in a series of chapters that *Municipal Lawyer* will feature.

Notes

1. This chapter addresses only public or government subsidized housing. While the authors encourage private owners to adopt similar measures, current insurance industry standards impose significant burdens on mandated requirements to do so. For that reason, the authors encourage state governments to prevent insurance companies from imposing breed specific, size or weight exceptions in liability policies.
2. https://www.americanpetproducts.org/press_industrytrends.asp.
3. *Id.*
4. *Id.*
5. *E.g.*, https://www.nationalcanineresearchcouncil.com/browse/research_library/.
6. https://theharrispoll.com/whether-furry-feathered-or-flippers-a-flapping-americans-continue-to-display-close-relationships-with-their-pets-2015-is-expected-to-continue-the-pet-industrys-more-than-two-decades-strong/
7. Michelson Found Animals Foundation and the Human Animal Bond Research Institute (HABRI), *Tackling Misconceptions about Pets in Rental Housing* (January 2020).
8. *Id.*
9. *Id.*
10. *Id.*
11. *Id.*
12. *See* The Best Friends Animal Society Pet Lifesaving Dashboard, https://bestfriends.org/2025-goal.
13. https://www.mypitbullisfamily.org/.
14. Data collected in 2019.
15. Analysis of data by Shelterluv of 87,304 Owner Surrenders from 2019.
16. *E.g.*, Mass Gen. Laws ch. 121b § 5.
17. United States Housing Act of 1937, 42 U.S.C. § 1437z-3.
18. 24 C.F.R. § 960.707(b)(3).
19. 24 C.F.R. § 960.707(b)(4).
20. *See* Boston Public Housing Authority *Family Public Housing Pet Policy*, https://bostonhousing.org/en/Policies/Family-public-housing-Pet-Policy.aspx.
21. Los Angeles Municipal Code §. 51.20 and Los Angeles County Code § 8.70.



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IMLA Members,

We recognize that our members (cities, counties, and special districts) have been facing difficult times. We value your membership, and we hope you value IMLA. To support you, we are offering a dividend of sorts to our continuing members, in the form of a credit towards IMLA virtual programming:

• Most members will receive a credit equal to 6% of their dues payment for IMLA's last fiscal year (which ended June 30, 2020), which can be applied to IMLA's virtual programming this fiscal year.

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• The credit can be used for any virtual programming: a webinar, the Kitchen Sink* subscription or for the virtual portion of IMLA's upcoming Annual Conference in September 2021--provided that you register and apply the credit on or before June 30, 2021.

• Membership with IMLA must be current or brought current before using the credit, which expires on June 30, 2021.

• To use the credit, a member will need to contact IMLA directly when registering for a virtual program so that we can apply the credit and account for its use. Please email info@Imla.org.

The IMLA Board of Directors and our staff are committed to finding value for our members and making membership important to every local government. We hope this program recognizes the value of your support for IMLA and will help with the financial hurdles you are facing due to the coronavirus.
We pledge to continue supporting local governments with all of IMLA's resources.

Best Wishes,



Charles W. Thompson, Jr.
Executive Director and General
Counsel cthompson@imla.org
202-466-5424 x7110
Direct: 202-742-1016

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ALEL INTERVIEW

IMLA RECENTLY INTERVIEWED ALEL'S CELIA GUILLOT RABANAL, HEAD OF THE ADMINISTRATIVE AND LEGAL SUPPORT OFFICE, BARCELONA PROVINCIAL COUNCIL.

IMLA: Celia, tell us a little about your legal career-

Celia: I've been practicing law since 2004. I received my law license from the Autonomous University of Barcelona, as well as a master's degree in tax and a diploma in superior studies, specializing in public law and a degree in local government law. I began my career specializing in tribunal law, but I currently specialize in administrative law, local law, and management of protected natural areas. I am responsible for the management and coordination of the Administrative and Legal Support Office of the Provincial Council's Management of Natural Space Services.

IMLA: Thank you. In your very informative companion article about the formation of the Spanish State, you describe Spain's 17 Autonomous Communities. How does Barcelona fit into that structure?

Celia: The Provincial Council of Barcelona is the governing and administrative body of the Barcelona province, which together with Tarragona, Lérida and Gerona, are the four provinces of the Autonomous Community of Catalonia. The Barcelona province is made up of 311 municipalities, with their respective town halls, among them the prominent International Barcelona Olympic headquarters in 1992. The Provincial Councils are supra-municipal bodies, responsible for guaranteeing the principles of inter-municipal solidarity and balance and ensuring comprehensive and adequate services throughout the provincial territory. The Autonomous Communities, including Catalonia, are permitted by law to create regions territories that group various municipalities apart from the province. In the province of Barcelona, there are 11 regions called Comarcas, each of which is governed by a Regional Council. The Provincial Council of Barcelona manages the province of Barcelona and its main capability is to support the Town Halls, especially those with the smallest populations, because the laws require them to provide the same services even with fewer technical and economic resources.

IMLA: Who do you represent in your position?

Celia: The Administrative and Legal Support Office is part of the Natural Spaces Services Management, which manages the network of parks and natural spaces in the province of Barcelona. The Management is made up of three technical offices and ours. We oversee budgets, contracting, agreements with public and private entities, and employees, and manage the heritage of the network of parks, as well as being a legal advisor to the tech offices. The Natural Spaces Services Management is atypical within the Provincial Council of Barcelona. mainly because our work is the concrete management of some territories that are granted to us or delegated to us by the Generalitat de Catalunya (governing body of the Autonomous Community of Catalonia) or by special urban plans that regulate these spaces. Most of the clients the Provincial Council manages are usually the Town Halls.

IMLA: What do you like the most about your job, and about ALEL?

Celia: The thing I like the most about my job is that it's very dynamic and I work with different branches of law. Managing Barcelona's parks covers diverse topics such as urbanism, administrative law, forest management, biodiversity protection, and the environment. I can say that I never get bored! And what I like most about ALEL is sharing questions and experiences with colleagues all over Spain.

IMLA: Tell us something about Barcelona that most people don't know—if someone had a day to spend in Barcelona, what should they see?

Celia: Barcelona is a very beautiful city, but I live in one of its most unknown areas. It's called "Nou Barris" ("nine neighborhoods" in Catalan) and has its district headquarters in the old Mental Hospital of Santa Cruz, which is a majestic building from the late nineteenth century. In terms of highlights, I would recommend that you visit the Torre de les Aigües Gardens, the town of Call, the Boqueria market, the town of Barceloneta, and inside the Casa Batlló i de la Pedrera.

IMLA: If you could visit anywhere in the United States, where would you go?

Celia: I would really like to visit Washington DC, because I have family who lives there, and New Orleans because it looks like a city with a lot of rich culture. I have already had the good fortune of seeing New York, Chicago, and San Francisco.

IMLA: Thank you. And what are your recommendations for Spanish traditions—and foods?

Celia: I really like "carrefocs," a Catalan Catalan, Balearic, and Valencian tradition. It consists of people disguising themselves as demons that parade in the streets carrying sticks with firecrackers and flares. My two favorite dishes are black pudding or "blood sausages" from the León region and "calçots," which is a type of green onion.

MLA: And finally, asking about one of the world's most famous architectural projects, will the Sagrada Familia be completed in your lifetime?

Celia: I hope so!

THE SPANISH TERRITORIAL STRUCTURE: SPAIN AS THE "STATE OF THE AUTONOMIES"

BY: CELIA GUILLOT RABANAL

In 1978, with the adoption of its Constitution, Spain became a parliamentary monarchy, and a new democratic stage began in our country after almost 40 years of dictatorship. The Constitution opens the way to the "state of autonomies," recognizing and guaranteeing in its Article 2 the right to autonomy of all nationalities and regions that make up the Spanish state, as well as solidarity between all of them, confirming the fact that Spain is a multinational and multilingual state:

> The Constitution is based on the indissoluble unity of the Spanish Nation, the common and indivisible homeland of all Spaniards; it recognizes and guarantees the right to self-government of the nationalities and regions of which it is composed and the solidarity among them all.

The Constitution did not require the formation of Autonomous Communities, but rather recognizes the right to their formation by combining various of Spain's 50 provinces. It establishes that neighboring provinces with common historical, cultural and economic characteristics, island territories, and individual provinces with a "historical regional entity" can assert self-government and become Autonomous Communities upon the approval of their corresponding "Statute of Autonomy," which acts as the basic institutional foundation of each Community.

The Spanish State of Autonomies is made up of a total of 17 Autonomous Communities and two Autonomous Cities, Ceuta and Melilla, which are located in North Africa and obtained their status in 1995. The Communities are territorial entities with legislative, economic, and governmental autonomy that emanates from the Constitution itself and from their Statutes of Autonomy approved for this purpose. Each Community comprises a number of provinces (except the Community of Madrid, which was formed from a single province) and within each province are numerous municipalities—the basic political entity affording residents the prerogatives of limited local government.



Governments of the Autonomous Communities of Spain as of March 2021.

The Constitution establishes a differentiated competence system in its articles 148 and 149, by virtue of which the Communities are granted their own powers in different matters, which may be included in their Statutes of Autonomy. This has led to the fact that in the Spanish State some Communities enjoy broader political autonomy than others.

The Constitution also reserves numerous "exclusive competences" to the Spanish State, including foreign affairs and defense. These allow the State to establish basic and common rules for the entire national territory and serve as an umbrella of equality for all Spaniards. Communities can develop basic norms thanks to their legislative autonomy, but can never contradict the State's exclusive competencies. Among other things, Communities cannot form alliances or erect barriers to the free flow of people and goods.

The evolution of this basic authority of the State and its subsequent legislative deployment at the hands of the Communities has given rise to various conflicts between the State and Autonomies, disputes that are resolved by the Constitutional Court, the highest judicial body and supreme interpreter of the Constitution, that defines and interprets our jurisdictional system.

If the Spanish territorial structure is analyzed, it follows that we are not a federal state "*stricto sensu*," but rather a federal court structure. The Constitution allows a certain degree of decentralization of political power; Spain is a unitary state insofar as there is a single sovereign people, from which all its powers emanate. But, at the same time, it is close to the federal state in which the Communities enjoy legislative capacity, although they lack constituent power.

The Constitution recognizes the autonomy, but not the sovereignty, of the nationalities and regions that make up the Spanish State. This is how the Constitutional Court itself interprets it:

> It is not the result of a pact between historical territorial instances that preserve rights prior to the Constitution and superior to them, but a norm of the constituent power that is imposed with general binding force in its field, without leaving out previous historical situations.

Spain is a multifaceted country in which diverse national and regional identities coexist, with complex territorial planning and management that is not without tensions. But this is the cultural, territorial, and political wealth of our country, which is why from the ALEL we invite you all to get to know us, not only through these articles, but also by encouraging you to visit our towns and cities.

AMICUS

BY: AMANDA KARRAS,
IMLA Deputy Director and Director of Legal Advocacy

Fighting Preemption of Public Health Measures

IMLA's legal advocacy program focuses primarily on cases of national concern, which often means we file amicus briefs in the Supreme Court (either at the petition or merits stage) or in federal appellate courts. One area where we are particularly active in state courts, however, is in cases involving preemption. Although these cases can often turn on state law because we see trends in state legislatures preempting local governments throughout the country, as well as trends by businesses in attempting to use state and federal preemption as a way to invalidate local ordinances, we believe supporting local governments in these preemption cases is critical to IMLA's mission. IMLA will be filing amicus briefs in the coming month in two such cases, which are described below.

State of Texas v. City of Austin

This case involves the State of Texas' legal challenge to the City of Austin's ordinance requiring facial coverings due to the coronavirus. On March 2, 2021, Texas Governor Greg Abbott issued Executive Order GA-34, which removed nearly all COVID-19 precautionary measures such as limits on business occupancy and public gatherings, social distancing requirements, and the wearing of masks. GA-34 also indicates that it "supersede[s] any conflicting order issued by local officials in response to the COVID-19 disaster, but only to the extent that such a local order restricts services allowed by this executive order…"[1] The Executive Order also purports to suspend portions of the Texas Disaster Act that would otherwise authorize local governments to issue emergency management orders during a declared public disaster in order to ensure local officials do not impose any "inconsistent" restrictions in response to COVID-19.[2]

Because the City of Austin continues to see ongoing threats of transmission, the introduction of new virus variants, a low percentage of vaccinations, and possible "super spreader public events," the City sought to keep its mask mandate in place despite GA-34. The State of Texas sued the City. Austin argued in the lower court that the Public Health Authority for the City of Austin/County of Travis has "the independent and express statutory authority provided to it from the Texas Legislature to take preventative measures in an effort to curb the transmission of infectious disease under the Local Public Health Reorganization Act," Tex. Health & Safety Code §121.024.[3] The Local Public Health Reorganization Act provides local governments in Texas with the authority to "enforce any law that is reasonably necessary to protect the public health," and local governments of Austin's size may "take any action necessary or expedient to promote health or suppress disease," including actions to prevent the introduction or spread of a communicable disease and to abate a public health nuisance.[4]

The City contends that this authority is separate from and unrelated to the Governor's emergency management authority and that the City's mask ordinance is therefore not preempted by the Governor's order. In other words, according to the City, the Governor's attempt to preempt its ordinance is a separation of powers violation because the City's authority to act came from the Legislature under a separate grant of authority and its ability to act to address health and safety concerns exists even outside a declared disaster, whereas the Governor's power is more limited.

The City's arguments prevailed in the state trial court, and the State is appealing. On appeal, the question is whether local governments in Texas have the authority, through their public health authority delegated to them by the Texas Legislature, to take steps to stop the spread of communicable disease or whether the Governor's Executive Order preempts local authority in this area.

IMLA filed an amicus brief in a nearly identical case last summer in support of local governments in Georgia. As noted above, preventing unwarranted preemption is central to IMLA's mission and these cases are significant affronts to local government authority and autonomy. Local governments are in the best position to know, through science-backed public health decision making, what their health and safety risks are and how best to prevent the serious

consequences of unchecked spread of the coronavirus in their communities. This is particularly true in a case like this, where some areas of the state may have relatively low levels of coronavirus transmission and hospitalizations, and public health authorities in those jurisdictions may believe it is appropriate to lift public health measures like mask mandates. But a one-size-fits-all approach that ties local governments' hands behind their backs when it comes to protecting their communities is entirely inappropriate, particularly given the fact that the Governor was acting outside the scope of his constitutional authority in usurping the legislature's role. The consequences of the Governor's attempted usurpation of properly delegated legislative authority to local governments are particularly serious in the face of a deadly virus that has already claimed the lives of over 550,000 Americans and nearly 50,000 Texans.

GA-34 raises additional questions and problems for local governments. The Executive Order indicates that it does not "preclude businesses or other establishments from requiring employees or customers to follow additional hygiene measures, including the wearing of a face covering." This allowance does not mention whether it applies to local governments acting in their proprietary capacity, such as when local governments require facial coverings in municipally owned buildings, whether for their employees or the general public. If the carve-out only applies to private businesses, the usurpation of power by the Governor is even greater, given the self-government granted to local governments to control their own property and workforces.

Finally, the issues raised in this case are larger than just a local government's authority to prevent the spread of COVID-19. That is because the Governor is attempting to preempt local government's authority to act to prevent the spread of any communicable disease; this broad power grab would mean that local governments' ability to enact reasonable ordinances for the health and welfare of their citizenry would be stymied. The issue is central to local governments' police powers.

R.J. Reynolds Tobacco Company, v. County of Los Angeles

This case involves a Los Angeles County Ordinance that prohibits tobacco retailers from selling flavored tobacco products, including both cigarettes and e-cigarettes.[5] A number of tobacco companies sued seeking an injunction, claiming the ordinance was preempted by the Family Smoking Prevention and Tobacco Control Act (the FSPTCA), 21 U.S.C. §§ 387-387u. The FSPTCA's preemption clause states in pertinent part:

> (A) In general. No State or political subdivision of a State may establish or continue in effect with respect to a tobacco product any requirement which is different from, or in addition to, any requirement under the provisions of this chapter [21 USCS §§ 387 et seq.] relating to tobacco product standards, …
> (B) Exception. Subparagraph (A) does not apply to requirements relating to the sale, distribution, possession, information reporting to the State, exposure to, access to, the advertising and promotion of, or use of, tobacco products by individuals of any age, or relating to fire safety standards for tobacco products.[6]

The FSPTCA also has a "Preservation of State and Local Authority" Clause, which states:

> Except as provided in paragraph (2)(A), nothing in this chapter [21 USCS §§ 387 et seq.], or rules promulgated under this chapter [21 USCS §§ 387 et seq.], shall be construed to limit the authority of … a State or political subdivision of a State, … to enact, adopt, promulgate, and enforce any law, rule, regulation, or other measure with respect to tobacco products that is in addition to, or more stringent than, requirements established under this chapter [21 USCS §§ 387 et seq.], including a law, rule, regulation, or other measure relating to or prohibiting the sale, distribution, possession, exposure to, access to, advertising and promotion of, or use of tobacco products by individuals of any age, information reporting to the State, or measures relating to fire safety standards for tobacco products.[7]

The tobacco companies argued that the FSPTCA expressly preempts the Ordinance because it impermissibly "establishes a state requirement that is 'different from' and 'in addition to' federal requirements related to tobacco product standards,'" which they claim violates 21 USCS § 387p.[8] The district court rejected the argument that the ordinance is preempted, agreeing with the Second Circuit (which upheld a similar ban by New York City) "that a ban on flavored tobacco products was not a tobacco product standard" under the FSPTCA.[9] The court reasoned the ordinance addressed only "whether final tobacco products are ultimately characterized by – or marketed as having – a flavor and is not easily read to direct manufacturers as to which ingredients they may or may not include in their products" which if it was, would infringe on the FDA's authority to determine what chemicals and processes can be used in making tobacco products.[10] The court also rejected the implied preemption arguments, finding the ordinance is "neither a manufacturing standard nor does it

Continued on page 32

AMICUS *cont'd from page 31*

regulate the ingredients of tobacco products" and it therefore was not an obstacle to the purpose of the FSPTCA.[11] Finally, the court notes that the FSPTCA has a Preservation Clause which "expressly *preserves* localities' traditional power to adopt any 'measure relating to or prohibiting the sale' of tobacco products.'"[12]

The tobacco companies appealed the case to the Ninth Circuit, where it is currently pending. The issue in the case is whether the FSPTCA preempts, either expressly or impliedly, the County's Ordinance banning the sale of flavored tobacco products.

This case represents one of several challenges by tobacco companies to local government ordinances banning flavored tobacco products.[13] Additionally, we are seeing more instances of large corporations arguing that local government regulations are preempted by state federal law and we believe IMLA should strive to prevent private companies from seeking to circumvent a local government's regulations that relate to the health and welfare of its citizenry through these preemption challenges.[14]

In addition to the preemption issues, this case is important as it relates to municipalities' core police powers given that local governments have an interest in promoting healthy communities. The rise in popularity of flavored tobacco and e-cigarette products with young people poses serious health risks. The purpose of the Los Angeles County Ordinance is to help protect children and reduce tobacco use in youth under 21. According to the latest data from the 2020 National Youth Tobacco Survey, nearly 20% of high school students and 4.7% of middle school students were current e-cigarette users.[15] Public health experts generally agree that flavored tobacco products contribute to this high usage among youth.[16] Increases in health risks within a population will ultimately increase costs for local governments due to amplified demands on the health system.

Both the *County of Los Angeles* and the *City of Austin* cases present issues that are central to IMLA's mission of seeking to promote local autonomy and stave off unwarranted preemption challenges. If you are facing a preemption challenge in your state that you believe would benefit from IMLA's amicus participation, please contact Amanda Karras, IMLA's Director of Legal Advocacy, at akarras@imla.org. **ML**

Notes

1.Executive Order by the Governor of the State of Texas, GA 34, March 2, 2021, available at: https://open.texas.gov/uploads/files/organization/opentexas/EO-GA-34-opening-Texas-response-to-COVID-disaster-IMAGE-03-02-2021.pdf
2. *Id.*
3. *See* State of Texas v. City of Austin, No. D-1-GN-21-001046, Defendants' Amended Joint Response in Opposition to Plaintiff's Application for Temporary Restraining Order and/or Temporary Injunction.
4. *See* Tex. Health & Safety Code §§ 121.003(a), 122.005-.006, 341.011-012.
5. Los Angeles County Ordinance §11.35.070(E); § 11.35.020(J); § 11.35.020(U)(1)-(2).
5. 21 USC 387p.
6. *Id.*
7. R.J. Reynolds Tobacco Co. v. Cty. of Los Angeles, 471 F. Supp. 3d 1010, 1013 (C.D. Cal. 2020)
8. *Id.* at 1018.
9.*Id* at 1014-15.
10. *Id.* at 1018.
11. *Id.* at 1019.
12. See R.J. Reynolds Tobacco Co. v. Cty. of San Diego, No. 20-CV-1290 JLS (WVG), 2021 U.S. Dist. LEXIS 59800, at *26 (S.D. Cal. Mar. 29, 2021) (upholding County's ban on flavored tobacco products and concluding the ban was not preempted by the FSPTCA); Cigar Ass'n of Am. v. City of Phila., No. 20-3220, 2020 U.S. Dist. LEXIS 212267, at *1 (E.D. Pa. Nov. 13, 2020) (concluding City's ban on sale of flavored tobacco products was preempted by state law).
13. For example, IMLA filed amicus briefs in *Portland Pipeline Corp. v. City of South Portland* in both the Maine Supreme Judicial Court and the First Circuit in a case involving an oil pipeline company's challenge to the City's zoning ordinance. In that case, the corporation claimed the City's ordinance prohibiting the storing and handling of petroleum products for the "bulk loading of crude oil onto any marine tank vessel" in certain districts was preempted by a number of federal and state laws. The City passed the ordinance after extensive study when it concluded that higher concentrations of hazardous air pollutant (HAP) emissions caused by the crude oil loading would cause increases in City residents' risk of cancer and that these risks were particularly concerning due to the proximity of the Portland Pipe Line Corporation (PPLC) facilities to schools, parks, and other areas most used by children and the elderly. The First Circuit certified three questions of state law to the Maine Supreme Judicial Court and that court concluded that state law did not preempt the City's zoning ordinance. The case is now back before the First Circuit on the federal preemption questions.
14. Wang, Teresa, et. al, E-cigarette Use Among Middle and High School Students — United States, 2020, Centers for Disease Control and Prevention Mobility and Mortality Weekly Report, September 9, 2020, available at: https://www.cdc.gov/mmwr/volumes/69/wr/mm6937e1.htm?s_cid=mm6937e1_w
15. *Id.*

IMLA Nominating Committee for 2021 Elections

As required by our By-Laws, IMLA is announcing our 2021 Nominating Committee. In addition to filling existing and anticipated vacancies on IMLA's Board of Directors, the Nominating Committee is charged with nominating IMLA officers, including the Treasurer and President-elect. The Committee encourages all those interested in being nominated for vacant positions on the IMLA Board of Directors or for IMLA Regional Vice Presidents to make their interest known to the Committee. It is IMLA's goal to have a Board of Directors that represents the organization's diversity of gender, race, age, ethnicity, and region. Unlike some other non-profit boards, IMLA does not require Board members to contribute financially to the organization, but does seek persons who are interested in advancing IMLA's mission and in increasing IMLA membership and attendance at IMLA programs.

The Nominating Committee will be conducting phone interviews of interested candidates prior to IMLA's Annual Conference and will introduce its slate of nominees during or prior the IMLA business meeting. It is important to hear of your interest as soon as possible to allow for phone interviews to be conducted. The Nominating Committee hopes that you will offer an explanation about how you can advance the mission of IMLA and increase its membership and attendance as well as describe any innovative ideas you may have for advancing the interests of IMLA members.

PLEASE CONTACT THE NOMINATING COMMITTEE MEMBERS FOR CONSIDERATION:

CHAIR:
Art Pertile, III
Partner
Olson & Olson, L.L.P.
Wortham Tower, Suite 600
2727 Allen Parkway
Houston, TX 77019-2133
Apertile@olsonllp.com

Amanda Stanley
General Counsel
League of Kansas Municipalities
300 SW 8th Avenue, Suite 100
Topeka, KS 66603
astanley@lkm.org

Bradley Cunningham
Municipal Attorney
Town of Lexington
P.O. Box 397
Lexington, SC 29071
bcunningham@lexsc.com

DeWitt F. McCarley
Village Attorney/Partner
Misenheimer, North Carolina
Parker Poe Adams & Bernstein
620 South Tryon Street, Suite 800
Charlotte, NC 28202
macmccarley@parkerpoe.com

Sheryl King Benford
Chief Legal Officer
Greater Cleveland Regional
Transit Authority
1240 West 6th Street
Cleveland, OH 44113-1302
sbenford@gcrta.org

The current copy of IMLA's amended By-Laws, which describe the qualifications for service on the IMLA Board of Directors or other IMLA office, can be found at www.imla.org.

HOMELESSNESS

BY: ERICH EISELT,
IMLA Assistant General Counsel

Campgrounds on Main Street: The Persistence of Transience

On, April 20, 2021, federal Judge David Carter of the Central District of California ordered that the City and County of Los Angeles provide housing and related assistance for all homeless persons in the 50-square block area known for decades as known as "Skid Row" by October 18. According to the Los Angeles Homeless Services Authority, that number now exceeds 4,600 people.[1]

Judge Carter's sweeping decision in *LA Alliance for Human Rights v. City of Los Angeles*, cv. 20-02291 (C.D. Cal. Apr. 20, 2021) defines Los Angeles's homeless problem as disproportionately affecting people of color, reflecting decades of discriminatory employment and housing policies and repeated instances of underperformance by authorities despite the continued influx of billions of dollars:

> Here in Los Angeles, how did racism become embedded in the policies and structures of our new city? What if there was a conscious effort, a deliberate intent, a cowardice of inaction? Through redlining, containment, eminent domain, exclusionary zoning, and gentrification—designed to segregate and disenfranchise communities of color—the City and County of Los Angeles created a legacy of entrenched structural racism. . . . While Black people comprise only eight percent of Los Angeles's population, they make up 42% of its homeless population. The current inaction on the part of the City and County of Los Angeles has allowed the harms of their racist legacy to continue unabated, leaving Black people—and especially Black women—effectively abandoned on the streets.

The 110-page opinion found a broad range of actionable wrongs in the plaintiffs' motion for injunctive relief, ranging from denial of Due Process and Fifth Amendment associational rights, state-created danger and deliberate indifference, as well as ADA violations:

> To satisfy the ADA, public sidewalks must have at least 36 inches of passable sidewalk, and the City and County are responsible for ensuring that this requirement is met. 36 C.F.R. § 1191, app. D. § 403.5.1 (2014); Willits v. City of Los Angeles, 925 F. Supp. 2d 1089, 1093 (C.D. Cal. 2013). Hundreds of city sidewalks, not only in Skid Row but across the City and County of Los Angeles, fail to meet the minimum requirements of the ADA due to the creation of homeless encampments. Again, it must be emphasized that these encampments— and the resulting ADA violations—are the outcome of decades of active policy choices and deliberate indifference on the part of the City and County.

The decision also found joint responsibility by the City and County under California's Welfare and Institutions Code:

> Simply put, under the aegis of local, state, and federal initiatives, the City and County together have become jointly responsible for fulfilling the mandate of § 17000, at least as it pertains to confronting the crisis of homelessness. Therefore, the Court finds that the most reasonable interpretation of § 17000—the interpretation most in step with modern partnerships and funding arrangements between the City and County—is that it applies not only to counties alone, but to cities and counties when they undertake a joint venture directed to the goals of § 17000, such as a coordinated effort to alleviate homelessness in their jurisdictions.

Judge Carter imposed a rigorous schedule of remedial measures, placing an immediate hold on $1 billion of municipal funds. The City and County must provide "shelter or housing" to all unaccompanied women and children living in Skid Row within 90 days; to all families within 120 days and to the general

Skid Row population within 180 days. He also required creation of a report detailing "all land potentially available within each district for housing and sheltering the homeless" and ordered "the cessation of sales, transfers by lease or covenant" of more than 14,000 properties he understands to be owned by the City and County.

The City and County rapidly filed for interlocutory relief to the Ninth Circuit; their requests for stay pending appeal have been largely denied. IMLA is evaluating its amicus support in the proceedings.

The Skid Row order appears to be the most aggressive judicial response yet in a lengthening sequence of legal battles between municipalities and displaced individuals and advocates. More will ensue. According to the National Alliance to End Homelessness, in 2019, some 570,000 Americans were estimated to be without adequate shelter,[2] based on HUD's "point in time" counts conducted across the country annually each January.[3] The problem is most concentrated in large and coastal states. California itself accounts for more than one-quarter of the nation's homeless (151,000 persons), with New York (92,000), Florida (28,000), Texas (26,000), and Washington (22,000) rounding out the top five jurisdictions.[4] The racial imbalances noted by Judge Carter are borne out in the national statistics: fully 40% (more than 225,000) of the total homeless population is Black, with another 124,000 being Hispanic/LatinX.[5]

Large cities may dominate the headlines but seemingly no jurisdiction is immune from the problem or its resulting litigation. IMLA members will recall the seminal decision arising in Boise, whose ordinances criminalized sleeping outside on public property. The Ninth Circuit found that such policies violated the Eighth Amendment; the sanctions were unenforceable as cruel and unusual unless the city could offer shelter for any person so cited. The availability of "shelter" was not merely a function of the number of vacant beds, because the city's policies also limited an individual's shelter use to a certain number of consecutive nights. *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2017).

Numerous homeless cases seeking Eighth Amendment relief have subsequently cited *City of Boise*. Others have aimed far more broadly: one such example is *Phillips v. City of Cincinnati*, 479 F.Supp. 3d 611 (S.D. Oh. 2020). Beginning in 2018, Cincinnati and surrounding Hamilton County began to enforce ordinances making encampments illegal, closing site after site and repeatedly forcing settlements to relocate. Joseph Phillips, a Cincinnati resident who had been without shelter for ten years and was threatened with arrest for living outdoors, sued on behalf of himself and similarly situated residents, naming the City and its Mayor. Plaintiffs moved for injunction against further resettlement activity, as well as compensatory damages for property lost and destroyed as the City executed cleanup activities. Their prayer for relief sought a declaration that the City's policy governing "police interaction with homeless encampments" (so-called "Policy 12.111") violated the First, Fourth, Eighth, and Fourteenth Amendments. Seven of its eleven counts were adequately pled to survive motions to dismiss:

Free speech: "Here, Plaintiffs have provided enough facts to go forward on their claim that the Cincinnati homeless encampments were an expression of free speech to call attention to the crisis of the shortage of affordable housing shortage in Cincinnati, and that the Permanent Injunction unlawfully restricts that expression."

Cruel and unusual punishment: "Plaintiffs have provided enough facts to go forward on their claim that housing is not available for some specific unhoused people, nor for all, and, therefore, jailing people for being unhoused is cruel and unusual punishment."

Right to travel: "The Fourteenth Amendment promises citizens the virtually unfettered ability to lawfully and freely travel. Citing and arresting unhoused persons for sleeping in public spaces could violate the right to travel by denying unhoused people the necessity of a safe place to sleep, rest, and recuperate."

Substantive due process: "If the City is requiring the homeless to vacate well-lit and high-traffic public land, or go to jail, when housing is not available for some specific unhoused people, nor for all, and taking and destroying their tents, tarps, blankets, clothing, and other property, then the City may be creating an unlawful state-created danger for the homeless."

Procedural due process: "Confiscating or destroying property without fair notice could be a due process violation. Here, Plaintiffs have provided enough facts to go forward on their claim that the City has failed to provide adequate notice regarding the collection or destruction of their property."

Vagueness: "Plaintiffs have provided sufficient facts to go forward on their claim that Ohio's criminal trespass statute may be unconstitutionally vague, as applied to them by the City, for not providing adequate notice that individuals may be deprived of liberty or property interests for sheltering in a public space."

Monell: "Plaintiffs have provided sufficient facts to go forward on their claim that the City has a policy or custom of evicting and arresting unhoused persons who cannot secure shelter, and that the City's policy or custom has violated Plaintiffs' constitutional rights."

Although the majority of these claims failed, they illustrate the legal hurdles to removal of encampments. Even where camps are not relocated, legal frictions emerge. Localities attempting simply to clean streets

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INSIDE CANADA

BY: MONICA CIRIELLO
Ontario 2015

COVID Restrictions, Heritage-Designated Buildings, Anonymous Complainants, and More

Balancing Health and Religion During COVID-19
Toronto International Celebration Church v. Ontario (Attorney General), 2020 ONSC 8027 https://canlii.ca/t/jcb6x

The City of Toronto (City) was designated as Stage 1 under the Ontario Provincial Government's *Reopening Ontario (A Flexible Response to COVID-19) Act*, 2020 (*ROA*) and as a result all places of worship were limited to permitting a maximum of 10 people to attend in person. The Toronto International Celebration Church (Church) has a maximum capacity of 1000 members and brought an application to strike down the *ROA* to the extent that it prohibited more than 10 people from attending a religious service, arguing an infringement of s.2(a) of the *Canadian Charter of Rights and Freedoms (Charter)*, which guarantees freedom of conscience and religion. The Church sought an interim injunction pending the outcome of the constitutional challenge, seeking to permit services at 30% capacity, the capacity limit that applies to municipalities in the less restrictive Stage 2.

HELD: Interim injunction denied.

DISCUSSION: *RJR-MacDonald Inc. v. Canada*, [1994] 1 S.C.R. 311 outlines the three-part test when considering whether to grant an interim injunction. First, does the *Charter* application have merit; second, will the party suffer irreparable harm if the injunction is refused; third, which party will suffer the greater harm from granting or refusing the injunction. To determine if the Church's *Charter* application had merit, the Court would have to find a serious issue to be tried. Ontario (Province) conceded that *ROA* restricted religious freedoms as guaranteed under the *Charter*. The onus was therefore on the Province to demonstrate that the restrictions are saved under s. 1:

> the *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

The Court was satisfied that there was a serious issue to be tried. Second, the Court reviewed whether the Church and its members would suffer irreparable harm if the interim injunction was not granted. The Court held that in person religious service is an important aspect of religious practices and, although *ROA* does not prohibit in person attendance, it means a large majority of the members cannot practice. Lastly, the Court considered whether the Province or the Church would suffer greater harm from granting or refusing the injunction. The Church argued that the balance favoured protecting religious freedom, while the Province argued the *ROA* was in place to protect public health by minimizing the spread of COVID-19. The Court held that although the knowledge of COVID-19 is evolving, there is an understanding that close proximity to others from outside one's household for long periods of time contributes to the spread, therefore there would be greater harm caused by granting an injunction, outweighing the religious freedoms of those at the Church. The Church failed the third prong of the *RJR-MacDonald* test; interim injunction denied.

Call the Police: Who is the Employer?
Ruddall v. Windsor (City), 2021 HRTO 217 https://canlii.ca/t/jdvt1
The Applicant, a police officer and the

Chair of the Board of the Safety Village, alleged that the City of Windsor (City) Fire Chief spoke about her in a discriminatory manner, raising issues of harassment and discrimination in employment contrary to the *Human Rights Code*, R.S.O. 1990, c.H. 19 (*Code)*. In response the City's Human Resources Department investigated. Unsatisfied with the outcome, the Applicant filed an application with the Human Rights Tribunal of Ontario (Tribunal) alleging that the City was responsible for the harassment and discrimination she had faced. The City argued that it was not the Applicant's employer and sought to dismiss the application and request a summary hearing.

HELD: Summary hearing denied.

DISCUSSION: It was the Applicant's position that as a police officer, the City was her employer, relying on the governance framework of both the *Municipal Act,* R.S.O. 1990, c. M 45 (*Act*) and the *Police Services Act*, R.S.O. 1990, c. P. 15 (*PSA*). The City argued that the Applicant's employer was the Windsor Board of Police Service (WBPS). To support its position, the City provided case law including *Laing v. Toronto (City)* 2003 45493 (ON SC) that saw a party unsuccessfully attempted to hold the City of Toronto responsible for the actions of police officers in the City. In *Laing,* the Court held that the Police Services Board is governed by the PSA, therefore it was the Board (not the City) that was responsible for the actions of the police officers.
In reviewing the employment status between the parties, as well as examining the control and dependency outlined in *McCormick v. Fasken Martineau DuMoulin LLP,* 2014 SCC 39, the Tribunal was persuaded by the City's position that WBPS is the Applicant's employer. The Tribunal explicitly highlighted that even though there is legislation under the *Act* for municipalities to provide and pay for police services, it was not the municipality that employed the members of the police force. Based on this finding, the City pointed out that the *Code* only provides protection from harassment in the workplace, and it was the City's position that since the Applicant was not an employee and these comments did not take place in a workplace, she was not subject to these protections. Furthermore, the City put forth the same logic for the Applicant's claim of discrimination, that even if the treatment of the Applicant could be defined as discrimination, it did not occur "with respect to employment." The Tribunal was not persuaded to grant a summary hearing based on the City's position. The Tribunal relied on the Supreme Court of Canada decision of *British Columbia Human Rights Tribunal v. Schrenk*, 2017 SCC 62, to take a contextual approach to whether an interaction could be found to be employment-based, and dismissed the summary hearing.

Can an Applicant Cross-Examine an Adverse Witness?
Ramsay v. Brantford (City), 2021 HRTO 201 https://canlii.ca/t/jdwpr
The Applicant was unsuccessful in applying for a position at the City of Brantford (City). She filed a sex discrimination claim against the City alleging that she was denied the position despite being qualified because she is a woman, contrary to the *Human Rights Code,* R.S.O. 1990, c. H.19. The Applicant summoned the successful candidate (Mr. Nafziger) to the hearing. The Applicant requested to cross-examine Mr. Nafziger during his examination in chief.

HELD: Request denied.

DISCUSSION: Applying the considerations within *Wawanesa Mutual Insurance Co. v. Hanes,* 1961 CanLII 28 (ONCA), the Tribunal determined Mr. Nafziger was an adverse witness as he is an employee at the City and most notably, the successful candidate for the position the Applicant was seeking. The Applicant sought to cross-examine Mr. Nafziger as an adverse witness under Rule 53.07 of the *Rules of Civil Procedure*, R.R.O, Reg 194 (*Rules*). The Tribunal's Rules of Procedure provide that the Tribunal has the authority to control its own process and proceedings, meaning that the *Rules of Civil Procedure*, RRO, Reg 194 (*Rules*) do not apply. Although the Tribunal had no obligation to apply the *Rules*, the Applicant argued that the Tribunal should consider the *Rules* as a guide and permit the cross-examination of the adverse witness to ensure a fair hearing. The Tribunal disagreed. In reviewing the question before it, the Tribunal did not rely on the *Rules* but cited section 23 of the *Evidence Act,* R.S.O 1990, c. E. 23. The Tribunal held that the Applicant was not permitted to conduct a cross examination of Mr. Nafziger because it would allow the Applicant to impeach its own witness and undermine the credibility of Mr. Nafziger's evidence.

Section 23 did permit the Applicant to question if an inconsistent statement was provided and ask Mr. Nafziger for an explanation. If while providing testimony, Mr. Nafziger proved to be a hostile witness, the Tribunal could permit him at that point to be cross-examined by the Applicant. However, for the reasons outlined above, the Tribunal denied the Applicant's request to cross examine Mr. Nafziger.

Complexities in Repealing a Building's Cultural Heritage Designation
Ferron v. Niagara Falls (City), 2021 23950 (ON CONRB) https://canlii.ca/t/jf0fp

In 2010, the City of Niagara Falls (City) passed a bylaw designating a City-owned schoolhouse construct-

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ed in 1915 as a building of cultural heritage and value under s. 29 of the *Ontario Heritage Act,* RSO 1990, c. O.18 (*OHA*). Nine years later, the City began the process under s. 31(5) of the *OHA* to repeal the designation bylaw which protected the building with plans to demolish it to expand a City cemetery. Residents objected to the Conservation Review Board (Review Board).

HELD: Recommendation not to repeal designation.

DISCUSSION: Objectors before the Review Board expressed concerns that the City has few heritage-designated properties and those that are designated should remain. In response, the City conceded and agreed with the Objectors that the building maintains cultural heritage and value; however, it was the City's opinion that after years of consultation with the community and the Municipal Heritage Committee the bylaw should be repealed and the building demolished. *Trothen v. Sarnia (City),* 2016 29998 (ON CONRB) outlines the considerations for the Review Board when an owner of a property or building seeks to repeal a designation bylaw. The Review Board noted that although the matter before it addressed a municipally-initiated repeal under s. 31 of the *OHA, Trothen* would still apply. *Trothen* requires the Review Board operating within its authority of the *OHA* to review the evidence before it and make a recommendation whether the building maintains cultural heritage and value.

The challenge before the Review Board was that the City conceded the building maintained cultural heritage and value, thereby the Review Board could only arrive at the recommendation that the designation bylaw should not be repealed, and the building should be maintained under *OHA* protection. However, the City would not be bound by the Review Board's recommendation; the City like any other municipality in Ontario is legally obligated to consider but not required to follow a Review Board decision. Municipalities have broad discretion but are bound and required to uphold the principles of the *OHA*. The Review Board advised the City to proceed with caution when exercising its discretion following the Review Board's final recommendation to protect a schoolhouse that still maintained cultural heritage and value.

No Veil of Anonymity for City Employee Alleging Discrimination
Ahlawat v. Toronto (City), 2021 HRTO 140 https://canlii.ca/t/jddbd
The Applicant was terminated as an employee at the City of Toronto (City). In response, the Applicant filed a *Human Rights Code,* R.S.O. 1990, c. H. 19 (*Code*) application alleging discrimination when the City failed to accommodate his disability. Prior to the hearing, the Applicant sought an interim decision from the Tribunal to anonymize his name during the proceedings and requested to amend the application to add discrimination based on the grounds of race, creed, and place of origin.

HELD: Requests denied.

DISCUSSION: The Tribunal commenced by outlining that the natural process of legal proceedings in Canada are open and transparent, which includes the names of the parties involved. The Applicant expressed concerns that as a well-known South Asian in the City, the exposure of his mental health condition through this application would further stigmatize him in his community as well as worsen his condition. The City conceded that the Tribunal has discretion to grant an anonymization request but argued there were no exceptional circumstances presented by the Applicant to justify this request. Anonymization requests are reviewed on a case-by-case basis, allowing the Tribunal to strike a balance between the public interest in freedom of expression and open justice and the potential negative consequences of an applicant. The Tribunal relied on *C.M. v. York Region District School Board,* 2009 HRTO 735 which stated, "in general, values of openness support including the names of the parties in a Tribunal decision" further "without good reasons for doing so, parties should not make or defend allegations from behind a veil of anonymity […]". The lack of evidence presented by the Applicant failed to persuade the Tribunal to justify an anonymization request the and request was denied.

As for the Applicant's request to amend the application, the Tribunal noted that it had discretion to allow for an amendment under Rule 1.7 of the Tribunal's Rules of Procedure. The Applicant argued that he had every intention of including discrimination based on the grounds of race, creed and place of origin but as a result of a clerical error failed to check the appropriate box on the application. The Applicant relied on *Morris v. Oxford Country,* 2018 HRTO 1820 which permitted an applicant to amend an application after having been filed. The Tribunal was able to distinguish *Morris* from the matter before it; most notably in *Morris* the applicant did not raise any new factual allegations, while the Applicant here attempted to add additional examples of mistreatment by the City connected to the grounds of race, creed and place of origin. The Tribunal denied the request to amend the application under Rule 1.7 but made clear that by doing so the Tribunal was not disposing of the Applicant's initial allegations. Request to amend denied. ML

HOMELESSNESS, *cont'd from page 35*

and remove debris are ensnared in Fourth Amendment arguments. In *Proctor v. District of Columbia*, no. 18-cv-701 (D.D.C Nov. 27, 2018), plaintiffs alleged that the District unreasonably considered property abandoned when a resident was absent during the cleaning or left the site after the cleaning began, and that the District's signage "misleads homeless residents about how the District will treat certain unattended items." And in *Sullivan v. City of Berkeley*, no. 17-06051 (N.D. Cal. Jan. 19, 2018) the court permitted plaintiffs' Fourth Amendment claims to proceed where they alleged facts showing the city, on multiple occasions, "collect[ed] and store[d] property without notice, and in a way that [did] not allow plaintiffs to retrieve it in a usable condition (or at all)."

It is clear that housing unaffordability, driven by chronic poverty, unemployment and earnings too meager to pay skyrocketing rents, is a major cause of the homelessness crisis. Municipalities are pushing to address the problem, offering federally-funded housing vouchers, building temporary structures, rezoning to allow greater density, purchasing or leasing defunct hotels, and taking other steps to increase the number of available dwellings.[6] But adding supply will not, by itself, solve the persistent homelessness dilemma. A 2014 study concluded that fully one-quarter of homeless persons suffered from serious mental illness, with upwards of 45% being mentally unstable.[7] Add to this the significant instance of alcoholism and drug addiction among the displaced population and it becomes evident that only a multi-faceted approach, combining federal, state and local resources that address the spectrum of underlying causes, will begin to solve America's homeless problem. Until then, judicial pressure on municipal decision makers will no doubt continue. ML

Notes

1. 4700 - 2020 Greater Los Angeles Homeless Count—Skid Row (lahsa.org).
2. State of Homelessness: 2020 Edition - National Alliance to End Homelessness.
3. "The Point-in-Time (PIT) count is a count of sheltered and unsheltered people experiencing homelessness on a single night in January." Point-in-Time Count and Housing Inventory Count - HUD Exchange
4. State of Homelessness, *supra* note 2.
5. *Id.*
6. See for example, Seattle's multi-pronged approach: https://kingcounty.gov/depts/community-human-services/housing/services/homeless-housing.aspx.
7. Homeless Mentally Ill Facts and Figures : Mental Illness Policy Org.
8. https://www.samhsa.gov/homelessness-programs-resources/hpr-resources/housing-shelter.



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