Legal Update

BELL & ROPER, P.A.

January/February 2017

## CIVIL RIGHTS-FIRST AMENDMENT-SOCIAL MEDIA POLICY

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A recent decision from the 4th Circuit Court of Appeals found that a public entity's social networking policy was overly restrictive and, therefore, violated the First Amendment rights of its employees. In *Liverman v. City of Petersburg,* No. 15-2207, 2016 WL 7240179 (4th Cir. Dec. 15, 2016), the court considered a police department's social networking policy which governed its officers' use of social media platforms. The preface to the policy purported to prohibit any comments "… that would tend to discredit or reflect unfavorably upon the [Department] or any other City of Petersburg Department or its employees." The policy itself contained a *Cont'd 2*

## BIG WIN FOR PIP INSURERS

In *Allstate Insurance Company v. Orthopedic Specialists*, SC15-2298, Jan. 26, 2017, the Florida Supreme Court recently considered whether the language in a personal injury protection ("PIP") insurance policy legally provided sufficient notice of the insurer's election to use the permissive Medicare fee schedules identified in § 627.736(5)(a)2, Florida Statutes (2009), to limit medical expense reimbursements.

The Court recognized a conflict in decisions between the Fourth District Court of Appeals in *Orthopedic Specialists v. Allstate Insurance Co.*, 177 So. 3d 19 (Fla. 4th DCA 2015) and the First *Cont'd 4*

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"Negative Comment Provision" which prohibited employees from posting any negative comment regarding the operation of the department or fellow employees that "…impacts the public's perception of the department… ." The policy also contained a "Public Concern Provision" which allowed officers to comment on matters of public or general concern, provided said comments did not disrupt the workforce or undermine public confidence in the officer.

Two police officers posted comments on a private Facebook page which were critical of the department's practice of promoting less experienced officers to positions as instructors and supervisors and the leadership of their agency. These officers were found to be in violation of the social networking policy and were given a verbal reprimand and placed on six months probation, which they were told would not affect their eligibility for future promotions. Thereafter, the Chief changed the qualifications for promotions within the department to exclude officers on probation from eligibility for promotion. The officers expressed their intention to challenge that action and were then subjected to several investigations. As a result of said investigations, the Chief decided to fire one of the officers, but he resigned prior to receiving his notice of termination. The officers then filed suit in federal court asserting that the social networking policy infringed upon their free speech rights, challenging the discipline and alleging retaliation for exercising their constitutional rights. At the district court level, one plaintiff prevailed on his First Amendment claim, but the other did not, based upon the district court's determination that his speech was purely personal and not protected by the First Amendment. This appeal then ensued.

In considering the constitutionality of the social networking policy, the 4th Circuit first acknowledged the limitations which exist on a public employee's First Amendment rights, as follows:

> The legal framework governing public employee speech claims is well known. Public employees may not "be compelled to relinquish the First Amendment rights they would otherwise enjoy as citizens to comment on matters of public interest." *Pickering v. Bd. of Educ.,* 391 U.S. 563, 568 (1968). Underlying this principle is the recognition that "public employees are often the members of the community who are likely to have informed opinions as to the operations of their public employers." *City of San Diego v. Roe*, 543 U.S. 77, 82 (2004) (per curiam). Nonetheless, a citizen who accepts public employment "must accept certain limitations on his or her freedom." *Garcetti v. Ceballos,* 547 U.S. 410, 418 (2006). Government employers enjoy considerable discretion to manage their operations, and the First Amendment "does not require a public office to be run as a roundtable for employee complaints over internal office affairs." *Connick v. Myers*, 461 U.S. 138, 149 (1983).

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> Courts begin the First Amendment inquiry by assessing whether the speech at issue relates to a matter of public concern. *See Pickering*, 391 U.S. at 568. If speech is purely personal, it is not protected and the inquiry is at an end. If, however, the speech is of public concern, courts must balance "the interests of the [employee], as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees." *Id*.; *see also Connick*, 461 U.S. at 142.

*Liverman v. City of Petersburg,* No. 15-2207, 2016 WL 7240179 (4th Cir. Dec. 15, 2016).

The court found that the officers' speech was clearly entitled to First Amendment protection as a matter of public concern. In considering the policy at issue here, the court found that it was a broad policy which regulated the right of public employees to speak on matters of public concern and constituted a significant burden on their expressive activity. The court went on to acknowledge that a police department, as a paramilitary organization, has legitimate interests in maintaining camaraderie and building community trust. However, the court found that in this case, the department had failed to establish that those concerns about harm to its operations were "…real and not merely conjectural." The court found that the speculative ills targeted by the social networking policy were not sufficient to justify such sweeping restrictions on officers' freedom to debate matters of public concern. The court also found that the more intrusive Negative Comments Provision was not "saved" by the more liberal Public Concern Provision.

In conclusion, the court recognized the challenges associated with the proper operation of a police department, but determined that a more narrow social media policy was required to comply with dictates of the First Amendment:

> Running a police department is hard work. Its mission requires capable top-down leadership and a cohesion and esprit on the part of the officers under the chief's command. And yet the difficulty of the task and the need for appropriate disciplinary measures to perform it still does not allow police departments to wall themselves off from public scrutiny and debate. That is what happened here. The sensitivity of all the well-known issues that surround every police department make such lack of transparency an unhealthy state of affairs. The advent of social media does not provide cover for the airing of purely personal grievances, but neither can it provide a pretext for shutting off meaningful discussion of larger public issues in this new public sphere.

Although this decision from the 4th Circuit is not binding precedent in this jurisdiction, this case provides a timely reminder to public entities of the need to review and, if necessary, update existing social networking/media policies to ensure compliance with current law.

*By: Michael J. Roper, Esquire*

District Court of Appeal's decision in *Allstate Fire & Casualty Insurance v. Stand-Up MRI of Tallahassee, P.A.*, 188 So. 3d 1, 3 (Fla. 1st DCA 2015).

The Fourth District examined language in the Allstate policy providing payment as follows:

1. Medical Expenses

   Eighty percent of all reasonable expenses for medically necessary medical, surgical, X-ray, dental, and rehabilitative services, including prosthetic devises, and medically necessary ambulance, hospital, and nursing services

An endorsement to the policy provides:

> Limits of Liability
> ….
> Any amounts payable under this coverage shall be subject to any and all limitations, authorized by section 627.736, or any other provisions of the Florida Motor Vehicle No-Fault Law, as enacted, amended or otherwise continued in the law, including, but not limited to, all fee schedules.

*Orthopedic Specialists*, 177 So. 3d at 21.

The Fourth District held that this language was not legally sufficient to authorize Allstate to apply the Medicare fee schedules because it was "ambiguous" and "inherently unclear," thereby not providing sufficient notice under *Geico General Insurance Co. v. Virtual Imaging Services, Inc.*, 141 So. 3d 147 (Fla. 2013), requiring an insurer to clearly and unambiguously provide notice if it intended to employ the Medicare fee schedule for PIP claims instead of other, higher-paying reimbursement methods.

However, the First District upheld almost identical language in an Allstate PIP policy in *Stand-Up MRI*. The Florida Supreme Court agreed with the First District that the language in the policy was plain and obvious in that the reimbursements would be paid in accordance with all of the fee schedule limitations contained within § 627.736(5)(a)2. The Court cited to *Fla. Wellness & Rehab. v. Allstate Fire & Cas. Ins. Co.*, 201 So. 3d 169, 173 (Fla. 3d DCA 2016), "The use of the phrase 'subject to' in the policy places the insured on notice of the limitations elected by Allstate; indeed, we cannot discern any other alternative meaning to this language." According to the Court, there was only one reasonable interpretation of the phrase "shall be subject to" in the Allstate PIP policy, that of a mandatory command. The Court found that the policy language could only be interpreted to mean that benefits payments must or will be made in accordance with the limitations set out in the policy endorsement. Any other interpretation would render the provision meaningless. Thus, the First District's decision in *Stand-Up MRI* was approved and the Court quashed the Fourth District's decision in *Orthopedic Specialists* although the decision is not final until the time expires to file a motion for rehearing.

*By: Mai M. Le, Esquire*

## *MEDICARE (CMS) HAS MADE A LAST MINUTE CHANGE TO ITS RECOVERY THRESHOLD REPORTING LEVELS*

**If you are required to comply with Medicare Secondary Payer reporting consider adjusting your processes to these new thresholds or confirming your program has incorporated the changes.**

Earlier this year, Medicare announced its annual threshold reporting figures for settlements, judgments, awards or other payments by Non-Group Health Plans to Medicare beneficiaries. Medicare refers to such resolutions as Total Payment Obligation to the Claimant or TPOC. Medicare does not require reporting of claims which resolve at or below the threshold. Those required to comply with the Medicare Secondary Payer Mandatory Reporting Provisions would have duly noted these thresholds for the coming year (2017). Those, now inapplicable, threshold amounts for the three categories were:

| | |
|---|---|
| Liability Insurance: | $1,000; |
| No-Fault Insurance: | $0; and, |
| Workers Compensation: | $300. |

As of December 12, 2016 however the new TPOC amounts are:

| | |
|---|---|
| Liability Insurance: | $750 on or after January 1, 2017; |
| No-Fault Insurance: | $750 on or after October 1, 2016; and, |
| Workers Compensation: | $750 on or after October 1, 2016. |

This announcement was made by CMS in December 2016 through the following alert: https://www.cms.gov/Medicare/Coordination-of-Benefits-and-Recovery/Mandatory-Insurer-Reporting-For-Non-Group-Health-Plans/Downloads/New-Downloads/Technical-Alert-Change-in-TPOC-Reportinng-Threshold-Change.pdf

Due to the immediate applicability of these changes for Liability Insurance claims, this downward shift of the threshold should be noted and processes adjusted. Attention should also be paid to the changes imposed for Workers Compensation claims. Those matters resolved since October 1, 2016 with TPOC amounts between $300 and $750 meet the new threshold and require reporting. If you are required to comply with Medicare Secondary Payer reporting, you should consider adjusting your processes to these new thresholds or confirm the reporting program in place has incorporated these changes.

*By: Christopher R. Fay, Esquire*

## *THE EFFECT OF TWEETING DURING JURY DUTY*

In *Murphy v. Roth*, 204 So. 3d 43 (Fla. 4th DCA 2016), Michele Murphy sued Michael Roth for injuries she sustained in an automobile accident. Mr. Roth argued that he was not at fault and that Ms. Murphy, in fact, struck him first. The jury ultimately sided with Ms. Murphy and awarded her $27,000 for past and future medical expenses but nothing for pain and suffering. The jury also determined that Ms. Murphy was partly at fault for the accident, and her original award of $39,000 was reduced accordingly.

At the beginning of *voir dire* and after the jury was selected and sworn, jurors were explicitly told not to communicate with anyone about the case or their jury service via tweeting, texting, blogging, emails, posting information on a website or chatroom, or by any other means. Despite this instruction, Juror 5 posted a number of tweets on Twitter during the days of jury selection and trial. While the juror did not name the case or give specific details, he did mention his discontent with being selected for jury duty and his general dismay at being at the courthouse all day. The juror also stated he gave partial or improper answers to some questions during jury selection and that he dressed terrible. He also wrote that "everyone is so money hungry that they'll do anything for it."

After learning about the forging tweets, Ms. Murphy filed a motion for juror interview wherein she contended that her right to a fair and impartial jury was compromised by Juror 5. She also filed a motion for a new trial claiming that Juror 5 lied during jury selection and violated the court order prohibiting jurors from communicating about the case. Ms. Murphy further argued that Juror 5's tweets highlighted an obvious bias against her case. Juror 5, however, insisted his tweets were not about Ms. Murphy's case. Instead, his dislike of the legal system was based on a lawsuit that had recently been filed against his father after they were involved in a car accident. He did not reveal this fact during jury selection.

Upon examining the facts, the appellate court found that although it was undisputed Juror 5 committed misconduct, it recognized that not every violation of the rule against using social media during a trial would warrant a retrial absent evidence of actual prejudice to the litigants arising therefrom. In this case, the trial court found that Ms. Murphy suffered no prejudice as a result of the tweets and the juror's misconduct was neither intentional nor willful. There is also no evidence that any of the other jurors saw or had any discussions about Juror 5's tweets. Moreover, nothing in the plain language of Juror 5's tweets discusses any facts specific to this case or the parties involved. As such, the Fourth District held that the trial court did not abuse its discretion in denying Ms. Murphy's motion for new trial and affirmed the final judgment.

*By: Dani S. Theobald, Esquire*

## *AN OVERVIEW OF RELIGIOUS DISCRIMINATION CLAIMS*

Although religious discrimination claims are not among those claims most commonly and routinely asserted by disgruntled employees, employers need to pay extra caution when presented with a request for a religious accommodation since these types of claims are very broadly construed and the law appears to weigh in the employee's favor.

Title VII prohibits an employer from discriminating against an employee on the basis of, *inter alia,* religion. 42 U.S.C. § 2000e–2(a)(1); *see also* FLA. STAT. ANN. § 760.10(1)(a) (addressing religious discrimination under the FCRA); *Bush v. Regis Corp.,* 257 F. App'x 219, 221 (11th Cir. 2007). With respect to religion, Title VII prohibits, among other things, disparate treatment based on religion in recruitment, hiring, promotion, benefits, training, job duties, termination, or any other aspect of employment and denial of reasonable accommodation for sincerely held religious practices, unless the accommodation would cause an undue hardship for the employer. *See EEOC Religious Garb and Grooming in the Workplace: Rights and Responsibilities* at p. 1.

Title VII defines the term "religion" to include "all aspects of religious observance and practice, as well as belief." 42 U.S.C. § 2000e(j). "The employer violates the statute unless it 'demonstrates that [it] is unable to reasonably accommodate ... an employee's ... religious observance or practice without undue hardship on the conduct of the employer's business.'" *Beadle v. City of Tampa,* 42 F.3d 633, 636 (11th Cir. 1995) (citing *Ansonia Bd. of Educ. v. Philbrook,* 479 U.S. 60, 68 (1986) and 42 U.S.C. § 2000e(j)); *Bush*, 257 F. App'x at 221.

Title VII also defines religion very broadly to include not only traditional, organized religions such as Christianity, Judaism, Islam, Hinduism, Buddhism, and Sikhism, but also religious beliefs that are new, uncommon, not part of a formal church or sect, only subscribed to by a small number of people, or may seem illogical or unreasonable to others.

Religious practices may be based on theistic beliefs or non-theistic moral or ethical beliefs as to what is right or wrong that are sincerely held with the strength of traditional religious views. Religious observances or practices include, for example, attending worship services, praying, wearing religious garb or symbols, displaying religious objects, adhering to certain dietary rules, proselytizing or other forms of religious expression, or refraining from certain activities. Moreover, an employee's belief or practice can be "religious" under Title VII even if it is not followed by others in the same religious sect, denomination, or congregation, or even if the employee is unaffiliated with a formal religious organization.

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Because this definition is so broad, whether or not a practice or belief is religious typically is not disputed in Title VII religious discrimination cases. Title VII applies to any practice that is motivated by a religious belief, even if other people may engage in the same practice for secular reasons. However, if a dress or grooming practice is a personal preference, for example, where it is worn for fashion rather than for religious reasons, it does not come under Title VII's religion protections.

Title VII's accommodation requirement only applies to religious beliefs that are "sincerely held." However, just because an individual's religious practices may deviate from commonly-followed tenets of the religion, the employer should not automatically assume that his or her religious observance is not sincere. Moreover, an individual's religious beliefs - or degree of adherence - may change over time, yet may nevertheless be sincerely held. *EEOC v. Ilona of Hungary, Inc.,* 108 F.3d 1569, 1575 (7th Cir. 1997) (The sincerity of an employee's religious beliefs or practices must be determined as of the time of the alleged discrimination.); *EEOC v. IBP, Inc.,* 824 F. Supp. 147, 151 (C.D. Ill. 1993). Therefore, like the "religious" nature of a belief or practice, the "sincerity" of an employee's stated religious belief is usually not in dispute in religious discrimination cases. However, if an employer has a legitimate reason for questioning the sincerity or even the religious nature of a particular belief or practice for which accommodation has been requested, it may ask an applicant or employee for information reasonably needed to evaluate the request. In some instances, even absent a request, it will be obvious that the practice is religious and conflicts with a work policy, and therefore, that accommodation is needed.

Title VII requires an employer, once it is aware that a religious accommodation is needed, to accommodate an employee whose sincerely held religious belief, practice, or observance conflicts with a work requirement, unless doing so would pose an undue hardship. For example, when an employer's dress and grooming policy or preference conflicts with an employee's known religious beliefs or practices, the employer must make an exception to allow the religious practice unless that would be an undue hardship on the operation of the employer's business. *See, e.g., EEOC v. Red Robin Gourmet Burgers, Inc., No. C04-1291JLR, 2005 WL 2090677 (W.D. Wash. Aug. 29, 2005); EEOC v. 704 HTL Operating, LLC and Inv. Corp. of Am., d/b/a MCM Elegante Hotel*, 11-cv-00845 JCH/LFG (D.N.M. consent decree entered Nov. 2013); *EEOC v. Lawrence Trans. Sys.*, Civil Action No. 5:10CV 97 (W.D. Va. consent decree entered August 2011); *EEOC v. LAZ Parking, LLC* Case No. 1:10-CV-1384 (N.D. Ga. consent decree entered Nov. 2010); *EEOC v. Comair, Inc.*, Civil Action No. 1:05-cv-0601 (W.D. Mich. consent decree entered Nov. 2006); *EEOC v. Pilot Travel Ctrs. LLC*, Civil Action No. 2:03-0106 (M.D. Tenn. consent decree entered April 2004); *EEOC v. United Parcel Serv.*, 94 F.3d 314 (7th Cir. 1996); *EEOC v. Family Foods, Inc. d/b/a Taco Bell*, No. 5:11cv00394 (E.D.N.C. April 2012).

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## *THE LOOSENING OF THE STRICTLY CONSTRUED FLORIDA STATUE, SECTION 768.28(6)*

In a recent opinion from the Second District Court of Appeal, *Wilson v. City of Tampa*, No. 2D15-3953, 2017 WL 421935 (Fla. 2d DCA Feb. 1, 2017), the appellate court appears to be slowly chipping away at the strict requirements of the notice of claim provision contained in FLA. STAT. § 768.28(6).

To bring a tort claim against a government entity, a plaintiff is required to comply with the notice provisions of § 768.28(6). As a condition before filing suit, a plaintiff must provide written notice to the entity in which it intends to sue, and except for cities or the Florida Space Authority, send the same notice to the Department of Financial Services. The purpose of the statute is to allow the entity sufficient notice to investigate and respond to claims. *Metro. Dade Cnty. v. Reyes*, 688 So. 2d 311, 313 (Fla. 1996). The provisions were to be strictly construed, with strict compliance required. *Maynard v. State, Dep't of Corr.*, 864 So. 2d 1232, 1234 (Fla. 1st DCA 2004).

The statute expressly provides what is to be included in the notice in sections 6(a) and (c):

> **768.28 Waiver of sovereign immunity in tort actions; recovery limits; limitation on attorney fees; statute of limitations; exclusions; indemnification; risk management programs.—**
>
> ***(6)(a) An action may not be instituted on a claim against the state or one of its agencies or subdivisions unless the claimant presents the claim in writing to the appropriate agency, and also, except as to any claim against a municipality or the Florida Space Authority, presents such claim in writing to the Department of Financial Services, within 3 years after such claim accrues and the Department of Financial Services or the appropriate agency denies the claim in writing***; except that, if:
>
> 1. Such claim is for contribution pursuant to s. 768.31, it must be so presented within 6 months after the judgment against the tortfeasor seeking contribution has become final by lapse of time for appeal or after appellate review or, if there is no such judgment, within 6 months after the tortfeasor seeking contribution has either discharged the common liability by payment or agreed, while the action is pending against her or him, to discharge the common liability; or
>
> 2. Such action is for wrongful death, the claimant must present the claim in writing to the Department of Financial Services within 2 years after the claim accrues…

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> ***(c) The claimant shall also provide to the agency the claimant's date and place of birth and social security number if the claimant is an individual, or a federal identification number if the claimant is not an individual. The claimant shall also state the case style, tribunal, the nature and amount of all adjudicated penalties, fines, fees, victim restitution fund, and other judgments in excess of $200, whether imposed by a civil, criminal, or administrative tribunal, owed by the claimant to the state, its agency, officer or subdivision. If there exists no prior adjudicated unpaid claim in excess of $200, the claimant shall so state….***

See FLA. STAT. § 768.28(6) (emphasis added).

In the recent *Wilson* opinion, Wilson challenged a trial court's order dismissing her lawsuit against the City of Tampa with prejudice for her failure to comply with § 768.28(6)'s notice requirements. Wilson sued the City after she allegedly fell and suffered injuries when a City sewer drain suddenly broke underneath her. Prior to filing her lawsuit, she timely served notice to the appropriate entities. The notice stated Wilson was injured when she was "clearing grass out of the yard," and stepped on a storm drain grate. It listed the street name only and the date of her fall. It did not list the specific address where she fell.

In response to the complaint, the City moved to dismiss for plaintiff's failure to comply with § 768.28(6), asserting the notice: (1) did not provide a specific address for the storm drain's location; (2) did not state the time the incident occurred; and (3) the notice did not state Ms. Wilson's gender. At the time of the hearing, the City abandoned its last two points and argued only that plaintiff failed to specify the street address. The trial court agreed the notice was defective for failing to specify the location of the alleged incident and dismissed Wilson's case with prejudice.

In reversing this decision, the Second DCA focused on the language of 6(a), which requires the claim be in writing, but does not otherwise specify how the claim should be worded. The appellate court noted this lack of specificity has been addressed by other districts as well, but the legislature has not taken action to amend the section to clarify the requirement. Accordingly, the Second DCA concluded that to comply with section 6(a), only two requirements must be met: (1) the claim must be in writing; and (2) it must assert a claim for compensation. The court recognized the purpose of the statute, i.e., to investigate the claim. Yet, it still concluded that plaintiff's failure to include the physical address did not render an investigation impossible. It determined the notice was "reasonable" and "substantially compliant," sufficient for the City to have investigated or to have requested more information.

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For purposes of religious accommodation, undue hardship is defined by courts as a "more than *de minimis*" cost or burden on the operation of the employer's business. For example, if a religious accommodation would impose more than ordinary administrative costs, it would pose an undue hardship. This is a lower standard than the Americans with Disabilities Act (ADA) undue hardship defense to disability accommodation. As such, the employer should not assume that the accommodation would pose an undue hardship. While safety, security, or health may justify denying accommodation in a given situation, the employer may do so only if the accommodation would actually pose an undue hardship. In many instances, there may be an available accommodation that will permit the employee to adhere to religious practices and will permit the employer to avoid undue hardship.

Assigning applicants or employees to a non-customer contact position because of actual or feared customer preference violates Title VII's prohibition on limiting, segregating, or classifying employees based on religion. Even if the employer is following its uniformly applied employee policy or practice, it is not permitted to segregate an employee due to fear that customers will have a biased response to religious garb or grooming. The law requires the employer to make an exception to its policy or practice as a religious accommodation because customer preference is not undue hardship and it is not a defense to a religious discrimination claim.

An employer's reliance on the broad rubric of "image" or marketing strategy to deny a requested religious accommodation may amount to relying on customer preference in violation of Title VII, or otherwise be insufficient to demonstrate that making an exception would cause an undue hardship on the operation of the business. *EEOC v. United Galaxy Inc., d/b/a Tri-County Lexus,* No. 2:10-CV-04987 (D.N.J. consent decree entered Nov. 2013); *EEOC v. Grand Cent. P'ship,* Civil Action No. 08-8023 (S.D.N.Y. consent decree entered Aug. 2009); *EEOC v. United Parcel Service,* Civil Action No. 08-cv-1806 (M.D. Pa. consent decree entered Feb. 2010).

*By: Cindy A. Townsend, Esquire*

*11b*

The take away: where we have previously had success moving to dismiss cases which did not strictly comply with the notice requirements in sections (a) and (c), we are seeing a trend where courts are less inclined to dismiss based on such defects. Even where identifying information required in section (c) is absent, or, as here, a claimant failed to place an entity on notice of the specific location of an incident, courts are less likely to find the notice of claim insufficient. The key focus appears to be whether the notice "reasonably" places the entity on notice of a possible claim, and is the notice "substantially compliant," such that the entity can inquire further and investigate the claim.

*By: Anna E. Engelman, Esquire*

# *FIRM SUCCESS!*

The United States Court of Appeals for the Eleventh Circuit recently affirmed, after briefing and oral argument, a Summary Judgment Order granted in favor of the Village Center Community Development District in a case brought against it by 32 residents who are deaf or hard of hearing. This case involved novel issues regarding a governmental entity's obligations under the Fair Housing Act and Title II of the ADA to provide reasonable accommodations to disabled residents so that they might participate in activities of private clubs that are conducted on a governmental entity's property and facilitated, in part, by a governmental entity. The Eleventh Circuit affirmed the decision of United States District Judge Morales concluding that neither Title II of the ADA nor the Fair Housing Act requires a governmental entity to provide reasonable accommodation in the form of sign language interpreters for residents who are deaf or hard of hearing so that those residents might participate in activities of private clubs merely because those private clubs utilize property of a governmental entity and are subject to the rules associated with the use of that property.

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