Some Recent Decisions Relating to Administrative Adjudication in Illinois

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August 10, 2022

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PART ONE - GENERAL MATTERS

Rule 23(b) decisions

Many of the decisions involving judicial review of administrative decisions are issued pursuant to Supreme Court Rule 23(b). A Rule 23(b) decision cannot be cited as a precedent. Rule 23(e)(1) provides:

> *An order entered under subpart (b) or (c) of this rule is not precedential except to support contentions of double jeopardy, res judicata, collateral estoppel or law of the case. However, a nonprecedential order entered under subpart (b) of this rule on or after January 1, 2021, may be cited for persuasive purposes. When cited, a copy of the order shall be furnished to all other counsel and the court. "*

In *Osman v. Ford Motor Co., 359 Ill. App. 3d 367, 833 N.E.2d 1011, 295 Ill. Dec. 805 (2005),* the court in *dicta*, stated that under *Supreme Court Rule 23*, parties are not barred from "using the reasoning and logic" contained in a *Rule 23 (b)* order

> "The fact one court has used certain reasoning in an unpublished opinion does not bar courts in this state from using the same reasoning in their decisions. While our supreme court restricts parties from citing unpublished orders of Illinois appellate courts (166 Ill. 2d R. 23(e)), that does not bar the parties from using the reasoning and logic that an Illinois appellate court used in its unpublished decision; rather, it bars parties from citing that unpublished decision as authority."

Illinois Code of Judicial Conduct cautions judges on injudicious use of social media

https://www2.illinois.gov/sites/jib/Pages/Code.aspx

The Illinois Supreme Court has adopted a new Illinois Code of Judicial Conduct. This is the first "top to bottom" update of the code in 50 years. Several sections in the Code caution judges on the use of social media. It is a caution which ALJ's should also consider. Below are excerpts from the Code and the Committee's comments

The Code governs a judge's personal and judicial activities conducted in person, on paper, and by telephone or other electronic means. A violation of the Code may occur when a judge uses the Internet, including social networking sites, to post comments or other materials such as links to websites, articles, or comments authored by others, photographs, cartoons, jokes, or any other words or images that convey information or opinion. Violations may occur even if a judge's distribution of a communication is restricted to family and friends and is not accessible to the public. Judges must carefully monitor their social media accounts to ensure that no communication can be reasonably interpreted as suggesting a bias or prejudice; an *ex parte* communication; the misuse of judicial power or prestige; a violation of restrictions on charitable, financial, or political activities; a comment on a pending or impending case; a basis for disqualification; or an absence of judicial independence, impartiality, integrity, or competence.

To ensure that judges are available to fulfill their judicial duties, judges must conduct their personal and extrajudicial activities, including their use of social media or participation on social networking platforms, to minimize the risk of conflicts that would result in frequent disqualification. See Canon 3.

The proscription against communications concerning a proceeding includes communications with lawyers, law teachers, or other persons who are not participants in the proceeding and communications made or posted on social media or social networking platforms. A judge must make reasonable efforts to ensure that law clerks, court staff, court officials, and others under the judge's direction and control do not violate this Rule.

A judge's use of social media or social networking platforms may create the appearance of a relationship between the judge and litigants or lawyers who may appear before the judge. Whether a relationship would cause the judge's impartiality to "reasonably be questioned" depends on the facts. While the labels used by the social media or social networking platform (e.g., "friend") are not dispositive of the nature of the relationship, judges should consider the manner in which the rules on disqualification have been applied in traditional contexts and the additional ways in which social media or social networking platforms may amplify any connection to the judge.

A judge may not use social media or social networking platforms to promote the activities of educational, religious, charitable, fraternal, or civic organizations when the judge would be prohibited from doing so using another means of communication. For example, just as a judge may not write or telephone nonfamily members or judges over whom the judge has supervisory authority to encourage them to attend organizations' fundraising events, a judge may not promote those events via social media or social networking platforms.

Although named plaintiff and class members did not exhaust administrative remedies, court permits class action

Pinkston v. City of Chicago, 2022 IL App (1st) 200957

Court rules that vehicle owner may proceed with class-action challenging city's practice of issuing certain parking tickets, although the vehicle owners who received these tickets did not exhaust their administrative remedies. In this class action, the plaintiff alleged that the City of Chicago has a practice of improperly issuing *central business district metered parking tickets* where vehicles are parked outside of a central business district. These tickets carry higher fines than ordinary metered parking tickets issued to vehicles outside of the boundaries of a central business district. Mr. Pinkston requested that the court: (a) declare these tickets void, (b) order the city to refund all penalties, and (c) enjoin the city from issuing these tickets where vehicles are parked outside of the business district. The city made a motion to dismiss on the grounds that the court lacked jurisdiction to rule on the matter, as Mr. Pinkston failed to exhaust his administrative remedies. The trial court agreed and dismissed the action. In a split decision, the appellate court ruled that the trial court did have jurisdiction and remanded the matter

Bad faith response to FOIA request

Staake v. Department of Corrections, 2022 IL App (4th) 21007

The case involves an alleged bad faith response to a FOIA request. Mr. Staakes, an Inmate of the Illinois Department of Corrections, made a FOIA request for a copy of a complaint filed in a federal lawsuit and a copy of contracts to provide educational services which Department entered into.

The Department did not provide the documents until Mr. Staakes, filed a pro se lawsuit. In that lawsuit, IDOC claimed that it resisted providing a copy of the complaint because the document contained the names of other inmates. Under the Freedom of Information Act, the Department should have provided a copy of the complaint, with the names of the inmates redacted.

The Department moved for summary judgement arguing the matter was now moot, As Mr. Staakes filed his lawsuit as a pauper. he did not have to pay a filing fee. He incurred no attorney fee expenses. Finally, the Department argued that it did not act in bad faith in initially denying the FOIA request, The trial court granted the Department's motion for summary judgment.

On appeal, the appellate panel agreed that that portion of the lawsuit demanding the documentation was now moot. However, the panel reversed and remanded the trial court's order granting summary judgment on the issue of whether Mr. Staakes was entitled to the statutory civil penalty

Ultimately, we conclude that when viewing Mr. Staake's claim of bad faith in the light most favorable to him, questions of material fact remain that preclude summary judgment. For example: (1) Why did DOC withhold the Lippert complaint in its entirety instead of redacting it? (2) How did DOC come to the conclusion that the complaint was exempt from disclosure? (3) Who made that initial decision? (4) And, importantly, why did DOC state that Staake's request was not a proper "request for records" only after he (correctly) pointed out DOC could redact the complaint?

Local government may bypass administrative adjudication and prosecute ordinance directly in Circuit Court

Village of Downers Grove v. Village Square III Condominium Ass'n, 2022 IL App (2d) 210098

Where an ordinance sets out a procedure which permits a party to contest an ordinance violation charge through the administrative adjudication process, the local government may bypass administrative adjudication, where the local government's code also permits enforcement through actions filed and the circuit court. Under this circumstance, the local government may ignore a party's request for administrative adjudication and proceed directly with an action in circuit court.

City may prosecute ordinance violations through action filed in federal court

City of Chicago v. Equte LLC, No. 21 C 518, 2022 U.S. Dist. LEXIS 105893 (N.D. Ill. June 14, 2022)

The city enacted an ordinance which prohibited sale of liquid tobacco products to persons under the age of 21. The City's Department of Business Affairs and Consumer Protection ("BACP") Commissioner ("Commissioner") investigated Defendants and determined that Defendants had violated the Code. The city then filed an action in federal court, seeking fines and other relief against the defendants.

Mr. Evenmo, one of the defendants, is the owner of three of the defendant corporate entities. He filed a motion to dismiss, arguing that he could not be held liable for the conduct of the corporations. He also argued that the court did not have jurisdiction to prosecute him under the ordinance in that the city's only remedy was to utilize administrative adjudication process.

The court ruled that, the city sufficiently alleged that Evenmo is liable for the actions of Equte, Vapes.com and Juishy because those corporations are Evenmo's alter egos under Minnesota law

The court also ruled that the administrative adjudication processes is not the only tool which the city had to enforce its ordinances. It could seek fines in an action filed in federal court.

Should an ALJ be named as a defendant in an Administrative Review Action?

Crawley v. Board of Education, 2019 IL App (1st) 181367, 129 N.E.3d 672,

In Small v. Board of Education of Streator Township High School District No. 40, 2022 IL App (3d) 210113, the hearing officer was named as a defendant. Small, a teacher, was accused by the school of failing to report an incident of sexual abuse. At the conclusion of an administrative hearing, the hearing officer found that Small should have made the report. The School Board adopted the hearing officer's recommendation and ruled that Small's employment be terminated. Small filed an action seeking judicial review. In that action, she named the hearing officer as one of the defendants

The Administrative Review Law provides that the administrative agency and the parties (other than the plaintiff) should be named as defendants

735 ILCS 5/3-107(a) provides: "

> (a) Except as provided in subsection (b) or (c), in any action to review any final decision of an administrative agency, the administrative agency and all persons, other than the plaintiff, who were parties of record to the proceedings before the administrative agency shall be made defendants.

Is the ALJ an administrative agency? Is the ALJ a party of record to the proceeding? The statute's wording suggests that the Cook County Department of Administrative Hearings should be named as a defendant, rather than the ALJ.

One case holds that where a hearing officer only makes a recommended decision the hearing officer should not be named as a defendant

In Crawley v. Board of Education, 2019 IL App (1st) 181367, 129 N.E.3d 672, the hearing officer, Lawrence Cohen, was named as a defendant, although he only rendered a recommended decision The panel dismissed him as a party, and in doing so explained:

> Finally, we address Crawley's **naming Hearing Officer** Cohen as a party to her petition for administrative review. Although the Board does not raise the issue, and Cohen himself has not appeared, we note that the improper practice of naming administrative hearing officers as parties to administrative review cases occurs **with** disturbing frequency. See, *e.g.*, *Ball v. Board of Education of the City of Chicago, 2013 IL App (1st) 120136, 994 N.E.2d 999, 374 Ill. Dec. 62* (**naming hearing officer** Ellen Alexander as a defendant); *Younge, 338 Ill. App. 3d at 529* (**naming hearing officer** Edward L. Suntrup). ***HN5***[] Under the School Code, the hearing officer assigned in this case had the

> power to hear testimony, admit exhibits, and render a recommended decision to the Board, which itself was the ultimate decision-making authority. See *105 ILCS 5/34-85(a)(5)* (West 2016); *23 Ill. Adm. Code 51.60, 51.75* (2012). As such, the hearing officer is much like a circuit court judge whose decision is appealed to an appellate court. The circuit court judge is not a party to the appeal; only the actual litigants are. The same holds true for a hearing officer. The Board, as the ultimate decision-making authority, is a proper party to the petition for administrative review. So is the Board's chief executive officer because her predecessor brought the dismissal charges against Crawley. See *735 ILCS 5/3-113(b)* (West 2016) (in a direct administrative review action in the appellate court, "[t]he administrative agency and all persons, other than the petitioner, who were parties of record to the proceedings before the administrative agency shall be made respondents"). Since Cohen is neither an administrative agency nor a party of record, he was not a proper party to the petition. We therefore dismiss Cohen as a respondent to the petition for administrative review.

Arguably, that portion of the opinion which analogizes the role of an ALJ with that of the circuit court judge supports the proposition that the ALJ should not be named as a defendant in action seeking judicial review of an administrative decision, even where the ALJ makes the final decision.

However, it could also be argued that the Court's analysis is limited to situations where the ALJ simply makes a recommended decision, and another authority has the power to accept or reject or modify that decision. The hearing officer in Crawley and the hearing officers in the cases cited by the Crawley panel were only empowered to make recommended decisions.

One decision holds that the hearing officer is a necessary party

In Massoud v. Board of Education, 97 Ill. App. 3d 65, 422 N.E.2d 236 (3rd Dist. 1981). The court ruled that where the ALJ makes a final decision, the ALJ is a necessary party. In doing so, the court explained:

> In the instant case, it was a hearing officer from the State Board of Education who rendered the final administrative decision over which review is sought by plaintiff Massoud. Both the officer and the State Board are necessary parties and are required to be named parties defendant under section 8 of the Administrative Review Act. They must be joined. However, the plaintiff's suit should not be dismissed on that basis, at this time, and he should be given a reasonable opportunity to add them as parties defendant. To do so will not prejudice anyone's interests.
>
> For the reasons stated, the decision of the circuit court of Will County is reversed and the cause remanded for further proceedings, with directions that the plaintiff be permitted to amend the complaint so as to name the hearing officer and the State Board as parties defendant.

That decision has not been cited to support the proposition that the hearing officer is a necessary party.

The necessity of naming the ALJ was raised in Jones v. Cahokia Unit School District No. 187, 363 Ill. App. 3d 939, 845 N.E.2d 866 (5th Dist. 2006) where the plaintiff failed to name the

agency and the ALJ as defendants. The court walked away from the issue of whether the ALJ should be named; and ruled:

> The plaintiff failed to name and serve as a defendant the administrative agency from which the appeal is taken. This is fatal to the plaintiff's administrative review action. Accordingly, we find it unnecessary to discuss in further detail the impact of the plaintiff's failure to name and serve the hearing officer as defendants.

Where agency misleads party as to administrative adjudication process

Mercury Sightseeing Boats, Inc. v. County of Cook, 2019 IL App (1st) 180439, 142 N.E.3d 777; Grimm v. Calica, 2017 IL 120105, 88 N.E.3d 74;

The two decisions cited below stand for the following propositions:

1. Where a government body issues a decision adverse to the interests of a party, it is not constitutionally required to provide the aggrieved party with information as to how the decision may be challenged.

2. Where the government body provides misleading information and the aggrieved party follows those instructions, the governmental body cannot successfully object to the challenge on the basis that the aggrieved party failed to comply with the procedures set out by statute, ordinance, or rules.

Grimm v. Calica, 2017 IL 120105, 88 N.E.3d 741 involves a final decision entered by the Illinois Department of Children and Family Services (DCFS)

735 ILCS 5/3-103 provides that an action seeking reviewable final administrative decision is commenced by filing a complaint within 35 days of the date that a copy of the decision sought to reviewed was served on the party affected by the decision. The statute further provides:

> The method of service of the decision shall be as provided in the Act governing the procedure before the administrative agency, but if no method is provided, a decision shall be deemed to have been served either **when a copy of the decision is personally delivered or when a copy of the decision is deposited in the United States mail, in a sealed envelope or package, with postage prepaid, addressed to the party affected by the decision at his or her last known residence or place of business.**

DCFS sent a final decision to Ms. Grimm with instructions stating that she could seek judicial review of the decision pursuant to the Illinois Administrative Review Law within 35 days of the date of service, but it did not mention that the service date was the mailing date under § 3-103. She filed an action seeking judicial review within 35 days after receipt of the notice - but outside

of the 35-day period following the mailing of the notice. The court held that Ms. Grimm did not receive the process to which she was due and could proceed with her challenge to the DCFS decision.

Mercury Sightseeing Boats, Inc. v. County of Cook, 2019 IL App (1st) 180439, 142 N.E.3d 777 involves a tax assessment issued to Mercury by the Cook County Dept. of Revenue (DOR). Section 34-80(a) of the UPIP provides:" The **written protest and petition must be filed within 20 days of mailing the notice of tax determination and assessment by the Department."**

Mercury filed its protest outside of the 20-day period, because it was misled by instructions proved by DOR. The court ruled that

1. The deadline for filing a protest was jurisdictional in nature and not subject to forfeiture, because the county ordinance provided the taxpayer an administrative forum to raise its specific challenges to the allegedly unauthorized tax, and the sole basis for the taxpayer's right to protest the amusement tax was a county's procedures ordinances.

2. DOR violated the procedural due process rights of the taxpayer because the department affirmatively mislead the taxpayer, if unintentionally, on the proper deadline for filing.

3. "The remedy for this due process violation, as in Grimm, 2017 IL 120105, ¶ 28, is to deem Mercury's protest timely filed or, said differently, to hold that Mercury's failure to file the protest by September 29, 2014, did not deprive DOAH of jurisdiction to hear that protest."

PART TWO – ISSUES WHICH MAY ARISE IN A HEARING

Equitable estoppel defense against governmental body fails where aggrieved party fails to present clear and convincing evidence as to the amount of damages

895 Dale v. City of Wood Dale, No. 2-20-0450, 2022 Ill. App. Unpub. LEXIS 1187 (2nd Dist. July 13, 2022)

Holding: The City of Wood Dale Administrative Adjudication did not err in finding that the City was not equitably estopped from requiring plaintiff to install landscape islands in accordance with the City's landscaping ordinance before issuing plaintiff a business license. In reaching its decision, the appellate court agreed that the plaintiff made a strong argument that it was misled by the city. However, the plaintiff undermined its case by failing to submit evidence as to the actual costs it would occur by coming into compliance. The decision exemplifies the high bar a party must meet, in order to successfully assert the estoppel defense against a governmental body. It also suggests that this defense may be considered in an administrative hearing.

Background: At all times relevant to this case, the city's ordinance required that parking lots contain landscape islands and perimeter landscaping. The plaintiffs submitted plans for a parking lot to city officials. Those plans did not include landscape islands or perimeter landscaping.

On October 25, 2011, the City granted the permit application and issued plaintiff a building permit to construct the parking lot On December 3, 2014, after the parking lot was completed-sans landscape islands or perimeter landscaping-the City sent plaintiff correspondence stating that all of the work performed at the subject property under the building permit substantially complied with the approved plan as submitted.

In 2016, the city enacted an ordinance requiring businesses to have licenses. It issued a business license to plaintiff which expired in October 2017. The city refused to renew the license because the parking lot did not have landscaped islands.

On November 1, 2018, at the conclusion of an administrative hearing, the hearing officer found plaintiff liable for operating a business without a valid business license in violation of section 4.302 the City's Municipal Code and assessed plaintiff a $500 fine. The hearing officer stated that its ruling was primarily based on the undisputed fact that the subject property was noncompliant with section 17.606 of the City's Municipal Code because it lacked landscape islands and perimeter landscaping. It acknowledged that, although there were other code

violations noted in the June 21, 2018, citation, they were "trivial." In so ruling, the hearing officer rejected plaintiff's equitable estoppel defense and found that the city was not estopped from requiring plaintiff to install landscape islands and perimeter landscaping as a precondition to the issuance of a business license.

Decision: The hearing officer's decision was affirmed by the Circuit Court and the appellate court. Below is an excerpt of the decision

> In support the City cites, *City of Chicago v. Unit One Corp.*, where the city of Chicago had issued permits to Unit One to display commercial signs on the exterior wall of its building for 15 years. *218 Ill. App. 242, 243-44 (1991)*. When the city filed a complaint alleging that the signs violated a zoning ordinance, Unit One argued that the city should be estopped from enforcing the ordinance because the city had issued sign permits for its signs during the preceding 15 years. It argued that the city's conduct ratified the issuance of the permits, and it had detrimentally relied on the city's action. *Id. at 245*.
>
> The appellate court affirmed the circuit court's ruling in favor of the city. In so holding, the court stated that nothing indicated that the city either actively misled or induced the owner into believing the commercial signs did not violate any zoning ordinance. *Id. at 247*. Although language was stamped onto each **permit** indicating that the signs "conformed with the zoning ordinance," the court stressed that the permit stamp likewise stated that the "[a]pproval of [a]pplication for license shall not be held to permit or be an approval of any Violation of the provisions" of the zoning ordinance. *Id.* It also noted that, "every entity is charged with the responsibility of knowing the limitations of any ordinance under which it is subject." *Id*. (citing *Cities Services, 21 Ill. 2d 157*). The court also stated that the owner did not show that it substantially relied on the sign permits or changed its position due to the unauthorized permits, such that it would be unjust at that point to enforce the zoning ordinance. *Id*. Notably, the building was not constructed in reliance upon the belief that commercial signs on the exterior wall would be permitted, nor was there any indication that the commercial space inside the building was designed in reliance on the sign permits. *Id*. Moreover, the court was unpersuaded by the owner's assertion that, without the permits, it would be unable to attract or retain business, because the argument was directed against the ordinance rather than the city's prior failure to administer it.
>
> "That [the owner] **will** now be disfranchised of an advantage to which it had no right in the first place is not the type of loss upon which the concept of estoppel is focused. The fact that the sign ordinance will now be enforced leaves [the owner] in the same position it would have been in had it complied with the law in the first place."
>
> Accordingly, based on these circumstances, the court held that the city should not be estopped from enforcing the zoning ordinance. *Id*.
>
> Following the reasoning of the court in *Unit One*, the costs plaintiff must bear in constructing the landscape islands are not the type of loss which would trigger equitable estoppel, as plaintiff was always obligated under the city's ordinance to have such islands. There is an argument to be made that any increased costs associated with demolishing or redesigning portions of the parking lot might be the type of loss to which equitable estoppel would apply, since those represent additional moneys which would not need to have been

> spent had the city enforced the ordinance during the parking lot's initial construction. However, plaintiff has not provided specific estimates for the improvements and thus we have no way of assessing the extent of such costs. Gullo stated that had the City insisted on the installation of landscape islands when the project was initially being planned, the increased cost and decreased parking space would mean that the project "wouldn't have made sense to develop." However, there was also testimony that the lot had 188 spaces, while plaintiff was only permitted to lease 180 spaces. As there also appears to be space at the end of some of the rows which could accommodate a landscape island, plaintiff has not made it clear how many usable spots would actually be lost by the installation of the islands. Likewise, plaintiff argues that the installation of the islands would trigger new stormwater detention calculations but does not give any indication of the cost involved, or the likelihood that the installation of new islands would require changes to its current plan. In short plaintiff has not provided clear evidence of the harm it would suffer and instead calls for us to speculate regarding the extent of its costs. As such, plaintiff has failed to demonstrate detrimental reliance sufficient to satisfy an equitable estoppel claim.

Manager of LLC can be found personally liable for violation of ordinance if violation is based on manager's acts and omissions

Tadros v. City of Chicago Department of Administrative Hearings, 2021 IL App (1st) 200273

Between 2007 and 2017, the property located at 4627 S. State Street ran up a $56,000 water bill. The property was owned by a land trust. The beneficiary of the trust was an LLC. Mr. Tadros was the sole manager of the LLC. The City initiated a proceeding before the Department of Administrative Hearings seeking a finding of liability against the land trust, the LLC and Mr. Tadros. Mr. Tadros argued that by creating an LLC he insulated himself from liability, citing the state statute protecting owners and managers of LLCs

Section 11-12-330 of the Municipal Code provides that "[t]he owner or owners of a property, location or address where water or water service is supplied shall be jointly and severally responsible for payment for any water or water service supplied." Chicago Municipal Code § 11-12-330

> "any person who alone, or jointly or severally with others, is: (1) the legal title holder or holders to any premises, or dwelling units, with or without accompanying actual possession thereof; (2) the beneficial owner or owners of an Illinois Land Trust if legal title is held by such a trust; (3) the purchaser under a real estate installment sales contract; (4) any person serving as executor, administrator, trustee, or guardian of an estate if legal title is held by the estate; or (5**) any person, including the agent of the legal title holder, who is authorized or entitled to control, manage or dispose of any premises, dwelling or dwelling unit."**

The court found that Mr. Tadros, as an agent of the LLC, was entitled to control and manage the State Street property. Therefore, under the ordinance he and the LLC each had an obligation to

pay the water bill. His liability was not based on the liability imposed on the LLC. Rather, it was based on his individual responsibility under the ordinance to pay the water bill.

The court found no conflict between the state law insulating officers of corporations and the imposition of liability for the water bill. In doing so, the court explained:

> *Section 10-10(a)* and *(d)* of the Limited Liability Company (LLC) Act, *805 ILCS 180/10-10(a)*, *(d)* (2020), clearly provide that a manager is not personally liable for a debt of the company solely by being a manager, unless a provision to that effect is contained in the articles of organization and the manager so consented in writing. *Section 10-10(a-5)*, however, clarifies that nothing in the LLC Act limits the personal liability of a member or manager imposed under law other than the Act, for the manager's own wrongful acts or omissions. *§ 10-10(a-5)*. The statute thus makes a distinction between personal liability for one's own actions under law other than the LLC Act and personal liability for the LLC's debts solely because of one's status as the manager of the company. If liability is based on the former, the LLC Act does not preclude a claim against an LLC manager

A government may impose liability on corporate officers by imposing responsibilities on corporate officers though the wording its ordinance. See *Express Valet, Inc. v. City of Chicago*, 373 Ill. App. 3d 838, 869 N.E.2d 964 (1st Dist. 2007); *Cerone v. State*, 2012 IL App (1st) 110214, 974 N.E.2d 377; *Tadros v. City of Chicago Department of Administrative Hearings*, 2021 IL App (1st) 200273;]and Estate of Young v. Department of Revenue, 316 Ill. App. 3d 366, 248 Ill. Dec. 654, 734 N.E.2d 945, 2000 Ill. App. LEXIS 642 (Ill. App. Ct. 1st Dist. 2000)

Piecing the corporate veil of an LLC

Lewis, Yockey & Brown, Inc. v. Fetzer, 2022 IL App (4th) 210599,

Hypothetical: The County charged Acme LLC with violation of an ordinance. At the conclusion of the hearing, the ALJ makes a finding of liability and assesses the LLC for the taxes and imposes a fine Acme does not seek judicial review. The County initiates collection litigation and discovers that the LLC is without any. assets.

Can the County successfully bring an action to pierce the corporate veil and hold the members of the LLC liable for the taxes and fines?

In *Lewis, Yockey & Brown, Inc. v. Fetzer*, 2022 IL App (4th) 210599, the plaintiff, Lewis, sought to pierce the veil of an Illinois limited liability company, Lewis sought to hold the members of the limited liability personally liable for a money judgment that Lewis had won against the company. (Whereas owners of a corporation are called "shareholders," owners of a limited liability company are called "members”)
The Appellate Court, interpreting 805 ILCS 180/10-10(d), ruled that the company's debt was the debt of a member only if both of the following conditions were met:

1. the operating agreement provided that the member was personally liable for the company debt, and

2. the member had consented in writing to the adoption of that provision or had agreed to be bound by it.

These two conditions were not met in this case. Therefore, the plaintiff could not collect from the members of the LLC.

Ordinances and statutes can provide that liability attaches to those who participate in the violation or permitted he violation, so that owners of corporate entities can also be charged as defendants or respondents See *Express Valet, Inc. v. City of Chicago*, 373 Ill. App. 3d 838, 869 N.E.2d 964 (1st Dist. 2007); *Cerone v. State*, 2012 IL App (1st) 110214, 974 N.E.2d 377; *Tadros v. City of Chicago Department of Administrative Hearings*, 2021 IL App (1st) 200273;]and Estate of Young v. Department of Revenue, 316 Ill. App. 3d 366, 248 Ill. Dec. 654, 734 N.E.2d 945, 2000 Ill. App. LEXIS 642 (Ill. App. Ct. 1st Dist. 2000)

Agency's findings of facts not entitled to deference

Board of Education for Rockford Public Schools v. Illinois State Board of Education, 2022 IL App (2d) 210187

Verna Rentsch, a teacher, challenged the school district's decision to terminate her employment. She was provided with two administrative hearings. At the conclusion of the second, the hearing officer found that the district failed to prove sufficient grounds to terminate her employment. The circuit court reversed, ruling that the hearing officer's findings of fact were against the manifest weight of the evidence. The Appellate Court affirmed the trial court's decision. Below are excerpts of the court's decision:

> *We conclude that the second hearing officer's findings were against the manifest weight of the evidence. Essentially, we agree with the circuit court that the hearing officer ignored or misstated the evidence and improperly rejected the process.*
>
> *The hearing officer, without record evidence, questioned the use of the Danielson framework in a special education setting, but Kallstrom, who was certified in the Danielson framework and had a special education background, testified that the framework was used in the district at the time in such classrooms. Furthermore, the procedures employed were agreed to by the District and the REA.*
>
> *The hearing officer also took issue with District evaluators "without certification or endorsement for special education, assessing student engagement in a special education setting." But, again, the officer ignored that Kallstrom had worked seven years as a special education teacher.*

*The hearing officer also determined that **Rentsch** was not endorsed in special education. However, deputy superintendent Vosberg testified that **Rentsch**'s bilingual learning behavior specialist I approval qualified her to teach a special education classroom and that this was consistent with ISBE regulations.*

*The hearing officer also determined that the contents of the IEPs were not addressed, but Shuga testified that she discussed with **Rentsch** the students' needs as related to their IEPs and trusted that **Rentsch** provided accurate information.*

*The hearing officer also noted **Rentsch**'s complaints about class size, finding that the district provided only general denials. However, he failed to note that the record reflected that a paraprofessional was frequently present in her classroom, and he did not note Vosberg's testimony that, during the 2017-18 school year, **Rentsch** had between 1 and 11 students each period in her classroom.*

*As to Shuga, the hearing officer erroneously found that she stated that **Rentsch** was combative. There is no support for this finding in the record, as the circuit court noted. (Actually, Kallstrom characterized **Rentsch** as such.)*

*The hearing officer determined that Shuga had an unconscious bias against **Rentsch**, finding her language "stilted and slanted," and characterized the district's witnesses as selectively reporting their observations. However, the observation forms from both the PAR and remediation periods clearly reflect poorly run classes, where the students were not actively engaged or clear on what they were supposed to be doing or even where they needed to be.*

*The hearing officer found Ryan credible, but this was based on his erroneous determination that he "reviewed the entire process" and "primarily" represented the REA "during the remediation phase." This is not true. Ryan was not involved in the "entire process," nor was he even involved during **Rentsch**'s entire remediation process. Rather, he became involved during the third, i.e., final, phase of the remediation **p**rocess, and he never observed Kallstrom. Placing emphasis on his testimony when he was involved in so little of the process was unreasonable*

Adjudication of issues not raised in citation or notice to the party violates due process

Metcalf v. Chicago Housing Authority, 2022 IL App (1st) 210074-U

Where an individual has reasonable expectation of receiving a government benefit, and the government seeks to terminate that benefit, due process requires meaningful notice and an opportunity for a hearing. *Metcalf v. Chicago Housing Authority*, 2022 IL App (1st) 210074-

U stands for the proposition that a hearing officer should not enter an order terminating a benefit where the beneficiary has not received notice that the benefit may be terminated because of the hearing. In other words, the hearing officer's decision should be confined to those issues raised in the notice.

CHA provided Nicole Metcalf (Metcalf) and Lee Ridgeway (Ridgeway), with housing assistance through a housing voucher (Voucher 1). Metcalf was the abused by Ridgeway. Because of the abuse, CHA offered Metcalf moving papers and her own voucher (Voucher 2). She delayed in taking advantage of the offer. A short time later, CHA served on Ridgeway. a notice of Intent to terminate Voucher 1. The notice did not refer to Voucher 2. No notice was not served on Metcalf. Ridgeway requested an administrative hearing

Both Mitchel and Ridgeway participated in the hearing. At the hearing, CHA made two proposals; the first was to terminate Voucher 1, and the second was to give Voucher 2 to Metcalf. At the conclusion of the hearing, the hearing officer entered an order terminating Voucher 1. Further, the hearing officer explicitly declined to issue Metcalf a new voucher, finding that she disturbed other residents' peaceful enjoyment of their apartments. CHA, bound by the hearing officer's decision, terminated Voucher 1, and refused to issue Voucher 2 to Metcalf.

Metcalf and Ridgeway filed separate petitions for writ of *certiorari*, asking the circuit court to conduct a judicial review and reverse the CHA's termination. The circuit court consolidated both matters and affirmed the CHA's termination of the Vouchers.
The appellate court agreed that decision to terminate Voucher 1 was proper. However, the court found that CHA violated Metcalf's due process rights in terminating Voucher 2, without providing her with notice and an opportunity for a heating. Below is an excerpt of the decision.

> The *due process clause* protects property interests that an individual has already acquired in specific *benefits. Chi. Teachers Union, Local No. 1 v. Bd. of Educ., 2012 IL 112566, ¶ 12, 963 N.E.2d 918, 357 Ill. Dec. 520 (citing Board of Regents of State Colleges v. Roth, 408 U.S. 564, 576, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972)). To acquire a property interest in a specific benefit, one must have a legitimate claim of entitlement, or legitimate expectation, to receive or continue receiving that benefit. Polyvend, 77 Ill. 2d at 293-94 (1979) (citing Roth, 408 U.S. at 577); Ertl v. City of De Kalb, 303 Ill. App. 3d 524, 526, 708 N.E.2d 574, 236 Ill. Dec. 988 (1999). Legitimate expectations may arise from statutes, contracts, or mutually explicit understandings. Chamberlain v. Civil Service Comm'n of Village of Gurnee, 2014 IL App (2d) 121251, ¶¶ 36, 39, 385 Ill. Dec. 50, 18 N.E.3d 50.*
>
> *Since the issue of whether Metcalf acquired a unique property interest requires this court to consider federal constitutional principles, and since there is no Illinois case on point, we may consider federal case law for guidance. Key v. Aurora Housing Auth., 2020 IL App (2d) 190440, ¶ 11, 442 Ill. Dec. 159, 158 N.E.3d 1194; Mashal v. City of Chicago, 408 Ill. App. 3d 817, 823, 946 N.E.2d 508, 349 Ill. Dec. 314 (2011). We find that Pickett v. Housing Authority of Cook County, 114 F. Supp. 3d 663 (N.D. Ill. 2015), offers*

guidance. In Pickett, a tenant received a voucher and located three different units during her housing search. Id. at 666. For reasons beyond the tenant's control, however, each unit's landlord refused to contract with the housing agency. Id. After the third landlord refused, the tenant requested an extension of her voucher, but the agency denied her request and terminated her housing assistance. Id. The tenant then brought a procedural due process claim against the housing agency, and it moved to dismiss the claim, arguing that the tenant no longer possessed a property interest because her voucher had expired. Id. at 665, 667. The district court concluded that the tenant possessed a property interest, finding that, even though the tenant's voucher had expired, the tenant had "a legitimate expectation of remaining in the program" since she did everything within her control to remain in the program and was otherwise in compliance with the agency's policies. Id. at 668, 670.

In the case at bar, after Metcalf alleged domestic violence, the CHA initiated the process to separate the participant family by holding a briefing with Metcalf and issuing her the October 19, 2018 voucher and moving papers. When the CHA issued Metcalf the voucher and moving papers in response to her domestic violence allegation, Metcalf acquired a "legitimate expectation of remaining in the program" apart from the participant family. See Chamberlain, 2014 IL App (2d) 121251, ¶¶ 36, 39, 385 Ill. Dec. 50, 18 N.E.3d 50; Pickett, 114 F. Supp. 3d at 670. Further, even though Metcalf's voucher expired, she nevertheless retained a "legitimate expectation of remaining in the program," since she did everything within her control to remain in the program and was otherwise in compliance with the CHA's policies. See Pickett, 114 F. Supp. 3d at 670. Thus, we find that Metcalf possessed a "legitimate expectation of remaining in the program" apart from the participant family, and a unique, protectible property interest in continued housing assistance. See Polyvend, 77 Ill. 2d at 293-94 (citing Roth, 408 U.S. at 577); Ertl, 303 Ill. App. 3d at 526.

As Metcalf possessed a protectible property interest in continued housing assistance, the CHA was required to provide her with procedural due process protections before terminating her assistance. Specifically, the CHA was required to provide her with the following due process protections: (1) timely and adequate notice detailing the reasons for the proposed termination; (2) an opportunity to appear at a hearing, present evidence, and cross-examine adverse witnesses; (3) the right to be represented by counsel; (4) a right to a decision rendered by an impartial decision maker; (5) a right to have that decision based solely on rules of law and evidence presented at the hearing; and (6) a right to a statement by the decision maker setting forth the reasons for the decision and the evidence upon which it was based. See Tolliver, 2017 IL App (1st) 153615, ¶ 22, 415 Ill. Dec. 674, 82 N.E.3d 1220 (citing Goldberg v. Kelly, 397 U.S. 254, 266-71, 90 S. Ct. 1011, 25 L. Ed. 2d 287 (1970)). Thus, when Ridgeway informed the hearing officer that Metcalf brandished a knife and presented testimony against Metcalf, the CHA was required to provide her these procedural due process protections before terminating her assistance on that basis. See id. The focus of the proceeding was to terminate Ridgeway's assistance and provide a voucher for Metcalf, but the hearing officer, without giving Metcalf an opportunity to defend herself, issued a decision terminating her assistance. See id.

The CHA failed to provide Metcalf with all the due process protections to which she was entitled. First, the CHA failed to provide Metcalf with separate notice; it provided the amended ITT notice to the participant family's subsidized unit. Further, the notice also was addressed to Ridgeway and noted violations only committed by him. In addition, at the informal hearing, Metcalf was not provided ***[*** *an opportunity to appear on her own behalf, present evidence, or cross-examine Ridgeway's adverse witnesses. Nor was she provided the opportunity to be represented by counsel. Instead, Metcalf merely testified as a witness against Ridgeway. Thus, by failing to provide Metcalf with procedural due process protections before terminating her assistance, the CHA violated her due process rights. See id.*

Does an ALJ have the authority to rule an ordinance invalid (on its face or as applied) because the ordinance conflicts with the state or federal statute?

City of Chicago v. Wendella Sightseeing, Inc., 2019 IL App (1st) 181428, 143 N.E.3d 771; *Mercury Sightseeing Boats, Inc. v. County of Cook*, 2019 IL App (1st) 180439, 142 N.E.3d 777

Below are some factors you may want to consider.

Factors supporting authority
One can argue that the constitutional challenge prohibition implicitly leaves open the opportunity to rule on statutory claims.

In City of Chicago v. Wendella Sightseeing, Inc., 2019 IL App (1st) 181428, 143 N.E.3d 771, the ALJ found that the city's tax, as applied to Wendella, violated the federal statute. The appellate court agreed. The decision does not indicate any concern as to the ALJ's authority to find that the ordinance, as applied, violated the federal statute. The decision does not indicate any concern as to the ALJ's authority to find that the ordinance, as applied, violated the federal statute

In Mercury Sightseeing Boats, Inc. v. County of Cook, 2019 IL App (1st) 180439, 142 N.E.3d 777, the ALJ found that the county tax ordinance as applied to Mercury violated a federal statute. The Circuit Court reversed finding that the department of Administrative Hearings was without jurisdiction because Mercury did not file a timely protest, The Appellate court disagreed and found that DOAH did have jurisdiction. The court remanded the case with instructions that the circuit court should consider the merits of DOAH's final decision. The decision does not indicate any concern as to the ALJ's authority to find that the ordinance, as applied, violated the federal statute

Factors opposing authority

A decision that a county ordinance violates a federal statute will involve an interpretation of the Supremacy Clause.

A decision that any ordinance violates a state statute could involve an interpretation of the constitutions home rule provisions

Several decisions stand for the proposition that administrative agencies are without jurisdiction to decide whether a particular statute or regulation that the agency is charged with enforcing is constitutional. DOAH is an administrative agency. One could argue the judicial reasoning found in these decisions is applicable where the validity of an ordinance is challenged on the basis that it conflicts with a federal or state statute. Yellow Cab Co. v. City of Chicago, 938 F. Supp. 500 (N.D. Ill. 1996)

> "Generally, an administrative agency is "without power or expertise to pass upon the constitutionality of administrative or legislative action." Spiegel, Inc. v. Federal Trade Commission, 540 F.2d 287, 294 (7th Cir. 1976). See also Alleghany Corporation v. Haase, 896 F.2d 1046, 1051-52 (7th Cir. 1990) (noting that courts commonly hold that administrative agencies lack the power to determine the constitutionality of legislation they enforce), vacated in part as moot sub nom Dillon, Commissioner, Indiana Department of Insurance v. Alleghany Corp., 499 U.S. 933, 113 L. Ed. 2d 441, 111 S. Ct. 1383 (1991); Tillett v. Lujan, 931 F.2d 636, 640 (10th Cir. 1991) ("Nor do we generally commit to an administrative agency the power to determine the constitutionality of its regulations [or of legislation]"

Hunt v. Daley, 286 Ill. App. 3d 766, 677 N.E.2d 456 (1st Dist. 1997)

> "We first address the waiver issue. At the outset, we note that the parties agree that, as is the case with administrative agencies generally, the Mayor's License Commission did not have the power to invalidate a statute in the first instance because of any substantive due process violation. See generally 2 Am. Jur. 2d Administrative Law § 77, at 99 (1994) ("it is axiomatic that an administrative agency has no power to declare a statute void or otherwise unenforceable."). See also Yellow Cab Co. v. City of Chicago, 938 F. Supp. 500 (N.D. Ill. 1996) (administrative agencies lack power to determine the constitutionality of legislation which they must enforce); Palm Harbor Special Fire Control District v. Kelly, 516 So. 2d 249 (Fla. 1987) (administrative agency has no power to declare a statute void or unenforceable)."

Failure to raise constitutional challenge an administrative hearing waives constitutional claim

Polanco v. Cook County Officers Electoral Board, 2022 IL App (1st) 220712-U

Court ruled that even though administrative body lacked authority to decide constitutional claim failure to We lack the authority to determine the constitutionality of a County ordinance. Then, why does a party risk forfeiting this issue, by not raising it at the administrative adjudication stage? An explanation can be found in Polanco v. Cook County Officers Electoral Board, 2022 IL App (1st) 220712-U.

Are interview notes privileged?

Board of Educ. of Deerfield Public Schools District No. 109 v. Deerfield Educ. Ass'n, 2022 IL App (4th) 210359

The Board of Education (school) received complaints about one of its teachers, Jennifer Russell. The teacher was represented by the Deerfield Education Association (Union). The school retained an attorney to interview the parents and others.

After the interviews were concluded, the school notified the teacher that it intended to issue a notice of remedial warning. Pursuant to the union bargaining agreement, the union demanded that the school produce the lawyer's notes relating to the interviews. The school refused to do so.

The school then issued the notice of remedial warning. The union filed an unfair labor charge with the Illinois Education Labor, Relations Board (Board). A hearing was held before an ALJ. The ALJ ruled that the school was not required to produce the attorney's interview notes, as the notes constituted a work product and were privileged. The ALJ also recommended that the unfair labor charge be dismissed. The school adopted the ALJ's recommended decision.

The appellate court reversed

1. ALJ erred in determining that the attorney's interview notes were privileged without:(a) conducting an in-camera review of the notes, or (b) at least requiring an affidavit as to the contents of the notes.

> *"A party claiming that discovery material is privileged may not merely assert that the matter is confidential and privileged; rather, he should support such a claim 'either by [(1)] producing the materials for an in-camera inspection or [(2)] by submitting affidavits setting forth facts sufficient to establish the applicability of the privilege to the particular documents.'*

2. Where a party asserts a work product privilege, that party has the burden of proving that the notes were prepared for pending litigation or litigation likely to be filed in the future. The school failed to meet that burden.

Under Illinois law, the work product doctrine requires that the material be made in preparation for trial. Ill. S. Ct. R. 201(b)(2) (eff. July 1, 2014). Applying this standard, the District did not meet its burden to show that Knittle made her interview notes in preparation for trial because (1) the District did not present any evidence that there was any pending or impending litigation and (2) hiring an attorney to conduct an investigation in itself is not indicative of pending litigation.

First, nothing in the record shows that litigation—which is commenced upon the filing of a complaint (735 ILCS 5/2-201 (West 2018))—was pending or impending at the time Knittle conducted her interviews. The record is devoid of evidence showing that any parent even threatened to take legal action against Russell or the District. On the contrary, the record suggests lower stakes than the District asserts because the parents merely "expressed that they were concerned for the welfare" of the students—a statement far short of threatening litigation. Furthermore, although the investigation could have resulted in Russell's termination and thus possible litigation from Russell, that possibility is not sufficient to demonstrate that litigation was pending. The possibility of litigation is always present when an investigation resulting from parental complaints is conducted, but that possibility—without more does not justify the application of the work product doctrine.

3. Documents are not privileged unless they show the attorney's reasoning or strategy. That showing was not made.

"In Illinois, the work product doctrine covers only opinion work product, which includes an attorney's theories, mental impressions or litigation plans and thus [does] not encompass much of the work generated on a party's behalf in preparation for trial Illinois work product doctrine does not protect ordinary work product. Ordinary work product is material that does not include a party's attorney's theories, impressions, or plans." (Internal quotation marks omitted.) Ralph Ruebner & Katarina Durcova, Survey of Illinois Law: Waiver of the Attorney-Client Privilege and Work Product Protection, 37 S. Ill. U. L.J. 825, 831 (2013). . . .

Ultimately, the District did not meet its burden to demonstrate that (1) Knittle's interview notes were made in preparation for trial or (2) the interview notes contained Knittle's mental impressions or thoughts. This result is entirely foreseeable because the District did not submit the interview notes for in camera review or include affidavits detailing the protected material the interview notes contained. See Mlynarski, 213 Ill. App. 3d at 431 ("The party who claims the privilege has the burden of showing the facts which give rise to the privilege.").

Does voluntary payment of a fine or tax preclude a challenge?

Addison Group, Inc. v. Daley, 382 Ill. App. 3d 1036, 889 N.E.2d 701 (1st Dist. 2008); McIntosh v. Walgreens Boots Alliance, Inc., 2019 IL 123626, 135 N.E.3d 73

Addison Group, Inc. v. Daley, 382 Ill. App. 3d 1036, 889 N.E.2d 701 (1st Dist. 2008) involved an action by the City of Chicago to revoke a liquor license. Previously, the licensee had been

cited for other violations. Rather than challenging these charges, the licensee paid the fine. Under the rules of the liquor control commission, these payments constituted an admission of liability. The licensee argued that it should be able to present evidence that the fine payments were made only because the cost of contesting the charges would have been greater than the fines and therefore, the payments are merely made as a matter of convenience. However, under the Commission's rules, the licensee was prohibited from providing evidence showing the reasons for the fine payments. The court held that the administrative agencies are given a great deal of leeway in determining what evidence is to be considered and that the commission's rule prohibiting the licensee from submitting evidence as to the reasons for the fine payments did not constitute an abuse of discretion

However, the panel suggested that if the Commission's rules had not barred Addison from litigating the issue of why the fine was paid, Addison should be given the opportunity to rebut the presumption that the payment was an admission of guilt.

> *It [Addison]voluntarily paid fines and accepted a suspension, but it never formally admitted the facts underlying the charges for which it accepted these sanctions. Courts have not treated uniformly the* ***voluntary payment*** *of* ***fines****. Some courts have held evidence of the voluntary payment inadmissible in a later case because the accused did not admit the underlying facts. See, e.g., Hannah v. Ike Topper Structural Steel Co., 120 Ohio App. 44, 47, 201 N.E.2d 63, 65 (1963); Waszczak v. City of Warner Robins, 221 Ga. App. 528, 529-30, 471 S.E.2d 572, 574-75 (1996). Other courts have held that the accused effectively admitted to the underlying offense. See Wilson v. Burke, 356 Mo. 613, 202 S.W.2d 876 (1947);* ***[***9]*** *Krystal Jeep Eagle, Inc. v. Bureau of Professional & Occupational Affairs, 725 A.2d 846, 850 (Pa. Commw. 1999); Kravis v. Hock, 136 N.J.L. 161, 54 A.2d 778 (N.J. 1947).*
>
> *Some courts have held that the voluntary payment qualifies as rebuttable evidence of the charged violation. "[A]* ***voluntary payment*** *of* ***fine*** *and costs is evidence of the violation. However, it is not conclusive and does not foreclose an inquiry into defenses and the guilt of the violation underlying the revocation." Bruce Appeal, 41 Pa. D. & C.2d 195, 196 (1966).*
>
> *In Chodorov v. Eley, 239 Va. 528, 391 S.E.2d 68, 6 Va. Law Rep. 2085 (1990), Eley's automobile struck the rear of the car in which Chodorov rode as a passenger. Eley voluntarily paid a fine to dispose of a charge that he followed too closely the car he hit. Chodorov sued Eley for negligence. The trial court allowed Chodorov to introduce evidence of the fine, but it also permitted Eley to explain that he paid the fine to keep from having to take time off from work. The jury found Eley not liable for the accident. The appellate court affirmed, holding that by voluntarily paying the fine Eley did not judicially admit to following too closely:*
>
>> *"Although the jury reasonably could have found from this evidence* ***that*** *Eley, by paying the fine voluntarily, had acknowledged that he was following too closely, the jury also reasonably could have found that Eley paid the fine to avoid* the inconvenience and expense of contesting the charge." *Chodorov, 239 Va. at 532, 391 S.E.2d at 71*.

McIntosh v. Walgreens Boots Alliance, Inc., 2019 IL 123626, 135 N.E.3d 73 involved a consumer's class action complaint against a major pharmacy retailer alleging the retailer had unlawfully collected a city tax on bottled water purchases that were exempt from taxation. Below are excerpts of the decision

> The common-law voluntary payment doctrine embodies the ancient and "universally recognized rule that money voluntarily paid under a claim of right to the payment and with knowledge of the facts by the person making the payment cannot be recovered back on the ground that the claim was illegal." *Illinois Glass Co. v. Chicago Telephone Co., 234 Ill. 535, 541, 85 N.E. 200 (1908)*; see also *Vine Street Clinic v. HealthLink, Inc., 222 Ill. 2d 276, 298, 856 N.E.2d 422, 305 Ill. Dec. 617 (2006)*; *King v. First Capital Financial Services Corp., 215 Ill. 2d 1, 27-28, 828 N.E.2d 1155, 293 Ill. Dec. 657 (2005)*; *Illinois Graphics, 159 Ill. 2d at 497*; *Kanter & Eisenberg v. Madison Associates, 116 Ill. 2d 506, 512, 508 N.E.2d 1053, 108 Ill. Dec. 476 (1987)*; *Freund v. Avis Rent-A-Car System, Inc., 114 Ill. 2d 73, 79, 499 N.E.2d 473, 101 Ill. Dec. 885 (1986)*; *Getto v. City of Chicago, 86 Ill. 2d 39, 48-49, 426 N.E.2d 844, 55 Ill. Dec. 519 (1981)*; *Yates v. Royal Insurance Co., 200 Ill. 202, 206-07, 65 N.E. 726 (1902)*; *Elston v. City of Chicago, 40 Ill. 514, 518-19 (1866)*.
>
> **[**
>
> To avoid application of this long-standing doctrine, it is necessary to show not only that the claim asserted was unlawful but also that the payment was not voluntary, such as where there was some necessity that amounted to compulsion and payment was made under the influence of that compulsion. *King, 215 Ill. 2d at 28, 30*; *Illinois Graphics, 159 Ill. 2d at 497*; *Geary v. Dominick's Finer Foods, Inc., 129 Ill. 2d 389, 393-94, 544 N.E.2d 344, 135 Ill. Dec. 848 (1989)*; *Freund, 114 Ill. 2d at 79*; *Getto, 86 Ill. 2d at 49*; *Illinois Glass Co., 234 Ill. at 541*; *Yates, 200 Ill. at 207*.
>
> In addition to compulsion or duress, other recognized exceptions to the voluntary payment doctrine **[**include fraud or misrepresentation or mistake of a material fact. *Vine Street Clinic, 222 Ill. 2d at 298*; *King, 215 Ill. 2d at 30*; *Illinois Graphics, 159 Ill. 2d at 497*; *Freund, 114 Ill. 2d at 79*; *Getto, 86 Ill. 2d at 49*; *Illinois Glass Co., 234 Ill. at 541*; *Yates, 200 Ill. at 207*.
>
> The voluntary payment doctrine is a common-law rule of general application, including cases involving the erroneous collection of a tax. *Yates, 200 Ill. at 206*; see also *Freund, 114 Ill. 2d at 79-84*; *Getto, 86 Ill. 2d at 48-53*; *Adams v. Jewel Cos., 63 Ill. 2d 336, 343-44, 348 N.E.2d 161 (1976)*; *Hagerty v. General Motors Corp., 59 Ill. 2d 52, 59-60, 319 N.E.2d 5 (1974)*. Generally, taxes paid voluntarily though erroneously may not be recovered without statutory authorization. *Freund, 114 Ill. 2d at 79*; *Getto, 86 Ill. 2d at 48*; *Adams, 63 Ill. 2d at 343-44*; *Hagerty, 59 Ill. 2d at 59*. This rule also applies to tax payments made to an intermediary such as a retailer. *Freund, 114 Ill. 2d at 79*; *Adams, 63 Ill. 2d at 343-44*; *Hagerty, 59 Ill. 2d at 59-60*.
>
> In support of his assertion that the voluntary payment doctrine does not apply to claims brought under the Consumer Fraud Act, McIntosh relies primarily on the appellate court's decisions in *Nava v. Sears, Roebuck & Co., 2013 IL App (1st) 122063, 995 N.E.2d 303, 374 Ill. Dec. 164*, *Ramirez v. Smart Corp., 371 Ill. App. 3d 797, 863 N.E.2d 800, 309 Ill.*

> *Dec. 168 (2007)*, and *Flournoy v. Ameritech, 351 Ill. App. 3d 583, 814 N.E.2d 585, 286 Ill. Dec. 597 (2004)*. We find, however, that these cases do not establish a categorical exemption from the voluntary payment doctrine for claims brought under the Consumer Fraud Act.
>
> In *Flournoy*, the plaintiff brought an action under the Consumer Fraud Act against the defendant, a provider of telephone service to prison inmates. *Flournoy, 351 Ill. App. 3d at 584-85*. The plaintiff alleged that the defendant engaged in a deceptive course of conduct by offering telephone service under a specified rate structure and then fraudulently collecting multiple fees and surcharges to reinitiate calls that had been prematurely and deliberately terminated by the defendant. *Id. at 586-87*. The gravamen of the plaintiff's claim was that the defendant had misrepresented the true rate of the telephone service by terminating calls prematurely and imposing duplicate fees when the plaintiff placed the same call again. The appellate court held that the plaintiff's claim was not barred by the voluntary payment doctrine because he had alleged a deceptive practice under the Consumer Fraud Act that was "in the nature of fraud." *Id. at 587*. The decision in *Flournoy* is ***HN10***[] a straightforward application of the fraud exception to the voluntary payment doctrine. As such, it does not support the assertion that statutory consumer fraud claims are categorically exempt from the voluntary payment doctrine

Statutory deadline for issuance of administrative decision ruled to be directory

Brennan v. Board of Education, 2022 IL App (1st) 201162-U

This decision involves the termination of the employment of a Chicago Public Schools tenured teacher. She was given an administrative hearing. The hearing officer issued a decision recommending termination of employment. However, the hearing officer issued the recommended decision more than 30 days after the conclusion of the hearing.

The governing statute requires that hearing officer submit a written recommended decision within 30 days after conclusion of hearing. the hearing officer did not meet the 30-day deadline. Did the School Board lose jurisdiction?

Section 34-85(a)(6) of the School Code provides in part

> "The hearing officer shall within 30 calendar days from the conclusion of the hearing report to the general superintendent findings of fact and a recommendation as to whether or not the teacher or principal shall be dismissed and shall give a copy of the report to both the teacher or principal and the general superintendent."

On appeal, the teacher argued that the Board lost jurisdiction because the hearing officer failed to meet the 30-day deadline. The Appellate Court rejected the argument, finding that the statutory provision is to be interpreted as discretionary – not mandatory. Below is an excerpt of the court's decision.

Petitioner's argument implicates issues of statutory construction and the Board's jurisdiction, both of which are questions of law that we review de novo. Roberts v. Alexandria Transp., Inc., 2021 IL 126249, ¶ 28; J&J Ventures Gaming, LLC v. Wild, Inc., 2016 IL 119870, ¶25, 409 Ill. Dec. 31, 67 N.E.3d 243. The fundamental rule of statutory construction is to ascertain and effectuate the legislature's intent. In re Marriage of Dynako, 2021 IL 126835, ¶ 14. We look to the plain language of the statute and give each term its plain and ordinary meaning and construe the language of the statute in light of other relevant statutory provisions. Haage v. Zavala, 2021 IL 125918, ¶ 44.

[

Section 34-85(a)(6) of the School Code provides in part

> *"The hearing officer shall within 30 calendar days from the conclusion of the hearing report to the general superintendent findings of fact and a recommendation as to whether or not the teacher or principal shall be dismissed and shall give a copy of the report to both the teacher or principal and the general superintendent."*

*Petitioner contends the legislature's use of the phrase "shall within 30 days *** report *** findings of fact and a recommendation" should be given a mandatory reading, and that the hearing officer's failure to comply with the legislature's mandate should result in a finding that the Board loses jurisdiction to discipline a teacher. Petitioner, however, fails to advance any argument addressing the relevant principles our supreme court has identified when examining legislative procedural commands. Our supreme court has repeatedly observed a distinction between mandatory and directory legislative commands. The legislature's use of the word "shall" suggests a government official has an "obligatory duty" that it is required to perform, rather than possessing discretion to choose whether to perform or not. See People v. Delvillar, 235 Ill. 2d 507, 514, 922 N.E.2d 330, 337 Ill. Dec. 207 (2009) (explaining distinction between mandatory and permissive statutory provisions). A second question, however, asks whether a statutory command is mandatory or directory. The court recently reiterated*

> *'the law presumes that statutory language issuing a procedural command to a government official is directory rather than mandatory, meaning that the failure to comply **with** a particular procedural step will not have the effect of invalidating the governmental action to which the procedural requirement relates. That presumption can be overcome under either of two conditions: (1) when there is negative language prohibiting further action in the case of noncompliance or (2) when the right the provision is designed to protect would generally be injured under a directory reading.'" Lakewood Nursing & Rehab. Ctr., LLC v. Dep't of Pub. Health, 2019 IL 124019, ¶ 29, 441 Ill. Dec. 824, 158 N.E.3d 229 (quoting In re James W., 2014 IL 114483, ¶ 35, 381 Ill. Dec. 621, 10 N.E.3d 1224 (citing People v. M.I. (In re M.I.), 2013 IL 113776, ¶¶ 16-17, 989 N.E.2d 173, 370 Ill. Dec. 785)).*

*Here, section 34-85(a)(6), in part, instructs the hearing officer to issue findings of fact and a recommendation within 30 days from the conclusion of the **administrative** hearing. The statute is silent as to what, if any, consequences must result if the hearing officer does not comply with the 30-day requirement. "[T]he absence of language specifying a particular consequence for noncompliance with the provision results in a directory interpretation" of the statutory command. Lakewood Nursing & Rehab. Ctr., LLC, 2019 IL 124019, ¶ 33, 441 Ill. Dec. 824, 158 N.E.3d 229 (citing In re*

M.I., 2013 IL 113776, ¶ 16, 989 N.E.2d 173, 370 Ill. Dec. 785). We therefore presume that the 30-day requirement in section 34-85(a)(6) is directory rather than mandatory.

Ignorance of law is a defense where party is misled by government

Pumilia v. City of Rockford, 2021 IL App (2d) 200681-U

1) Ignorance of the law can be a defense where the ignorance is based on misinformation provided by government employees.

2) Local officials are immune from liability when exercising their discretion – even where their misconduct is willful and wanton.

Christopher Pumilia sought to sell used cars at a former used car lot in Rockford. The City of Rockford (the City), refused to allow him to sell cars, finding that a special use permit to sell cars at the property had lapsed. He filed a complaint seeking a declaration that he had the right to sell cars at the property. The trial court granted the plaintiff summary judgment on his complaint and awarded him damages. The Appellate Court affirmed the trial court's order awarding the plaintiff summary judgment but vacated the award of damages.

The City argued that Christopher was not entitled to relief because he filed the wrong form, He filed *a special use permit application*. He should have filed a *request to reestablish the special use*. The City's employees instructed him to file *special use permit application*. The Appellate Court affirmed the trial court's ruling that it was equitable to treat the special use permit application as his request to reestablish the special use.

> *In so ruling, we reject the City's argument that the plaintiff should be bound by the improper document he filed because "ignorance of the law is no excuse." The City points to no case, however, **where** that doctrine has been applied when the plaintiff's mistake of law was based on wrong information he received from the City's own employees. As we believe it would be unjust to apply that doctrine based on the circumstances of this case, we decline to do so. See Halleck v. County of Cook, 264 Ill. App. 3d 887, 893, 637 N.E.2d 1110, 202 Ill. Dec. 374 (1994) (equitable estoppel will be applied against municipal bodies if it is necessary to prevent fraud and injustice).*

In reversing the trial court's award of damages, the panel looked to the Tort Immunity Act

> *Section 2-201 of the Act provides that "a public employee serving in a position involving the determination of policy or the exercise of discretion is not liable for an injury resulting from his act or omission in determining policy when acting in the exercise of such discretion even though abused." 745 ILCS 10/2-201 (West 2018); In re Chicago Flood Litigation, 176 Ill. 2d at 193-94. As such, section 2-201 immunity protects against both negligent and willful and wanton conduct. Nichols v. City of Chicago Heights, 2015 IL App*

*(1st) 122994, ¶ 27, 391 Ill. Dec. 849, 31 N.E.3d 824. Section 2-209 of the Act extends immunity granted to public employees to municipalities. 745 ILCS 10/2-109 (West 2018) ("A **local** public entity is not liable for an injury resulting from an act or omission of its employee where the employee is not liable"). Where an official's conduct requires deliberation or the exercise of judgment, his or her actions are discretionary and are subject to immunity. Donovan v. County. of Lake, 2011 IL App (2d) 100390, ¶ 62, 951 N.E.2d 1256, 351 Ill. Dec. 592.*

No violation of APA where challenged agency rules mirrored federal rules

Northwestern Illinois Area Agency on Aging v. Basta, 2022 IL App (2d) 210234

The defendant, a state agency, passed federal funds to the plaintiff. The plaintiff alleged that the defendant's monitoring policy was invalid because it constitutes a rule and was not promulgated through the procedures set out in the Administrative Procedure Act. The appellate court upheld the trial court's dismissal of a claim, finding that the requirements either did not constitute rulemaking or were already required by federal regulation.

Agency required to provide hearing - rather than simply dismissing petition

Nyhammer v. Basta, 2022 IL App (2d) 200460 Appeal granted by Nyhammer v. Basta, 2022 Ill. LEXIS 468 (Ill., May 25, 2022)

HOLDINGS: [1]-The Illinois Department on Aging was required to give the Northwestern Illinois Area Agency on Aging (NIAAA) adjudicatory hearings and determine the merits of its petitions, and the Department's summary dismissals of the NIAAA's petitions and its conclusory statements that the petitions failed to present contested cases were insufficient for meaningful judicial review, 5 ILCS 100/10-50(a) (2018); the Department failed and refused to provide a means for administrative review for the determination of the NIAAA's rights, duties, and responsibilities because it failed to grant a hearing where findings of fact and conclusions of law were determined after an opportunity to be heard.

PART THREE – INTERPRETATIONS

Agency's interpretation of statute found to be unreasonable and not entitled to deference

Kishwaukee Auto Corral, Inc. v. Department of Revenue, 2021 IL App (1st) 200236

A sizable body of case law stands for the proposition that in interpreting an ambiguous ordinance or statute, the ALJ should give significant deference to the interpretation adopted by the government agency responsible for the implementation of that ordinance or statute.
Kishwaukee Auto Corral, Inc. v. Dept. of Revenue demonstrates that there are limitations as to that deference. It involves 35 ILCS 120/6d. The statute covers the situation where a car dealer is both the vendor and the lender. Under the statute, where the car dealer advances the sales-tax as part of the loan, the dealer may obtain a rebate or deduction on that tax payment where: (a) the buyer defaults on the loan, and (b) the dealer writes off the debt and makes no attempt to collect.
35 ILCS 120/6d provides:

> "A retailer is relieved from liability for any tax that becomes due and payable if the tax is represented by amounts that are found to be worthless or uncollectible, have been charged off as bad debt on the retailer's books and records in accordance with generally accepted accounting principles, and have been claimed as a deduction pursuant to *Section 166 of the Internal Revenue Code* on the income tax return filed by the retailer**. A retailer that has previously paid such a tax may, under rules and regulations adopted by the Department, take as a deduction the amount charged off.**

The Illinois Department of Revenue promulgated a regulation which provided that the rebate would not be available if the dealer is a "cash basis taxpayer.". After examining the wording of the statute together with its legislative history, the court found no basis for denying a rebate solely because the dealer was a "cash basis taxpayer."

The Department argued that recovery under the second sentence of the statute the deduction is conditioned upon rules and regulations adopted by the Department That sentence reads: "**A retailer that has previously paid such a tax may, under rules and regulations adopted by the Department, take as a deduction the amount charged off."** ". After the enactment of section 6d, the Department adopted a regulation stating that "[r]etailers or lenders that file federal returns on a cash basis and cannot claim a deduction.

In rejecting that argument, the court explained:

> A *reasonable* construction of an ambiguous statute by the agency charged with its **administration** and enforcement can create a presumption of correctness, if contemporaneous, consistent, long-continued, and accompanied by legislative acquiescence (*Citibank, N.A. v. Ill. Dep't of Revenue, 2017 IL 121634, ¶ 39, 422 Ill. Dec. 833, 104 N.E.3d 400*). However, the Department's regulation in this case is not reasonable. When Kishwaukee sells a car, it is required to pay ROT on the car's entire value up front. If the buyer defaults and Kishwaukee repossesses the car, it resells the car and *again* pays the full ROT up front. To deny Kishwaukee a refund under these circumstances would be to allow the State double recovery, which is both unreasonable and contrary to the express intent of the legislature in enacting *section 6d*

Is an ALJ's interpretation of a statute or ordinance entitled to judicial deference?

City of Chicago v. Wendella Sightseeing, Inc., 2019 IL App (1st) 181428, 143 N.E.3d 771

In a tax case, upon completion of an administrative hearing, the ALJ issues a decision. In that decision, the ALJ sets out an interpretation of the relevant ordinance, and rules against Revenue. That interpretation differs from Revenue's interpretation. Revenue seeks judicial review. Which interpretation is entitled to deference by the court?

In. *In City of Chicago v. Wendella Sightseeing, Inc.*, 2019 IL App (1st) 181428, 143 N.E.3d 771, the ALJ ruled in favor of Wendella. The ALJ's interpretation of an ordinance favored Wendella. When the case reached the appellate court, Wendella argued that the DOAH interpretation should be given deference. The appellate court rejected that argument and explained:

> An administrative agency's interpretation of a statute's language constitutes a question of law that we review *de novo*. *Sloper v. City of **Chicago**, Department of Administrative Hearings, 2014 IL App (1st) 140712, ¶ 15, 388 Ill. Dec. 10, 23 N.E.3d 1208*. "But we will not substitute our interpretation of a statutory provision for a reasonable interpretation adopted by the agency charged with the statute's administration." *Id.* Pursuant to *Sloper*, Wendella contends that we should give deference to the DOAH's interpretation of *section 5(b)* after MTSA. We disagree, ***HN5***[] as MTSA is a federal statute and Congress has not made the DOAH responsible for its administration. DOAH is also not charged with administering the amusement tax. Rather, the Chicago Municipal Code provides that the Department of Finance, through the Comptroller, has that responsibility. DOAH does not administer the amusement tax, its interpretation of the tax is not entitled to any special deference.

Where remand order does not require agency to adopt court's interpretation of statute, agency need not do so

Improta v. White, 2021 IL App (1st) 201140

Where judicial review court finds agency misinterpreted statute and remands for further hearings, agency need not alter its interpretation, in rendering a second final decision, if the remand order did not require agency to adopt court's statutory interpretation.

Consider the following scenario. You rendered a final decision. In doing so, you interpreted an ordinance. The respondent then filed an action seeking judicial review. The trial court entered a

remand order which reversed your decision and found your interpretation of the ordinance to be erroneous. The order set out, in detail, the court's interpretation which was inconsistent with your interpretation. The court's remand order calls for *further consideration* of the matter pursuant to the ordinance. However, the order does not mandate that the supplemental order grant the respondent any specific relief.

The County disagrees with the court's interpretation of the ordinance. Can the County appeal the Circuit court's remand order; or is it required to enter a supplemental final order? This decision holds that the court's order is an interim order and not appealable even though it reversed your decision, because it called for *further consideration*.

2018 Final Administrative Decision

Improta v. White involves the title to a motor vehicle. Mr. Improta applied for an Illinois title for the car. A statutory database search showed the State of Texas branded the car "junk" in October 2017 due to flood damage. The State of New Hampshire issued the vehicle a rebuilt title after it passed various inspections required by New Hampshire

The Illinois Secretary of State denied Mr. Improta's request for the issuance of a title. He appealed and was given an administrative hearing. At the conclusion of the hearing, the hearing officer rendered a recommended decision finding that under the Vehicle Code the vehicle was junk. The Secretary adopted the hearing officer's recommended decision.

2019 Circuit Court Order

The vehicle owner sought judicial review. On August 15, 2019, after briefing, the circuit court entered a written order reversing the Secretary's decision and remanding for further consideration. The circuit court made the following findings. Sections 3-104.5 and 3-301 both use the mandatory language "shall" with respect to the Secretary's titling obligation: section 3-104.5 required the Secretary to issue a junk certificate based on Texas's junk title, and section 3-301 required the Secretary to issue a rebuilt title provided the vehicle passed a section 3-308 inspection. The Secretary's "conclusion that it should be allowed to adhere to one section of the [Vehicle Code] without adhering to another is a mistake." The Secretary's "application of section 3-104.5 is clearly erroneous in light of the [Vehicle Code's] definition of 'junk vehicle,'" since the vehicle was operational and there was no evidence that the vehicle had been "dismantled, crushed, compressed, flattened. or otherwise reduced to a state in which it can no longer be returned to an operable state." The Secretary "committed clear error in making its decision." The circuit court ordered, "The decision of the [Secretary] is reversed and remanded for further consideration of [p]laintiff's Certificate of Title application, pursuant to 625 ILCS 5/3-301.",

2019 Supplemental Administrative decision

On December 12, 2019, the hearing officer—without any additional briefing or hearings—issued a second recommended decision which included amended findings of fact and conclusions of law. The hearing officer's findings of law were inconsistent with those of the Circuit Court. The hearing officer again recommended that title not be issued to the vehicle as the vehicle was junk. The Sec. adopted the hearing officer's recommended decision.

2020 Circuit Court Order

On January 16, 2020, Mr. Improta filed another complaint for **administrative** review in seeking review of the Secretary's December 12, 2019, supplemental order. In count I, he sought a judgment declaring the December 12, 2019, supplemental final order "void and of no force or effect," and requested attorney fees and costs. Count II sought judicial review of the Secretary's supplemental final order.

The circuit court found the Secretary incorrectly interpreted the circuit court's prior order "to mean that the [c]ourt merely disagreed with [the Secretary's] finding, and that [the Secretary] could affirm its own decision so long as it 'considered' [the circuit court's] August 15, 2019 [o]rder." The circuit court clarified that its prior order "makes perfectly clear" that the Secretary erred by denying plaintiff's application for a vehicle title. The circuit court criticized the Secretary's interpretation of "the phrase 'for further consideration' to mean that [the circuit court's] reversal of the **administrative** decision was seemingly conditional upon [the Secretary] agreeing with the [circuit] [c]ourt's finding." The circuit court refused to find the Secretary in contempt because the circuit court's order "provided [the Secretary] with just enough ambiguity to possibly misinterpret the August 15, 2019 [o]rder." The circuit court ordered the Secretary to issue plaintiff a certificate of title for the vehicle.

2021 Appellate Court Decision

The Secretary appealed the circuit court 2020's decision**.** Mr. Improta argued that the appeal was untimely in that the Secretary should have appealed the 2019 Circuit Court order. The Appellate Court rejected this argument and explained:

> Here, the circuit court's August 15, 2019, order was nonfinal because it remanded the case to the Secretary "for further consideration of [p]laintiff's Certificate of Title application, pursuant to *625 ILCS 5/3-301*." The order clearly contemplated additional consideration of the facts and the law by the Secretary. The circuit court may have found that the Secretary clearly erred by finding that the vehicle was junk, but the circuit court's August 15, 2019, order did not direct the Secretary to issue a rebuilt title and contained no discussion as to whether plaintiff's title application satisfied all the criteria for a rebuilt title under *section 3-301* of the Vehicle Code—a task the circuit court expressly left to the Secretary. On remand, the Secretary did as he was instructed, and concluded that not only was the vehicle junk, but that plaintiff's application for a certificate of title was insufficient. The parties then returned to the circuit court for review of the Secretary's supplemental final order, which the circuit court reversed with instructions that the Secretary issue a certificate of title. The Secretary filed a notice of appeal within 30 days of the circuit court's September 21, 2020, order instructing the Secretary to issue a certificate of title. We reject plaintiff's argument—and the circuit court's view expressed in the September 21, 2020, order—that the August 15, 2019, order was a final and appealable order, as it did not fully resolve the issue of whether plaintiff was entitled to a certificate of title. We find the Secretary's notice of appeal was timely and we have jurisdiction over the Secretary's appeal.

"Presumed" means rebuttable. "Deemed" means irrefutable.

Jackson v. TSA Processing Chicago, Inc., 2021 IL App (2d) 200769

What is the difference between the word presumed at of the word deemed?

Some statutes and ordinances provide those certain facts are **presumed** to be true, under specific circumstances. Other statutes and ordinance provide that under specific circumstances certain facts **shall be deemed** to be true. What is the difference?

This case involves the interpretation of a regulation which provides that the date of receipt of a notice is presumed to be the fifth day following the government's mailing of the notice. The trial court treated the presumption as irrebuttable and dismissed Mr. Jackson's suit as untimely

The appellate court reversed, ruling that this presumption was rebuttable, and Mr. Jackson successfully rebutted it. The panel distinguished the regulation's wording from statutes and regulations which provide that receipt "shall be deemed" to occur on a certain date after mailing. The court opined that phrase "shall be deemed" constitutes an irrebuttable presumption.

In this case, Mr. Jackson filed a complaint with the Illinois Department of Human Rights alleging that his former employer discriminated against him because of his disability. The Department issued a "Notice of Substantial Evidence" (the original notice) on December 31, 2018 and mailed the notice to Mr. Jackson the same day. However, the notice was sent to his previous address. Mr. Jackson did not receive the first notice. At his request, the Department sent him a second notice

The statute sets a 90-day deadline after receipt of notice to file an action. The Department's regulation provides:

> "Whenever a time period commences upon a person's receipt of service or notice, and service is by mail, receipt shall be presumed to occur on the fifth day after mailing"

Mr. Jackson filed his lawsuit within 90 days of the second notice but outside the 90-day period following the first notice. His former employer moved to dismiss on the basis that the regulation provided a presumption of receipt of the first notice. The trial court agreed and dismissed Mr. Jackson's action as being untimely.
The appellate court reversed. Analyzing the presumption provision in the regulation, the court explained:

> *As a preliminary matter, defendants assert that the presumption of service contained in the Illinois Administrative Code is irrebuttable. Defendants contend that plaintiff cites nothing that holds that the presumption at issue here may be rebutted; we note that defendants cite nothing that holds that it may not. We do note that irrebuttable presumptions have been disfavored as contrary to due process. In re Amanda D., 349 Ill. App. 3d 941, 948, 811 N.E.2d 1237, 285 Ill. Dec. 358 (2004) (citing Vlandis v. Kline, 412 U.S. 441, 446, 93 S. Ct. 2230, 37 L. Ed. 2d 63 (1973)). More importantly, plaintiff does call our attention to a case interpreting other provisions of the Act that are similar to the provision at issue here. In Cigna v. Illinois Human Rights Comm'n, 2020 IL App (1st) 190620, ¶ 28, 445 Ill. Dec. 112, 165 N.E.3d 964, the court was called on to construe the phrase "'receipt shall be deemed to occur on the fourth day after mailing' " (emphasis added) (quoting 56 Ill. Adm. Code 5300.20 (1992)). It relied on Gemini Services, Inc. v. Martin, 141 Ill. App. 3d 17, 19, 489 N.E.2d 1145, 95 Ill. Dec. 417 (1986), where the court construed an earlier version of a similar regulation, which stated, "[s]ervice by mail shall be deemed complete four days after mailing." (Emphasis in original and internal quotation marks omitted.) The Gemini Services court contrasted the*

term "deemed" to language appearing in another section of the Administrative Code that stated that receipt is "presumed" four days after mailing. Id. at 20. The court explained the difference as follows:

> *"[The former section] is couched in the mandatory language that service 'shall be deemed complete four days after mailing.' This is in contrast to the language of [the latter section] of the Commission's rules [citation], which speaks of computation of time to begin upon receipt of documents which are 'presumed' to have been received four days after mailing. There the word 'presumed' might be taken to indicate a rebuttable determination which could be negated by proof of actual receipt." Id.*

The Cigna court applied this reasoning in determining that "deemed" indicated an irrebuttable presumption. Cigna, 2020 IL App (1st) 190620, ¶ 35.

Limitation on deference given to agency's interpretation of a statute or ordinance

Kishwaukee Auto Corral, Inc. v. Department of Revenue, 2021 IL App (1st) 200236

A sizable body of case law stands for the proposition that in interpreting an ambiguous ordinance or statute, the ALJ should give significant deference to the interpretation adopted by the government agency responsible for the implementation of that ordinance or statute. *Kishwaukee Auto Corral, Inc. v. Dept. of Revenue* demonstrates that there are limitations as to that deference. It involves 35 ILCS 120/6d. The statute covers the situation where a car dealer is both the vendor and the lender. Under the statute, where the car dealer advances the sales-tax as part of the loan, the dealer may obtain a rebate or deduction on that tax payment where: (a) the buyer defaults on the loan, and (b) the dealer writes off the debt and makes no attempt to collect.

35 ILCS 120/6d provides:

> "A retailer is relieved from liability for any tax that becomes due and payable if the tax is represented by amounts that are found to be worthless or uncollectible, have been charged off as bad debt on the retailer's books and records in accordance with generally accepted accounting principles, and have been claimed as a deduction pursuant to *Section 166 of the Internal Revenue Code* on the income tax return filed by the retailer**. A retailer that has previously paid such a tax may, under rules and regulations adopted by the Department, take as a deduction the amount charged off,**

The Illinois Department of Revenue promulgated a regulation which provided that the rebate would not be available if the dealer is a "cash basis taxpayer.". After examining the wording of the statute together with its legislative history, the court found no basis for denying a rebate solely because the dealer was a "cash basis taxpayer."

The Department argued that recovery under the second sentence of the statute the deduction is conditioned upon rules and regulations adopted by the Department That sentence reads: "**A retailer that has previously paid such a tax may, under rules and regulations adopted by the Department, take as a deduction the amount charged off."** After the enactment of section

6d, the Department adopted a regulation stating that "[r]etailers or lenders that file federal returns on a cash basis and cannot claim a deduction.

In rejecting that argument, the court explained:

> A *reasonable* construction of an ambiguous statute by the agency charged with its administration and enforcement can create a presumption of correctness, if contemporaneous, consistent, long-continued, and accompanied by legislative acquiescence (*Citibank, N.A. v. Ill. Dep't of Revenue, 2017 IL 121634, ¶ 39, 422 Ill. Dec. 833, 104 N.E.3d 400*). However, the Department's regulation in this case is not reasonable. When Kishwaukee sells a car, it is required to pay ROT on the car's entire value up front. If the buyer defaults and Kishwaukee repossesses the car, it resells the car and *again* pays the full ROT up front. To deny Kishwaukee a refund under these circumstances would be to allow the State double recovery, which is both unreasonable and contrary to the express intent of the legislature in enacting *section 6d*

Does finding of violation of a statute or ordinance require proof of intent?

People v. Sroga, 2022 IL 126978,

In this decision, the Illinois Supreme Court provided guidance for determining whether the wording of statute or ordinance requires proof of intent.

Mr. Sroga was convicted of a Class A misdemeanor under section 4-104(a)(4) of the Illinois Vehicle Code for displaying an unauthorized license plate on a vehicle.

He filed a petition under section 2-1401, asserting that his conviction violated the proportionate penalties clause in the Illinois Constitution (Ill. Const. 1970, art. I, § 11) arguing that that his conduct violated both section 4-104(a)(4) and section 3-703 of the Vehicle Code. He claimed that both statutes prohibit the same conduct, and both requite proof of intent. Violation of section 3-703 is a is only a Class C misdemeanor. Violation of 4-104(a) (4is a Class A misdemeanor. Had he been convicted of violating section 3-703, the penalty would have been less severe than the penalty he received for violation of 4-104(a)(4).

The court agreed that Mr. Sroga's conduct violated section 3-703 and 4-104(a)(4). However, the higher penalty for violation of 4-104(a)(4) was justified because conviction of 4-104(a)(4) required proof of intent. In contrast, section 3-703 imposed absolute liability. Conviction of section 3-703 did not require proof of intent.

For our purposes, the decision is significant because it provides guidance in determining whether a finding of liable requires proof of intent. The court set out three factors which should be considered:

(1) The plain statutory language. section 3-703 used the word "shall". The word "shall and the phrase "shall not" suggests absolute liability

(2) The comparative severity of the potential penalty. Where the penalty is severe, the likelihood of a legislative intent to impose absolute liability is reduced. The converse also is true. A fine between $501 and $1000 was "not severe and suggests likelihood of a legislative intent to impose absolute liability.”.

(3) A reading of the statute in the context of related provisions. Several related provisions in the Vehicle Code prohibited a person from “knowingly” engaging in certain conduct, Section 3-703 does not require that the person charged knowingly violated the statute. The express inclusion of a culpable mental state in related statutes (for example “knowingly”) and the omission of a reference to a mental state in section 3-703 established the legislature's intent to create absolute liability on those who violate section 3-703

Does an amendment to a rule apply retroactively?

People v. Deroo, 2022 IL 126120

The Illinois Supreme Court provided another example of where an amended rule can be applied retroactively. Numerous decisions stand for the proposition that where a governmental body adopts rules governing administrative adjudication process, it must follow those rules. The attached decision suggests another approach. The rules can be amended, and the amended version applied retroactively.

In the People v, Derwoo, the trial court permitted the entry of the defendant's medical records into evidence, in violation of the Illinois Supreme Court Rules. The defendant appealed, arguing that reversal of his conviction was warranted because of the trial court's failure to comply with the Rules.

The Supreme Court panel agreed that evidence used to convict the defendant should not be admitted under its Rules of Evidence. The Court also concluded that the Rule was stupid and amended the evidentiary rule in its decision. The court then sustained the conviction on the basis that admission of the evidence did not violate the amended rule.

Following a jury trial in the circuit court of Rock Island County, Mr. Deroo was convicted of aggravated driving under the influence (DUI) and aggravated driving while his license was revoked and sentenced to concurrent terms of imprisonment of nine and three years, respectively.

During his trial, the results of a chemical blood test establishing his blood alcohol content were admitted into evidence pursuant to section 11-501.4(a) of the Illinois Vehicle Code (625 ILCS 5/11-501.4(a). This provision allows the admission of chemical tests of blood conducted in the course of emergency medical treatment “as a business record exception to the hearsay rule.”

Mr. Deroo thought that Illinois Supreme Court Rule of Evidence 803(6) was his a get out of jail card.

That rule expressly excludes “medical records in criminal cases” from the business records exception to the hearsay rule. Therefore, the trial court violated Rule 803(6) in by admitting into evidence his medical records The Supreme Court agreed that the Rule conflicted with the Vehicle Code. In its decision, the Court amended the Rule so that it permits a medical record to be introduced into evidence in criminal cases as a business record exception to the hearsay rule. Below is an excerpt of the decision.

> *Illinois Rule of Evidence 803(6) is amended effective immediately by removing the medical records exclusion for criminal cases. In the current version of Illinois Rule of Evidence 803(6), this is **[**27]** the first clause of the rule, which reads, "Except for medical records in criminal cases." See Ill. R. Evid. 803(6) (eff. Sept. 28, 2018). This amendment is applicable to all pending cases, including the case at bar. To the extent that amended Illinois Rule of Evidence 803(6) conflicts with section 115-5(c)(1) of the Code of Criminal Procedure, the rule takes precedence. Ill. R. Evid. 101 (eff. Jan. 1, 2011).*
>
> *Applying amended Illinois Rule of Evidence 803(6) to this appeal answers in the negative defendant's contention that his chemical blood tests were erroneously admitted. We note that applying the amended rule to conduct in this case that occurred before the amendment took effect does not raise any ex post facto concerns. **HN20**[] As the United States Supreme Court has explained, "[o]rdinary rules of evidence *** do not violate the [Ex Post Facto] Clause" because "by simply permitting evidence to be admitted at trial, [the rules] do not at all subvert the presumption of innocence, because they do not concern whether the admissible evidence is sufficient to overcome the presumption." Carmell v. Texas, 529 U.S. 513, 533 n.23, 120 S. Ct. 1620, 146 L. Ed. 2d 577 (2000). "The issue of the admissibility of evidence is simply different from the question whether the properly admitted evidence is sufficient to convict the defendant. Evidence admissibility rules do not go to the general issue of guilt, nor to whether a conviction, as a matter of law, **[*** may be sustained." Id. at 546. In short, there is a distinction between laws that "'alter the degree, or lessen the amount or measure, of the proof' required to convict from those laws that merely respect what kind of evidence may be introduced at trial." Id. at 550 (quoting Hopt v. Utah, 110 U.S. 574, 589, 4 S. Ct. 202, 28 L. Ed. 262 (1884)).*
>
> *Amended Illinois Rule of Evidence 803(6) does not alter the amount of evidence necessary to convict defendant. Rather, the amended rule merely allows for the admission of medical records evidence that was previously excluded under the business records exception. The amended rule is "evenhanded, in the sense that [it] may benefit either the State or the defendant in any given case." Id. at 533 n.23. Because amended Illinois Rule of Evidence 803(6) addresses only what type of evidence can be admitted, it does not raise ex post facto concerns. See also Lambert v. Coonrod, 2012 IL App (4th) 110518, ¶ 22, 966 N.E.2d 583, 359 Ill. Dec. 262 (holding that the then-recently adopted Illinois Rules of Evidence applied retroactively).*

PART FOUR - CIVIL RIGHTS ACTIONS

Court rules that where a government official ignores a legitimate request for an administrative adjudication, that official can be held personally liable in a civil rights action

Royan v. Chicago State University, No. 20-cv-2014, 2022 U.S. Dist. LEXIS 102853 (N.D. Ill. June 9, 2022)

A body of case law stands for the proposition that hearing officers are cloaked with quasi-judicial immunity. The attached decision suggests that the cloak does not extend to administrators who are obligated to arrange for the administrative adjudication of a grievance or claim.

Ms. Royan was a student at the College of Pharmacy at Chicago State University. She was dismissed by the school, allegedly because her attitude was not professional. The College of Pharmacy Student Handbook outlines a grievance procedure for dismissed students. The Handbook provides that students may appeal their dismissal to the Dean of the College. She filed a civil rights action alleging that she was not provided with a hearing although she requested one. Specifically, she alleged:

1. Through counsel, she filed an appeal of her dismissal with the College Dean, Mr. Gentry.
2. She and her counsel did not receive a response.
3. Her counsel followed up with the Dean's staff who told her counsel to contact the legal department.
4. Her counsel contacted the legal department but received no response to several phone messages or email.

Mr. Gentry, who served as the dean, was named as one of the defendants in the lawsuit He made a motion to dismiss arguing: that:

> he was not personally involved in the alleged unlawful conduct. "Individual liability under § 1983 requires personal involvement in the alleged constitutional deprivation. An individual cannot be held liable in a § 1983 action unless he caused or participated in an alleged constitutional deprivation." *Colbert v. City of Chicago, 851 F.3d 649, 657 (7th Cir. 2017)*. To state a claim for individual liability under § 1983 a plaintiff must allege that the defendant was "personally responsible for the deprivation of a constitutional right" because "he directed the conduct causing the constitutional violation, or it occurred with his knowledge or consent." *Sanville v. McCaughtry, 266 F.3d 724, 740 (7th Cir. 2001)*.

Rejecting that argument, the court ruled:

> Royan alleges that Gentry, in his capacity as the Dean of the College of Pharmacy, was responsible for reviewing the appeal, deciding, and informing Royan of the decision. Dkt. 56 at ¶ 77. After Royan filed her appeal and followed up with Gentry's office, Royan was directed to contact the legal department. *Id.* at ¶ 83. Despite numerous follow-up emails from Royan's lawyers, she never received a response. *Id.* at ¶¶ 87-88. At this pleading stage, her allegations taken are sufficient to show Gentry's personal involvement.
>
> Gentry was responsible for Royan's appeal per the student handbook. Dkt. 56 at ¶¶ 59, 77. Not only did he receive her appeal, Royan specifically contacted his staff and was directed to the legal department. *Id.* at ¶ 83. According to the Amended Complaint, Gentry failed to consider her appeal as required, or if he did, failed to inform Royan of her decision. *Id.* at ¶ 88. Royan's allegations that Gentry was responsible for her appeal and failed to provide her that process sufficiently allege Gentry's personal involvement in the denial Royan's due process rights.

No due process violation where aggrieved party may seek judicial review of final administrative decision

Cozzi v. Village of Melrose Park, No. 21-cv-998, 2022 U.S. Dist. LEXIS 49571 (N.D. Ill. Mar. 21, 2022)

The Village of Melrose Park decided that it would be a good idea to issue 62 tickets to an elderly couple for having lawn chairs in their front yard. The Village issued ticket after ticket, imposing fine after fine, to two eighty-year-old residents, Plaintiffs Vincent, and Angeline Cozzi.

The fines were not small potatoes. Each ticket cost $500, so the Village tagged them with fines totaling about $30,000. And when it was all said and done, the Village slapped them with a lien on their house, for good measure. The Village police also laid an avalanche of tickets on their son's vehicle charging parking violations.

They challenged the tickets through the Village's administrative adjudication process The ALJ found them liable. In their federal suit, they maintain that the hearing process was a grossly unfair. Their complaint consists of several counts. One count alleges that the Village violated their due process rights in failing to provide them with a fair hearing. A second count seeks a review of the hearing officer's decisions through the Administrative Review Law.

The District Court ruled that with respect to the due process claim, the plaintiffs received all the process due to them in that state law provides for judicial review of the hearing officer's decisions. The court also found that it could review the hearing officer's decision pursuant to the Illinois Administrative Review Law. The decision is informative. Below is an excerpt.

Below is an excerpt.

Here, part of the claim focuses on the issuance of the tickets in the first place. See Second Am. Cplt., at ¶ 154(a) (Dckt. No. 40). But most of the claim takes issue with what happened at the hearing itself. The Cozzis allege that the Village deprived them of a "fair and impartial hearing" by (1) refusing to grant a continuance; (2) requiring an in-person appearance by an elderly couple during the pandemic; (3) failing to describe the alleged violation with specificity; (4) failing to issue a written order with findings of law; (5) failing to issue a decision based on the evidence; (6) failing to identify the complaining witnesses; (7) imposing a lien without a prove-up hearing and the requisite waiting period required by state statute. Id. at ¶¶ 153-54.

The complaint starts with the premise that a failure to follow state procedures is a violation of the Due Process Clause of the federal Constitution. But state procedures and federal due process are not perfectly coextensive. There may be some overlap — for example, both could require notice and an opportunity to be heard — but a violation of one is not necessarily a violation of the other.

A violation of state procedures is not ipso facto a violation of the Due Process Clause. See Vargas v. Cook Cnty. Sheriff's Merit Bd., 952 F.3d 871, 874-75 (7th Cir. 2020) ("[An] state's failure to comply with its own law is not a federal due-process violation. Indeed, a state may disregard its own law without depriving a person of due process of law. This isn't a novel rule. It has been clear for decades that noncompliance with state law is not itself a deprivation of due process of law.") (emphasis in original); Oesterlin v. Cook Cnty. Sheriff's Dep't, 781 F. App'x 517, 522 (7th Cir. 2019) ("Due process is a federal standard, independent of any procedure guaranteed by state law . . .."); Simmons v. Gillespie, 712 F.3d 1041, 1044 (7th Cir. 2013) ("The Constitution does not require states to ensure that their laws are implemented correctly."). An action can violate state procedures without violating the Due Process Clause. And an action can violate the Due Process Clause without violating state procedures.

But the fact that a decision violated state procedures does not preclude a claim that it violated the Due Process Clause, either. They are not mutually exclusive. See Bradley, 929 F.3d at 880 ("'[J]ust as a violation of state law does not a constitutional claim make, so the [state law] violation does not protect officials from the federal consequences of their otherwise-unconstitutional conduct,' as Supreme Court precedent has 'establish[ed] the indifference of constitutional norms to the content of state law.'") (capitalization added; brackets in original; citations omitted).

The due process claim fails to the extent that it rests on a mere violation of state procedural rights. See GEFT Outdoors, LLC v. City of Westfield, 922 F.3d 357, 366 (7th Cir. 2019) ("[T]here is no constitutional procedural due process right to state-mandated procedures."); Tucker v. City of Chicago, 907 F.3d 487, 495 (7th Cir. 2018) ("[F]ederal due process protection is not a guarantee that state governments will apply their own laws accurately."); Gryger v. Burke, 334 U.S. 728, 731, 68 S. Ct. 1256, 92 L. Ed. 1683 (1948) ("We cannot treat a mere error of state law, if one occurred, as a denial of due process; otherwise, every erroneous decision by a state court on state law would come here as a federal constitutional question.").

The process that is "due" depends on the situation. "Due Process, as this Court often has said, is a flexible concept that varies with the particular situation." Zinermon v. Burch, 494 U.S. 113, 127, 110 S. Ct. 975, 108 L. Ed. 2d 100 (1990); see also Vargas, 952 F.3d at 874 ("Because the constitutional guarantee of due process of law 'calls for such procedural protections as the particular situation demands, its content is variable rather than constant.") (citation omitted).
Sometimes a person is entitled to a hearing before the deprivation takes place. And sometimes a hearing after the fact is enough. It depends on whether the act in question was "random and unauthorized." See Parratt v. Taylor, 451 U.S. 527, 541, 101 S. Ct. 1908, 68 L. Ed. 2d 420 (1981).

Due process claims fall into two categories: "(a) claims based on established state procedures and (b) claims based on random, unauthorized acts by state employees." Leavell v. Illinois Dep't of Nat. Res., 600 F.3d 798, 804 (7th Cir. 2010) (cleaned up). If a claim falls into the second bucket, then "the state's obligation under the Due Process Clause is to provide sufficient remedies after its occurrence, rather than to prevent it from happening." Michalowicz v. Village of Bedford Park, 528 F.3d 530, 535 (7th Cir. 2008). That is, "a claim based on random and unauthorized acts by state officials does not have the same predictability, and thus, only requires a meaningful post-deprivation remedy." See Cannici v. Village of Melrose Park, 885 F.3d 476, 479 (7th Cir. 2018). "When a state official deprives a person of his property through a random, unauthorized act that departs from state law, the federal due-process guarantee requires only that the state provide an adequate postdeprivation remedy." Vargas, 952 F.3d at 875; see also Leavell, 600 F.3d at 805 ("[F]or a plaintiff alleging a procedural due process claim based on 'random and unauthorized' conduct of a state actor, the plaintiff must either avail herself of state post-deprivation remedies 'or demonstrate that the available remedies are inadequate.'") (citation omitted).

The claim at hand falls into the second camp. The Cozzis aren't claiming that the Village of Melrose Park established procedures that inherently violate the Due Process Clause. Instead, they are claiming that Village failed to follow procedures and failed to apply normal rules in an unbiased manner.

*The thrust of the claim is that the Village of Melrose Park was biased against them. But a claim about bias is a claim about random and unauthorized conduct. See Calderone v. City of Chicago, 979 F.3d 1156, 1165 (7th Cir. 2020) ("Calderone specifically alleges that the individual defendants acted out of 'negative animus' and 'bias' against her. This is not a challenge to the disciplinary procedures prescribed by municipal law. Rather, Calderone readily admits that she describes a series of 'random and unauthorized' departures from municipal law, resulting in the deprivation of her property interest in continued public employment."); Vargas, 952 F.3d at 875 (holding plaintiff's allegation that defendant "pressured Merit Board members to make biased decisions" qualified as a "random, unauthorized act"); Cannici, 885 F.3d at 480 ("Cannici's argument surrounding any potential bias of [*23] the Board is precisely the same unpredictable misconduct contemplated in Michalowicz. Thus, the district court's application of random and unauthorized acts by the Board was not erroneous."); Michalowicz, 528 F.3d at 534-35 ("[H]e claims he was denied due process because the Village allowed the Board of*

Trustees — which he maintains was biased against him — to conduct his hearing . . .. This species of due-process claim is a challenge to the 'random and unauthorized' actions of the state officials in question, i.e., to their unforeseeable misconduct in failing to follow the requirements of existing law.").

So the Cozzis need a post-deprivation remedy, meaning that they need an opportunity to challenge what took place. And they've got one. The Cozzis have a post-deprivation remedy under the Illinois Administrative Review Act. See 735 ILCS 5/3-101 et seq.

And in fact, the Cozzis are pursuing that remedy here. Count V seeks relief under the Act. See Second Am. Cplt., at ¶¶ 202-03 (Dckt. No. 40); see generally City of Chicago v. Int'l Coll. of Surgeons, 522 U.S. 156, 164, 118 S. Ct. 523, 139 L. Ed. 2d 525 (1997) (confirming that federal courts may exercise supplemental jurisdiction over state administrative review claims when the state's action also gives rise to constitutional claims over which there is original jurisdiction).
The Cozzis don't lack a process to challenge what happened to them at the hearing. They're challenging it right here, right now, in Count V. That's a post-deprivation remedy, and that's enough for due process. They have a lane to challenge what happened, and they're already driving down it.

The Cozzis never argue that the post-deprivation remedy is inadequate, or otherwise fails to pass constitutional muster. In claims by public employees, the Seventh Circuit has "found time and again that the Illinois Administrative Review Act provides sufficient post-deprivation relief" for public employees to challenge random and unauthorized departures from state law. See Cannici, 885 F.3d at 480; see also Leavell, 600 F.3d at 805-06; Michalowicz, 528 F.3d at 534-36.

Part Five – Motor Vehicles
Where vehicle is impounded for unpaid fines, the lien is judicial and therefore avoidable in bankruptcy

City of Chicago v. Mance (In re Mance), 31 F.4th 1014 (U.S. 7th Cir. 2022)

The Seventh Circuit Court of Appeals issued the attached decision holding that where a vehicle is impounded because of unpaid fines, the city's lien on the vehicle is a **judicial lien** which is avoidable in bankruptcy. The decision begins with this observation:

> *This case may appear to be a technical dispute with modest stakes, but it's a test case that is important to the City and will affect many drivers. Outstanding debt for Chicago traffic tickets surpassed $1.8 billion last year.1 On average, the City issues around three million tickets a year, and by one recent estimate, revenue from those tickets in 2016 exceeded a quarter of a billion dollars and constituted seven percent of the City's operating budget. Melissa Sanchez & Sandhya Kambhampati, Driven into Debt: How Chicago Ticket Debt Sends Black Motorists into Bankruptcy, ProPublica Ill. (Feb. 27, 2018), https://features.propublica.org/driven-into-debt/chicago-ticket-debt-bankruptcy. As the dockets in this court and the Northern District of Illinois show, aggressive ticketing practices may help push many drivers into bankruptcy. Id. (explaining that "[p]arking, traffic and vehicle compliance tickets prompt so many bankruptcies the court [in Chicago] [led] the nation in Chapter 13 filings" at the time); see also Table F-2—Bankruptcy Filings (December 31, 2019), U.S. Courts, https://www.uscourts.gov/statistics/table/f-2/bankruptcy-filings/2019/12/31 (last visited Apr. 21, 2022) (Northern District of Illinois led nation in nonbusiness Chapter 13 filings with 15,851 cases in 2019). Even with recent reforms to ticketing practices, bankruptcy filings remain high by comparison to other districts. Table F-2—Bankruptcy Filings (December 31, 2021), U.S. Courts, https://www.uscourts.gov/statistics/table/f-2/bankruptcy-filings/2021/12/31 [*4] (last visited Apr. 21, 2022) (in 2021 the Northern District of Illinois had the second most non-business Chapter 13 filings (5,198)).*

Vehicle owners of vehicles impounded because of unpaid fines can obtain relief through Chapter 13

Cordova v. City of Chicago, Nos. 19bk06255, 19ap00684, 2021 Bankr. LEXIS 3335 (Bankr. N.D. Ill. Dec. 6, 2021)

This case involves an action filed in the United States Bankruptcy Court for the Northern District of Illinois. The Plaintiffs, residents of the city, had their vehicles impounded by the city for unpaid vehicle infraction fines. After their vehicles were impounded, each plaintiff commenced a

case under Chapter 13 of the Bankruptcy Code. Under chapter 13, the commencement of the case gives rise to an automatic stay which protects both debtors individually but also assets of debtors' and bankruptcy estates. Any entity in possession of property that a trustee may use, sell, or lease is required by statute to deliver to the trustee that property, or the value thereof.
After filing their bankruptcy actions, the plaintiffs demanded return of their vehicles. The city demanded an upfront lump sum amount, often over $1,000 and treatment of its claims in the Plaintiffs' bankruptcy plan as fully secured in exchange for turnover of the vehicles.

The complaint alleged that the City's refusal to turn over the vehicles violated provisions of the Code which not addressed by Supreme Court in *Fulton*. The plaintiffs sought injunctive relief, actual damages, and punitive damages The City made a motion to dismiss - arguing that its inaction (refusal to turn over the cars) did not violate the automatic stay provision. It also argued that it was not bound by the automatic stay provision because of its home rule powers.

The Bankruptcy Court denied the city's motion to dismiss claims which alleged violations of *362(a)(4)* and *(6) (*provisions in the Code not addressed in *Fulton).* The court dismissed plaintiffs' section 362(a)(7) claim, with leave to amend their complaint. The Court pointed out that the city's practice of retaining possession of the vehicles was inconsistent with Chapter 13 principals.

> "Having a car is essential to maintaining employment. Interference with a debtor's possession of such a car jeopardizes the debtor's chance for a fresh start and the recoveries of all creditors. An automobile is virtually essential for a worker to engage in productive and beneficial employment which, in turn, improves the chances a debtor will complete his or her chapter 13 plan."

The court dismissed the plaintiffs' punitive damages claim and declined to rule on the city's claim to be exempt from the automatic stay provision because of its home rule powers. After expressing skepticism of the city's position, the court suggested that the claim should be asserted as an affirmative defense.

Illinois Vehicle Code provisions which set maximum fines override city's home rule powers

Blaha v. City of Chicago, 2022 IL App (1st) 210546

Summary

A. Administrative adjudication of parking and compliance violations must be consistent with 625 ILCS 5/11-208.3, a statute which limits home rule authority.
B. The maximum combination of fine and late fee for violation of these ordinances cannot be in excess of $250 – with certain exceptions.

Facts of case

625 ILCS 5/11-208.3 authorizes local governments to utilize the administrative adjudication process to enforce their parking, compliance, and traffic camera violations.

Some of the plaintiffs in this case were found liable for wheel tax violations. The assessments of liability were made through the administrative adjudication process. Each was assessed $250 fine and a $250 late payment penalty.

Other plaintiffs were found liable for parking adjacent to fireplugs. Liability determinations and the impositions of the fines were through the administrative adjudication process. Each of these plaintiffs was assessed $150 fine and a $150 late payment penalty.
They filed a class action claiming that the combined fines and late fees were in excess of the amounts permitted under 625 ILCS 5/11-208.3

Apparent conflict between one provision which sets $250 ceiling and another which sets and $500 ceiling
One provision in 625 ILCS 5/11-208.3 sets a ceiling of $250 for the combined amount of both the fine and late penalty which can be assessed through administrative adjudication for parking, compliance, and camera violations.[1] Another provision in the same section sets a $500 ceiling. A second section sets the ceiling at $500.

Argument made by the city
The city argued that this conflict was the result of an unfortunate drafting error; and urged the court to apply the $500 ceiling in determining the outcome of the case. The city also argued that because it is a home rule governmental body, it has the right to set the maximum fine which can be set through administrative adjudication.

Court's decision
The court rejected both arguments. It found that the Illinois Vehicle Code provides a local government with a wide range of discretion in enacting ordinances governing traffic, parking, compliance, and wheel tax. However, it does not provide them with discretion in establishing administrative adjudication process to enforce these ordinances

Court rules that innocent owner of impounded vehicle should be able to retrieve vehicle without having to pay penalty

Davis v. City of Chicago, 481 F. Supp. 3d 757 (N.D. Ill. 2020),

Plaintiffs alleged that the city impounds tens of thousands of cars each year, holding the cars until owners pay a variety of fees and fines. Plaintiffs claimed that they were "innocent owners" who were wrongfully subjected to fines, towing and storage fees, and the seizure of their cars. They alleged that the offenses that led to their cars being impounded were committed by other people and without their knowledge. The court denied the City's motion to dismiss ruling that:

> “The Illinois Supreme Court has interpreted the Proportionate Penalties Clause as "provid[ing] a limitation on penalties beyond those afforded by the eighth amendment."

> People v. Clemons, 2012 IL 107821, ¶ 39, 968 N.E.2d 1046, 360 Ill. Dec. 293, 303-04 (2012). Although the Illinois Supreme Court recently acknowledged that "it has not spoken consistently on the relationship between our proportionate penalties clause and the eighth amendment" (People v. Coty, 2020 IL 123972, ¶ 45 (2020)), the City has not cited authority showing that Clemons has been overruled. Therefore, accepting Plaintiffs' factual allegations as true and drawing reasonable inferences in their favor, the Court finds that Plaintiffs have stated a claim under the Proportionate Penalties Clause of the Illinois Constitution. "

On July 21, 2020, the Chicago City Council amended Section 2-14-132 of the Chicago Municipal Code to provide the following defense to the impoundment of the vehicle:

> h) For purposes of the section, a vehicle is not considered to have been used in a violation that would render the vehicle eligible for towing if: . . .
>
> (4) the owner of the vehicle provides adequate proof that a criminal court dismissed all of the alleged criminal violations for which the vehicle was impounded after a judicial finding of the facts of, or laws applicable to, such violations; or
>
> (5) the owner of the vehicle was not present at the scene of the alleged crime for which the vehicle was impounded, and the owner of the vehicle provides adequate

Court rules that impoundment violated constitutional rights of owner where owner's friend offered to drive vehicle from scene

Pennie v. City of Rockford, No. 3:19-cv-50120, 2022 U.S. Dist. LEXIS 19632 (N.D. Ill. Feb. 3, 2022).

The vehicle owner was charged with driving with a suspended license. The vehicle was impounded, although the driver was not arrested, the vehicle was parked in a legal spot, and a passenger in the vehicle (who had a valid license) offered to drive the car from the scene. The owner filed an actin claiming that the impoundment was a violation of his constitutional rights

The United States District Court ruled that a vehicle impoundment, under these circumstances, violates the Fourth amendment where:

> (a) Government takes possession of vehicle for purposes of impoundment - rather than forfeiture,
> (c) Government will return vehicle if owner pays an administrative penalty
> (b) A search of the vehicle for evidence of criminal activity is unnecessary; and
> (c) Impoundment is not necessary for community caretaking.

Court rules that impoundment did not violate constitutional rights of owner where owner's friend offered to drive vehicle from scene

People v. Partin, No. 2-21-0445, 2022 Ill. App. LEXIS 248 (2nd Dist. June 2, 2022

The vehicle owner was arrested, and the vehicle was legally parked. Sometime after the arrest, a friend of the owner came to the scene, and offered to drive the car. In the criminal case, the trial court granted the defendant's motion to suppress the evidence obtained by the police through the inventory search which resulted from the impoundment. The appellate court reversed, finding that the impoundment was legally justified because:

- The local government's ordinance provided that the vehicle is to be impounded under these circumstances.
- The owner's friend arrived on the scene only after the police had decided to begin an inventory search.
- The inventory search was delayed because the owner refused to unlock the vehicle
- The record did not show whether the friend had the necessary insurance to drive the vehicle