



GOV LAW

Monthly Publication for Michigan Cities, Townships, Villages and Schools

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From the Editor by John J. Gillooly



Open Meetings

In 1976, the Open Meetings Act was enacted in an attempt to set a uniform standard for all meetings of a public body. While many governmental leaders believe that they understand the Act, the number of lawsuits against municipalities for alleged violations of the Act has risen. The lawsuits are not only costly in terms of dollars, but politically expensive as well. Here is a quick overview of some of the more important provisions of the Open Meetings Act:

- ✓ The Act takes priority over all local charter provisions which may relate to public meetings.
- ✓ All meetings must be held following the posting of an appropriate notice.
- ✓ The notice must contain the name of the public body, its address and phone number, and the notice must be posted.
- ✓ Dates for regular meetings must be posted not more than 10 days after the first regular meeting each calendar year.
- ✓ Special meetings may only generally be called upon 18 hours' notice.
- ✓ Minutes of each public meeting must be kept.

✓ To go into closed session, a two-thirds majority roll call vote is required. There are seven reasons why a public body can go into closed session:

- To consider employment-related matters involving an employee who requests the closed session;
- To discuss strategy and negotiation matters of a Collective Bargaining Agreement;
- Student disciplinary matters;
- To discuss the purchase or lease of property;
- To discuss matters in litigation;
- To discuss any items that might be exempt from disclosure; and
- To review or consider the specific contents of an application for employment.

For a more detailed discussion of the Open Meetings Act with your public officials, please feel free to call for a complementary seminar.

Governmental Immunity Protects Firefighter / Paramedics

by Jami E. Leach



On February 16, 2006, the Michigan Court of Appeals held that summary disposition should have been granted to two Sterling Heights firefighter-paramedics because their conduct was not grossly negligent, nor was it *the proximate cause* of plaintiff's alleged injuries.

Plaintiff brought suit against the firefighter/ paramedics who transported plaintiff to the hospital after he suffered a seizure. Plaintiff alleged that the defendants fractured his shoulder and hip during transport. Defendants testified that plaintiff was combative during transport and needed to be restrained for his own safety. Because defendants are governmental employees, it was undisputed that they were entitled to governmental immunity under MCL 691.1407.

Plaintiff argued that the doctrine of *res ipsa loquitur* warranted an inference of negligence because he did not have fractures when he entered the ambulance, but had them when he arrived at the hospital. The facts did not support this contention, but even assuming it to be true, the doctrine did not apply in this case. The Court of Appeals agreed with defendants' position that while the doctrine may assist in establishing ordinary negligence, the doctrine is not available where the requisite standard of conduct is gross negligence or willful and wanton misconduct.



One paramedic testified that he held plaintiff's left arm over his head in a standard restraint position to keep him from moving around much. Plaintiff's own expert testified that this was a proper form of restraint. Plaintiff alleged that the defendant must have used excessive force, thereby fracturing the plaintiff's shoulder. However, plaintiff's treating orthopedic surgeon testified that the action of moving plaintiff's arm from his side to above his head would not cause plaintiff's shoulder injury, even if he was struggling. He further testified that this type of shoulder injury is one he sees fairly commonly associated with seizures. Therefore, the Court of Appeals held that plaintiff failed to present evidence of gross negligence or that the defendant's actions were *the proximate cause* of plaintiff's shoulder injury.

Plaintiff alleged the other paramedic fractured his hip when he knelt on him in order to establish an IV. Defendant testified that at no time did he kneel on plaintiff, but even if he did, the surgeon again testified the alleged conduct would not have caused the hip fracture. The emergency room physician testified that it was proper procedure to establish the IV so that if plaintiff suffered another seizure medication could quickly be administered.

Therefore, the Court of Appeals held that plaintiff failed to present evidence of gross negligence or that the defendant's actions were *the proximate cause* of plaintiff's hip injury.

**The unpublished case is *Brock v Dye and Ranes*, (CA#255985). The firefighter/paramedics were represented by Garan Lucow Miller trial attorney Jami Leach and appellate specialist Sarah Robertson.

When You Don't Like the Facts,
Make Sure You Know the Law

by Rosalind Rochkind



Litigation frequently results when someone is injured after a government employee fails to perform, or imperfectly performs, his or her job. Frequently the results are tragic, and often the facts are ugly. One's impulse might be to assume that liability must naturally follow, as when a member of the public was killed when four police officers failed to stop a drag race about to take place on the public streets. However, neither state nor federal law provided a remedy. *Jones v Reynolds, et al.*

In CA #250616 (04/07/05), the Michigan Court of Appeals held that governmental immunity applied to prevent suit against the officers because their conduct did not constitute "the proximate cause" of the injuries sustained when one of the racers lost control of his vehicle and ran into a woman watching the race. On February 27, 2006, the Michigan Supreme Court denied leave to appeal.


On that same day, the Sixth Circuit Court of Appeals affirmed the summary judgment granted to the defendants by the federal district court, finding that no constitutional rights enforceable under 42 USC §1983 were implicated by the allegations that the officers had failed to protect the woman from the drag racers, citing the United States Supreme Court opinion in *DeShaney v Winnebago County Department of Social Services*, 489 US 189 (1989). *Jones v Reynolds*, ___ F3d ___ (6th Cir 2006).

Although successful, these holdings are not popular with the bench, as evident in the dissent in the federal action and the unusual suggestion in the majority opinion regarding better ways of pleading these claims under the Fourteenth Amendment. But public servants are not perfect, and mistakes happen. When confronted with the reality of imperfections in performance, and as we strive to correct the deficiencies, we can look to the law to provide defenses, even as the facts seem indefensible. As these cases demonstrate, motions for summary relief are a powerful defensive tool.

**The police officers in *Jones v Reynolds* were represented in both the State and Federal actions by Garan Lucow Miller trial attorney John Gillooly and appellate specialist Rosalind Rockkind.

BREAKING NEWS !!!

Oliver v Smith, ___ Mich App ___; ___ NW2d ___ (01/31/06).

 Defendant police officer and another officer attempted to administer field sobriety tests to the driver of a vehicle in which plaintiff was a passenger. Plaintiff was disruptive and uncooperative during the test and was subsequently arrested. Plaintiff claimed defendant used excessive force during the arrest because the officer intentionally handcuffed plaintiff's wrists too tightly with the intent to inflict harm. The Court affirmed the lower court's denial of defendant's motion for summary disposition finding that while the plaintiff did not present evidence to establish a genuine issue of material fact regarding whether defendant's conduct was grossly negligent, discovery was not yet complete, so that summary disposition in defendant's favor was premature. The Court went on to hold that a police officer's conduct of handcuffing an individual too tightly does not constitute gross negligence unless physical injury results. Furthermore, where defendant failed to produce a doctor's affidavit, an admission by the plaintiff, or any other evidence to support his contention that gross negligence did not occur, defendant failed to meet his initial burden and summary disposition was improper. The matter was reversed and remanded, allowing plaintiff the full period

of discovery to compile evidence to support his claim of gross negligence.

Judge Schuette dissented, finding the burden rested on plaintiff to submit evidence of injury, and plaintiff failed to do so.

Price v Dept of Transportation (Unpub, COA No. 257577, 01/31/06).



Plaintiff sustained injuries while riding his bicycle when he had to swerve into the path of an oncoming vehicle in order to avoid a drain hole on a bridge that was located between the fog line and the curb. The Court of Appeals confirmed that the shoulder of a highway is included in the improved portion of the highway designed for vehicular travel. The Court found that the hole was a result of the bridge being improperly resurfaced. Accordingly, where plaintiff alleged that defendant's failure to repair and maintain the bridge caused the dangerous and defective condition, the highway exception to governmental immunity applies to plaintiff's claims.

People of Grosse Ilse Township v Michael Alan Dembinski (Unpub, COA No. 256429, 02/07/06)



Where a police officer witnessed the plaintiff driver make a turn without signaling, the police officer had probable cause to stop the vehicle. The fact that the officer waited five to ten minutes after witnessing the turn to stop the vehicle has no bearing on the constitutional reasonableness of the stop. "[O]bjective facts known to the police officers who effected the traffic stop should be considered in determining whether the stop was justified by [probable cause] regardless of whether the officers subjectively relied on those facts." The Court of Appeals, after granting plaintiff's delayed application for leave to appeal, reversed the district and circuit court's orders of dismissal.