



PASADENA

GENERAL MUNICIPAL LITIGATION UPDATE

League of California Cities
2018 Annual Conference

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General Themes

General Municipal Litigation Update – September 2018

- 11-8-2 in favor of positions favoring public entities
 - > Employment (2-0)
 - > Torts (3-0)
 - > Civil Rights (2-6)
 - > Land Use (1-2)
 - > Finance (2-0)
 - > Public Records (1-0)
 - > Attorneys (0-0-2)





Employment

General Municipal Litigation Update – September 2018

- ***Palm v. Los Angeles Dept. of Water & Power*** – probationary employee
- ***Fisher v. State Personnel Board*** – outside employment by ALJ



Palm v. Los Angeles Department of Water & Power 889 F.3d 1081 (9th Cir. 2018)

General Municipal Litigation Update – September 2018

- Plaintiff was a 25-year employee at city steam plant
- Promoted to supervisor
- Given the option of “forced resignation” or termination from supervisor position
- Plaintiff resigned, returning to assistant position





Palm v. LADWP (cont.)

General Municipal Litigation Update – September 2018

- Plaintiff claimed the threatened termination violated his procedural due process rights
- District Court denied leave to amend
- Ninth Circuit affirmed dismissal
 - > Review of charter and civil service rules
 - > Plaintiff lacked protected property interest in probationary employment as supervisor



Fisher v. State Personnel Board

25 Cal.App.5th 1 (2018)

General Municipal Litigation Update – September 2018

- 2010 – SPB appointed Plaintiff as ALJ
- 2011 – While still employed with SPB, Plaintiff joined private law firm specializing in administrative law
- 2013 – SPB colleague discovered Plaintiff's employment at a local bar association event





Fisher v. State Personnel Board (cont.)

General Municipal Litigation Update – September 2018



- SPB terminated Plaintiff
- Trial court upheld termination
- Court of Appeal affirmed
 - > Actual notice of incompatible activity not required
 - > Penalty of termination justified
 - > Appellate opinion to be forwarded to State Bar



Torts

General Municipal Litigation Update – September 2018

- ***Ramirez v. City of Gardena*** – police pursuit immunity
- ***Gund v. County of Trinity*** – workers' compensation and assisting “active law enforcement”
- ***Newland v. County of Los Angeles*** – driving home from work



Ramirez v. City of Gardena

5 Cal.5th 995 (2018)

General Municipal Litigation Update – September 2018

- PIT maneuver by police resulted in suspect vehicle crashing, killing passenger
- Passenger's mother filed suit
- Trial court granted summary judgment for city on police pursuit immunity





Ramirez v. City of Gardena (cont.)

General Municipal Litigation Update – September 2018



- Immunity under Vehicle Code Section 17004.7 requires agency to
 - > Adopt pursuit policy
 - > Provide annual training
 - > Require officers to certify they have received, read, understood the policy



Ramirez v. City of Gardena (cont.)

General Municipal Litigation Update – September 2018

- Trial court granted summary judgment for city
- Court of Appeal affirmed grant of MSJ
- Supreme Court affirmed
 - Immunity not lost for officers' failure to sign certification



- Labor Code 3366 – persons engaged in active law enforcement are deemed to be employees for purposes of workers' compensation laws
- 911 call to CHP dispatcher – “help me”
- Sheriff's Deputy call to Plaintiffs
 - > Likely related to inclement weather
 - > “Probably no big deal”



Gund v. County of Trinity (cont.)

General Municipal Litigation Update – September 2018

- Trial court granted summary judgment on state law claims on Labor Code Section 3366
- Court of Appeal affirmed
 - > Plaintiffs engaged in “active law enforcement”
 - > Deputy could have responded, and would have clearly been engaged in active law enforcement



Newland v. County of Los Angeles

24 Cal.App.5th 676 (2018)

General Municipal Litigation Update – September 2018

- Employee injured a pedestrian while driving his personal vehicle on his way home from work at courthouse
 - > Work for the day involved six cases on calendar at single courthouse
- Employer did not require car, but did reimburse for mileage





Newland v. County of Los Angeles (cont.)

General Municipal Litigation Update – September 2018

- At trial, jury found Plaintiff was in the course and scope of employment
- Court of Appeal reversed
 - > Vehicle use exception to “coming and going” rule did not apply





Civil Rights/Fourth Amendment

General Municipal Litigation Update – September 2018

- ***Felarca v. Birgeneau*** – use of force
- ***Martin v. City of Boise*** – anti-camping ordinance
- ***Carpenter v. United States*** – search of cell-site location information
- ***Byrd v. United States*** – search of rental car
- ***Collins v. Virginia*** – automobile exception to warrant requirement



Felarca v. Birgeneau

891 F.3d 809 (9th Cir. 2018)

General Municipal Litigation Update – September 2018



- Two days before rally, campus-wide email that no-camping policy would be enforced
- University failed in attempted compromise following afternoon protests
- Evening protests resulted in at least 36 arrests



Felarca v. Birgeneau (cont.)

General Municipal Litigation Update – September 2018

- All but one Plaintiff claimed excessive force from baton jabs, among other things
- District Court denied defendants' MSJ
- Ninth Circuit reversed
 - > Force used by officers was not excessive
 - > University administrators lacked personal involvement
 - > On-scene lieutenant and sergeant



- Three homeless shelters in Boise

Interfaith Sanctuary Housing Service	<i>River of Life Rescue Mission</i>	<i>City Light Home for Women and Children</i>
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- Six Plaintiffs, convicted of violating anti-camping ordinance from 2007-2009, filed suit



Martin v. City of Boise (cont.)

General Municipal Litigation Update – September 2018

- 2014 – city amended ordinance to preclude citations if no available space at homeless shelter
- 2015 – District Court granted city's motion for summary judgment
- Ninth Circuit affirmed, in part, and reversed, in part



Martin v. City of Boise (cont.)

General Municipal Litigation Update – September 2018



- So long as no sleeping space is practically available, city cannot cite individuals under an anti-camping ordinance



Carpenter v. United States

_____, U.S. _____, 138 S.Ct. 2206 (2018)

General Municipal Litigation Update – September 2018

- Four men arrested for robbing Radio Shack and T-Mobile stores
- One suspect confessed -- 15 accomplices
- Prosecutors obtained court orders for cell carriers to produce cell site location information (CLSI) of accomplices
- District Court denied motion to suppress CLSI, Carpenter convicted





Carpenter v. United States (cont.)

General Municipal Litigation Update – September 2018

- Sixth Circuit affirmed conviction
- U.S. Supreme Court reversed conviction

**“Mine Run” of CLSI
(historical data)**

*Real-time
CLSI*

*Tower Dump
of CLSI*

**Search that requires
warrant before
acquiring records**

*Not
addressed*

*Not
addressed*



Byrd v. United States

_____, U.S. _____, 138 S.Ct. 1518 (2018)

General Municipal Litigation Update – September 2018

- Friend rented car, listing herself as authorized driver
- Byrd drove away in the rental car, later pulled over for a possible traffic infraction
- Troopers searched vehicle
 - > Laundry bag with body armor
 - > Byrd began to run away, and was caught
 - > Byrd admitted there was heroin
 - > Troopers resumed search – 49 bricks of heroin





Byrd v. United States (cont.)

General Municipal Litigation Update – September 2018

- District Court denied motion to suppress evidence found in trunk
- Third Circuit affirmed
- Supreme Court vacated Third Circuit's opinion
 - > Driver in lawful possession of rental car has a reasonable expectation of privacy in the car, even if he/she is not listed as authorized driver on rental agreement



Collins v. Virginia

_____, U.S. _____, 138 S.Ct. 1663 (2018)

General Municipal Litigation Update – September 2018



- Motorcyclist committed two traffic infractions, and evaded/eluded police from pulling him over
- Facebook page showed motorcycle parked at a house
Officer went to house (picture), and pulled off tarp, revealing motorcycle from prior incidents



Collins v. Virginia (cont.)

General Municipal Litigation Update – September 2018

- District Court denied motion to suppress
 - > Defendant was convicted
- Virginia Court of Appeals affirmed
- Virginia Supreme Court affirmed
- U.S. Supreme Court reversed
 - > Automobile exception inapplicable here
 - > Motorcycle parked within curtilage



Civil Rights/Other

General Municipal Litigation Update – September 2018

- ***Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*** – First Amendment/Free Exercise Clause
- ***Hipsher v. Los Angeles County Employees Retirement System*** – pension benefit forfeiture
- ***United States v. California*** – SB 54/immigration enforcement



Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission _____, U.S. ____, 138 S.Ct. 1719 (2018)

General Municipal Litigation Update – September 2018

- Bakery owner declined to make a cake for same-sex wedding
- ALJ ruled the bakery had unlawfully discriminated against the couple on the basis of sexual orientation
- Colorado Civil Rights Commission affirmed
- Colorado Court of Appeals affirmed
- Colorado Supreme Court declined to hear the case



Masterpiece Cakeshop, Ltd.

v. Colorado Civil Rights Commission (cont.)

General Municipal Litigation Update – September 2018

- U.S. Supreme Court reversed
 - > Commission comments lacked respect for the bakery owner's arguments under the Free Exercise Clause
 - > Comments "cast doubt on the fairness and impartiality of the Commission's adjudication" of the case
 - > Commission matters involving other bakers suggest disparate treatment in this case



Hipsher v. LACERA

24 Cal.App.5th 740 (2018) (rev. granted 9/12/18)

General Municipal Litigation Update – September 2018

- 2001 – Plaintiff began conducting illegal gambling operation at fire station
- 2012 – Legislature passed PEPRA
- 2013 – Plaintiff charged
- 2014 – Plaintiff retired, entered guilty plea, and was convicted
- LACERA adjusted Plaintiff's pension
 - Retirement allowance reduced from ~\$6,800 to \$2,900





Hipsher v. LACERA (cont.)

General Municipal Litigation Update – September 2018

- Trial court
 - > Rejected Plaintiff's contract and ex post facto claims
 - > County did not provide sufficient due process related to original retirement benefits
- Court of Appeal affirmed, with modifications
 - > Forfeiture provisions of PEPRA do not violate Contracts Clause or Ex Post Facto Clause
 - > LACERA (not County) was required to provide Plaintiff with due process, through existing administrative appeal procedures



United States v. California

314 F.Supp.3d 1077 (E.D. Cal. 2018)

General Municipal Litigation Update – September 2018



- 2017 – California Legislature passed three bills aimed at addressing federal immigration enforcement programs, including SB 54 (California Values Act)
- Plaintiff asserted bills were preempted
 - 8 USC Section 1373 – bars states from prohibiting/restricting sharing of information related to “citizenship or immigration status” with federal immigration authorities
- District Court denied motion for preliminary injunction (as to SB 54)



United States v. California (cont.)

General Municipal Litigation Update – September 2018

- SB 54 – no direct conflict with Section 1373
 - > Section 1373
 - “limits its reach” to immigration status
 - Does not pertain to information like release dates and addresses
- No obstacle preemption re: SB 54
 - > Congress did not require states to assist in immigration enforcement





Land Use

General Municipal Litigation Update – September 2018

- ***Lamar Advertising Company v. County of Los Angeles*** – billboards
- ***County of Ventura v. City of Moorpark*** – sand hauling routes for beach restoration project
- ***City of Morgan Hill v. Bushey*** – land use law and referendum power



Lamar Advertising Company v. County of Los Angeles

22 Cal.App.5th 1294 (2018)

General Municipal Litigation Update – September 2018

- 1967 – County issued permit for billboard
- 1995 – County adopted ordinance banning billboards in area of Plaintiff's billboard
 - > Billboard became a non-conforming use
- 2008 – Windstorm blew billboard down one support pole
 - > Plaintiff installed new advertising face and support structures
 - > County issued removal order, hearing officer denied appeal



Lamar Advertising Co. v. County of Los Angeles (cont.)

General Municipal Litigation Update – September 2018

- Trial court denied writ petition
- Court of Appeal affirmed
 - > Reconstruction was more than “customary maintenance” under CalTrans regulations re: Outdoor Advertising Act
 - Existing dimensions altered / new components added
 - > County’s own ordinance allowing restoration of structures that are “partially destroyed” did not apply
 - Billboard was completely destroyed



County of Ventura v. City of Moorpark

24 Cal.App.5th 377 (2018)

General Municipal Litigation Update – September 2018

- Settlement agreement for beach restoration project found valid
- In severable provision, agreement improperly surrendered geologic hazard abatement district's police power authority to modify sand hauling routes

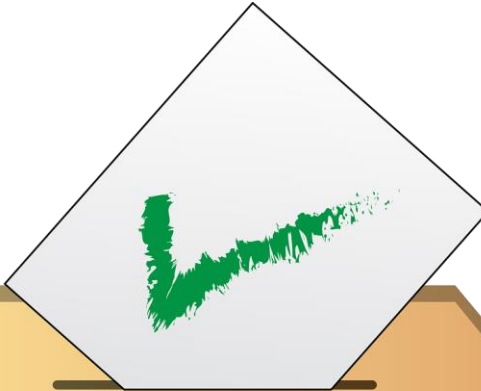




City of Morgan Hill v. Bushey

Cal.5th ____, 2018 WL 4017404 (2018)

General Municipal Litigation Update – September 2018



Referendum may be
used to challenge zoning
ordinance amendment
intended to bring city
into compliance with
general plan



- ***Strategic Concepts, LLC v. Beverly Hills Unified School District*** – Government Code Section 1090
- ***Citizens for Fair REU Rates v. City of Redding*** – Proposition 26



- 2005 – Christiansen hired as director of planning and facilities
 - > \$113,000/year
- 2006 – Terminated and hired back as consultant, performing same duties
 - > \$160/hour, maximum \$170,000/year
- 2007 – Christiansen assigned her contract to Strategic Concepts



Strategic Concepts, LLC v. Beverly Hills USD (cont.)

General Municipal Litigation Update – September 2018

- Invoices approved / annual payments made to Strategic Concepts exceeding
 - > \$250,000 (2006) / \$1.3 million (2007) / \$1.3 million (2008)
- 2008 – without seeking proposals, school board retained Christiansen to manage projects funded by bond measure
 - > Fees potentially exceeding \$16 million
 - > Bond measure passed, \$2 million in fees paid, although no specific project approved
- 2009 – school district declared contracts void for violation of Government Code Section 1090



Strategic Concepts, LLC v. Beverly Hills USD (cont.)

General Municipal Litigation Update – September 2018

- Christiansen and Strategic Concepts sued school district for breach of contract
 - > Trial court instructed jury that Section 1090 does not apply, based on Court of Appeal reversal of Christiansen's criminal conviction (*People v. Christiansen*, 216 Cal.App.4th 1181 (2013))
 - > Verdict in favor of Christiansen and Strategic Concepts – \$20+ million judgment





Strategic Concepts, LLC v. Beverly Hills USD (cont.)

General Municipal Litigation Update – September 2018

- While appeal was pending, Supreme Court decided *People v. Superior Court (Sahlolbei)*, 3 Cal.5th 230 (2017)
 - > Independent contractor can be subject to Section 1090
- Court of Appeal reversed
 - > Trial court erred in instructing that Strategic Concepts' contracts did not violate Section 1090
 - > Christiansen “used her position of trust” and “used her influence” to increase her earnings, and obtain no-bid contract



Citizens for Fair REU Rates v. City of Redding

Cal.5th ____, 2018 WL 4057226 (2018)

General Municipal Litigation Update – September 2018

- Redding electric utility -- annual budget transfer to general fund (payment in lieu of taxes) designed to compensate general fund for costs of services other departments provide
- Supreme Court opinion in favor of Redding
 - > Electric rates did not exceed reasonable costs of service
 - Voter approval not required for PILOT under Prop 26
 - > Declined to decide whether Prop 26 applies retroactively



Public Records

General Municipal Litigation Update – September 2018

- ***Natl. Conference of Black Mayors v. Chico Community Publishing, Inc.*** – attorney's fees in Public Records Act proceedings



Natl. Conf. of Black Mayors v. Chico Community Publishing, Inc. 25 Cal.App.5th 570 (2018)

General Municipal Litigation Update – September 2018

- Sacramento News & Review made public records request to city for emails sent from private accounts associated with the Mayor's office
- Records potentially contained NCBM privileged information
- NCBM, Mayor (in official capacity as former president of NCBM), and Chapter 7 bankruptcy trustee filed reverse-CPRA action
 - > SNR opposed, City did not oppose





NCBM v. Chico Community Publishing, Inc. (cont.)

General Municipal Litigation Update – September 2018

- Trial court reviewed 113 records, ordered 58 to be disclosed in unredacted form, 17 to be redacted and disclosed
- SNR sought fees through CPRA and Private Attorney General Statute, and trial court denied motion
- SNR appealed denial of fees under CPRA



NCBM v. Chico Community Publishing, Inc. (cont.)

General Municipal Litigation Update – September 2018

- Court of Appeal affirmed denial of CPRA fee motion
- City did not withhold records, so SNR could not bring a CPRA action against City
- City's failure to oppose reverse-CPRA action does not compel fee award
 - > City was neither attorney nor client in NCBM privileged communications
 - > Mayor's claim of privilege stems from position as president of NCBM



- ***Monster Energy Company v. Schechter*** – “approved as to form and content”
- ***Sheppard, Mullin, Richter & Hampton, LLP v. J-M Manufacturing, Inc.*** – blanket waiver of law firm’s conflicts



Monster Energy Company v. Schechter

26 Cal.App.5th 54 (2018)

General Municipal Litigation Update – September 2018

- Family, represented by attorney Schechter, settled civil suit against Monster
- Confidential settlement agreement signed by parties, and “approved as to form and content” by attorneys
- One month later, Schechter discussed general terms of settlement with reporter for online verdict publication, and article was published





Monster Energy Company v. Schechter (cont.)

General Municipal Litigation Update – September 2018

- Monster sued Schechter and his law firm
- Defendants filed anti-SLAPP motion, which trial court denied
- Court of Appeal reversed, in relevant part
 - > Schechter's statements to reporter are protected under anti-SLAPP statute
 - > Monster failed to demonstrate probability of prevailing
 - "Approved as to form and content" only means that an agreement "has the attorney's professional thumbs-up"



General Municipal Litigation Update – September 2018

- Since 2002 – attorney at law firm represented a special district on and off on employment matters
 - Retainer included advance waiver of conflicts of interest
- 2006 – J-M (pipe manufacturer) involved in qui tam action, ~200 public entities – potential parties (including special district)
- 2010 – J-M retained other attorneys at law firm, signed blanket waiver
- 2011 – District Court granted special district's motion to disqualify law firm from representing J-M



Sheppard Mullin v. J-M Manufacturing, Inc. (cont.)

General Municipal Litigation Update – September 2018



- Law firm billed over \$3 million to J-M during qui tam litigation
- Law firm sued J-M for unpaid fees
 - > Arbitrator ruled for law firm
 - > Trial court confirmed award
 - > Court of Appeal reversed arbitration award



Sheppard Mullin v. J-M Manufacturing, Inc. (cont.)

General Municipal Litigation Update – September 2018

- Supreme Court affirmed, in part, and reversed, in part
- Blanket conflict waiver with J-M did not put J-M on notice of the current conflict with the special district
 - > Fee agreement with J-M unenforceable
 - > Court did not otherwise decide validity of blanket waivers
- Case remanded to trial court to consider whether law firm may recover in quantum meruit



What Did We Learn?

General Municipal Litigation Update – September 2018

