

A Public Safety Law Firm

# RDK

REIMER DOBROVOLNY & KARLSON LLC

## 2018 Legal Update

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# DISCLAIMER

- Information is provided for educational purposes.
- It is not legal advice.
- We are not your attorneys... yet...

# PRE-HEARING PRACTICE

*Keeling v. Forest Park PPB,*  
2017 IL App (1st) 170804

- Police officer is in trouble and alleges he is disabled.
- On 4/2/14 Officer meets with Union Rep/PB Trustee who gives him a “request for an application.”
- Same day, PB Attorney sends Applicant an application packet (application, releases, etc.)

# PRE-HEARING PRACTICE

## *Keeling Cont.*

- Applicant is terminated on 4/23/14.
- Applicant files application on 7/9/14.
- Pension Board finds it lacks jurisdiction because Applicant was not a “police officer” at the time of his application.
- On administrative review, trial court reverses.

# PRE-HEARING PRACTICE

## *Keeling Cont.*

- Appellate court holds:
  - “Choosing what paperwork will best meet an agency’s needs is by definition an administrative action...Simply put, an ‘application’ is whatever the Board says it is, within reason.”
  - “Keeling filed only one designated application form. At the time of filing, Keeling was no longer a police officer...Accordingly, the Board’s determination that he failed to timely file an application was not against the manifest weight of the evidence.”

# PRE-HEARING PRACTICE

## *Robolet v. Crystal Lake PPB,*

2017 IL App (2d) 170306

- Police officer had experienced pension counsel.
- City had intervened in the case.
- Took a long time to schedule hearing.
- 11 days before hearing, new Applicant attorney appears – Tom McGuire.

# PRE-HEARING PRACTICE

## *Robolet cont.*

- McGuire knew case was scheduled when he accepted representation of Applicant.
- Prior Applicant's counsel, City, and PB ensure McGuire has all materials prior to hearing date.
- McGuire asks PB Attorney for continuance of hearing.
- PB Attorney says he lacks authority to do so.

# PRE-HEARING PRACTICE

## *Robolet cont.*

- PB Attorney tells McGuire to appear and argue his case before the PB.
- City opposes the motion.
- McGuire's took the case because of his "ego."
- McGuire told his client to not appear for hearing because it was a "calculated risk."



# PRE-HEARING PRACTICE

## *Robolet cont.*

- McGuire argues the motion for more than 3 hours.
- PB gives Applicant an additional 48 hours to begin the hearing.
- No mention of any conflicts with 48 hour continuance.
- On evening before hearing McGuire says he has a conflict due to a non-emergency medical appointment and will not attend.

# PRE-HEARING PRACTICE

## *Robolet cont.*

- McGuire and Applicant fail to appear for 2<sup>nd</sup> hearing.
- City moves to dismiss case for want of prosecution.
- PB finds Applicant abandoned his claim.
- In the meantime, Applicant has been terminated.
- Applicant seeks administrative review. Trial court affirms the Pension Board.

# PRE-HEARING PRACTICE

## *Robolet cont.*

- Appellate court affirms Pension Board's dismissal.
- The appellate court held the Pension Board has broad discretion to grant or deny continuance.
- However, such discretion must be exercised judiciously rather than arbitrarily to satisfy the ends of justice.

# FAIR HEARING

## *Naden v. Sugar Grove Fire Prot. Dist. FFPB*

2017 IL App (2d) 160698

- Firefighter claims LOD disability due to anxiety stemming from alleged sexual harassment.
- When the allegations are made, Applicant is required by Dist. to file a report detailing alleged impropriety.
- 3 of the Trustees were named as transgressors.

# FAIR HEARING

## *Naden cont.*

- An internal investigation of the 3 trustees began but was suspended at request of Applicant.
- After hearing, Applicant was found “not disabled.”
- Court found the three trustees had a “material, direct, personal interest in denying her disability claim, whether to discredit her or to retaliate against her.”

# FAIR HEARING

## *Naden cont.*

- Board's decision unsustainable and vacated the denial of disability benefits remanding for a new hearing excluding the three identified trustees.
- How do you hold a hearing with only 2 trustees?
- Not our client.

# POLICE ACT OF DUTY

*Martin v. Shiloh PPB,*

2017 IL App (5th) 160344

- Police detective injured in car accident while riding as passenger in unmarked squad.
- Duties at courthouse were concluded and was heading back to PD.
- Board held he was not engaged in “act of duty” involving a “special risk.”

# POLICE ACT OF DUTY

## *Martin cont.*

- Appellate Court holds it is an “act of duty.”
- Court reasoned, Applicant “sustained injuries in an automobile accident during his shift while performing duties in furtherance of his job as a detective...”
- Seems to create a workers’ comp. standard.



# POLICE ACT OF DUTY

## *Martin cont.*

- Court wrote, “The duties performed by plaintiff are not delegated to any members of the general public. Further, because plaintiff was on duty at the time of the accident and was a passenger in a squad car, he was subject to attend to any other police responsibility if necessary.”

# POLICE ACT OF DUTY

## *Martin cont.*

- Creates a conflict with various prior cases (e.g. Johnson, Rose, Jones, Alm).
- Expands “act of duty” to seemingly mean “on duty.”

# CONSULTANT DISCLOSURES

## *P.A. 100-0542*

- Creates Sections 1-113.22 and 1-113.23
- APPLIES ONLY CONSULTANTS not managers/advisors
- Effective 1/1/2018
- Consultants must disclose certain search and hiring information to pension boards.

# CONSULTANT DISCLOSURES

*P.A. 100-0542 cont.*

- Requires consultants to disclose:
  - 1) total number of searches for investment services in the prior calendar year;
  - 2) annual total number of searches including underrepresented businesses;
  - 3) annual total number of searches where the consultant recommended underrepresented businesses;
  - 4) annual total number of searches where an underrepresented business was retained; and
  - 5) total annual dollar amount invested with underrepresented businesses following recommendation for selection by the consultant.

# CONSULTANT DISCLOSURES

*P.A. 100-0542 cont.*

- Consultants must also disclose all payment or economic benefits received from investment advisors providing services to a pension fund, or recommended for selection by the consultant during the prior 24 months.

# CONSULTANT DISCLOSURES

*P.A. 100-0542 cont.*

- Consultants must also disclose all payment or economic benefits received from investment advisors providing services to a pension fund, or recommended for selection by the consultant during the prior 24 months.
- Good practice: ask for disclosures during RFP process.

# LIMITED FF TRANSFER OF CREDIT

*P.A. 100-0544*

- Two parts: 1) Transfer of Art. 3 to Art. 4 in same municipality; and 2) Transfer from Art. 4 to Article 6.
- Both transfer opportunities only open for 6 months starting November 8, 2017.

# LIMITED FF TRANSFER OF CREDIT

*P.A. 100-0544 – Transfer from Art. 3 to 4*

- Must be in same municipality.
- Can go from police to fire, not *visa versa*.
- Purchase a maximum of 6 years.
- If “subject to disciplinary action” when FF left the Pd, no entitlement to transfer time.



# LIMITED FF TRANSFER OF CREDIT

## *P.A. 100-0544 – Transfer from Art. 3 to 4*

- PPF will transfer the following to the FFPF: 1) the FF's contributions to the PPF; 2) a matching amount equal to the FF's contributions; and 3) any interest paid by the FF to reinstate service.
- If FF took a refund from the PPF, (s)he may (for purposes of transfer) reinstate service in the PPF by paying back the amount of the refund plus interest (6% compounded annually from the date of refund through the date of payment).

# LIMITED FF TRANSFER OF CREDIT

*P.A. 100-0544 –*

*Transfer from Art. 4 to Chicago Fire*

- Transfer Article 4 to Chicago Fire, not *visa versa*.
- Transfer up to 10 years of credit.

# LIMITED FF TRANSFER OF CREDIT

*P.A. 100-0544 –*

## *Transfer from Art. 4 to Chicago Fire*

- The Article 4 pension fund will transfer the following to the Chicago FFPF: 1) the FF's contributions to the fund; 2) a matching amount equal to the FF's contributions; and 3) any interest paid by the FF to reinstate service.
- Per Section 6-227, within five years, the Chicago FF must pay an additional amount using actuarial principles determined by the Chicago Firefighters' Pension Fund.

# FIGHTING UNDERFUNDING

## *Comptroller Intercept Rules*

- Rules make story of “mandatory funding” a bit more of a reality.
- 2011 amendment to Pension Code provided if a municipality fails to transmit the monies due a pension fund within 90 days after they were due, the pension fund may notify the State Comptroller.

# FIGHTING UNDERFUNDING

## *Comptroller Intercept Rules*

- First, a pension fund must send notice to the Comptroller certifying the delinquent amount and describing the notice and opportunity to be heard given the municipality.
- Notice must be signed by the Pension Board President.
- Comptroller identifies the warrant to which the intercept can be claimed.
- Comptroller then gives notice to the municipality of the claim. Comptroller deposits the money claimed into the State Offset Claims Fund which acts as an escrow account.

# FIGHTING UNDERFUNDING

## *Comptroller Intercept Rules*

- Municipality has 60 days from the Comptroller's notice to contest the claim. If no dispute is raised, the amount certified is paid to the pension fund.
- If disputed, the Comptroller makes a determination using the information submitted and/or may request additional information.
- Then, we are off to court, maybe...

# FIGHTING UNDERFUNDING

## *Comptroller Intercept Rules*

- Many questions remain:
  - The statute and rules do not make clear what avenue is available to review determinations of the Comptroller on contested claims.
  - The Constitutional amendment passed at the last general election makes many funds earmarked by the State for municipalities protected from attachment under this procedure.
  - Recent amendments to the Municipal Code allowing municipalities to segregate funds dealing with municipal bonding authority may also have an impact on potential revenues available to underfunded pension funds.

# DOI CHANGES

## *DOI Changes*

- New actuary retained by DOI – Same as IMRF.
- New executive director of DOI and Pension Division.



# DOI CHANGES

New assumed rates of return:

<u>Fund Size</u>	<u>Prior Return Assumption</u>	<u>New Investment</u>
<u>Return Assumption</u>		
Less than \$2.5 million*	5%	5%
\$2.5-\$5 million	6%	5.75%
\$5-\$10 million	6.5%	6.25%
Over \$10 million	6.75%	6.5%

# DOI CHANGES

## New assumed rates of return:

- Oddly, funds under \$2.5 million are the least likely to hit their previously assumed rate of return. Yet, they are the only size-class not changed.
- Funds under 40% funded will have another 0.25% reduction in the assumed rate of return.

# “DOUBLE DIPPING”

## P.A. 100-0281

- Chief's may not elect to participate in IMRF after January 1, 2019, unless they have IMRF service prior to that date.
- Municipalities must create defined individual contribution plans.
- Police officers eligible to participate in the DB plan, instead of Article 3, will be only those who have more than 10 years creditable service in a fund and enter service with a different municipality.
- Police officer who first enters service after January 1, 2019, and re-enters service with any municipality while receiving pension benefits can only participate in the defined contribution plan.

QUESTIONS???

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## UNDERFUNDING

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