

Municipal Liability for Police Employment Reference that Hides History of Unconstitutional Conduct

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In settling an employment dispute with a former employee, it is almost routine for the parties to agree that a response to future requests for an employment reference will be limited, often to providing only the dates of employment. This agreement not only advances the interest of settlement but may prevent defamation and other suits by the former employee. What if the separating employee is a police officer with a history of unconstitutional conduct in the performance of his or her duties, such as the use of excessive force?

In *Sassak v. City of Park Ridge*, 431 F.Supp. 2d 810 (N.D. Ill. 2006), a Park Ridge police officer pulled plaintiffs' car over. The driver was eventually charged with several offenses, including DUI. One of the passengers in the car was the driver's spouse, who was also an attorney. When the spouse/attorney asked if he could provide legal advice to his wife, he was arrested for resisting arrest. The majority of the charges were eventually dismissed by the State's Attorney's office.

In addition to suing the police officer and Park Ridge, plaintiffs also sued Lake Zurich, the officer's former employer. While employed by Lake Zurich, the officer had committed various crimes, including perjury and deceptive practices. Lake Zurich entered into an agreement with the officer that—in exchange for his resignation—it would provide a positive job reference to prospective employers, and it gave a reference to Park Ridge. Plaintiffs contended, among other things, that Lake Zurich adopted a policy to conceal the conduct and unconstitutional propensities of the officer. In denying Lake Zurich's motion to dismiss, the court held that plaintiffs adequately alleged that Lake Zurich's policy, custom, or practice of concealing its former employee's bad conduct caused plaintiffs' injuries.

Some states, such as California (*Randi v. Muroc Jt. Unified School Dist.*, 929 P.2d 582 (Cal. 1997)), recognize a cause of action for negligent referral, where an employer may be liable for providing untrue information or omitting information about a dangerous or criminal propensity. At this point, Illinois has not recognized the cause of action. See *Neptuno Treyhand-Und Verwaltungsgesellschaft MBH v. Arbor*, 295 Ill.App.3d 567 (1st Dist. 1998).

Although there may not be a state common law cause of action, an Illinois unit of local government may have §1983, Monell liability if, pursuant to a settlement agreement with a police officer-employee, knowingly fails to include information about a history of unconstitutional or dangerous conduct of the police officer. If the governmental employer has reason to believe that a former employee represents a foreseeable risk for a prospective employer, it should proceed with caution regarding agreements about inquiries from prospective employers for job references.

This alert was featured in the [July 2018 edition of our Informing Illinois Newsletter](#).

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