



Overview

Position Details

Application Process

Benefits

Click on a tab to navigate through this vacancy announcement.

Job Posting Announcement

CITY ATTORNEY Legal Division

Job Type: Appointed, full-time, regular, NBU

Pay Range: \$45.57 - \$ 48.30/hr. (annualizes to \$94,785.60 - \$ 100,464) plus a generous benefits package.

FLSA Status: Exempt

Posting Period: July 12 – August 12, 2012

The City of Urbana invites applications for a full-time City Attorney to lead the Legal Division. The successful candidate will be responsible for performing complex and highly responsible legal work; preparing legal memoranda, ordinances, and resolutions; representing and advising the City on legal issues; advising and participating in civil litigation; and performing other related duties as assigned.

This position requires a highly experienced executive-level attorney who can provide expert assistance and solid legal advice. Supervision is exercised over the office's professional and administrative support staff. The successful candidate will be highly organized and will possess excellent oral and written communication skills, legal research and reasoning skills, and will operate with the highest integrity and ethics.

Key Requirements:

- At least ten (10) years of progressive experience in professional legal practice, including at least (5) years of administrative or supervisory responsibility and first chair trial experience.
- A current and valid license to practice law in Illinois.
- The successful applicant must be available for evening meetings. The City Council meets regularly twice a month on the 1st and 3rd Mondays and the Committee of the Whole meets on the 2nd and 4th Mondays of the month.
- Experience working with a local government in Illinois is highly desirable but not required.

Applications are accepted electronically at: www.urbanaininois.us/jobs (click on "Job Opportunities"). In addition to a completed application, please attach a resume and one (1) original legal writing sample of no more than two pages with your application. Application materials must be received no later than 11:59 p.m. CST on Sunday, August 12, 2012.

The City of Urbana Welcomes Diversity!

We foster an environment that values and encourages mutual respect, inclusion of all people, and utilizing differences and similarities as an organizational asset. We welcome applications from diverse candidates and candidates who support diversity. EOE.

Overview

Position Details

Application Process

Benefits



CITY OF URBANA
Human Resources Division

CITY ATTORNEY

Division: Legal
Department: Executive
Reports To: Mayor
FLSA Status: Exempt,
Job Type : Appointed, Non-Civil Service

JOB SUMMARY

Under the administrative direction of the Mayor, the City Attorney is responsible for directing the staff and operations of the Legal Division. This position serves as chief legal counsel to the Mayor, City Council, Boards, Commissions and City departments. The City Attorney is appointed by, serves at the pleasure of, and reports directly to the Mayor.

The successful candidate will have at least (10) ten years of progressive experience in professional legal practice, demonstrated expertise in municipal law and possess excellent oral and written communication skills.

ESSENTIAL FUNCTIONS

- Provides advice to the Mayor, the City Council, boards, commissions and City departments/divisions concerning all legal matters.
- Attends weekly City Council and Committee of the Whole meetings.
- Researches and recommends to the Mayor and/or appropriate departmental staff modifications to existing ordinances and practices and/or proposes new City legislation.
- Directs all functions of the Legal Division and manages its day-to-day operations.
- Performs other duties as assigned.

JOB REQUIREMENTS

KNOWLEDGE AND EXPERIENCE

- Juris Doctorate from an accredited law school. Knowledge and ability acquired through receipt of Juris Doctorate from an American Bar Association (ABA) accredited law school;
- Ten (10) years progressive experience in professional legal practice, including at least (5) years of administrative or supervisory responsibility and first chair trial experience.

- Demonstrated expertise in several major areas of municipal law practice, including but not limited to: torts, contracts, land use, criminal law, constitutional law, public procurement law, government/administrative law, and municipal finance.
- Demonstrated success in cultivating effective working relationships with elected officials, boards and commissions, department/division heads, City staff, labor unions, community groups, and the general public.
- Demonstrated success in directing or supervising professional legal, administrative support staff, and/or outside legal counsel.
- Demonstrated success litigating highly complex cases in court and before administrative agencies.
- Demonstrated ability to identify and respond to community and City Council issues, concerns, and needs.
- Experience drafting legal instruments and proposed legislation.

SKILLS

- Proficiency with Microsoft Office products, particularly Word, Outlook, Excel and Access.
- Proficiency using Westlaw.
- Outstanding communication skills, both orally and in writing.

LICENSES, CERTIFICATIONS AND MEMBERSHIPS REQUIRED

- Licensed to practice law in Illinois. Must be licensed to practice law in State of Illinois at the time of appointment and must maintain license in good standing as a condition of continued employment.
- Valid Illinois driver's license.

PERFORMANCE EXPECTATIONS

- Cultivate a work environment that is respectful, productive, professional, and diverse.
- Operate with a consistently high degree of professionalism and ethics.

RESPONSIBLE FOR:

- Providing expert legal guidance to the Mayor, Council, boards, commissions, and departments/divisions.
- Supervision of the Legal Division staff and all outside counsel.
- Development and expenditure of the divisional budget in accordance with departmental practices and accepted City financial policy and procedures.

CONTACTS: INTERNAL/EXTERNAL

- Regular contact with elected and appointed officials, state administrative appellate and hearing boards, commissions, opposing counsel, union representatives and staff to present information and represent the City in legal matters.

WORK ENVIRONMENT

- Standard office setting.
- Hours may vary, but generally 8:00 a.m. to 5:00 p.m., Monday through Friday.
- Indoor working environment with contact with the general public and other City staff.

PHYSICAL CONDITIONS

- Essential and marginal functions may require maintaining physical condition necessary for standing or sitting for prolonged periods of time

The work environment characteristics described herein are representative of those an employee encounters while performing the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

The physical demands described herein are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

The duties listed above are intended only as illustrations of the various types of work that may be performed. The omission of specific statements of duties does not exclude them from the position if the work is similar, related or a logical assignment to the position.

The job description does not constitute an employment agreement between the employer and employee and is subject to change by the employer as the needs of the employer and requirements of the job change.

Overview

Position Details

Application Process

Benefits

Application Process

Application Instructions: Applications are accepted electronically at: www.urbanaininois.us/jobs (click on “Job Opportunities”), posting #139, and must include:

- 1) A completed application;
- 2) The names, addresses, daytime telephone numbers and e-mail addresses for three professional references;
- 3) One original legal writing sample of no more than two (2) pages; and
- 4) A current resume.

PLEASE NOTE: A current resume and one original legal writing sample of no more than two (2) pages are required as part of your application packet. Resume and writing sample must be attached to your on-line application on the “Supplemental Materials” page; materials sent through postal mail, fax, and methods other than online attachments will not be considered. The following locations offer free Internet access and assistance: the [Urbana Free Library](#) and the [Illinois Employment and Training Center](#).

Application Deadline: The deadline for receipt of applications is Sunday, August 12, 2012 at 11:59 p.m. CST. The initial review of application materials will begin on Monday, August 13, 2012 and will be commensurate with the volume of applications received.

Selection Procedure: Only online applications will be accepted for this position and must be received by the posted closing date. The information provided on your job application will be used to determine whether you meet the qualification requirements. Failure to provide detailed and complete information may result in your application being rejected. Do not submit a resume in lieu of completing the application questions. We reserve the right to request further information about your academic program, evidence of comparability, or an original transcript. Any information you submit may be verified.

Questions may be directed to Elizabeth Borman, Assistant Human Resources Manager, at: eeborman@urbanaininois.us or 217.384.2459. The City of Urbana provides reasonable accommodations for persons with disabilities; if you need information, please contact the Human Resources Division at the number or e-mail above.

Overview

Position Details

Application Process

Benefits

Benefit Information and Other Details

VACATION: Upon hire and on each eligible anniversary, vacation is advanced for the upcoming year. Ten (10) days are offered upon hire and increase on the employee's anniversary of Years 2, 3, 4 and 16.

SICK LEAVE: 69 hours advanced on the first day of employment. After completion of one (1) year of service, eight (8) hours of sick leave will accrue each month

HOLIDAYS: Ten (10) holidays are observed.

HEALTH INSURANCE: The City will pay the full cost of the premium for the City's standard group health insurance plan, plus 40% of the cost of the premium for standard family dependent coverage. We currently offer an HMO, which includes a network of Carle Clinic, Carle Hospital, Christie Clinic and Provena Hospital. Employees who waive City insurance and carry alternative health insurance may be eligible for a year-end cash bonus of \$118.00 per month.

LIFE INSURANCE: Effective on start date through The Hartford; coverage is \$20,000 regular life and \$40,000 accidental death & dismemberment. Additional supplemental coverage is optional.

DENTAL INSURANCE: Effective the first day of the month following hire date; coverage is optional and offered through Delta Dental.

IMRF: Exempt positions are covered by IMRF. 4.5% of earnings are deducted from the employee's check and the City pays all remaining costs for pensions, death benefits, and disability payments. Employees who do not vest may withdraw their own contributions upon separation.

457 PLAN: In addition to the traditional pension plans, the City sponsors a deferred compensation plan for benefit eligible personnel. The City does not make a contribution to this plan; however, employees may save for retirement by deferring a portion of their wages in this tax-deferred plan.

PROFESSIONAL LICENSES: As the City requires professional licenses, the City's policy is to pay the full cost for all required professional license fees, following approval by the employee's Department Head. At the discretion of the Department Head and within budgetary constraints, other licenses or certification fees that are strongly desired, but not required, may be partially or fully reimbursed.

PROFESSIONAL ORGANIZATION MEMBERSHIPS: The City recognizes that it is necessary and beneficial for employees and the City to keep abreast of current technology, equipment, techniques, legislation and ideas to provide the best possible services to the tax payer at the least possible cost. Therefore, upon the authorization of the employee's Department Head, the City will pay the cost for membership in job-related professional organizations that are beneficial to the City.

CONFERENCES AND TRAININGS: Participation at professional conferences, seminars, and workshops not only serves the employee in continuing his/her educational and professional development, but also assists the City in maintaining efficient and effective managerial and technological practices. Therefore, the City, within budgetary limits, may pay reasonable job-related conference or training fees and associated travel and accommodation costs. Department Head approval will be based upon the potential benefit to the employee and to the City, and the availability of funds.

EDUCATIONAL BENEFITS: The City encourages employees to further their education. Employees who voluntarily pursue job-related educational opportunities outside of work may be eligible for partial or full tuition reimbursement and/or a flexible schedule. See the Assistant Personnel Manager for details.

UNUSED SICK LEAVE: Upon separation an eligible employee who separates in good standing will receive payment for not utilizing sick leave during his or her employment. This payment, whether received as a cash payment or as a deposit into the PESHP will be based on an 8 hour of sick leave per month accrual. There are two schedules for a cash payment for unused sick leave, one schedule for employees that are not included in the City's PESHP and a second schedule for employees that are included in the PESHP. Employees that are included in the PESHP also receive a deposit into their PESHP account based on accrued unused sick leave balance. This payment shall be considered a form of termination payment and not a payment that reduces the balance of unpaid, unused sick leave. Thus, this payment will not reduce the amount of accrued, unused sick leave that is used in IMRF retirement calculations accordingly.

ABOUT THE CITY OF URBANA: Located in the heart of Champaign County in east central Illinois, Urbana (pop. 41,250) is strategically poised at the intersection of three major interstates, making it an attractive location for economic development. Urbana prides itself on being a progressive, dynamic community. The City is also internationally distinguished as the home of the University of Illinois at Urbana-Champaign, the state's flagship public university and one of the pre-eminent research institutions in the world. The City of Urbana is a municipal corporation and a home rule city led by Mayor Laurel Prussing, who also serves as the City's chief executive officer responsible for administering day-to-day operations. More information about the City is available at www.urbanaininois.us.



City Attorney

The City of Urbana invites applications for a full-time, appointed City Attorney. Key requirements include at least ten (10) years of progressive experience in professional legal practice and a current license to practice law in Illinois. Municipal government experience is highly desirable but not required.

For more information or to apply, visit:

www.urbanaininois.us/jobs, JobID #139.

Deadline to apply: Sunday, August 12, 2012

The City of Urbana Welcomes Diversity!

EOE.

THE NEWS GAZETTE, INC.
PO BOX 677
CHAMPAIGN IL 61824

ORDER CONFIRMATION

Salesperson: BETH ROEGNER

Printed at 07/13/12 09:40 by broegner

Acct #: 6145

Ad #: 1136806

Status: N

CITY OF URBANA
400 S VINE
URBANA IL 61801

Start: 07/15/2012 Stop: 07/21/2012
Times Ord: 7 Times Run: ***
STD7 1.00 X 41.00 Words: 72
Total STD7 41.00
Rate: CL Cost: 134.96
Class: 615 PROFESSIONAL

Contact: ELIZABETH BORMAN
Phone: (217)384-2459
Fax#: (217)384-2426
Email: eeborman@city.urbana.il.us
Agency:

Descript: CITY ATTORNEY THE CITY O
Given by: LIZ BORMAN
Created: broeg 07/13/12 09:35
Last Changed: broeg 07/13/12 09:39

PUB ZONE ED TP START INS STOP SMTWTFS
NG A 97 S 07/15
SH A 97 S 07/18
JN A 97 S 07/15,16,17,18,19,20,21

AUTHORIZATION

Under this agreement rates are subject to change with 30 days notice. In the event of a cancellation before schedule completion, I understand that the rate charged will be based upon the rate for the number of insertions used.

Name (print or type)

Name (signature)

(CONTINUED ON NEXT PAGE)

THE NEWS GAZETTE, INC.
PO BOX 677
CHAMPAIGN IL 61824

ORDER CONFIRMATION (CONTINUED)

Salesperson: BETH ROEGNER

Printed at 07/13/12 09:40 by broegner

Acct #: 6145

Ad #: 1136806

Status: N



City Attorney

The City of Urbana invites applications for a full-time, appointed City Attorney. Key requirements include at least ten (10) years of progressive experience in professional legal practice and a current license to practice law in Illinois. Municipal government experience is highly desirable but not required.

For more information or to apply, visit:

www.urbanaininois.us/jobs, JobID #139.

Deadline to apply:
Sunday,
August 12, 2012

*The City of Urbana
Welcomes Diversity!*

EOE.

From: [REDACTED]
Sent: Wednesday, June 13, 2012 10:19 PM
To: Prussing, Laurel Lunt
Subject: Assistant City Attorney Position

Dear Mayor Prussing:

Please consider the attached as my application for the City of Urbana Assistant City Attorney which was recently posted on the Illinois State Bar Association job board. I look forward to discussing how my professional experience and problem-solving skills will be of value to the City of Urbana.

James L. Simon
Attorney-Mediator

JAMES L. SIMON

Attorney at Law

June 13, 2012

Honorable Laurel Prussing
Mayor

City of Urbana
400 South Vine Street
Urbana, IL 61801

VIA E-MAIL: lprussing@urbanaininois.us

Re: Assistant City Attorney.

Dear Honorable Prussing:

I am responding to your posting for applications for the position of Assistant City Attorney which appeared in the June 12, 2012 on-line edition of the Illinois State Bar Association jobs postings. My wife and I are planning to move to the Champaign-Urbana area since my daughter and her fiancé live in the general area and she will be teaching in Urbana School District 116.

As an attorney with significant experience handling and managing all phases of diverse, routine and complex litigated and transactional matters, I will be extremely valuable as your next Assistant City Attorney. In addition to having represented units of local government in diverse matters, I also have significant civil litigation experience representing not only local government clients but commercial enterprises and national healthcare not-for-profit organizations in state and federal trial and appellate courts and before administrative bodies. While your requirements for the Assistant City Attorney position are brief, allow me to demonstrate how the breadth of my experience will be a valuable asset for the City of Urbana.

Requirements:

James L. Simon's Qualifications:

Litigation experience.

Considerable experience handling all phases of litigation including counseling, pleadings, discovery, pre-trial motion practice, trial, post-trial, and appeals in state and federal courts. Matters have included risk exposure between \$25K to well in excess of \$750,000.00. Have represented clients in appeals in state and federal appellate courts. Clients have included five special library districts.

Administrative proceedings.

Have represented local government entities and national healthcare organizations before IDHR, IHRC, EEOC, and FTC. Have represented clients before zoning boards of appeal, property tax review boards.

Experience representing governmental units in various matters.

Experience includes handling litigation for and providing general counsel to special library districts in matters involving general corporate, FOIA, Open Meetings Act, employment discrimination, harassment, employee embezzlement, wrongful discharge, defamation, breach of contract, condemnation, annexation, accounting/auditing malpractice, employee termination, annexation, condemnation, *quo warranto*,

Requirements:

James L. Simon's Qualifications:

Advises City Departments, Boards and Commissions.

and inter-governmental disputes. Have drafted numerous operating resolutions.

Prepares and reviews various contract documents.

Extensive experience counseling and advising governing boards, department-heads, committees and CEO's of special library districts, national healthcare organizations, medical centers, community hospitals, and private closely-held business entities on diverse transactional and litigated matters.

Dispute resolution experience.

Significant experience negotiating, drafting, reviewing and analyzing contract documents involving diverse and complex transactional matters. Developed structure and drafted documents for international private placement involving assets in excess of \$750,000,000.

Licenses to practice.

Second chair 8-week anti-trust jury trial (U.S. Dist. Ct. N.D. Ill.); first chair 7-week anti-trust bench trial (U.S. Dist. Ct. N.D. Ill.); first chair 6-day mineral lease bench trial (Cir. Ct. Cook Cty.); first chair 4-day competing annexation petitions bench trial (16th Jud. Cir.); first chair two-day breach of contract bench trial (19th Jud. Cir.); several 1-day breach of contract bench trials (Cir. Ct. Cook Cty.); 1-day bench theft of trade secrets trial (Cir. Ct. Cook Cty.). (Trials generally, much less jury trials, in commercial matters are few and far between.) Served as panel-chair in 100+ Court annexed small case arbitrations. Have received mediator training and have served in capacities of mediator and advocate in mediations in commercial matters. Have served as panel chair in over 100 small-case arbitrations.

Licensed to practice in the State of Illinois. Admitted to practice before the U.S. Sup. Ct.; 7th Cir. Ct. of App.; U.S. Dist. Court for N.D. Ill. (federal trial bar member). Have practiced *pro hoc vice* before federal courts in CA, IL, IA, IN, MI, NJ, NY, OH, and TX and in the Cir. Ct. of App. for the 3rd, 6th and 7th Cir.

Enclosed please find my resume and writing samples for your careful review. I look forward to exploring with you how my experience will be of value to the City of Urbana. Feel free to contact me during the day at [REDACTED] and in the evening at [REDACTED]. *I would appreciate you keeping this application strictly confidential.*

Sincerely,
James L. Simon

James L. Simon

Assistant City Attorney

Professional Experience:

Professional experience is highlighted by years of handling, managing, supervising, and counseling clients in complex and routine commercial litigated and transactional matters, mediation (neutral and advocate), and small-case arbitration (as panel-chair).

- Experience includes representing special library districts, national healthcare organizations, national trade associations, regional medical centers, community hospitals, commercial enterprises, and individuals in divers litigated and transactional matters.
- Represented special library district in diverse matters including general corporate, FOIA, Open Meetings Act, employment discrimination, harassment, employee embezzlement, wrongful discharge, defamation, breach of contract, condemnation, annexation, accounting/auditing malpractice, employee termination, annexation, condemnation, *quo warranto*, and inter-governmental disputes.
- Have represented special library districts in state court and before state administrative agencies.
- File management responsibilities for pre-litigation counseling, pleadings, discovery, motion practice, trial, post-trial, and appellate phases of litigation involving complex and routine matters in state and federal courts at trial and appellate levels.
- Trial experience includes:
 - second chair 8-week anti-trust jury trial (U.S. Dist. Ct. N.D. Ill.);
 - first chair 7-week anti-trust bench trial (U.S. Dist. Ct. N.D. Ill.);
 - first chair 6-day mineral lease/royalties dispute bench trial (Cir. Ct. of Cook Cty.);
 - first chair 4-day competing annexations bench trial (16th Jud. Cir.);
 - first chair two-day breach of contract bench trial (19th Jud. Cir.);
 - first chair several 1-day breach of contract bench trials (Cir. Ct. Cook Cty.);
 - first chair 1-day theft of trade secrets bench trial (Cir. Ct. Cook Cty.);
 - first chair 3-day breach of residential sales contract bench trial before magistrate (U.S. Dist. Ct. N.D. Ill.).
- Successfully defended 11 federal anti-trust suits in seven federal district courts and three federal appellate courts with combined risk exposure well in excess of \$750,000,000.
- Successfully defended suit involving mineral lease rights and royalties with a risk exposure in excess of \$10 million.
- Negotiated, drafted, reviewed, and analyzed contracts involving diverse and complex substantive matters.
- Extensive experience counseling clients in connection with corporate governance and contractual matters.
- Member of the DePaul University College of Law adjunct faculty teaching *Negotiations*.
- Lecturer on negotiation strategies and skills and alternative dispute resolution.
- Received mediator training (40 hours) and served in mediated disputes as neutral and advocate.
- Panel-chaired 100+ small-case arbitrations in court-annexed arbitrations.
- Served as General Counsel for life settlement investment company with assets exceeding \$25 million.

Academic and Court Credentials:

- Admission to practice before: United States Supreme Court, Illinois Supreme Court, United States District Court for the Northern District of Illinois (trial bar member), United States Court of Appeals for the Seventh Circuit.
- Have represented clients in federal courts in CA, IL, IN, IA, MI, NJ, NY, OH, and TX as well as U.S. Courts of Appeals for the Third, Sixth and Seventh Circuit.
- Doctor of Jurisprudence *magna cum laude*, DePaul University College of Law.
- *Pi Gamma Mu National Social Science Honor Society* honors.
- Recipient of several American Jurisprudence Book awards for outstanding scholarship.
- Published *The Case for Mandatory Mediation in Foreclosure Matters: Can It Work for the Circuit Court of the 19th Judicial Circuit*, The Docket (LCBA Journal), Vol. 19, No. 3 (Mar. 2012).
- Published articles on nursing and the law for nurse anesthetist journal, healthcare informed consent for IILCE.

Career History:

- | | | |
|--------------------------------|---------------------------------|--------------|
| • Of Counsel | Lakelaw | 2010-Present |
| • Adjunct Faculty | DePaul U. Coll. of Law | 2004-Present |
| • General Counsel | LifeCycle Investments, LLC | 2007-2010 |
| • Attorney/Partner/Shareholder | Roberts, Simon & Even, Ltd. | 1989-2007 |
| • Attorney/Partner/Shareholder | Schuyler, Roche & Zwirner, P.C. | 1978-1989 |
| • Attorney/Associate | Hinshaw & Culbertson | 1977-1978 |



8.29.2012



City of Urbana, Illinois

[JAMES SIMON]

APPLICANT INTERVIEW PACKAGE

James L Simon



Contents:

1. Application
2. Attachment: Cover Letter
3. Attachment: Resume
4. Attachment: Writing Sample #1

Prepared for: Elizabeth Borman
City of Urbana
Aug 27, 2012 9:46 AM

City of Urbana Online Application

Simon, James - AppNo: 1348 | eborman-Note: Job 139: Specialized in library district...

Date Submitted: 7/22/2012

Personal Data

Name: James L Simon
(First) (Middle Initial) (Last)

Other name(s) under which transcripts, certificates, and former applications may be listed:

Other: (First) (Middle Initial) (Last)

Email Address: [REDACTED]

Postal Address

Permanent Address

Number & Street: [REDACTED]
Apt. Number: [REDACTED]
City: [REDACTED]
State/Province: [REDACTED]
Zip/Postal Code: [REDACTED]
Country: [REDACTED]
Daytime Phone: [REDACTED]
Home/Cell Phone: [REDACTED]

Present Address

Number & Street:
Apt. Number:
City:
State/Province:
Zip/Postal Code:
Country:
Phone Number:

Employment Desired

Closed Vacancy Desired:	Date Last Submitted	Experience in Similar Positions
JobID: 139 Executive Department: City Attorney at Urbana City Building, 400 S. Vine St.	7/22/2012	-

Position Desired:	Experience in Similar Positions
Executive Department 1. Legal Division	30+ years

JobID 139 Questions

* 1. Responses to the supplemental questions must reflect the information provided under the "Work Experience" section of the application. Only information on the application will be considered and additional information listed on a resume, cover letter or other supplemental materials will not be used when deciding if a candidate meets the qualifications. Applicants are STRONGLY encouraged to include all information and details on their application. I understand and agree.

* 2. By completing this supplemental evaluation, I attest that the information I have provided is accurate. Any information I provide may be reviewed by the hiring manager. Any misstatements or falsification of information may eliminate me from consideration or may result in dismissal. I understand and agree.

* 3. Do you have a Juris Doctorate degree from an ABA-accredited law school?

Yes

* 4. Are you currently licensed and authorized to practice law in Illinois?

Yes

* 5. Do you have at least ten (10) years of progressive experience in professional legal practice? Please only count paid, professional experience; post-secondary education classes should not be counted.

Yes

* 6. Do you have at least (5) years of supervisory responsibility?

Yes

6a. If you answered yes, please summarize your supervisory experience:

20+ years supervising associates, law interns, summer associates, and professional administrative staff. 8+ years law school teaching experience teaching and mentoring law students.

City of Urbana Online Application

Simon, James - AppNo: 1348 | eborman-Note: Job 139: Specialized in library district...

Date Submitted: 7/22/2012

JobID 139 Questions continued

* 7. Do you have first chair trial experience?

Yes

7a. If you answered yes no, please summarize your trial experience:

Experience includes: (i) 8 week anti-trust case in U.S. District Court with significant risk exposure; (ii) 1 week intra-government dispute over annexation of property; (iii) 1 day trial with significant risk exposure; (iv) 3 day breach of contract case in U.S. District Court; (v) various small case trials involving debt collection.

* 8. Please select the area(s) you have professional experience handling (examples are listed in parentheses):

- Real estate issues (property acquisition, demolition, condemnation, eminent domain)
- Zoning and development (annexation, zoning, subdivision, construction, infrastructure, land use)
- Labor and employment matters (FMLA, ADA, employee discipline, recruitment and retention issues, grievances)
- Collective bargaining (contract negotiation, arbitration)
- Board procedures (Open Meetings Act, FOIA)
- Ordinance drafting
- Administrative hearings and appeals

9. If you answered that you have experience in any of the practice areas listed above, please briefly summarize your experience. Be sure to include summaries for all areas that you selected in Question 8.

- Represented individuals seeking zoning variances;
- Represented Library Districts in condemnation actions;
- Panel chaired 100+ small-case arbitrations;
- Negotiated numerous employee/employer contracts;
- Teach negotiation strategies and skills at college of law;
- Represented Library Districts and employers in IDHR, IHRC, and EEOC matters;
- Provided counsel and advice to Library Districts on OMA, FOIA and other state and federal compliance issues;
- Drafted ordinances as requested by Library Districts;
- Represented Library Districts, employers, and employees at administrative hearings before EEOC, IHDR, and IHRC as well as not-for-profit organizations before FTC and Illinois health facilities planning board.

Experience

City of Urbana Online Application

Simon, James - AppNo: 1348 | eborman-Note: Job 139: Specialized in library district...

Date Submitted: 7/22/2012

Experience Continued

Current or Most Recent Position		Employer Contact Information		Supervisor/Reference Contact Information	
Lakelaw Of Counsel		420 W. Clayton Street Waukegan, IL, IL 60085 847-249-9100		None	
Date From - Date To:	08/2010 - present	Full or Part Time:	Full	Last Annual Salary:	25% of billings
Reason for Leaving:	Still employed				
	[REDACTED]				
	[REDACTED]				

Previous Position Held		Employer Contact Information		Supervisor/Reference Contact Information	
LifeCycle Investments, LLC General Counsel		4709 Golf Road Skokie, IL 60085 N/A		None N/A N/A	
Date From - Date To:	12/2007 - 08/2010	Full or Part Time:	Full	Last Annual Salary:	\$130,000
Reason for Leaving:	Company forced to close due to 2008 nationwide financial crisis.				
	[REDACTED]				
Responsibilities/Accomplishments	All general corporate matters including negotiating and memorializing complex investment arrangements; establishing and implementing investment strategies including all documentation and compliance related thereto.				

Previous Position Held		Employer Contact Information		Supervisor/Reference Contact Information	
Roberts, Simon & Even, Ltd. Partner		1620 Colonial Parkway Inverness, IL 60067 847-507-7640		[REDACTED] N/A N/A	
Date From - Date To:	08/1989 - 12/2007	Full or Part Time:	Full	Last Annual Salary:	\$95,000
Reason for Leaving:	To form investment company - LifeCycle Investments, LLC				
	[REDACTED]				
Responsibilities/Accomplishments	Generally responsible for litigation. Responsible for all client matters brought to me by my own business clients. Responsible for representing library districts in all litigation and administrative proceedings and such other projects as requested by one or both partners.				

City of Urbana Online Application

Simon, James - AppNo: 1348 | eborman-Note: Job 139: Specialized in library district...

Date Submitted: 7/22/2012

Experience Continued

Previous Position Held		Employer Contact Information		Supervisor/Reference Contact Information	
Schuyler, Roche & Zwirner, PC Partner		1 Prudential Plaza Chicago, IL 60601 312-565-2400		Daniel M. Schuyler, deceased N/A N/A	
Date From - Date To:	12/1978 - 08/1989	Full or Part Time:	Full	Last Annual Salary:	\$120,000
Reason for Leaving:	Formed own firm.				
May we contact this employer?	No				
Responsibilities/Accomplishments	Supervisor is deceased. General litigation and transactional matters.				

Education

High School Attended: Highland Park High School, Highland Park, IL
Graduation Status: H.S. Diploma

Colleges, Universities and Technical Schools Attended:

Education Continued

Name and location	Dates Attended: From - To	Major area of study	Minor area of study	Degree	Graduation Date
DePaul University College of Law, Chicago, IL	09/1973 2/1977	Law		JD	05/1977
University of Illinois, Urbana, IL	09/1969 2/1971	Industrial Design		BFA	02/1971
Ohio University, Athens, OH	09/1966 06/1969	Industrial Design	Graphic Design, History	N/A	

General Information

Employment Eligibility

* Are you eligible for employment in the United States? (Proof of U.S. Citizenship or immigration status will be required upon employment.)

* Are you 18 years of age or older?

Driving Record

* Do you have a valid driver's license?

* Has your driver's license been under suspension or revocation within the last 12 months?

* Have you been convicted of a felony, released from prison in the past 7 years, or been convicted of an offense that might make you unsuitable for this position?

City of Urbana Online Application

Simon, James - AppNo: 1348 | eborman-Note: Job 139: Specialized in library district...

Date Submitted: 7/22/2012

General Information continued

NOTE: A 'yes' answer does not automatically disqualify you from employment. The nature and date of the offense and the type of job for which you are applying will be considered. Applicants are not obligated to disclose sealed or expunged records of conviction or arrest. Also, do not include juvenile convictions (before your 17th birthday), unless you were tried as an adult.

If you answered, "Yes," please list the date and nature of the offense(s).

- * Are you willing to undergo a physical examination by a physician, to prove you are physically able to safely perform the tasks of the job for which you have applied?
- * The City of Urbana will send time-sensitive exam notices and other correspondence via e-mail to applicants; we will NO LONGER send paper and notices. Only e-mail notification will be sent, regardless of notification preference selected. Do you understand that you will only be notified by e-mail?
- * Incomplete applications may not be considered. You must complete all sections of the application, including the Education and Work Experience section, even if you also attach a resume or other documentation. Failure to complete the application may result in your application being rejected. However, you may attach a resume or other documentation in addition to your completed resume. Do you understand and agree to the above information?

Yes
Yes
Yes

Certificates and Licenses

Certificates & Licenses

Please list any relevant certificates or licenses you currently possess:

Type:	Law License
Date issued:	05/1977
Expiration date:	None
Number:	ARDC No.: 2612798
Issued by:	Illinois Supreme Court

Type:	Membership
Date issued:	1983
Expiration date:	N/A
Number:	N/A
Issued by:	United States Supreme Court

Type:	Membership
Date issued:	1977
Expiration date:	N/A
Number:	N/A
Issued by:	United States Court of Appeals for the Seventh Circuit

City of Urbana Online Application

Simon, James - AppNo: 1348 | eborman-Note: Job 139: Specialized in library district...

Date Submitted: 7/22/2012

Professional References

	Reference 1 of 3	Reference 2 of 3
Name:	[REDACTED]	[REDACTED]
Employer:	[REDACTED]	[REDACTED]
Current Position:	[REDACTED]	[REDACTED]
Phone	[REDACTED]	[REDACTED]
Mailing Address:	[REDACTED]	[REDACTED]
Email:	[REDACTED]	[REDACTED]
Relationship to Candidate:	[REDACTED]	[REDACTED]
Years Known:	[REDACTED]	[REDACTED]
	Reference 3 of 3	
Name:	[REDACTED]	
Employer:	[REDACTED]	
[REDACTED]	Trustee	
Phone	N/A	
Mailing Address:	[REDACTED]	
Email:	[REDACTED]	
Relationship to Candidate:	[REDACTED]	
Years Known:	20+	

Referrals

How did you hear about employment with us?

City website		
--------------	--	--

Disclosures

Professional Status

* Have you ever failed to be rehired, been asked to resign a position, resigned to avoid termination, expelled or terminated from employment?

No

If Yes, explain:

--

Legal Information

City of Urbana Online Application

Simon, James - AppNo: 1348 | eborman-Note: Job 139: Specialized in library district...

Date Submitted: 7/22/2012

Equal Opportunity Employer

The City of Urbana is an equal opportunity employer dedicated to a policy of nondiscrimination in employment. All qualified applicants will receive consideration of employment regardless of race, color, national origin, religion, sex, age, marital status, physical and mental disability, sexual preference, political affiliation, or other legally protected group status.

The City of Urbana Welcomes Diversity.

We foster an environment that values and encourages mutual respect, inclusion of all people and utilizing differences and similarities as an organizational asset.

Applicant's Acknowledgment and Agreement

INVESTIGATION AUTHORIZATION, UNDERSTANDING, & CERTIFICATION OF APPLICATION

By clicking on the 'agree' button below, I hereby certify to all of the following: I meet all legal requirements for this position, including the age requirement. There are no misrepresentations or false information in my application package (all submissions). I am aware that should investigations disclose such, my current and future applications may be disqualified, my name may be removed from all eligible lists, and I may be disciplined or discharged if I am a currently employed with the City.

I understand that I will have to produce documentation verifying identity and employment eligibility in the U.S. I understand that I may be required to verify any and all information given on this application. I understand that this completed application is the property of the City of Urbana and will not be returned. I understand that I must notify the Human Resources Division of any changes in my name, address, or phone number.

I am aware that eligibility for a City of Urbana pension is based on the requirements set forth in the applicable pension plan, the provisions of which will be described in the new employee publication that will be provided to me if I am employed in an eligible position. I understand that acceptance of employment does not create a contractual obligation upon the City to continue to employ me in the future.

By signing this application, I authorize the investigation of all statements and information contained in this application. I release from all liability anyone supplying such information, including disciplinary reports, letters of reprimand, or other disciplinary actions. I authorize the Illinois State Police Department and the FBI to release to the City of Urbana any conviction information for the purpose of evaluating my qualifications and character as it relates to the position(s) for which I have applied. I also release the City of Urbana from all liability that might result from making an investigation.

The City of Urbana is an Equal Opportunity Employer. Pursuant to law, discrimination because of race, sex, color, religion, national origin, physical or mental disability, age, sexual orientation, or any other protected class is prohibited. If I believe I have been discriminated against, I may contact the City's Human Relations Officer or I may notify the appropriate federal or state agency.

I, James Simon, agree to all of the terms above.

I agree

JAMES L. SIMON

Attorney at Law

July 22, 2012

Honorable Laurel Prussing
Mayor
City of Urbana
400 South Vine Street
Urbana, IL 61801

VIA E-MAIL: lprussing@urbanaininois.us

Re: City Attorney.

Dear Honorable Prussing:

I am responding to your posting for applications for the position of City Attorney which currently appears on the City of Urbana website. I have been periodically checking the website inasmuch as I applied for the then open assistant attorney position. As noted in my previous application, my wife and I are planning to move to the Champaign-Urbana area since our daughter and her fiancé live in the general area and our daughter will be teaching in Urbana School District 116.

As an attorney with significant experience handling and managing all phases of diverse, routine and complex litigated and transactional matters, I will be extremely valuable as your next City Attorney. In addition to having represented units of local government in diverse matters, I also have significant civil litigation experience, including trial experience, representing not only local government clients but also commercial enterprises and national healthcare not-for-profit organizations in state and federal trial and appellate courts and before administrative bodies. While your requirements for the City Attorney position are brief, allow me to demonstrate how the breadth of my experience will be a valuable asset for the City of Urbana.

Requirements:

At least 10 years of progressive experience in professional legal practice.

Five years supervisory responsibility.

Litigation experience.

James L. Simon's Qualifications:

30+ years of professional experience including 25+ years of file-management responsibility handling routine transactional, compliance, and litigated matters.

20+ supervising associates, law interns, and summer directing, supervising, coordinating, and mentoring their work. 8 years of teaching and mentoring law students at DePaul University College of Law. Managed outside legal counsel on behalf of national lending and equipment leasing organizations. Managed small law firm.

Significant experience handling all phases of litigation including counseling, pleadings, discovery, pre-trial motion practice, trial, post-trial, and appeals in state and federal trial and appellate courts. Matters have included risk exposure between \$25K to well in excess of \$750MM. Clients have included five special library districts. Litigated matters for governmental clients have included administrative, annexation, employment,

Requirements:

James L. Simon's Qualifications:

Experience representing governmental units in various matters.

inter-governmental mandamus, *quo warranto*, and zoning disputes.

Advises City Departments, Boards and Commissions.

Experience includes handling litigation for and providing general counsel to special library districts in matters involving accountant/auditor malpractice, administrative, annexation, breach of contract, condemnation, defamation, discrimination, employee discharge, employee embezzlement, FOIA, general corporate, harassment, inter-governmental, mandamus, Open Meetings Act, *quo warranto*, and zoning issues and disputes. Have drafted numerous operating resolutions.

Extensive experience counseling and advising governing boards, department-heads, committees and CEO's of special library districts, national healthcare organizations, medical centers, community hospitals, and private closely-held business entities on diverse and complex matters.

Prepares and reviews various contract document, resolutions and ordinances.

Significant experience negotiating, drafting, reviewing and analyzing contract documents, regulations, rules and procedures.

Alternative dispute resolution experience.

In addition to extensive litigation experience, have received mediator training and have served as neutral in diverse disputes as well as panel chairman in over 100 small-case arbitrations for court annexed arbitration program.

Licenses to practice.

Licensed to practice in State of Illinois; admitted to practice before the U.S. Sup. Ct.; 7th Cir. Ct. of App.; U.S. Dist. Court for N.D. Ill. (federal trial bar member). Have practiced *pro hoc vice* before federal courts in CA, IL, IA, IN, MI, NJ, NY, OH, and TX and in the Cir. Ct. of App. for the 3rd, 6th and 7th Cir.

Enclosed please find my resume and writing samples for your careful review. I look forward to exploring with you how my experience will be of value to the City of Urbana. Feel free to contact me during the day at [REDACTED] and in the evening at [REDACTED]. [REDACTED]

Sincerely,
James L. Simon

City Attorney – City of Urbana

Professional Experience:


Professional experience is highlighted by years of handling, managing, supervising, and counseling clients in complex and routine commercial litigated and transactional matters, mediation (neutral and advocate), and small-case arbitration (as panel-chair).

- Experience includes representing special library districts, national healthcare organizations, national trade associations, regional medical centers, community hospitals, commercial enterprises, and individuals in divers litigated and transactional matters.
- Represented and counseled special library district in diverse matters including accountant/auditor malpractice, administrative, annexation, breach of contract, condemnation, defamation, discrimination, employee discharge, employee embezzlement, general corporate, FOIA, harassment, inter-governmental, mandamus, Open Meetings Act, *quo warranto*, and zoning issues and disputes.
- Have represented special library districts in state court and before state administrative agencies.
- File management responsibilities for pre-litigation counseling, pleadings, discovery, motion practice, trial, post-trial, and appellate phases of litigation involving complex and routine matters in state and federal courts at trial and appellate levels.
- Trial experience includes:
 - second chair 8-week anti-trust jury trial (U.S. Dist. Ct. N.D. Ill.);
 - first chair 7-week anti-trust bench trial (U.S. Dist. Ct. N.D. Ill.);
 - first chair 6-day mineral lease/royalties dispute bench trial (Cir. Ct. of Cook Cty.);
 - first chair 4-day competing annexations bench trial (16th Jud. Cir.);
 - first chair two-day breach of contract bench trial (19th Jud. Cir.);
 - first chair several 1-day breach of contract bench trials (Cir. Ct. Cook Cty.);
 - first chair 1-day theft of trade secrets bench trial (Cir. Ct. Cook Cty.);
 - first chair 3-day breach of residential sales contract bench trial before magistrate (U.S. Dist. Ct. N.D. Ill.).
- Successfully defended 11 federal anti-trust suits in seven federal district courts and three federal appellate courts with combined risk exposure well in excess of \$750MM.
- Successfully defended suit involving mineral lease rights and royalties with a risk exposure in excess of \$10 million.
- Negotiated, drafted, reviewed, and analyzed contracts involving diverse and complex substantive matters.
- Extensive experience counseling clients in connection with corporate governance, compliance, and contractual matters.
- Member of the DePaul University College of Law adjunct faculty teaching *Negotiations*.
- Lecturer on negotiation strategies and skills and mediation.
- Received mediator training (40 hours) and served in mediated disputes as neutral and advocate.
- Panel-chaired 100+ small-case arbitrations in court-annexed arbitrations.
- Served as General Counsel for life settlement investment company with assets exceeding \$25 million.

Academic and Court Credentials:

- Admission to practice before: United States Supreme Court, Illinois Supreme Court, United States District Court for the Northern District of Illinois (trial bar member), United States Court of Appeals for the Seventh Circuit.
- Have represented clients in federal courts in CA, IL, IN, IA, MI, NJ, NY, OH, and TX as well as U.S. Courts of Appeals for the Third, Sixth and Seventh Circuit.
- Member of judicial task force for the 19th Judicial Circuit charged with analyzing viability of instituting a mediation program for foreclosure actions and developing rules and procedures for instituting such program.
- Doctor of Jurisprudence *magna cum laude*, DePaul University College of Law.
- *Pi Gamma Mu National Social Science Honor Society* honors.
- Recipient of several American Jurisprudence Book awards for outstanding scholarship.
- Published –
 - *The Case for Mandatory Mediation in Foreclosure Matters: Can It Work for the Circuit Court of the 19th Judicial Circuit*, The Docket (LCBA Journal), Vol. 19, No. 3 (Mar. 2012).
 - *The Role of Mini-Trial in Negotiation and Mediation – Two Cases*, The Docket (LCBA Journal), Vol. 9, No. 6 (Jul. 2012).
- Published articles on nursing and the law for nurse anesthetist journal, healthcare informed consent for IILCE.

Career History:

- | | | |
|--------------------------------|---------------------------------|--------------|
| • Of Counsel | Lakelaw | 2010-Present |
| • Adjunct Faculty | DePaul U. Coll. of Law | 2004-Present |
| • General Counsel | LifeCycle Investments, LLC | 2007-2010 |
| • Attorney/Partner/Shareholder | Roberts, Simon & Even, Ltd. | 1989-2007 |
| • Attorney/Partner/Shareholder | Schuyler, Roche & Zwirner, P.C. | 1978-1989 |
| • Attorney/Associate | Hinshaw & Culbertson | 1977-1978 |
- 

MEMORANDUM

TO: JOHN T. EVEN
FROM: JAMES L. SIMON
SUBJECT: RESEARCH ISSUES.
DATE: FEBRUARY 29, 2012

The issues our Library Districts have recently raised are addressed below.

A. Whether library district trustee's office becomes vacant upon conviction of a felony:

You have raise two questions concerning the status of a Library District Trustee's seat upon his conviction of a felony. As discussed below, the Illinois Constitution of 1970, Article 13, § 1 provides that a person convicted of a felony renders that person ineligible from holding any elected office and, thus, his or her seat becomes vacant. Eligibility may be restored "as provided by law."

While 75 ILCS 16/30-25 of the Public Library District Act does not provide for ouster of Trustees upon their felony conviction, the Article 13, § 1 of the Illinois Constitution of 1970 and supporting case law do provide that upon conviction of a felony, the Trustee is deemed ousted from his/her public office. No action by the Board to declare the seat vacant is required. Please note that conviction means completion of all proceedings at the trial level including sentencing and post-trial motions. The filing of a notice of appeal of such felony conviction does not stay the ouster.

However, where the individual is pardoned, he/she becomes eligible to hold office notwithstanding the prior conviction. *People ex rel. Symonds v. Gualano*, 97 Ill.App.2d 248, 254-255, 240 N.E.2d 467 (1st Dist. 1968). In that case, defendant was serving a four-year term, having been elected as president of the Village of Justice in 1965. He also was holding several other offices at the time. In 1935, the officer pled guilty to mail fraud. Ouster was sought and denied at the trial level on the grounds that mail fraud was not an infamous crime. NOTE: Action was brought before the 1970 Illinois Constitution went into effect. The court noted that –

The respondent's last conviction took place a quarter of a century ago, his probation was satisfactorily discharged and, presumptively, his life during the intervening years merited the trust the citizens of the Village of Justice imposed in him. However, the language of the constitution is absolute and makes no provision for a mitigation of its prohibition with the passage of time. The statute provides for the restoration of the rights of citizenship if there is an appropriate pardon. But the respondent has not been pardoned and his rehabilitation, which deserves commendation, does not redound to his favor insofar as the right to hold public office is concerned.

Emphasis supplied.

Article 13, § 1 of the Illinois Constitution of 1970 expressly declares that: "A person convicted of a felony, bribery, perjury or other infamous crime shall be ineligible to hold an office created by this Constitution. Eligibility may be restored as provided by law." This position is well supported by case law arising primarily before the adoption of the 1970 Illinois Constitution. However, Article 12, § 1 "codifies" those cases and elevates the automatic ouster to a constitutional level. (Ill. Const. Art 7 provides for the creation of special districts which are subject to the provisions of the Illinois Constitution.) See also –

- *People ex rel. City of Kankakee v. Morris*, 126 Ill.App.3d 722, 726, 467 N.E.2d 589, 81 Ill.Dec. 718 (3rd Dist. 1984) (Alderman convicted of felony theft in food stamp program could be ousted

from office even though sentenced to probation since elective office becomes vacant upon incumbent's conviction of an "infamous crime.").

- *Werdell v. Turzynski*, 128 Ill.App.2d 139, 153, 262 N.E.2d 833 (1st Dist. 1970) – Determination of what constitutes an infamous crime is subject to judicial decision and is an offense implying such a dereliction of morals that it shows a total disregard of the obligation of an oath.).
- *People ex rel. Grogan v. Lisinski*, 113 Ill.App.3d 276, 281, 446 N.E.2d 1251, 68 Ill.Dec. 854 (1st Dist. 1983) (Vacancy in office is created upon conviction and completion of criminal trial, ouster is not stayed pending appeal.).
- *People ex rel. Taborski v. Illinois Appellate Court, First District*, 50 Ill.2d 336, 340, 278 N.E.2d 796 (1972) (Any public officer convicted, in Federal court state court of a felony which falls within the general classification of being inconsistent with commonly accepted principles of honest and decency, or which involves moral turpitude, stands convicted of an infamous crime.).
- *People ex rel. Rice v. Appellate Court, Fifth District*, 48 Ill.2d 195, 198, 268 N.E.2d 420 (1971) – A felony is "infamous" within the concept of the common law if it is inconsistent with commonly accepted principles of honest and decency or involves moral turpitude. Conviction related to duties of office.
- *People v. Cordovano*, 94 Ill.App.2d 106, 109, 236 N.E.2d 374 (1st Dist. 1968) (A public officer convicted, in federal or state court, of a felony which is inconsistent with principles of honesty and decency, or which involves moral turpitude, stands convicted of an infamous crime and that such conviction creates a vacancy in such office.).

B. Designation, Training and Certification for Electronic Training Under OMA and of FOIA:

The OMA and FOIA both establish training and compliance requirements for Trustees, officers, and employees.

OMA Requirements: 5 ILCS 120/1.05(a) requires every public body to "designate employees, officers, or members to receive training on compliance" with the OMA. The Library District must submit a list of designated individuals to the Public Access Counselor within the AG's office ("PAC"). Those individuals must successfully complete an "electronic training curriculum" provided by the PAC by June 30, 2012. Except as noted below, designees must complete training programs annually. Any additional designees must successfully complete training within 30 days of designation. 5 ILCS 120/1.05(b) provides that all Trustees must successfully complete the training. Those Trustees who commenced serving (by election or appointment) prior January 1, 2012 must successfully complete electronic training by December 31, 2012. Trustees who are elected or appointed after January 1, 2012 must complete the training within 90 days after they take their oath of office or, in the absence of such oath, after they commence their responsibilities. A Trustee who has successfully completed training must file a copy of his/her certificate of completion with the Library District. No further training is required for Trustees.

FOIA Requirements: 5 ILCS 140/3.5 provides that the Library District must designate one or more officials or employees to act as FOI officer(s). FOI officers must complete by June 30, 2010 an electronic training curriculum also provided by the PAC. Newly designed FOI officers must complete the training within 30 days of assuming their positions. Training is an annual requirement. Failure to successfully complete the training disqualifies that person from serving as a FOI officer.

Unlike the Open Meetings Act requirements, if a Trustee is designated as a FOI officer, he/she must successfully complete the electronic training curriculum on an annual basis.

C. Requirement of Physical Attendance at Board of Trustee Meetings:

The OMA (5 ILCS 120/1 *et seq.*) requires that for determining whether a quorum exists to conduct a public meeting, only those Trustees who are physically present at the meeting may be counted. Other Trustees who are not physically present may participate by video or audio conference. 5 ILCS 120/2.01.

Section 7 of the OMA incorporates Section 2.01 for purposes of determining a quorum. Attendance by a Trustee by video or audio conference may be allowed at closed meetings where the Trustee is absent due to personal illness or disability, personal employment obligations or undertaking the business of the District, or a family emergency. The Trustee must give notice to the recording secretary in advance of the meeting unless such advance notice is impractical. Attendance and participation by video or audio conference must be approved by a majority of the Board and such attendance is governed by rules adopted by the District. Those rules cannot expand Sections 2.01 or 7 of the Act.

MEMORANDUM

TO: JOHN T. EVEN
FROM: JAMES L. SIMON
SUBJECT: RESEARCH ISSUES.
DATE: FEBRUARY 29, 2012

The issues our Library Districts have recently raised are addressed below.

A. Whether library district trustee's office becomes vacant upon conviction of a felony:

You have raise two questions concerning the status of a Library District Trustee's seat upon his conviction of a felony. As discussed below, the Illinois Constitution of 1970, Article 13, § 1 provides that a person convicted of a felony renders that person ineligible from holding any elected office and, thus, his or her seat becomes vacant. Eligibility may be restored "as provided by law."

While 75 ILCS 16/30-25 of the Public Library District Act does not provide for ouster of Trustees upon their felony conviction, the Article 13, § 1 of the Illinois Constitution of 1970 and supporting case law do provide that upon conviction of a felony, the Trustee is deemed ousted from his/her public office. No action by the Board to declare the seat vacant is required. Please note that conviction means completion of all proceedings at the trial level including sentencing and post-trial motions. The filing of a notice of appeal of such felony conviction does not stay the ouster.

However, where the individual is pardoned, he/she becomes eligible to hold office notwithstanding the prior conviction. *People ex rel. Symonds v. Gualano*, 97 Ill.App.2d 248, 254-255, 240 N.E.2d 467 (1st Dist. 1968). In that case, defendant was serving a four-year term, having been elected as president of the Village of Justice in 1965. He also was holding several other offices at the time. In 1935, the officer pled guilty to mail fraud. Ouster was sought and denied at the trial level on the grounds that mail fraud was not an infamous crime. NOTE: Action was brought before the 1970 Illinois Constitution went into effect. The court noted that –

The respondent's last conviction took place a quarter of a century ago, his probation was satisfactorily discharged and, presumptively, his life during the intervening years merited the trust the citizens of the Village of Justice imposed in him. However, the language of the constitution is absolute and makes no provision for a mitigation of its prohibition with the passage of time. The statute provides for the restoration of the rights of citizenship if there is an appropriate pardon. But the respondent has not been pardoned and his rehabilitation, which deserves commendation, does not redound to his favor insofar as the right to hold public office is concerned.

Emphasis supplied.

Article 13, § 1 of the Illinois Constitution of 1970 expressly declares that: "A person convicted of a felony, bribery, perjury or other infamous crime shall be ineligible to hold an office created by this Constitution. Eligibility may be restored as provided by law." This position is well supported by case law arising primarily before the adoption of the 1970 Illinois Constitution. However, Article 12, § 1 "codifies" those cases and elevates the automatic ouster to a constitutional level. (Ill. Const. Art 7 provides for the creation of special districts which are subject to the provisions of the Illinois Constitution.) See also –

- *People ex rel. City of Kankakee v. Morris*, 126 Ill.App.3d 722, 726, 467 N.E.2d 589, 81 Ill.Dec. 718 (3rd Dist. 1984) (Alderman convicted of felony theft in food stamp program could be ousted from office even though sentenced to probation since elective office becomes vacant upon incumbent's conviction of an "infamous crime.").

- *Werdell v. Turzynski*, 128 Ill.App.2d 139, 153, 262 N.E.2d 833 (1st Dist. 1970) – Determination of what constitutes an infamous crime is subject to judicial decision and is an offense implying such a dereliction of morals that it shows a total disregard of the obligation of an oath.).
- *People ex rel. Grogan v. Lisinski*, 113 Ill.App.3d 276, 281, 446 N.E.2d 1251, 68 Ill.Dec. 854 (1st Dist. 1983) (Vacancy in office is created upon conviction and completion of criminal trial, ouster is not stayed pending appeal.).
- *People ex rel. Taborski v. Illinois Appellate Court, First District*, 50 Ill.2d 336, 340, 278 N.E.2d 796 (1972) (Any public officer convicted, in Federal court state court of a felony which falls within the general classification of being inconsistent with commonly accepted principles of honest and decency, or which involves moral turpitude, stands convicted of an infamous crime.).
- *People ex rel. Rice v. Appellate Court, Fifth District*, 48 Ill.2d 195, 198, 268 N.E.2d 420 (1971) – A felony is “infamous” within the concept of the common law if it is inconsistent with commonly accepted principles of honest and decency or involves moral turpitude. Conviction related to duties of office.
- *People v. Cordovano*, 94 Ill.App.2d 106, 109, 236 N.E.2d 374 (1st Dist. 1968) (A public officer convicted, in federal or state court, of a felony which is inconsistent with principles of honesty and decency, or which involves moral turpitude, stands convicted of an infamous crime and that such conviction creates a vacancy in such office.).

B. Designation, Training and Certification for Electronic Training Under OMA and of FOIA:

The OMA and FOIA both establish training and compliance requirements for Trustees, officers, and employees.

OMA Requirements: 5 ILCS 120/1.05(a) requires every public body to “designate employees, officers, or members to receive training on compliance” with the OMA. The Library District must submit a list of designated individuals to the Public Access Counselor within the AG’s office (“PAC”). Those individuals must successfully complete an “electronic training curriculum” provided by the PAC by June 30, 2012. Except as noted below, designees must complete training programs annually. Any additional designees must successfully complete training within 30 days of designation. 5 ILCS 120/1.05(b) provides that all Trustees must successfully complete the training. Those Trustees who commenced serving (by election or appointment) prior January 1, 2012 must successfully complete electronic training by December 31, 2012. Trustees who are elected or appointed after January 1, 2012 must complete the training within 90 days after they take their oath of office or, in the absence of such oath, after they commence their responsibilities. A Trustee wjp has successfully completed training must file a copy of his/her certificate of completion with the Library District. No further training is required for Trustees.

FOIA Requirements: 5 ILCS 140/3.5 provides that the Library District must designate one or more officials or employees to act as FOI officer(s). FOI officers must complete by June 30, 2010 an electronic training curriculum also provided by the PAC. Newly designed FOI officers must complete the training within 30 days of assuming their positions. Training is an annual requirement. Failure to successfully complete the training disqualifies that person from serving as a FOI officer.

Unlike the Open Meetings Act requirements, if a Trustee is designated as a FOI officer, he/she must successfully complete the electronic training curriculum on an annual basis.

C. Requirement of Physical Attendance at Board of Trustee Meetings:

The OMA (5 ILCS 120/1 *et seq.*) requires that for determining whether a quorum exists to conduct a public meeting, only those Trustees who are physically present at the meeting may be counted. Other Trustees who are not physically present may participate by video or audio conference. 5 ILCS 120/2.01.

Section 7 of the OMA incorporates Section 2.01 for purposes of determining a quorum. Attendance by a Trustee by video or audio conference may be allowed at closed meetings where the Trustee is absent due to personal illness or disability, personal employment obligations or undertaking the business of the District, or a family emergency. The Trustee must give notice to the recording secretary in advance of the meeting unless such advance notice is impractical. Attendance and participation by video or audio conference must be approved by a majority of the Board and such attendance is governed by rules adopted by the District. Those rules cannot expand Sections 2.01 or 7 of the Act.

**IN THE CIRCUIT COURT FOR THE SIXTEENTH JUDICIAL CIRCUIT
KANE COUNTY, ILLINOIS**

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. THE GENEVA PUBLIC LIBRARY)
DISTRICT, KANE COUNTY, ILLINOIS,)
)
 Petitioner/Relator,)
)
 v.)
)
BATAVIA PUBLIC LIBRARY DISTRICT,)
KANE AND DUPAGE COUNTIES, ILLINOIS,)
)
 Respondent.)

Case No. 07 MRK 108

**RESPONDENT’S RENEWED SECTIONS 2-615 AND 2-619 MOTIONS TO DISMISS
PETITIONER’S FIRST AMENDED PETITION AND PROPOSED COMPLAINT**

Batavia Library moves pursuant to 735 ILCS 5/2-615 and 2-619(a)(3) to dismiss Geneva Library’s First Amended Petition for Leave to File a Complaint in Quo Warranto and to deny leave to file Geneva Library’s proposed complaint which seeks *quo warranto*, declaratory and other relief and in support hereof states:¹

- A. The Amended Petition should be dismissed and leave to file Count I (*Quo Warranto*) of the Proposed Complaint should be denied pursuant to Section 2-615 because Geneva Library **lacks standing** to proceed since those pleadings allege no facts which demonstrate a private interest in Batavia Library’s annexation proceedings or damage to any such interest.
- B. Geneva Library’s Amended Petition should be dismissed and leave to file Count II (Declaratory and Other Relief) of the Proposed Complaint should be denied pursuant to Section 2-615 because the Proposed Complaint seeks relief which is **not available** in a declaratory action.
- C. The Amended Petition should be dismissed and leave to file the Proposed Complaint should be denied pursuant to Section 2-619(3) because **another action is pending** involving the same issues in which Geneva Library claims to be a party.

Illinois law will **not** confer standing on Geneva Library to pursue a *quo warranto* claim simply because Geneva Library adopted an annexation ordinance and declared Batavia Library’s prior-

¹ The First Amended Petition does not attach the complaint sought to be filed. Thus, Batavia Library assumes that Geneva Library is requesting leave to file the complaint submitted with its original Petition. Citations to the First Amended Petition, paragraphs therein, and exhibits will be “Amended Petition”, “AP _” and “AP Ex. _.” Citation to the proposed Complaint in Quo Warranto will be “Proposed Complaint.”

commenced annexation proceedings to be defective. Geneva Library must, but cannot, show that it had a private interest in Batavia Library's annexation proceedings at the time they were commenced and that its purported private interest was invaded and damaged.²

A. THE AMENDED PETITION MUST BE DISMISSED PURSUANT TO SECTION 2-615 BECAUSE GENEVA LIBRARY LACKS STANDING TO INITIATE A QUO WARRANTO ACTION.

The Amended Petition must recite facts, **not conclusions**, which show that Geneva Library has a private interest in Batavia Library's annexation proceedings. *People ex rel. Koplin v. Village of Hinsdale*, 348 N.E.2d 483, 486, 38 Ill.App.3d 714 (2nd Dist. 1976); *People ex rel. Hannawell v. Dimmik*, 181 N.E.2d 825, 35 Ill.App.2d (2nd Dist. 1962) (abst.). Thus, a naked conclusory allegation that Geneva Library has a "private interest" in Batavia Library's annexation proceedings which has been "adversely affected", absent any specific factual allegations which show such private interest, can neither be considered by the Court nor construed as an admission against Batavia Library by reason of its Section 2-615 motion to dismiss. *Benhart v. Rockford Park Dist.*, 161 Ill.Dec. 242, 244, 218 Ill.App.3d 554, 578 N.E.2d 600 (2nd Dist. 1991); *Panorama of Homes, Inc. v. Catholic Foreign Mission Soc., Inc.*, 39 Ill.Dec. 513, 516, 84 Ill.App.3d 142, 404 N.E.2d 1104 (2nd Dist. 1980).

1. Geneva Library Pleads No Facts Which Demonstrate Any Private Interest.

As demonstrated below, the Amended Petition does **not** plead any facts which show that Geneva Library had a private interest in Batavia Library's annexation proceedings at the time those proceedings were commenced. At most its allegations disclose a governmental or public interest for which Geneva Library has no standing to proceed. Moreover, the Amended Petition pleads no facts which show that any Geneva Library interest was invaded or adversely affected at the time Batavia Library commenced its annexation proceedings. Geneva Library alleges:

² Batavia Library may combine motions to dismiss pursuant to Sections 2-615 and 2-619 if the basis of each is set out separately and so labeled. 735 ILCS 5/2-619.1.

- That on October 18, 2006, Batavia Library commenced proceedings to annex certain territory in Blackberry Township (AP 10);
- That two residents (the Otts) who purportedly live in the territory to be annexed signed a petition asking that the annexation question be submitted to a referendum (AP 14-16);
- That, given the Otts' petition, Batavia Library was required to, but failed to, either submit the annexation question to a referendum or vacate its annexation ordinance (AP 17-19)³;
- That in a letter addressed to Kane County Clerk, the Kane County State's Attorney "determined" that Batavia Library's annexation ordinance was defective because it failed to submit the annexation question to a referendum (AP 20);⁴
- That one month after Batavia Library commenced its annexation proceedings, Geneva Library adopted an annexation ordinance which sought to annex a portion of the property described in Batavia Library's prior-adopted annexation ordinance (AP 22-24);
- That Batavia Library adopted several corrective annexation ordinances which deleted from its annexation process certain parcels (including the Otts' property) due to a lack of contiguity (AP 25-28);
- That Batavia Library's annexation ordinances are defective for a variety of purported reasons (AP 30a-s);
- That Geneva Library's annexation ordinance takes precedence over Batavia Library's annexation ordinances (AP 32); and
- That the Illinois Attorney General and the State's Attorneys for Kane and DuPage Counties refused to initiate this *quo warranto* proceeding on behalf of Geneva Library (AP 33-35). Thus

³ Batavia Library's initial annexation ordinance demonstrates that the Ott parcel is not contiguous to Batavia Library's current territory and, hence, cannot be annexed by Batavia Library. Thus, the Otts had no standing to petition Batavia Library to submit the annexation question to a referendum. The validity of the Otts' petition and standing are now pending before the Appellate Court. *Zack v. Ott*, Case No. 2-07-0228, Appellate Court, Second Judicial District; appeal from consolidated Case Nos. 06 MRK 544 and MRK 573, Circuit Court for Sixteenth Judicial Circuit, Kane County, Illinois (hereafter, collectively, the "Ott Litigation").

⁴ Geneva Library misrepresents the State's Attorney's "opinion." That opinion did not declare Batavia Library's annexation ordinance defective. AP Ex G. Rather, it opined that the annexation question should not appear on the ballot because Batavia Library has not submitted it for referendum and that the territory should not be added to the tax roles because the annexation has yet to take effect. *Id.* Where allegations in a pleading conflict with statements in exhibits, exhibits control. *Bajwa v. Metropolitan Life Ins. Co.*, 281 Ill.Dec. 554, 567, 208 Ill.2d 414, 804 N.E.2d 519 (2004); *Evers v. Edward Hospital Ass'n*, 187 Ill.Dec. 490, 497, 243 Ill.App.3d 717, 617 N.E.2d 1211 (2nd Dist. 1993). Moreover, the "opinion" is highly suspect inasmuch as the State's Attorney has taken an advocate's role in the Ott Litigation even though Illinois law bars him from doing so. *Speck v. Zoning Bd. of Appeals*, 433 N.E.2d 685, 687, 89 Ill.2d 482 (1982); *Elsenaw v. City of Chicago*, 165 N.E. 129, 130, 334 Ill. 78 (1929); *Kozenczak v. DuPage County Officers Electoral Bd*, 700 N.E.2d 1073, 1074, 299 Ill.App.3d 205 (2nd Dist. 1998).

In short, Geneva Library argues that Batavia Library's annexation proceedings are defective; that Geneva Library's subsequent annexation ordinance is valid and should take precedence over Batavia Library's previously-adopted ordinance; and, thus, Geneva Library has a private interest in the validity of Batavia Library's ordinance. Unfortunately, as discussed below, such scenario is not sufficient to confer standing on Geneva Library to bring this *quo warranto* action. *People ex rel. Village of Long Grove v. Village of Buffalo Grove*, 113 Ill.Dec. 629, 633, 162 Ill.App.3d 340, 515 N.E.2d 438 (2nd Dist. 1987).

2. Summary of the Law Which Requires Dismissal of the Amended Petition.

The proper way to challenge the Amended Petition is by a motion to dismiss. *Prather*, 163 N.E. 139; *People ex rel. Turner v. Lewis*, 59 Ill.Dec. 879, 880, 104 Ill.App.3d 75, 432 N.E.2d 665 (4th Dist. 1982); *People ex rel. Hettleman v. Board of County Commissioners of Cook County*, 243 N.E.2d 531, 532-533, 102 Ill.App.2d 310 (1st Dist. 1968).

A writ of *quo warranto* is not a writ of right but lies in the sound discretion of the Court. *People ex rel. Prather v. Miller*, 163 N.E. 139, 331 Ill. 395, 399 (1928); *People ex rel. Van Cleave v. Village of Seneca*, 116 Ill.Dec. 473, 475, 165 Ill.App.3d 410, 519 N.E.2d 63 (3rd Dist. 1988). When considering a citizen's petition for leave to file a *quo warranto* complaint, the Court may consider all the circumstances and conditions including the petitioner's ill-motives in instituting the proceedings. *Id.*

Only the Attorney General and the State's Attorney have standing to bring a *quo waranto* action in matters involving governmental or public interests. *People v. Wood*, 104 N.E.2d 800, 804, 411 Ill. 514 (1952); *People ex rel. City of North Chicago v. City of Waukegan*, 71 Ill.Dec. 578, 580, 116 Ill.App.3d 88, 451 N.E.2d 293 (2nd Dist. 1983); *People ex rel. Brooks v. Village of Lisle*, 321 N.E.2d 65, 67, 24 Ill.App.3d 432 (2nd Dist 1974); *Henderson v. Miller*, 170 Ill.Dec. 134, 138, 228 Ill.App.3d 260, 592 N.E.2d 570 (1st Dist. 1992).

A citizen **lacks standing** to sue in *quo warranto* in the absence of a private interest which has been directly, substantially and adversely invaded by the challenged action. The fact that an interest is not common to every other member of the public will not convert a public interest into a private interest sufficient to confer standing. *Wood*, 104 N.E.2d at 804-805. Also, a citizen **lacks standing** where no damage occurs or is certain to occur to its purported interest. *People ex rel. Buchanan v. Mulberry Grove Community High School Dist.*, 61 N.E.2d 256, 258, 390 Ill. 341 (1945); *Wood*, 104 N.E.2d 804; *Brooks*, 321 N.E.2d at 68; *Village of Long Grove*, 113 Ill.Dec. at 633; *Henderson*, 170 Ill.Dec. at 138; *Turner*, 59 Ill.Dec. at 881-882. A citizen cannot rely on an anticipated damage to its interest as a basis for a *quo warranto* action. *Village of Long Grove*, 113 Ill.Dec. at 633; *Henderson*, 170 Ill.Dec. at 138; *Turner*, 59 Ill.Dec. at 882.

Even though a *quo warranto* suit is the proper means for testing the validity of an annexation, a citizen still **must** demonstrate it has a private interest in the challenged annexation and that damage is occurring or will certainly occur to such private interest as a result of the annexation. *City of North Chicago*, 71 Ill.Dec. at 580-581; *People ex rel. Hanrahan v. Village of Wheeling*, 1 Ill.Dec. 524, 530, 42 Ill.App.3d 825, 356 N.E.2d 806 (1st Dist. 1976).

Only governmental or public interests are implicated where respondent annexes or seeks to annex territory which is not within petitioner's boundary nor within territory included in petitioner's prior-commenced annexation proceedings. Only the Attorney General or a State's Attorney has standing in such instances to bring a *quo warranto* action. *Village of Long Grove*, 113 Ill.Dec. at 634-635; *Brooks*, 321 N.E.2d at 68.⁵ Indeed, **no** private interest exists even where (a) the respondent's annexation causes the petitioner to be denied future tax revenue; (b) the territory to be annexed by the respondent is included in the petitioner's comprehensive or growth

⁵ A petitioner has standing if a respondent attempts to annex territory which is within the petitioner's existing boundary or which is the subject of the petitioner's prior-commenced annexation proceeding. *City of North Chicago*, 71 Ill.Dec. at 581; *Village of Long Grove*, 113 Ill.Dec. at 633; *Village Of Kildeer v. Village of Lake Zurich*, 118 Ill.Dec. 559, 560-561, 167 Ill.App.3d 783, 521 N.E.2d 1252 (2nd Dist. 1988). This is **not the case here** because Geneva Library's annexation ordinance was adopted **after** Batavia Library initiated its annexation proceedings.

plan; (c) contracts in which the petitioner has an interest might be adversely affected by respondent's annexation; or (d) the territory to be annexed by the respondent is contiguous to but not within the petitioner's boundary. *Freeport Fire Protection District v. City of Freeport*, 45 Ill.Dec. 367, 369-370, 90 Ill.App.3d 112, 412 N.E.2d 718 (2nd Dist. 1980); *People ex rel. Durst v. Village of Germantown Hills*, 10 Ill.Dec. 38, 40, 51 Ill.App.3d 969, 367 N.E.2d 426 (4th Dist. 1977); *People ex rel. Van Cleave v. Village of Seneca*, 116 Ill.Dec. 473, 475, 165 Ill.App.3d 410, 519 N.E.2d 63 (3rd Dist. 1988); *Hanrahan*, 1 Ill.Dec. at 530.

As a matter of law, one government-petitioner **cannot** convert a public or governmental interest into a private interest to gain standing simply by attempting to annex territory which is already the subject of a respondent-government's prior-commenced annexation proceedings. *Village of Long Grove*, 113 Ill.Dec. at 636. The same is true even if the respondent's prior-commenced annexation proceedings may be defective. *Village of Mundelein v. Village of Long Grove*, 162 Ill.Dec. 636, 640, 219 Ill.App.3d 853, 580 N.E.2d 599 (2nd Dist. 1991).

3. Geneva Library Pleads No Facts to Maintain a Quo Warranto Action.

Geneva Library recognizes that its original petition was legally and factually deficient because it voluntarily withdrew the petition before any hearing on Batavia Library's first motion to dismiss. Geneva Library's Amended Petition contains virtually the same factual allegations as pled in its original petition. The only difference between the two petitions, other than Geneva Library's naked conclusory allegation that it has a private interest which is being invaded and adversely affected, is that (a) following commencement of Batavia Library's annexation proceedings, Geneva Library adopted its own annexation ordinance which purports to annex some of the same territory included in Batavia Library's prior-commenced annexation, and (b) the Kane County State's Attorney stated that the "question regarding the annexation should not appear on the ballot for the election" and that "the annexation has not taken effect ... at this

time.” AP 10, 22; AP Ex 6.⁶ Curiously, Geneva Library did not correct the defects in its Proposed Complaint which were identified in Batavia Library’s prior motion.

The only possible interest which Geneva Library might have in Batavia Library’s annexation proceedings is a governmental or public interest for which Geneva Library has **no standing** to maintain a *quo warranto* action. Library districts exist for one purpose –

To provide local public institutions of general education for citizens of Illinois, library districts and libraries may be established, equipped, and maintained by the board pursuant to this Act. That library shall be forever for the use of the residents and taxpayers of the district in which it is located, subject to reasonable rules and regulations the board adopts to render the use of the library of the greatest benefit to the greatest number of those residents and taxpayers.

Illinois Public Library Act of 1991, 75 ILCS 16/1-1 *et seq.* (the “Act”). The Act also provides that (i) “All or any portion of the territory within one or more counties may ... be organized and formed into a district for the purpose of levying a tax or taxes to pay for establishing, equipping, maintaining, and supporting library services” (75 ILCS 16/5-5); (ii) a library district “may undertake programs to encourage the addition to the district of adjacent areas without local tax supported library services ...” (75 ILCS 16/30-55.65); and (iii) “Territory outside of any [library] district but contiguous to the [library] district may be annexed as provided in Sections 15-10 through 15-45 ...” (75 ILCS 16/15-5, brackets supplied).

Special units of government (e.g., public library districts which are organized and operated almost identically to fire protection districts⁷), unlike municipalities, have **no** private interests because they are created and exist for a single solitary public purpose. *Freeport Fire Protection District*, 45 Ill.Dec. at 370. In the absence of annexation proceedings which seek to annex territory within another district’s boundaries or which is subject to that other district’s

⁶ See footnote 4 above regarding Geneva Library’s mischaracterization of the State’s Attorney’s opinion. Of further note, the Attorney General and the Kane and DuPage County State’s Attorneys declined to initiate a *quo warranto* action against Batavia Library for Geneva Library’s benefit. AP 34, AP Ex Q.

⁷ The Act is substantially similar as the Fire Protection District Act. Compare, 75 ILCS 16/1-1 *et seq.* with 70 ILCS 705/0.01 *et seq.*

prior-commenced annexation proceeding, only the Attorney General or a State's Attorney has standing to challenge actions taken by such special district. Given the fact that library districts exist for a single purpose, the factual allegations in the Amended Petition and Proposed Complaint demonstrate that Geneva Library **cannot** have any private interest, much less one which is being invaded and adversely affected, in Batavia Library's annexation. *Id.*

Even if Geneva Library could demonstrate some sort of private interest, the Illinois Supreme Court requires that such private interest be invaded and adversely affected at the time the allegedly offending conduct occurred – i.e., when Batavia Library commenced its annexation proceedings. *Wood*, 104 N.E.2d at 804-805. Geneva Library **cannot** show any private interest or any damage to any such purported interest at the time Batavia Library commenced its annexation because Geneva Library adopted its own annexation ordinance **after** Batavia Library had commenced its proceedings. Again, in the absence of any effort by Batavia Library to annex territory which is within Geneva Library's existing boundaries or which is the subject of a prior-pending Geneva Library annexation ordinance, Batavia Library's annexation proceedings could not have invaded or adversely affected any Geneva Library interest, public or private. *Id.*

The Amended Petition does not even allege that Batavia Library's annexation (a) will cause Geneva Library to lose current tax revenue; (b) includes territory which is part of Geneva Library's comprehensive plan; (c) will negatively impact contracts which Geneva Library has with other persons; or (d) seek to annex territory which is contiguous to but beyond Geneva Library's boundaries. However, such allegations would not create a private interest on which standing could be based. *Freeport Fire Protection District*, 45 Ill.Dec. at 369-370; *Durst*, 10 Ill.Dec. at 40; *Van Cleave*, 116 Ill.Dec. at 475; *Hanrahan*, 1 Ill.Dec. at 530.

Batavia Library's ordinances to correct minor defects in its original annexation ordinance are part and parcel of Batavia Library's prior-commenced annexation procedures and do not create any private interest in Geneva Library. In *City of North Chicago*, the court stated:

We also conclude the trial court erred in refusing to permit Waukegan to amend its answer to the complaint in quo warranto by the second annexation ordinance adopted by Waukegan in which the description error is said to be corrected. [Cite omitted.] ... The court held that a public body may amend the records of its actions to conform to the facts in order to prevent public injustice. A public body establishes its acts by its records and, in cases of error or omission, may amend them. [Cite omitted.]

71 Ill.Dec. at 582, brackets supplied. Moreover, priority in competing annexation ordinances is not dependent on the validity of the ordinances. *Id.*; *Village of Mundelein*, 162 Ill.Dec. at 640.

Thus, Batavia Library's corrective ordinances do not confer a private interest on Geneva Library.

The Court may also consider Geneva Library's ill-motives in adopting its annexation ordinance. *People ex rel. Prather*, 163 N.E. 139; *People ex rel. Van Cleave*, 116 Ill.Dec. at 475.

According to the Amended Petition exhibits, Geneva Library's subsequently-adopted annexation was intended to create a narrow barrier between Batavia Library's pre-annexation boundary and the contiguous territory which is the subject of Batavia Library's annexation proceedings. AP 29. Geneva Library's ordinance was adopted to frustrate Batavia Library's annexation efforts.⁸

The Amended Petition does **not** plead facts which show that Geneva Library has a private interest in Batavia Library's annexation proceeding or that any such purported interest has been invaded or adversely affected. At most, Geneva Library demonstrates a public or governmental interest which is not sufficient to create standing for it to pursue a *quo warranto* action. Geneva Library cannot try to annex territory which is the subject of Batavia Library's prior-commenced annexation and then cry foul. In the absence of such factual allegations, the Amended Petition must be dismissed with prejudice pursuant to Section 2-615. *Village of Long Grove*, 113 Ill.Dec. at 633; *Henderson*, 170 Ill.Dec. at 138; *Turner*, 59 Ill.Dec. at 882; *Brooks*, 321 N.E.2d at 68.

⁸ Batavia Library suspects that Geneva Library induced the Otts to challenge Batavia Library's annexation despite their lack of standing to do so. If Geneva Library has been or is funding the Otts' legal expenses in connection with preparing their petition, executing that petition, and handling the litigation relative thereto, then Geneva Library's conduct would constitute a criminal violation of the Election Code. "Any person who knowingly gives, lends or promises to give or lend any ... valuable consideration to any other person to influence such other person to ... register to vote or ... to vote for or against any ... public question to be voted upon at any election shall be guilty of a Class 4 felony." 10 ILCS 5/29-1, emphasis supplied.

B. LEAVE TO FILE THE PROPOSED COMPLAINT SHOULD BE DENIED BECAUSE GENEVA LIBRARY LACKS STANDING AND BECAUSE IT SEEKS QUO WARRANTO RELIEF THROUGH AN IMPROPER CLAIM.

1. Leave to file Count I of the Proposed Complaint Must Be Rejected Because Geneva Library Lacks Standing to Pursue a *Quo Warranto* Action.

Leave to file Count I of Geneva Library's Proposed Complaint must be denied pursuant to Section 2-615 because, like the Amended Petition, the Proposed Complaint contains no facts which show the existence of any private interest sufficient to confer standing. Indeed, the Proposed Complaint does not even allege that Geneva Library adopted the annexation ordinance referred to in the Amended Petition. Therefore, Geneva Library's Proposed Complaint is legally and factually defective on its face and, thus, leave to file must be denied. *Village of Long Grove*, 113 Ill.Dec. at 634-635; *Brooks*, 321 N.E.2d at 68. See discussion above.

2. Leave to file Count II of the Proposed Complaint Must Be Denied Because the Relief Sought is Not Available in a Declaratory Action.

Leave to file Count II of the Proposed Complaint must be denied pursuant to Section 2-615 because it seeks relief which is **not** available in a declaratory action. Count II challenges Batavia Library's annexation proceedings by asking the Court to declare those proceedings "invalid, of no force and effect, and held for naught", to declare that Geneva Library's annexation ordinance has priority over Batavia Library's annexation proceedings, and that at least some of the territory described in Geneva Library's ordinance be annexed to Geneva Library's existing territory.

Illinois law is clear that the sole and exclusive means for challenging an annexation proceeding is through a *quo warranto* action. *Edgewood Park #2 Homeowners Assoc'n v. Countryside Sanitary District*, 246 N.E.2d 294, 297, 42 Ill.2d 241 (1969); *Village of Mundelein*, 162 Ill.Dec. at 645; *City of North Chicago*, 71 Ill.Dec. at 580. See also, *People ex rel. Village of Northbrook v. City of Highland Park*, 342 N.E.2d 196, 199, 35 Ill.App.3d 435 (1st Dist. 1976). A petitioner may **not** use a declaratory action to seek *quo warranto*-like relief. *Edgewood Park*,

246 N.E.2d at 297. The fact that Geneva Library lacks standing to bring this particular *quo warranto* action does not confer any right to use a declaratory action to seek the same relief. Thus, leave to file Count II of the Proposed Complaint must also be denied.

C. THE AMENDED PETITION MUST BE DISMISSED AND LEAVE TO FILE THE PROPOSED COMPLAINT MUST BE DENIED PURSUANT TO SECTION 2-619(a)(3) BECAUSE ANOTHER ACTION IS PENDING.

Section 2-619(a)(3) requires dismissal of this action if another action is pending which involves Geneva Library and the same issues. The Amended Petition and Proposed Complaint, on their face, demonstrate that another matter challenging Batavia Library's annexation is pending to which Geneva Library claims to be a party – i.e., the Ott Litigation. AP 16; AP Ex D (Ott Petition for Referendum Concerning Annexation of Territory to the Batavia Public Library District); AP Ex F (Ruling by the Kane County Officers Election Board which acknowledged Geneva Library's participation through its attorney). Also see Proposed Complaint ¶¶ 5, 15.k. which references the Ott Litigation. Attached hereto are true and correct copies of the Notice of Filing and Petition for Judicial Review (without exhibits) in *In re Objection of Daniel G. Zack, etc.*, Case No. 06 MRK 544; Notice of Filing and Petition for Judicial Review (without exhibits) in *In re Objection of Daniel G. Zack, etc.*, Case No. 06 MRK 573; Agreed Order consolidating the two aforesaid Petitions for Judicial Review; Ottosen Britz Kelly Cooper & Gilber, Ltd.'s appearance in those proceedings on behalf of Geneva Library; Notice of Appeal to the Appellate Court of Illinois, Second District; and Geneva Library's appearance in the appellate proceedings.⁹ Because there is another action pending, Geneva Library's Amended Petition should be dismissed with prejudice and leave to file its Proposed Complaint should be denied pursuant to Section 2-619(a)(3).

⁹ By including these court filings, Batavia Library does **not** waive any objection which it raised in the Ott Litigation to Geneva Library's lack of standing or otherwise to participate in those proceedings.

CONCLUSION

The Amended Petition should be dismissed and leave to file Count I of the Proposed Complaint should be denied pursuant to Section 2-615 because they clearly show that Geneva Library has **no private interest** in Batavia Library's annexation proceedings (much less one which was damaged by those annexation proceedings) and, thus, no standing to bring a *quo warranto* action. Leave to file Count II of the Proposed Complaint should be denied pursuant to Section 2-615 because Geneva Library cannot seek *quo warranto*-like relief in a declaratory action even where its *quo warranto* action is wholly defective. This entire proceeding should be dismissed pursuant to Section 2-619(3) because Geneva Library claims to be a party in another action (the Ott Litigation) which involves the same issues – a challenge to Batavia Library's annexation proceedings.

Respectfully submitted,

One of Batavia Library's attorneys.

James L. Simon – ARDC No. 2612798
Bruce K. Roberts
Kristen Pinter
Roberts, Simon & Even, Ltd.
1620 Colonial Parkway
Inverness, Illinois 60067
847-705-7640

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:)		
KATHLEEN A. WIERZBICKI,)		
	)	CHARGE NO.:	2006CA0493
and	)	EEOC NO.:	21BA53030
	)	ALS NO.:	07-473
MOKENA COMMUNITY PUBLIC LIBRARY)		
DISTRICT.)		

RESPONDENT’S MOTION FOR SUMMARY DECISION

Respondent Mokena Community Public Library District (“Mokena Library”) moves pursuant to Section 5/8A-1-2(D)(2) of the Illinois Human Rights Act (775 ILCS 5/1-101 *et seq.*) and Section 5300.735 of the Administrative Code for summary decision and to strike and dismiss the Complaint which the Illinois Department of Human Rights (“IDHR”) filed on behalf of Complainant. There is **no** genuine issue of material fact insofar as that:

- Mokena Library discharged Complainant solely for poor job performance and not because of her age;
- Complainant committed several serious infractions, any one of which would have been grounds for termination including (i) unilaterally, without notice or her supervisor’s permission, cancelling a book order (*Harry Potter and the Half-Blood Prince*) which was critical to Mokena Library’s 2005 children’s summer reading program (the centerpiece of a year-long reading program); (ii) lying about notifying another staff member that she had cancelled the book order; (iii) making false and misleading representations to Mokena Library’s governing board; and (iv) fabricating utilization statistics for the Children’s Library;
- Complainant was repeatedly advised during the seven months preceding her discharge that her declining and poor job performance were serious issues;
- Well before Mokena Library discharged Complainant, it restructured the Children’s Librarian position from one 40-hours/week position into two 25-hours/week part-time supervisor positions, offered Complainant one of the positions (albeit on a probationary basis with a performance review to follow), and Complainant rejected the offer;
- Prior to Complainant’s discharge and subsequent to the restructuring decision, Mokena Library hired another individual (age 36) to fill the other part-time supervisor’s position which Mokena Library had no intention of offering to Complainant;

- Following Complainant's discharge, Mokena Library promoted another staff member (age 52) into the part-time supervisor's position which Complainant was offered and refused to accept;
- Utilization statistics for Mokena Library's Children's Department's programming increased dramatically following Complainant's discharge; and
- 64% of Mokena Library's staff at the time of Complainant's discharge was over 40.

Thus, Complainant **cannot** establish a *prima facie* case that Mokena Library (a) discriminated against Complainant because of her age; (b) restructured her position as a "pretext" for intentional age discrimination; or (c) engaged in a general pattern of age discrimination. Thus, as a matter of law, summary decision should be entered in favor of Mokena Library, the Complaint should be stricken and these proceedings should be dismissed with prejudice.

A. PROCEEDINGS TO DATE.

On August 31, 2005, Complainant filed an age discrimination Charge alleging that she was 55 years when discharged by Mokena Library; that her job performance met Mokena Library's legitimate expectations; and that she was replaced with a younger person. Mokena Library responded with evidence that:

- (1) Mokena Library's Employee Handbook provided for informal job performance evaluations on an as-needed basis;
- (2) Mokena Library held at least six informal performance evaluations with Complainant during the seven months prior to her discharge at each of which her declining and poor performance was discussed;
- (3) Well before Complainant's discharge, Mokena Library began planning to restructure the 40-hour full-time Children's Librarian position into two 25-hour supervisor positions in order to provide at least 10 more hours per week of Children's Department coverage and to develop more age-appropriate programs for the two principal age groups (K-Fourth Graders and Fifth-Eighth Graders) who used the Children's Department;
- (4) Mokena Library informed Complainant of the restructuring plans eight months prior to the restructuring and long before any decision was made to terminate her;

(5) Mokena Library offered Complainant one of the part-time positions (albeit on a probationary basis with an evaluation to follow) and Complainant refused the offer;

(6) Complainant committed several dischargeable offenses when she unilaterally and without her supervisor's consent cancelled an order for *Harry Potter and the Half-Blood Prince* which was critical to Mokena Library's 2005 children's summer reading program (the centerpiece of a year-long reading program) and lied about her conduct and when she made false and misleading representations to Mokena Library's governing board;

(7) Mokena Library did not intend to offer Complainant the part-time Young Adult Services Supervisor position and, hence, hired another person (age 36) for the position;

(8) Following Complainant's termination, Mokena Library promoted another staff member (age 52) into the position offered to and rejected by Complainant;

(9) Participation in children's programming increased significantly following Complainant's discharge compared to the eight-month period prior to her discharge.

(10) Mokena Library did not perform a formal performance evaluation on Complainant in May 2005 because she was on medical leave, her position was being restructured, she had had a number of informal evaluations, and she would receive an evaluation following a three-month probationary period in the restructured position; and

(11) 64% of Mokena Library's employees was over age 40.

See Exhibit A appended hereto. Complainant offered **no** factual evidence contrary to the above.

The IDHR dismissed the Charge for lack of substantial evidence finding that

Respondent discharged Complainant for poor performance. The Department's investigation did not reveal, nor did Complainant provide evidence that Complainant was discharged due to her age, 55 ... There is no evidence to show that Complainant's age, 55, had anything to do with Respondent discharging Complainant or that a younger employee was treated any differently.

See Exhibit B appended hereto.

Complainant filed a Request for Review asserting that she was unaware her performance was an issue; that all her "formal" evaluations showed she had been performing above expectation; and that the restructuring of her full-time position was a pretext for age discrimination. In reply, Mokena Library summarized the evidence previously presented which remains uncontroverted to this day.

The Chief Legal Counsel for the IDHR vacated the dismissal with a finding of substantial evidence finding that (a) there was no evidence of poor job performance in Complainant's January 2000 through May 2003 "formal" performance evaluations; (b) Mokena Library did not document an evaluation in 2004; (c) Mokena Library replaced Complainant with a younger person; and (d) the restructuring of Complainant's position was a pretext for age discrimination. The Chief Legal Counsel clearly ignored Mokena Library's un rebutted evidence.

The matter was referred back to IDHR staff counsel for conciliation. Despite several attempts by staff counsel, Complainant never offered to participate in conciliation. On July 5, 2007, the IDHR filed the Complaint to which this Motion is directed.

B. APPLICABLE GOVERNING LAW.

Administrative Code Section 5300.735 provides that

a) At any time after the service of a Complaint and prior to service of a decision pursuant to Section 8A-102(l), Section 8A-102.5(B)(4) or Section 8B-102(J) of the Act, the Complainant or the Respondent may move with or without supporting affidavits for a summary Order in the moving Party's favor as to all or any part of the relief sought.

b) ... The Order sought shall be rendered without delay if the pleadings and affidavits, if any, show that there is no genuine issue as to any material fact and that the moving Party is entitled to a Recommended Order as a matter of law.

The Human Rights Commission must apply a three-step approach – (i) Complainant must present a *prima facie* case for age discrimination; (ii) Mokena Library must rebut the *prima facie* case by articulating, but not necessarily proving, a valid non-discriminatory reason for its action; and (iii) Complainant must prove that Mokena Library's reason for discharging her was a pretext for intentional age discrimination. *Illinois J. Livingston Company v. Illinois Human Rights Comm'n*, 235 Ill.Dec. 224, 302 Ill.App.3d 141, 704 N.E.2d 797 (1st Dist. 1998). In order to state a *prima facie* case for age discrimination, Complainant must plead and prove that (i) she was 40

or older when discharged; (ii) she was performing her job well, (iii) she was discharged, and (iv) similarly situated employees under 40 were treated materially better. 775 ILCS 5/1-103(A) and (Q); *Koulegeorge v. State of Illinois Human Rights Comm'n*, 250 Ill.Dec. 208, 216, 316 Ill.App.3d 1079, 738 N.E.2d 172 (1st Dist. 2000).

Given that Complainant alleges that Mokena Library's conduct was a pretext for age discrimination, she must demonstrate that her qualifications and performance were so superior and so obvious that Mokena Library's reasons for discharging her were unbelievable and that there was no other legitimate reason, whether or not commendable, for discharging her. *Illinois J. Livingston Company*, 235 Ill.Dec. at 232, citing *Christ Hosp. and Med. Ctr. v. Illinois Human Rights Comm'n*, 227 Ill.Dec. 608, 612, 293 Ill.App.3d 105, 687 N.E.2d 1090 (1st Dist. 1997).

Proceeding on a theory of disparate treatment, Complainant must also show that the protected trait (age) actually motivated Mokena Library's decision to discharge her. *Hazen Paper Co. v. Biggins*, 507 U.S. 604, 610, 113 S.Ct. 1701, 123 L.E.2d 338 (1993); *Koulegeorge*, 250 Ill.Dec. at 218. Thus, reorganization of a position is **not** evidence of age discrimination. *Koulegeorge*, 250 Ill.Dec. at 218. Employer demographic and employee performance statistics can be demonstrate non-discrimination, *Id.*

As demonstrated below, Complainant cannot prove any set of facts that Mokena Library terminated her because of her age.

C. COMPLAINANT WAS DISCHARGED FOR POOR PERFORMANCE AND NOT BECAUSE OF HER AGE.

No genuine issue of material fact exists insofar as that Complainant (i) was discharged after seven months of poor job performance; (ii) committed several egregious infractions any one of which would have been grounds for discharge; (iii) was repeatedly advised over a seven-month period that her poor performance was a serious issue; (iv) was informed several months

before her discharge that the 40-hour/week full-time Children's Librarian position was being restructured into two 25-hour/week part-time positions and the reasons therefore; and (v) rejected an offer (albeit on a probationary basis) of one of the part-time positions (Youth Services Supervisor). The chronology of events leading to Complainant's discharge is critical.¹

1. Background.

Mokena Library, at all times relevant, has been a unit of local government with authority to levy and collect property taxes. 75 ILCS 16/1 *et seq.* At least since 1997, its Board of Library Trustees (the "Board") has considered children's library services its highest priority. Aff 2, 4, 5.

Complainant commenced her employment on January 3, 2000 as full-time (40-hours/week) Children's Librarian and reported to its chief administrative officer (the "Director"). At that time Complainant acknowledge receiving Mokena Library's Employee Handbook which provided, *inter alia*, that (a) all employees served "at will" and were subject to termination, schedule change, job change, or decreases in work hours with or without cause at the discretion of the Director; (b) absenteeism, refusal to carry out duties, and falsification of records were grounds for dismissal; and (c) a formal written performance evaluation would be given each May and informal evaluations would be conducted on an as-needed basis. Aff 2, 6-10; Ex 1-3.

From 2000 to 2004, Complainant received favorable "formal" performance reviews. However, in 2003 and 2004 the Director began noticing problems with Complainant's job performance. The Director chose not to discuss these concerns with Complainant because Complainant was experiencing some serious family issues. Aff 12, 13, 15.

In late 2004, due to additional revenue expected in Spring 2005, the Director began developing plans to increase coverage in, supervision of, and the number and quality of programs

¹ References to paragraphs in and exhibits submitted with Phyllis Jacobek's Affidavit will be "Aff _" and "Ex _."

for the Children's Department.² Part of the plans under consideration included eliminating the one 40-hours/week Children's Librarian position and creating two new 25-hours/week part-time positions. The Director believed that two part-time supervisors would provide much more coverage and supervision for the Children's Department generally, developed more age-appropriate programs for and concentrate their efforts on the age groups for which they would be responsible (K-Fourth Graders and Fifth-Eighth Graders), provide greater flexibility in supervision, and supply the necessary supervision of older children in the Children's Department between the hours of 2:30 p.m. and 4:00 p.m. which was then lacking Aff 16.

2. Complainant's Early Poor Job Performance and Informal Evaluations.

In December 2004, the Director continued to observe problems in Complainant's job performance. By that time the Director could no longer wait to discuss these serious issues with Complainant. Thus, on December 15, 2004, the Director had an informal performance conference with Complainant. During this conference, the Director admonished Complainant about her (a) continued cancellation of children's programs despite earlier directives not to do so, (b) leaving work without permission, (c) failure to develop programs for the school holidays and breaks, and (d) failure to physically supervise the Children's Department (rather than sitting in her office) when older children were in the Department.³ The Director specifically directed Complainant to correct these issues. At that time, the Director informed Complainant about the possible restructuring of the full-time Children's Librarian position into two 25-hour part-time positions to gain more flexible and better focused coverage in the Children's Department. On

² In March 2004, Mokena Library's constituency approved a referendum which would generate significantly more tax revenues for Mokena Library. Based on information from Will County, Illinois, Mokena Library expected to see a significant increase in its revenue starting in Spring 2005. Aff 14.

³ At that time altercations among older children were occurring in the Children's Department. Prior to December 15, 2004, the Director had directed Complainant to be physically present in the Department between 2:30 p.m. and 4:00 p.m. to minimize such difficulties. Aff 18.

many occasions after the meeting the Director observed Complainant sitting in her office between 2:30-4:00 p.m. rather than supervising the Children's Department. Aff 17-20; Ex 4, 5.

In mid-January 2005, the Director informed Complainant in writing that she was still seriously concerned about her leaving work early without prior permission and, again, directed Complainant to cease this behavior. Aff 22; Ex 6.

Early in 2005, the Director requested Complainant to develop an elaborate high quality children's summer reading program. The Director wanted to use that opportunity to thank the community for approving the referendum in March 2004 and to showcase how Mokena Library intended to use some of the additional revenue it would start receiving in Spring 2005. Aff 21.

In February 2005, Complainant requested a change in her start time from 10:00 a.m. to 8:00 a.m. to make up hours lost due to her physical therapy. The Director advised that the request did not meet Mokena Library's needs because the building did not open until 10:00 a.m. and that Complainant could make up the hours by working evenings thus providing much needed coverage in the Children's Department. Complainant flatly refused. Aff 23; Ex 7.

On March 30, 2005, the Director held another informal performance evaluation with Complainant. The Director expressed ongoing concern that Complainant (a) continued to cancel children's programming, (b) failed to schedule programs for school holidays and breaks, and (c) failed to be at hand in the Children's Department when older children were present. Complainant was provided statistics which highlighted the serious decline in her children's programming. At that time, the Director confirmed that she was proceeding with restructuring the 40-hours/week Children's Librarian position into two part-time 25-hours/week supervisor positions (Youth Services Supervisor and Young Adult Services Supervisor) with the change effective on August 1, 2005. It was again explained to Complainant that the restructuring was

intended to provide greater and more focused coverage in the Children's Department and to develop more age-appropriate programs to meet the different library needs of patrons of the Children's Department. Complainant objected to the reorganization and informed the Director that she would not accept a part-time position, that she was looking for another full-time position, and that she would leave when she found that position. Aff 24-27; Ex 8.

3. The 2005 Children's Summer Reading Program.

As noted above, in early 2005 the Director directed Complainant to develop an elaborate children's summer reading program for 2005 as a way of thanking the community for passing the referendum and as a showcase for how some of the additional tax revenue would be spent. The summer reading program was also to serve as the centerpiece for the entire year's reading program. Aff 28; Ex 9.

On April 8, 2005, the Director advised Complainant in writing that she was concerned about the quality of her proposal for the 2005 children's summer reading program. The Director also informed Complainant that her proposal would be discussed at an April 15, 2005 staff meeting and that Complainant should be present. Complainant neither attended the meeting nor informed the Director that she would be unable to do so. Aff 28; Ex 9.

On May 18, 2005, the Director had a telephone conversation with Complainant during which she informed Complainant that she had to have other staff members complete the plans for the 2005 children's summer reading program. Aff 31.

For reasons discussed below, it is important to note that the 2005 children's summer reading program was structured around a "Harry Potter" theme because the "Harry Potter" book series was a huge hit with children. Mokena Library planned to end the summer reading program with a large party at which time six children would be selected to receive copies of the

soon-to-be released and highly coveted latest installment in the “Harry Potter” series – *Harry Potter and the Half-Blood Prince*. The celebration at which the six children were to be selected was scheduled for July 15, 2005. Distribution of the book prizes was scheduled for the next day which coincided with the official national release date for that book.⁴ To that end, Complainant ordered six copies of *Harry Potter and the Half-Blood Prince* and submitted a reimbursement request for the expense. Aff 29-31; Ex 10.

Due to her leave of absence, Complainant was not present for any part of the 2005 children’s summer reading program. Thus, the program was run and managed by other staff members including Ms. Patricia Hoornaert. Aff 32.

4. Complainant’s June 6, 2005 Letter to the Board of Library Trustees.

On May 23, 2005, the Director wrote to Complainant to confirm the latter’s return from her leave of absence and to remind her that the restructuring of the Children’s Librarian position into the two supervisor positions would take effect on August 1, 2005. At that time the Director intended to offer Complainant the part-time Youth Services Supervisor position (to work with and develop programs for the K-Fourth Graders) albeit on a three-month probationary basis pending demonstrated job performance improvement and with a performance evaluation to follow. Aff 33-34; Ex 11.

Complainant sent a letter dated June 6, 2005 to the Board and the Director in which she expressed deep concern about the restructuring of the Children’s Librarian position. In her letter, Complainant recounted what she believed were major accomplishments meriting continuation of the Children’s Librarian on a full-time basis including that (a) her programs attracted about 150

⁴ It is noteworthy that the “Harry Potter” book series has been so successful that children and adults alike have waited in long lines for hours hoping to purchase a limited number of copies of new installments on the days the books were released for sale. Mokena Library hoped that offering six copies of the latest book scheduled for release would give children great incentive to participate in the summer reading program.

children per week, (b) one of her programs involved making and sending 2000 paper cranes to the Hiroshima Peace Park as part of an international peace celebration, (c) she attended every Saturday meeting to support the March 2004 tax referendum, (d) her “knitTEEN” program had 20 participants per week, (e) she represented Mokena Library at an inter-library organization, and (e) she created a Reading Rainbow Club. She also represented that she “was deeply upset” that the Director had decided to restructure the Children’s Librarian position “without discussing the circumstance further with [Complainant].” Aff 35-36; Ex 12, brackets supplied.

The Director reviewed Complainant’s June 3, 2005 letter carefully and researched several of her so-called accomplishments discussed therein. Contrary to Complainant’s representations, the Director had discussed the restructuring of the Children’s Librarian position and the reasons therefore with Complainant on a number of occasions. Aff 17-19, 26, 33; Ex 4, 8, 11. Further, the Director concluded that Complainant had misrepresented her so-called achievements to the Board. For example, (a) the statistics regularly reported to the Illinois State Library showed that only about 48 children in both age groups attended Complainant’s programs per week, (b) the paper cranes were never sent to the Hiroshima Peace Park because they were ultimately discovered in boxes in the library after Complainant was discharged, (c) she had attended only a couple of Saturday referendum meetings, (d) the participants in her “knitTEEN” group included mostly her adult friends, (e) she had attended one meeting of the inter-library organization only because Mokena Library’s regular representative was ill that day, and (f) the Director had repeatedly urged Complainant to set up a Reading Rainbow Club but that the program failed in less than a year due to Complainant’s poor performance. Aff 37.

On June 13, 2007, the Director replied to Complainant’s June 6, 2005 letter by stating that the Director’s recollection of the events described in Complainant’s letter were quite

different from Complainant's recollection. The Director also reminded Complainant that they had begun discussing the restructuring at the end of 2004. The Board took no action on Complainant's request to preserve the full-time Children's Librarian position. Aff 38-39; Ex 5.

5. Filling the Part-Time Youth Services Supervisor Position.

As of June 13, 2005, the Director still anticipated that Complainant might accept the part-time 25-hours/week Youth Services Supervisor position (albeit on a probationary basis with a performance review to follow) inasmuch as Complainant had not informed the Director that she had found other employment. At **no** time did the Director contemplate offering the part-time Young Adult Services Supervisor position to Complainant. On June 24, 2005, the Director prepared a tentative work schedule for both part-time positions and sent it to Complainant and another person who, by that date, had been offered the part-time Young Adult Services Supervisor position and requested their comments. Aff 40-41, 47; Ex 14.

On June 29, 2005, the Director formally offered Complainant the Youth Services Supervisor part-time position on a three-month probationary basis with an evaluation to follow. The Director laid-out certain job expectations and areas for improvement given Complainant's prior poor performance. These expectations included (i) not leaving work early without permission, (ii) not canceling any children's programming, and (iii) developing programs for school holidays and breaks. Complainant was also informed that the part-time Young Adult Services Supervisor position had been offered to another person. Aff 48.

On July 6, 2005, Complainant reiterated to the Director that Complainant was actively looking for full-time employment elsewhere. The Director responded that if Complainant returned to work at Mokena Library it would be on the terms and conditions which they had discussed earlier. Aff 50; Ex 16. On July 11, 2005, Complainant and the Director met at which

time the Director reiterated the conditions under which Complainant could work if she accepted the part-time Youth Services Supervisor position - i.e., Complainant would (a) work 24 hours a week, (b) use the library's time clock to clock in, (c) obtain permission before leaving work early, (d) conduct eight "Story Hours" per week, and (e) develop and present programs for school holidays and breaks. Aff 51; Ex 17.⁵

6. The "Harry Potter" Book Fiasco.

As planned, on July 15, 2005, Mokena Library held its party to celebrate the end of the summer reading program. At that time six children were selected to receive copies of *Harry Potter and the Half-Blood Prince* which would be distributed to them the following day which coincided with the book's official national release. However, it was discovered that the six book prizes had not arrived at the Library. Fortunately, staff members who had separately ordered their own personal copies of the book were willing to donate their copies in order to avoid a huge embarrassment to Mokena Library. On July 16, 2005, the date set for the book's national release, Mokena Library distributed the book prizes to the six children. The book prizes which Complainant ordered never arrived at the library. Aff 53-54.

On July 18, 2005, the Director requested staff member Cathy Palmer to investigate the missing prize books including contacting Complainant. On July 21, 2005, Ms. Palmer reported to the Director that Complainant had cancelled the prize book order in June 2005. Complainant represented that she had informed Ms. Palmer of the cancellation. However, Ms. Palmer informed the Director that Complainant had never mentioned canceling the book prizes order but

⁵ The IDHR Chief Legal Counsel's Order indicated that Complainant was not given a "formal" performance review in 2004 and 2005. The evidence submitted to the Chief Legal Counsel demonstrated that a "formal" review was conducted in 2004. Mokena Library did not give Complainant a "formal" performance review in 2005 because she was on leave of absence at the time, the Director had conducted a number of informal reviews between December 2004 and July 2005, and Complainant was offered the Youth Services Supervisor position on a probationary basis with a performance evaluation to follow. Aff 52.

only the order for books to be placed on the circulation shelves in the Children's Department.⁶ Based on Ms. Palmer's investigation, the Director concluded that Complainant had lied about notifying a staff member about canceling the book prizes order. Aff 55-56; Ex 18.

7. Complainant's Discharge on July 23, 2005.

Complainant's unauthorized cancellation of the book prizes order, her lie about notifying Ms. Palmer of the cancellation, and her false and misleading representations to the Board proved to be the "last straw." On July 23, 2005, the Director terminated Complainant for cause including Complainant's (a) refusal to follow directives, (b) refusal to correct noted deficiencies in her job performance, (c) continued cancellation of children's programming, (d) falsification of statistics, and (e) cancellation of the "Harry Potter" book prizes order. Aff 57-58; Ex 19.

As the above demonstrates, Complainant did not meet legitimate job expectations during the eight-month prior to her dismissal, that she was repeatedly advised over a seven-month period that her poor performance was a serious issue, and that she committed several serious infractions any one of which was grounds for termination. In short, the evidence clearly shows that Complainant was **not** terminated because of her age.

D. COMPLAINANT CANNOT PLEAD OR PROVE THAT SHE WAS REPLACED BY SOMEONE UNDER AGE 40.

As a matter of law, Complainant **cannot** present a *prima facie* case for age discrimination because there is no evidence that she was replaced by someone under 40. 775 ILCS 5/1-103(A) and (Q); *Koulegeorge*, 250 Ill.Dec. at 216.

As early as December 2004, Mokena Library began developing plans and prior to March 30, 2005 decided to restructure the 40-hours/week full-time Children's Librarian into a two 25-

⁶ The Director was aware of and covered the cancellation of the "Harry Potter" books which had been ordered for Mokena Library's circulating collection. That order was separate from the book prizes order. Aff 56.

hours/week positions and repeatedly discussed such restructuring with Complainant. Complainant repeatedly stated that she was not interested in part-time employment, that she would look for another position, and that she would leave Mokena Library when she found other employment. Aff 17, 19, 24, 26, 27, 33, 35, 48, 50, 51; Ex 4, 5, 8, 11, 12, 16, 17.

At no time did Mokena Library ever contemplate offering the part-time Young Adult Services Supervisor position to Complainant. Shortly before May 17, 2005 (a full two months before Complainant's termination), Mokena Library began searching for an individual to fill that position. At that time, Mokena Library learned that Michaelene Cervantes Squires was working as a Young Adult Supervisor with another library, that she was moving to the Mokena area, and that she would be looking for part-time employment. On May 17, 2005, the Director conferred with Ms. Squires about Mokena Library's 25-hours/week part-time Young Adult Services Supervisor and its general duties and responsibilities. Ms. Squires expressed strong interest in the position but advised that she would not be moving into the Mokena area for another month. Aff 41-43.

On June 16, 2005 (over a month before Complainant's dismissal), the Director offered the part-time Young Adult Services Supervisor position to Ms. Squires. Ms. Squires indicated that she was available in August. On July 1, 2005, Ms. Squires accepted the position and the Director confirmed her acceptance and an August 15th start date via a letter dated July 26, 2005. At that time Mokena Library was not aware that Ms. Squires was under 40. During this same period, Mokena Library offered the Youth Services Supervisor position to Complainant on a three-month probationary basis.⁷ Aff 40-49; Ex 13-17.

⁷ The Director placed similar constraints on Ms. Squire as Complainant including that she work 24 hours per week, clock-in using the library's time clock, and develop a certain number and level of children's programming. Thus, Complainant cannot even demonstrate that she was treated materially different than the younger Ms. Squires.

For the reasons stated above, Complainant was terminated on July 23, 2005 for cause. Thereafter, Mokena Library promoted Ms. Patricia Hoornaert, then 52, to the part-time Youth Services Supervisor position which had been offered to and rejected by Complainant. Ms. Hoornaert was offered the position because she had worked in the Children's Department about the same length of time as Complainant, had taken over running the Children's Department while Complainant was on her leave of absence, and had run the 2005 children's summer reading program in Complainant's absence. Aff 31, 32, 58, 59; Ex 19.

Clearly, Mokena Library did **not** replace Complainant with someone under 40 inasmuch as (1) she was never considered for the part-time position filled by Ms. Squires (age 36) and (2) Ms. Hoornaert (52) was promoted to the part-time position which was offered to and rejected by Complainant prior to her dismissal.

Thus, Complainant **cannot** make out a *prima facie* case for age discrimination because there is no evidence that she was discharged because of her age, that she performed at legitimate expectations, or that she was replaced with someone under 40.

E. THE RESTRUCTURING OF COMPLAINANT'S POSITION WAS NOT A PRETEXT FOR INTENTIONAL AGE DISCRIMINATION.

There is no evidence that the restructuring of the full-time Children's Librarian position was a pretext for intentional age discrimination. The restructuring or reorganization of jobs and job functions, alone, is **not** evidence of age discrimination. *Koulegeorge*, 250 Ill.Dec. at 218. Complainant must, but cannot, offer evidence that the restructuring of her job was done intentionally to discriminate against her because of her age. *Id.*

Mokena Library began planning to restructure the full-time Children's Librarian position into two part-time supervisor positions at least eight months before Complainant was dismissed. See pp. 5-14 *supra* and the Affidavit paragraphs and exhibits cited therein. Complainant was

repeatedly advised, both orally and in writing, of those plans and the reasons for the restructuring including: (1) the Board's continuing tremendous emphasis on growing and improving children's library programming; (2) the anticipated availability of additional revenue for expansion of programming in the Children's Department; (3) the scheduling flexibility offered by two part-time overlapping positions over one full-time position; (4) the greater coverage provided by two part-time positions having at least 50 work hours versus one full-time position having 40 work hours; (5) the opportunity to develop more age-appropriate programs to meet the differing needs of the two principal age groups who utilized the Children's Department; and (6) the opportunity to provide physical supervision of the Children's Department during hours when older children were present and when Complainant refused to work.⁸ *Id.*

Again as discussed above, the final decision to restructure the Children's Librarian position was made nearly four months before Complainant's dismissal. Indeed, Complainant was offered one of the part-time positions and she rejected the offer. *Id.*

Clearly, the restructuring and reorganization of the full-time Children's Librarian position into the part-time Youth Services Supervisor and Young Adult Services Supervisor positions can provide **no pretext** for intentional age discrimination especially because the reorganization commenced eight months before Complainant was discharged and because Complainant was offered one the Youth Services Supervisor position.

F. STATISTICS AND DEMOGRAPHICS DEMONSTRATE NO AGE DISCRIMINATION OCCURRED.

The Children's Department program participation statistics further highlight the propriety of Mokena Library's decision to terminate Complainant for poor performance. During the eight-

⁸ Surely, Complainant could not have worked two overlapping part-time positions having at least 50 hours combined per week especially when she refused to work evenings. Aff 23.

month period September 2004 through April 2005, about 91 children per month participated in programs created and presented by Complainant. Yet, during the seven-month period September 2005 through March 2006, over 500 children per month participated in programs developed by Ms. Hoornaert and Ms. Squires. Complainant's 2005 summer reading program attracted 265 children while Ms. Hoornaert's 2006 and 2007 summer reading programs attracted 615 and 706 children respectively. In 2006, following Complainant's discharge, over 8,100 children participated in children's programming and during the period January 1, 2007 through July 31, 2007 over 10,850 children participated in children's programming. Aff 60.

Mokena Library's staff demographics demonstrate no pattern of age discrimination. At the time of Complainant's termination, of the 36 employees, 30 were over 40; four of the five senior supervisors were over 40; the average age of Mokena Library's full-time staff was 52.4 and the average age of all staff, excluding student pages, was 54.1. Aff 61.

CONCLUSION

As demonstrated above, Complainant cannot present a *prima facie* case for age discrimination because she did not perform at Mokena Library's legitimate expectations, she was discharge for poor job performance and for cause, and she was not replaced by someone under 40. Further, there is no evidence that the restructuring of her position was a pretext for age discrimination or that a general pattern of age discrimination existed.

WHEREFORE, Mokena Library requests that summary decision be entered in its favor, that the Complaint be dismissed with prejudice, and that it be awarded its cost, expenses, and reasonable attorneys' fees in connection with defending Complainant's frivolous Charge.

Respectfully submitted,

One of Mokena Library's attorneys.

James L. Simon
Roberts, Simon & Even, Ltd.
For Mokena Library
1620 Colonial Parkway
Inverness, Illinois 60067
847-705-7640

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF)		
Kathleen A. Wierzbicki,)		
Complainant,	)	CHARGE NO.:	2006ca0493
	)	EEOC NO.:	21BA 53030
and	)	ALS NO.:	07-473
)		
Mokena Community Public)		
Library District,)		
Respondent.)		

**MOTION FOR INTERLOCUTORY APPEAL PURSUANT TO THE
RULES OF THE ILLINOIS HUMAN RIGHTS COMMISSION SECTION 5300.740**

Respondent Mokena Community Public Library District (“Mokena Library”) moves pursuant to the Rules of the Illinois Human Rights Commission Section 5300.740 for the Administrative Law Judge (“ALJ”) to certify to the Commission for interlocutory consideration the following extraordinarily significant questions of law:

Whether the United States Supreme Court’s opinion in *Gross v. FBL Financial Services, Inc.*, 557 U.S. ___, 129 S.Ct. 2343 (2009) is of such extraordinary significance that the Commission should approve and accept its use and application by the Commission and the Administrative Law Section in age discrimination cases.

Whether the ALJ should apply the legal principles articulated in *Gross v. FBL Financial Services, Inc.*, 557 U.S. ___, 129 S.Ct. 2343 (2009) to the above-entitled matter.

In support hereof, Mokena Library states:

The United States Supreme Court’s opinion in *Gross v. FBL Financial Services, Inc.* is extraordinarily significant to age discrimination charges before the Commission and the Administrative Law Section for the following reasons: the United States Supreme Court’s opinion in *Gross* –

- i. re-wrote the requirements for pleading a *prima facie* case for age discrimination;
- ii. rejected any notion that the burden of proof in age discrimination charges shifts to the employer/respondent;
- iii. stated that a complainant must prove that he or she was discriminated against solely *because of his or her age* (i.e., that age was the “but-for” cause of the challenged employer’s decision); and
- iv. involved facts virtually identical to those in the above entitled-case.

The ALJ’s December 6, 2010 Order (“Order”), which denied Mokena Library’s Motion for Summary Decision, states –

To date, the *Gross* decision has not been discussed or cited with approval by the Commission or any Illinois court of review. For this reason, the argument presented in the Supplement is **disregarded**.

Emphasis supplied.¹ However, the Illinois Supreme Court in *Zaderaka v. Illinois Human Rights Comm’n*, 131 Ill.2d 172, 178-179, 545 N.E.2d 684, 137 Ill.Dec. 31 (1989) stated that the -

Commission and the Illinois appellate court have adopted the analytical framework set forth in United States Supreme Court decisions addressing claims under ... the Age Discrimination in Employment Act (29 U.S.C. § 621 et seq. (1982). ... This court will follow the same approach.

The United States Supreme Court opinion in *Gross v. FBL Financial Services, Inc.*, 557 U.S. ___, 129 S.Ct. 2343 (2009) is now part of that Court’s “analytical framework” which the Illinois Supreme Court states governs age discrimination cases.

Judicial and administrative time and resources will be seriously wasted if the ALJ and Commission proceed with discovery, dispositive motions, pre-hearing motions, an evidentiary hearing, post-hearing motions, and appeals to the Commission, and possibly, in state or federal courts without a determination that the United States Supreme Court’s opinion in *Gross* applies

¹ A decision to disregard an entire body of law (here, federal law) unless it has been previously “discussed or cited with approval by the Commission or any Illinois court of review” or “affirmatively accepted ... in a decision of the Commission or a reviewing court”, raises constitutional due process issues especially when a charge includes a federal component which is pursued through a fair employment practices agency as well as the federal EEOC.

to age discrimination charges before the Administrative Law Section and the Commission. Likewise, given that the above-entitled matter and many other age discrimination cases are jointly brought as EEOC matters (the above-entitled case being EEOC No. 21BA 53030) surely a United States Supreme Court decision has extraordinary significance.

A. APPLICABLE STANDARD FOR INTERLOCUTORY APPEAL.

At the outset, it must be noted that the above-entitled case is proceeding under both the ADEA (29 U.S.C. § 621 *et seq.*) as EEOC No. 21BA 53030 and under the IHRA (775 ILCS 5/1-101 *et seq.*) as Charge No. 2006CA0493 and as ALS No. 07-473. The IDHR and the IHRC are handling this matter under a fair employment practices agency contract with the EEOC.² Given that the above-entitled case is brought under state and federal age discrimination statutes, surely a Supreme Court opinion which rewrites the legal standards applicable to pleading and proving age discrimination charges has “extraordinary significance.”

Section 5300.740 of the Rules of the Illinois Human Rights Commission governs interlocutory appeals to the Commission.

The Commission shall not entertain interlocutory appeals from rules by an Administrative Law Judge, *except when the Administrative Law Judge determines that a specific ruling of such extraordinary significance that a decision of the Commission is required prior to completion of the case.* Only the Administrative Law Judge shall have authority to certify a question for the Commission’s consideration.

Emphasis supplied.

The ALJ’s Order “disregarded” the United States Supreme Court decision in *Gross* raised in Mokena Library’s Supplement to its Motion for Summary Decision by stating –

In its supplement to [Mokena Library’s] Motion for Summary Decision and Reply in Support of Motion for Summary Decision, filed July 18, 2009, [Mokena

² The EEOC “may enter into agreements with state ... fair employment practices agencies to cooperate in enforcement ... activities, and may engage the services of such agencies in processing charges” of age discrimination in employment. 29 CFR Ch. XIV, Part 1626.10. IHRC and EEOC have entered into such a contract.

Library] argued that the decision rendered by the United States Supreme Court in Gross v. FBL Financial Services, Inc., 557 U.S. ___, 120 S.Ct. 2343 (2009) is fully dispositive of the issues raised in the present case. Although the Commission has held that the age discrimination provisions of the Illinois Human Rights Act are closely analogous to the federal Age Discrimination in Employment Act (ADEA), decisions in federal cases are not precedential in actions before the Commission, but can be “relevant and helpful” in certain instances. *See, City of Cairo v. FEPC*, 21 Ill.App.3d 358, 363, 315 N.E.2d 344 (5th Dist. 1974). In those instances where a federal case can be “relevant and helpful” in a case before the Administrative Law Section, it must have been affirmatively accepted as such in a decision of the Commission or a reviewing court. To date, the Gross decision has not been discussed or cited with approval by the Commission or any Illinois court of review. For this reason, the argument presented in the Supplement is disregarded.

* * *

In the Motion, Respondent relies on the familiar analysis prescribed by the U.S. Supreme Court case, McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). In that case, the Court set out the progression of proof in a discrimination case: the complainant must establish a *prima facie* case of discrimination; the respondent must then articulate, but not prove, a legitimate reason for its action; and, complainant must establish that the reason set forth by the respondent is a pretext for the alleged discriminatory act.

Order p. 1, brackets supplied. This standard is drastically flawed for several reasons.

First, given the opinion in *Gross* and the ALJ’s rejection of that opinion as applying to age discrimination cases pending before the Administrative Law Section, application of substantially similar age discrimination statutes (the IHRA and the ADEA) by state and federal agencies are **no longer** “closely analogous” notwithstanding the ALJ’s suggestion to the contrary. Order p. 1. Indeed, as discussed below, the United States Supreme Court in *Gross* completely changed the standard for pleading a *prima facie* charge of age discrimination and the burden of proof required to sustain such a charge. Furthermore, the “familiar analysis” which the ALJ applied, relying on *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), was rejected in *Gross*. *McDonnell Douglas, Corp.* involved a race discrimination case under Title VII, not an age discrimination under the ADEA. The Supreme Court in *Gross* stated – “Unlike

Title VII, the ADEA's text does not provide that a plaintiff may establish discrimination by showing that age was simply a motivating factor." 557 U.S. at ____, 129 S.Ct. at 2349. In short, the "familiar analysis" cited by the ALJ no applies to age discrimination cases.

Second, *City of Cairo v. FEPC*, 21 Ill.App.3d 358, 363, 315 N.E.2d 344 (5th Dist. 1974) does not stand for the proposition that "in those instances where a federal case can be 'relevant and helpful' in a case before the Administrative Law Section, it must have been affirmatively accepted as such in a decision of the Commission or a reviewing court." Rather, *City of Cairo*, states that federal decisions "while not controlling, **are** relevant and helpful precedents." Emphasis supplied. There is nothing in *City of Cairo* which suggests that the Commission or an Illinois reviewing court must place its imprimatur on a federal decision before the Administrative Law Section or any of its ALJs can consider or rely on that decision.

Third, *Zaderaka v. Illinois Human Rights Comm'n*, 131 Ill.2d 172, 178-179, 545 N.E.2d 684, 137 Ill.Dec. 31 (1989) also does not require that a federal case be "affirmatively accepted as such in a decision by Commission or a reviewing court" before it can be relied upon by the Commission or the Administrative Law Section. Order, p. 1. Indeed, *Zaderaka* requires the Commission and Administrative Law Section to apply the "analytical framework" set forth in United States Supreme Court decisions concerning age discrimination. In *Zaderaka*, the Illinois Supreme Court expressly held that –

In analyzing employment discrimination actions under the Human Rights Act, the Commission and the Illinois appellate court **have adopted the analytical framework set forth in United States Supreme Court decisions addressing claims under ... the Age Discrimination in Employment Act (29 U.S.C. § 621 et seq. (1982)). ... This court will follow the same approach.**

131 Ill.2d at 178, emphasis supplied. Surely, the United States Supreme Court's decision in *Gross* is now part of, if not significantly altered the "analytical framework" referred in *Zaderaka*.

In sum, there is no law which requires that a federal case be “affirmatively accepted” by the Commission or a reviewing court prior to its use by the Administrative Law Section.³

B. GROSS v. FBL FINANCIAL SERVICES IS PART OF THE “ANALYTICAL FRAMEWORK” FOR CONSIDERING AGE DISCRIMINATION CASES AND, THEREFORE, IS EXTRAORDINARILY SIGNIFICANT.

There is no doubt that the opinion in *Gross* drastically changed the United States Supreme Court’s “analytical framework” for considering age discrimination charges. Pursuant to *Zaderaka*, the Commission and Administrative Law Section now must consider *Gross* as part of that “analytical framework” – especially for those cases which proceed on a dual track under the IHRA and the ADEA. *Zaderaka*, 131 Ill.2d at 178-179.

Section 1-102 of the Illinois Human Rights Act provides – “It is the public policy of this State: (d) To secure for all individuals within Illinois the freedom from discrimination against any individual *because of his or her ... age* ... in connection with employment.” 775 ILCS 5/1-102(d), emphasis supplied. The Age Discrimination in Employment Act provides – “It shall be unlawful for an employer ... to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, *because of such individual’s age.*” 29 U.S.C. § 623(a)(1), emphasis supplied. Both the Illinois and the federal age discrimination statutes contain the “because of” language. The “*because of*” language was extensively discussed in the *Gross* opinion. 557 U.S. at ____, 129 S.Ct. at 2350-2351

Gross involved an age discrimination claim brought by an employee who was reassigned to a different position with lesser responsibilities. A younger person was promoted into *Gross*’s prior position and was given many of his prior responsibilities. *Gross* claimed that his

³ Under the ALJ’s analysis, there would be no opportunity for a new Supreme Court decision to be “affirmatively accepted” by the Commission or a reviewing court. If a party does not or cannot raise an issue in proceedings below then that party is barred from raising that issue on appeal, whether before the Commission or a reviewing court.

“demotion” was based in part on age. His employer defended its position on the grounds that Gross’ reassignment was part of a corporate restructuring and that the new position better suited his skills. 557 U.S. at ____, 129 S.Ct. at 2346-2347.

The parties in *Gross* requested the Supreme Court to decide whether a claimant must present direct evidence of discrimination in order to obtain a mixed-motive jury instruction. *Id.*, at 2348. The Court first determined that the burden of persuasion never shifts to the employer in a mixed-motive discrimination claim. *Id.*, at 2348-2349. Thus, right from the outset, the Supreme Court in *Gross* rejected the “familiar analysis prescribed by ... *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973)” (Order, p. 1) and changed the “analytical framework” employed in age discrimination cases. The Supreme Court next discussed the “*because of such individual’s age*” language in the ADEA. *Id.*, at 2350-2351. As noted above, this same language (“... *any individual because of his or her ... age*”) appears in the IHRA. The Court then held that

the plaintiff retains the burden of persuasion to establish that age was the ‘but-for’ cause of the employer’s adverse action. ... A plaintiff must prove by a preponderance of the evidence ... that age was the ‘but-for’ cause of the challenged employer decision.

Id., at 2352. Thus, the Supreme Court, for age discrimination charges, invalidated the *McDonnell Douglas* analysis.

The Supreme Court in *Gross* concluded its opinion with the following holding –

We hold that a plaintiff bringing a disparate-treatment claim pursuant to the ADEA must prove, by a preponderance of the evidence, that age was the “but-for” cause of the challenged adverse employment action. The burden of persuasion does not shift to the employer to show that it would have taken the action regardless of age, even when a plaintiff has produced some evidence that age was one motivating factor in that decision.

C. SUMMARY OF PROCEEDINGS IN ABOVE-ENTITLED MATTER:

Mokena Library provides this summary of proceedings to show the “extraordinary significance” which the opinion in *Gross* has within the “analytical framework set forth in United States Supreme Court decisions” and how the ALJ’s application of that changed “analytical framework” would likely have resulted in a different ALJ Order.

Complainant filed her charge against Mokena Library in August 2005. Mokena Library responded to that charge in October 2005. In January 2007 the investigator for the IDHR found that there was not substantial evidence to proceed with the charge. Thereafter, the IDHR Staff Attorney reversed the investigator’s recommendation and the matter was set for conciliation. Complainant did not participate in conciliation. The Staff Attorney filed Complainant’s complaint with the IHRC.

In July 2007, Mokena Library moved for summary decision. The motion presented evidence that for eight months prior to discharge, Mokena Library’s Director repeatedly admonished Complainant for her poor job performance in managing the children’s library department and programs. The final “straw” came when Complainant, without notice, cancelled an order for then soon-to-be released books (*Harry Potter and the Half-Blood Prince*) which were to be given as prizes for children’s participation in Mokena Library’s summer reading program that year.⁴ Thus, Complainant jeopardized the children’s summer reading program which, itself, was and is a signature event for Mokena Library and its community in general.

In her response to Mokena Library’s Motion for Summary Decision, Complainant, for the very first time, alleged four acts which she contended constituted *prima facie* age discrimination

⁴ That year’s children’s summer reading program was based on a “Harry Potter” theme. Given that long lines usually form at bookstores when “Harry Potter” books are to be released, the “Harry Potter” book prizes were considered by children as a coveted reward for participating in Mokena Library’s summer reading program.

including that: (i) in July 2004, the Director of Mokena Library gave her a gift of costume jewelry and a wallet purchased from the “Red Hat Society”; (ii) in October 2003, the Director made a comment about getting “old” after Complainant slipped on a sidewalk off library premises; (iii) the Director said to Complainant “Oh, it’s your birthday”; and (iv) the Director made a comment to the effect “who would hire you” (without any reference to age).⁵

In October 2007, Mokena Library filed its Reply in Support of Motion for Summary Decision which demonstrated that the two of the four events identified by Complainant fell well outside the limitations period and that the other two events were isolated incidents which arose in casual conversation, thus providing no basis for an age discrimination charge. Clearly, Complainant bases her age discrimination charge on pretext.

Mokena Library’s Motion for Summary Decision was fully briefed by December 2007.

In July 2009, a month or two after issuance of the United States Supreme Court’s opinion in *Gross*, Mokena Library supplemented its Motion for Summary Decision by arguing that the facts in *Gross* were on all-fours with the facts in the instant case and that *Gross* was dispositive of all issues in this matter based on the record then before the ALJ. Mokena Library provided the ALJ with a copy of the Supreme Court’s slip opinion. Complainant neither objected to nor contested to the applicability of the opinion in *Gross*.

On December 6, 2010, the ALJ issued his Order which denied Mokena Library’s Motion for Summary Decision and rejected Mokena Library’s argument concerning *Gross*.

⁵ Mokena Library does not contest the fact that Complainant was over age 40 when discharged; that long prior to her discharge Mokena Library decided to restructure Complainant’s position into two part-time positions; that an employee in the protected age classification was promoted to fill one of the part-time positions; that Complainant was offered the other part-time position albeit on a probationary basis given her prior poor performances; that Complainant rejected the offer; and that another person outside the protected classification was hired for that position. Mokena Library has consistently contended that Complainant was discharged for cause and that the final act which led to her discharge was her cancellation without notice of the summer reading program prizes.

Mokena Library's motion likely would have been granted if *Gross* had been "affirmatively accepted" as part of the Supreme Court's "analytical framework." The ALJ, applying *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973) stated that

... the Court set out the progression of proof in a discrimination case: the complainant must establish a *prima facie* case of discrimination; the respondent must then articulate, but not prove, a legitimate reason for its action; and, complainant must establish that the reason set forth by the respondent is a pretext for the alleged discriminatory act.

Order, p. 1. Thereafter, the ALJ found that there were genuine issues of fact concerning whether Complainant had performed her job well enough prior to her discharge and whether similarly situated employees were treated materially better. Had the ALJ applied the analysis in *Gross*, he could not have relied on the "familiar analysis prescribed" in the *McDonnell Douglas* case because the Supreme Court in *Gross* held –

... a plaintiff bringing a disparate-treatment claim ... must prove, by a preponderance of the evidence, that age was the "but-for" cause of the challenged adverse employment action. The burden of persuasion does not shift to the employer to show that it would have taken the action regardless of age, even when a plaintiff has produced some evidence that age was one motivating factor in that decision.

557 U.S. at ___, 129 S.Ct. at 2352. As noted above, Mokena Library presented un rebutted evidence that Complainant's job performance was not up to Mokena Library standards in her last eight months of employment and that she had seriously jeopardized one of Mokena Library's signature programs by her conduct. Rather, Complainant offered four events spread out over a long period of time as evidence that she was discharged in part because of her age. As the Supreme Court in *Gross* held, Complainant was obligated to make a showing in order to rebut Mokena Library's motion "that age was the 'but-for' cause of the challenged adverse employment action." There was more than sufficient evidence that Mokena Library discharged Complainant for reasons *other* than her age. In short, two entirely different analyses, two

entirely different results – ergo, the “extraordinary significance” of recognizing that the Supreme Court’s opinion in “*Gross*” not only is part of the “analytical framework” but changed the “analytical framework” in matters involving age discrimination charges.

CONCLUSION

For the reasons state above and because it changed the “analytical framework set forth in United States Supreme Court decisions” for addressing age discrimination claims - whether the Supreme Court’s opinion in *Gross v. FBL Financial Services, Inc.* is to be “affirmatively accepted” in proceedings before the Commission and the Administrative Law Section is of “extraordinary significance.” Therefore, Mokena Library requests the ALJ to grant this Motion for Interlocutory Appeal and certify, pursuant to Section 5300.740, the following extraordinarily significant questions to the Commission for consideration:

Whether the United States Supreme Court’s opinion in *Gross v. FBL Financial Services, Inc.*, 557 U.S. ___, 129 S.Ct. 2343 (2009) is of such extraordinary significance that the Commission should approve and accept its use and application by the Commission and the Administrative Law Section in age discrimination cases, including the above-entitled matter.

Whether the ALJ should apply the legal principles articulated in *Gross v. FBL Financial Services, Inc.*, 557 U.S. ___, 129 S.Ct. 2343 (2009) to the above-entitled matter.

Respectfully submitted,

One of Mokena Library’s attorneys.

For Mokena Community Public Library District:
James L. Simon
John T. Even
810 Barrington Point
Barrington, IL 60010
847-507-7640

Welcome!

Please know that we sincerely appreciate the time and energy you have put into the process of meeting with us this morning. We would like to spend the next few hours getting to know more about you. You have been assigned a City liaison to escort you to your interviews throughout the building. If you have any questions during your time with us, please be sure to let your liaison know.



During these interviews, we will ask you some questions about how you have dealt with various situations in the past. In answering the questions, please direct your answers to professional situations that you have encountered throughout your career. In response to each question, you should be as specific and detailed as possible in describing the situation or problem, what you actually did and when (approximate dates), what you thought about, wanted, or felt, who was involved, what your contribution was, and what the outcome or result of your actions were.

You will begin by meeting with City department heads and key staff members, as well as the Mayor and Human Resources Manager; these will comprise four interview panels of 40 minutes each. After noon, you will be able to meet with individual Legal Division staff members that are 15 minutes each.

All applicants will be asked the same questions and will be evaluated against the same criteria. After you have given your response, interviewers may ask you follow-up questions to clarify any points in your answer. If time allows at the end of each interview, we will take some time to answer any questions you might have about the job, duties, or the City of Urbana. Light refreshments are available in the conference rooms. Please help yourself and enjoy!

About Your Interview

Itinerary for: James Simon

Your liaison: Jolinda Ross, Administrative Assistant to the Mayor

Schedule:

9:00-9:40 AM	PW/CD (CD Conf. Room)	11:15 - 11:55 AM	Police/Fire Command (Police Conf. Room)
9:40-9:45 AM	<i>Break</i>	11:55 AM - 12:00 PM	<i>Break</i>
9:45-10:25 AM	Finance/City Clerk (Exec. Conf. Room)	12:00 - 12:15 PM	Meet w/ Curt Borman (Exec. Conf. Room)
10:25-10:30 AM	<i>Break</i>	12:15 - 12:30 PM	Meet w/ Michelle Brooks & Todd Rent (HR Manager's office)
10:30 - 11:10 AM	Mayor /Vacellia Clark (HR Manager's office)	12:30 - 12:45 PM	Meet w/ Legal Support Staff (Legal)
11:10 - 11:15 AM	<i>Break</i>	12:45 - 1:00 PM	Meet w/ Jack Waaler (CD Conf.)

Interview Schedule | Finance/Clerk's Office

8.29.12 | City Attorney

Executive Conference Room

9:00-9:40 AM



9:40-9:45 AM

Break

9:45-10:25 AM

James Simon

10:25-10:30 AM

Break

10:30 - 11:10 AM



11:10 - 11:15 AM

Break

11:15 - 11:55 AM



Participants:

Curt Borman (Moderator)

Beth Beaty

Phyllis Clark

Bill DeJarnette

Interview Schedule | Public Safety Command Staff

8.29.12 | City Attorney

Police Conference Room

9:00-9:40 AM



9:40-9:45 AM

Break

9:45-10:25 AM



10:25-10:30 AM

Break

10:30 - 11:10 AM



11:10 - 11:15 AM

Break

11:15 - 11:55 AM

James Simon

Participants:

Rhonda Collins (Moderator)

Michelle Brooks

Chief Dilley

Chief Connolly

ACOP Morgan

Lt. Seraphin


Interview Schedule | Public Works/Comm. Dev.

8.29.12 | City Attorney


CD Conference Room

9:00-9:40 AM James Simon


9:40-9:45 AM *Break*

9:45-10:25 AM 

10:25-10:30 AM *Break*

10:30 - 11:10 AM 

11:10 - 11:15 AM *Break*

11:15 - 11:55 AM 

Participants:

Liz Borman (Moderator)

Jack Waaler

Libby Tyler

Robert Myers

John Schneider

Bill Gray

Barb Stiehl

Interview Schedule | Mayor/Executive Staff

8.29.12 | City Attorney

HR Manager's Office

9:00-9:40 AM



9:40-9:45 AM

Break

9:45-10:25 AM



10:25-10:30 AM

Break

10:30 - 11:10 AM

James Simon

11:10 - 11:15 AM

Break

11:15 - 11:55 AM



Participants:

Vacellia Clark (Moderator)

Mayor Prussing

Mike Monson

Application Packets

	Out	In
1. Rhonda Collins		
2. Liz Borman		
3. Vacellia Clark		
4. Curt Borman		
5. Jack Waaler		
6. Michelle Brooks		
7. Mayor Prussing		
8. Chief Connolly--Dept. Head ratings sheet		
9. ACOP Morgan		
10. Lt. Seraphin		
11. Chief Dilley		
12. Libby Tyler--Dept. Head ratings sheet		
13. Robert Myers		
14. John Schneider		
15. Bill Gray--Dept. Head ratings sheet		
16. Barb Stiehl		
17. Bill DeJarnette--Dept. Head ratings sheet		
18. Beth Beaty		
19. Phyllis Clark		
20. Mike Monson		

Employee #: [Redacted]

Personnel Division- City of Urbana
Personnel Action Request Form

P.W. Exec. C.D. Finance Police Fire City Clerk

TO BE COMPLETED BY DEPARTMENT:

ACTION PROPOSED: Appointment Proposed Effec. Date: 11-5-12 ✓

First Name: James M.I. L Last Name: Simon

Address: [Redacted] Home Phone: _____

Division Assigned: Legal Classified Title: City Attorney

Employment Status: Reg. F-T Reg. P-T _____ Seasonal _____ Temporary _____
Average # of hours per week: _____ Duration of Employment: _____

WAGE RATE: \$ 100,464 annual /hour % Budget Line # 0202 1100-1100 ✓
Other: \$48.30/hr. % Budget Line # _____
% Budget Line # _____
% Budget Line # _____
% Budget Line # _____

Comments: _____

Div. Mgr. _____ Date _____ Dept. Dir. [Redacted] Date 11/6/12

TO BE COMPLETED BY PERSONNEL (Tax, Pay and Benefit Codes)

SS#: [Redacted] ✓ Sex: [Redacted] Marital Status: [Redacted] Dependents: [Redacted] Race: [Redacted] ✓

DOH: 11-5-12 ✓ Accrual Date: 11-5-12 ✓ DOB: [Redacted] ✓

Dept. #: 20 ✓ EEO: 2 ✓ Pay: 15 Title: 6 ✓ Status: A ✓ Union: -

D.L. #: [Redacted] FLSA Status: Exempt Non-Exempt _____

TAXES AND BENEFITS:

FIT: M/S m ✓ # Dep. 0 ✓ Exempt _____ Add \$ _____
SIT: M/S m ✓ # Dep. 0 ✓ Exempt _____ Add \$ _____
FICA: ✓ [Redacted]

Deferred Comp.: _____ \$ _____ or _____ %
Retirement: IMRE ✓ Police _____ Fire _____
Health Ins.: [Redacted] F/S _____ Dental: _____ F/S _____
Life Ins.: [Redacted] Dependent _____ Supp. _____
Accrual Type: Management ✓ Other Deductions: Credit Union _____
Comments: _____

APPROVALS

Personnel Mgr [Redacted] Date 11-7-12
Mayor _____ Date _____

FOR PAYROLL USE ONLY

Sent to Finance By: AC
Date: 11-15-12
Keypunched By: HW
Verified By: _____

HW

All non-union employees having been employed for at least 48 months as of July 1, 2007 will receive a longevity pay of 2% of their salary on July 1, 2007 and an additional 1% each subsequent July 1, until such time as their years of employment and longevity pay equals the AFSCME longevity schedule. If you have not met the years of employment required on July 1st, your longevity will increase on your benefit accrual anniversary when you meet that service threshold.

**APPENDIX "C"
LONGEVITY PAY**

The total maximum annual salary for employees covered by this Agreement shall be the annual base salary as established in Appendix "B" of this Agreement plus longevity pay.

Longevity pay shall be based on an employee's years of continuous full-time service, and shall accumulate according to the following schedule, effective July 1, 2008:

Years of Employment	Total Increase Above Base Pay
4	3%
6	5%
8	6%
10	7%
13	9%
15	11%
20	13%
25	15%

Longevity pay shall be considered part of an employee's total maximum salary for all purposes including the computation of payment of overtime.

Williams, Heather

From: Collins, Rhonda
Sent: Monday, November 19, 2012 7:14 AM
To: Williams, Heather
Subject: RE: James Simon

Yes that is correct.

From: Williams, Heather
Sent: Friday, November 16, 2012 4:59 PM
To: Collins, Rhonda
Subject: James Simon

The PARF for James shows that he is going to start at the normal hourly rate (\$48.30 hr/ \$100,464 per yr) and not at the minimum (\$45.57/hr). Is that correct?

Heather M. Williams
City of Urbana, Accounting Dept
hmwilliams@urbanainlinois.us
217-384-2350



City of Urbana
400 South Vine Street
Urbana, IL 61801

September 19, 2012

James L. Simon
[Redacted]

Dear Mr. Simon:

I am pleased to offer you the position of City Attorney at the City of Urbana. Your starting salary will be \$100,464 per year. Typically, the salary structure and individual salaries are adjusted each July. Immediately upon employment, you will become eligible for the City's Management Benefit Package (summary attached). Further details will be provided at your orientation session with Rhonda Collins, Benefits Coordinator.

You are also eligible for reimbursement of up to \$5,000 for actual expenses of the combined costs for your move to Urbana, including temporary housing, travel and property storage. Any reimbursement of non-deductible expenses will be subject to taxation and payroll withholdings.

This offer is subject to your appointment by the Mayor and concurrence by the City Council. Your appointment will be recommended to the City Council following your acceptance of the position. Per City Code, this position is subject to annual July 1 reappointment by the Mayor and confirmation by the City Council. Typically, the Mayor makes these appointments in May for the upcoming July to June fiscal year. In addition, retention in this position requires maintenance of an Illinois driver's license and adherence to all laws and City and Department rules and requirements.

As part of our new hire process, you will be asked to complete a Form I-9 in compliance with the Immigration Reform and Control Act. As part of this compliance, you must present us with documents which identify you and indicate you are eligible to work in the United States, such as your driver's license and Social Security card; please be sure to bring these with you when you begin. A complete list of eligible documents can be found on the last page of: <http://www.uscis.gov/files/form/i-9.pdf>.

Please sign this letter and return it to Human Resources in the enclosed envelope. If you have any questions, please call me at (217) 384-2458.

Sincerely,

[Redacted Signature]
Vaeelha Clark
Human Resources Manager

I accept this position and the conditions of employment stated above, conditioned upon my appointment by the Mayor.

[Redacted Signature]
Signature

[Redacted Signature]
Date

2012-09-20





PURCHASE ORDER

CITY OF URBANA

400 SOUTH VINE STREET
URBANA, ILLINOIS 61801

Dept: Exec. (Human Resources)

Vendor _____

No: _____

Acct: _____

No: _____

Date: _____

To: Visa
1st National Bank of Omaha
P.O. Box 8580
Omaha, NE 68108-8580

Description	Quantity	Price	Amount
Room for James Simon (2 nights: 10/21 - 10/23)	1	\$172.48	172.48
Total			\$172.48

COMPETITIVE PURCHASING SECTION

(IMPORTANT: One of these lines must be checked)

I. Purchase is capable of being competitively priced? Examples of items that are not: those covered by separate contract, court ordered payments, etc. If sole source supplier, complete II. If answer is yes, complete I. below. If no, skip to II.

1. Is purchase amount less than \$500? If answer is yes, check one of 2 items below. If answer is no, go to 2.

Item being purchased is of a single-item nature. Nothing additional is required.

or Item being purchased is of multiple-purchase nature. (City buys more than one of these in year).

Total annual purchases are below \$500. Nothing additional is required.

Total annual purchases are at least \$500. A C.P.F. is on file (Date C.P.F. expires _____).

2. Purchase amount is \$500 or greater.

Item being purchased is of a single-item nature. A C.P.F. is attached

Item being purchased is of multiple-purchase nature. A C.P.F. is on file (Date C.P.F. expires _____).

II. Purchase is not capable of being competitively priced. If not obvious, a C.P.F. must be attached and explanation completed.

SHIPPING charges must be prepaid unless otherwise specified.
CITY is exempt from Illinois ROT and Federal Taxes

DEPARTMENT

Partial Shipment _____

Date Received _____ Partial Shipment _____

Authorized Signature _____

FINANCE

Authorized Signature _____

Vendor must comply with State of Illinois FEPC ACT, Section 854.4, and the City of Urbana AFFIRMATIVE ACTION PROGRAM.



BY CHOICE HOTELS

Comfort Suites

2001 North Lincoln Avenue
Urbana, IL, US, 61801
Phone: (217) 328-3500
Fax: (217) 328-3700

Introduction:

Whether you are traveling for business or going on vacation, the Comfort Suites® hotel provides relaxing accommodations close to a number of Illinois attractions. The **University of Illinois at Urbana - Champaign, Carle Foundation Hospital, Provena Covenant Medical Center and downtown Champaign** are just minutes from the hotel. This Urbana, IL hotel offers **free transportation** within a five-mile radius and **free airport transportation** to the **University of Illinois Willard Airport**.

Filled with entertainment venues like **Assembly Hall, Memorial Stadium, Krannert Center for the Performing Arts**, movie theaters and golf courses, the surrounding area offers a number of interesting things to see and do. Visitors have their pick of activities in the area, including hiking, biking, shopping, museum hopping and much more. There are several restaurants close to the hotel.

This Urbana, IL hotel provides guests with amenities, including:

- **Free weekday evening manager's reception**
- **Free wireless high-speed Internet access**
- **Free weekday newspaper**
- **24-hour indoor heated pool and hot tub**
- **Exercise room**

Your Morning Breakfast is full of hot and delicious options, making breakfast at the Comfort Suites the perfect way to start your day. Enjoy our free hot breakfast featuring eggs, meat, yogurt, fresh fruit, cereal and more, including your choice of hot waffle flavors! If you're leaving early, a **Your Suite Success™ Grab & Go bag** is available for the two hours prior to breakfast.

Corporate travelers can take advantage of the conveniences afforded in the **on-site business center**, including a **computer with Internet access**, and copy and fax service. **Meeting space** is located on the premises and can accommodate up to 50 people for most functions as well as an **executive boardroom** that can hold 12 people.

All elegantly decorated and spacious suites are furnished with **microwaves, refrigerators, coffee makers, 32-inch LCD flat-screen televisions**, curved shower rods, hair dryers, desks, voice mails, irons, ironing boards, pillow-top mattresses, sofa sleepers and cable television. Keep your electronic devices charged with the recharge device including AC and USB outlets provided in all guest rooms. Select suites also have **wet bars, robes and whirlpool bathtubs**.





BY CHOICE HOTELS



Comfort Suites

2001 North Lincoln Avenue
Urbana, IL, US, 61801
Phone: (217) 328-3500
Fax: (217) 328-3700

This Illinois hotel is **pet-friendly**; fees apply. For added convenience, a **sundry shop** and laundry facilities are located on the premises. Ample **free parking** is provided.

When you want countless features and an outstanding staff, look no further than the Comfort Suites hotel. Make a reservation with us today and experience all we have to offer.

Hotel Details:

- ▶ Check in time: 3:00 PM
- ▶ Check out time: 12:00 PM
- ▶ Points required for Choice Privileges reward night redemption:
Sep 16, 2012 - Nov 30, 2012: 20000
Dec 1, 2012 - Jan 31, 2013: 16000
- ▶ Pet accommodation: 20.00/stay Pet limit: 2 pets per room 30 lbs or less This hotel is 100 percent non-smoking.
- ▶  Pet Friendly Hotel
- ▶  Supports Green Practices
- ▶ Contact Us hotelhelp@choicehotels.com



BY CHOICE HOTELS

Comfort Suites

2001 North Lincoln Avenue
Urbana, IL, US, 61801
Phone: (217) 328-3500
Fax: (217) 328-3700

Things To Do:

Area Attractions

- Alto Vineyards (6.0m/9.7km S)
- Canopy Club (2.0m/3.2km S) - Courtesy
Transportation Available 9:00 AM to 7:50 PM
- Chanute Air Museum (14.0m/22.5km N)
- Curtis Orchard (11.0m/17.7km S)
- Dodd's Park (5.0m/8.0km E) - Courtesy
Transportation Available 9:00 AM to 7:50 PM
- Hardy's Reindeer Ranch (19.0m/30.6km N)
- Krannert Center (2.0m/3.2km S)
- Market Place Mall (2.0m/3.2km W)
- Memorial Stadium (5.0m/8.0km S)
- Tuscola Outlet Mall (25.0m/40.2km S)
- Univ of IL Assembly Hall (5.0m/8.0km S)
- Urbana Indoor Aquatic Center (3.0m/4.8km S)
- Virginia Theatre (3.0m/4.8km SW)
- W M Staerkel Planetarium (5.0m/8.0km W)

Area Businesses:

- Beckman Institute (0.1m/0.2km S)
- Carle Foundation Hospital (2.0m/3.2km S)
- Champaign County Courthouse (2.0m/3.2km SE)
- Hambrick & Miller Funeral (2.0m/3.2km E)
- ILEAS Training Center (3.0m/4.8km E)
- Kraft Foods Inc. (3.0m/4.8km W)
- Mittendorf Calvert Funeral (4.0m/6.4km SE)
- Owen's Funeral Home (2.0m/3.2km S)
- Parkland College (5.0m/8.0km W)
- PlastiPak (3.0m/4.8km E)
- Provena Covenant Hospital (2.0m/3.2km S)
- Renner Wikoff Chapel (1.5m/2.4km S)
- Solo Cup (3.0m/4.8km E)
- University of Illinois (2.0m/3.2km S)

Area Transportation:

- Willard University Airport (9.0m/14.5km S)
- Central Illinois Regional Ar (50.0m/80.5km W)
- O'Hare Int'l Airport (154.0m/247.8km N)
- C-U MassTransit District (2.0m/3.2km E)
- Orange Taxi (3.0m/4.8km S)
- Yellow Checker Cab Co. (3.0m/4.8km W)
- Illinois Taxi Company (2.0m/3.2km N)
- Amtrak (3.0m/4.8km S)
- Greyhound Bus Station (3.0m/4.8km S)

Activities & Services:

- Basketball (2.0m/3.2km)
- Billiard Room (2.0m/3.2km)
- Bowling (3.0m/4.8km)
- Driving Range (2.0m/3.2km)
- Golf Course (2.0m/3.2km)
- Indoor Tennis Courts (2.0m/3.2km)
- Miniature Golf (3.0m/4.8km)



BY CHOICE HOTELS

Comfort Suites

2001 North Lincoln Avenue

Urbana, IL, US, 61801

Phone: (217) 328-3500

Fax: (217) 328-3700

- Putting Green (2.0m/3.2km)
- Shopping (3.0m/4.8km)

Restaurants & Lounges:

- Boltini Lounge (2.2m/3.5km)
- Canopy Club (2.0m/3.2km)
- Chilis (Nearby)
- Cracker Barrel (2.3m/3.7km)
- Dos Reales (1.3m/2.1km)
- Guido's (2.2m/3.5km)
- Hickory River Smokehouse (1.8m/2.9km)
- Kennedy's (5.5m/8.9km)
- Old Chicago (Nearby)
- Olive Garden (Nearby)
- Outback Steakhouse (Nearby)
- Red Lobster (Nearby)
- Silver Creek (1.7m/2.7km)
- Soma (2.2m/3.5km)
- Urbana Garden (Adjacent to Property)



BY CHOICE HOTELS

Comfort Suites

2001 North Lincoln Avenue
Urbana, IL, US, 61801
Phone: (217) 328-3500
Fax: (217) 328-3700

Hotel Services and Amenities:

Complete List of Amenities:



100% Smoke Free Hotel

- Banquet/Meeting Rooms
- Braille Elevator(s)
- Business Center
- Cable/Satellite TV
- Corporate Shuttle
- Exercise Room
- Flat Screen/Plasma TV
- Free Airport Transportation
- Free Handicap Parking on Premises
- Free Newspaper Mon-Fri
- Free Wireless High Speed Internet Access
- Government Travelers: FEMA Approved
- Guest Use Copy Machine*
- Guest Use Fax Machine*
- Guest Laundry*
- Hair Dryer
- Accessible Features+
- Hotel accessible to individuals with disabilities
- Hotel has Safe
- In-Bath Whirlpool+
- In-Room Coffee Maker
- In-Room Desk
- Individual A/C & Heat
- Indoor Heated Pool
- Indoor Whirlpool/Hot Tub
- Interior Corridors
- Iron & Ironing Board
- Microwave
- Non-Smoking Rooms Available
- Outdoor Parking
- Pet-friendly Hotel*
- Phone for Hearing Impaired
- Pillow Top Mattress
- Recharge Device
- Refrigerator
- Robes+
- 100% Smoke Free Hotel
- Speaker Phone
- Valet Cleaning Service*
- Voice Mail
- Wake-Up Service
- Sundry Shop*
- Free Hot Breakfast

If an amenity is not located on the hotel premises, the distance to the amenity will be displayed in parentheses.

*Indicates services/amenities that may require an additional cost.

+In some rooms.

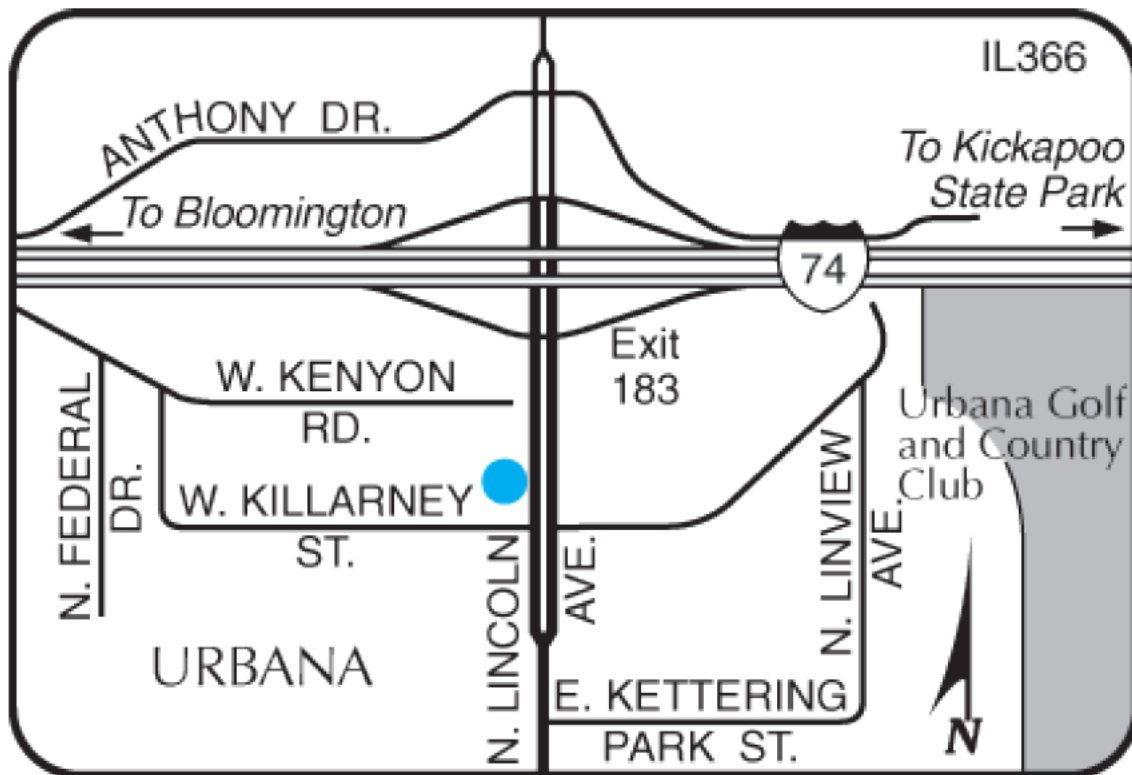


BY CHOICE HOTELS

Comfort Suites

2001 North Lincoln Avenue
Urbana, IL, US, 61801
Phone: (217) 328-3500
Fax: (217) 328-3700

Local Map:



Directions to Our Hotel:

From Chicago: 57 S toward Memphis. Merge onto I-74 E toward Indianapolis. Take the Lincoln Avenue exit, Exit 183. Go south on Lincoln Avenue. Hotel is on the right.

From Indianapolis: I-465 N/I-74 W. Merge onto I-74 W toward Peoria. Take the Lincoln Avenue exit, Exit 183. Go south on Lincoln Avenue. Hotel is on the right.

From St. Louis: I-55N/I-70 E toward Illinois. Merge onto I-70 E toward Indianapolis. Take the Lincoln Avenue exit, Exit 183. Go south on Lincoln Avenue. Hotel is on the right.

From Peoria: I-74 E toward Indianapolis/Decatur. Take the Lincoln Avenue exit, Exit 183. Go south on Lincoln Avenue. Hotel is on the right.

Contact Information:

2001 North Lincoln Avenue
Urbana, IL, US, 61801
Phone: (217) 328-3500
Fax: (217) 328-3700

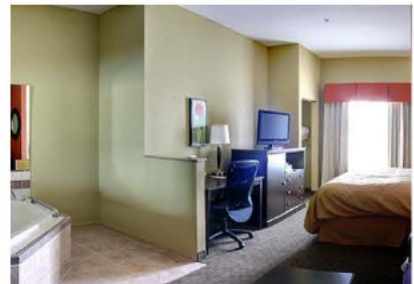


BY CHOICE HOTELS

Comfort Suites

2001 North Lincoln Avenue
Urbana, IL, US, 61801
Phone: (217) 328-3500
Fax: (217) 328-3700

Image Gallery



Hundley, Wendy

From: Christopher Hansen <corruptcu@gmail.com>
Sent: Tuesday, March 03, 2020 6:10 PM
To: !City Clerk
Subject: Urbana FOIA Request - James Simon Documents

I am requesting records under the Illinois Freedom of Information Act

I would like and all documents related to the hiring of Urbana City Attorney James Simon. Documents should cover Simon's initial contact with the City, to present day. Documents should include any documents or documents related to: applications, endorsements, letters of recommendation, promotions, compensation, performace, considerations for replacement etc...

If my request is denied, please cite the exact statutory citation authorizing the denial.

FOIA Request # 2020-F-137
Rec'd & routed 3/4/20 EXEC
Due to petitioner 3/11/20
Ext. requested _____
Ext. due date _____
Date/Time rec'd back to City Clerk's office _____
Contact requestor _____
Distributed _____
 Comply Partial Denied
Pages _____ Fee _____