

# HOW TO AVOID BEING SUED : COMMON MUNICIPAL LIABILITY ISSUES

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PART I  
COMMON MUNICIPAL  
LIABILITY ISSUES

## COMMON MUNICIPAL ISSUES

Current trends in municipal litigation:

- First Amendment
- Police Issues
- Open Records
- Employment-based issues

## FIRST AMENDMENT ISSUES

Most commonly seen in the context of:

- Sign regulation
- Various ordinances
- City Facebook pages and other social media sites

## FIRST AMENDMENT ISSUES

### Sign Regulation and Other Ordinances

- Time, place, and manner restrictions

REMEMBER: In most cases, you cannot make someone take down a sign simply because of what it says.

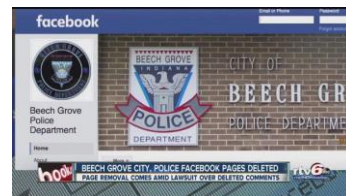
“The principal inquiry in determining content neutrality, in speech cases generally and in time, place, or manner cases in particular, is whether the government has adopted a regulation of speech because of disagreement with the message it conveys. The government’s purpose is the controlling consideration.”

*Ward v. Rock Against Racism*, 491 U.S. 781, 784 (1989)

## FIRST AMENDMENT ISSUES

### Government-Sponsored Social Media

- City-sponsored Facebook Pages are becoming increasingly popular
- It is unclear whether social media pages, such as Facebook, are “public forums”



## POLICE-RELATED ISSUES

### PERSONAL LIABILITY

- False Arrest
- Excessive Force
- Malicious Prosecution
- Failure to Intervene
- Deliberate Indifference

### DEPARTMENT LIABILITY

- Negligent Employment
- Inadequate Training
- Inadequate Supervision
- Negligent Entrustment
- Negligent Assignment
- Failure to Discipline
- Negligent Retention
- Maintaining an Atmosphere of Indifference to Citizen's Rights
- Failure to Direct
- Failure to Plan for the Defense of Critical Policies and Procedures

## POLICE-RELATED ISSUES

How to stay out of trouble:

- Have your officers wear body cameras
- Update your department-wide policies, especially use of force policies
- Have officers and officials stay up-to-date on trainings
- Stay up-to-date on recent cases and the relevant laws

## OPEN RECORDS

The Kentucky Open Records Act – KRS 61.870 to 61.884

- Public records are open to inspection by any person unless exempted by the terms of the Act or by some other statute or law.
- A public record must be made available for inspection to all members of the public if it is provided to any member of the public.
- The purpose for which a person seeks access is irrelevant.
- Each local government is required to adopt rules and regulations for open records requests.
- Must respond within three days with either the records or an explanation for the delay and the earliest date when the requested records will be available. KRS 61.872(5).

## OPEN RECORDS

- **A response to an open records request which denies any part of the request must include “a statement of the specific exception authorizing the withholding of the record and a brief explanation of how the exception applies to the record withheld.” KRS 61.880(1).**
  - Blanket denials are bad policy.
  - This is the biggest cause for appeal and litigation.
- Common Exemptions:
  - Personal Information
  - Certain Records of Law Enforcement Agencies
  - Preliminary Records
  - Unreasonable Burden

## OPEN RECORDS - APPEALS

Appeals from a denial of inspection of records under the Kentucky Open Records Act may be filed with the Attorney General or in Circuit Court.

### Attorney General

- No deadline to file appeal with AG.
- Letter to AG setting forth reasons for appeal.
- AG's Office will respond within 20 days (or extend deadline for additional 30 days).

### Circuit Court

- 30 days to appeal AG's decision to Circuit Court.
- May be challenged in Circuit Court as either an original action or as an appeal of the Attorney General's decision.
- Open records actions taken in Circuit Court are to take precedence on the docket over other cases.

Remember: Courts have the discretion to award Attorney's Fees when an Open Records Request was unreasonably denied. Make sure denials are well-explained and fit under an exemption.

## EMPLOYMENT ISSUES

Most employment litigation arises from wrongful termination lawsuits involving:

1. The Americans with Disabilities Act (ADA)
2. Family and Medical Leave Act (FMLA)
3. Kentucky Civil Rights Act

## EMPLOYMENT ISSUES

Who has the authority to discipline and make employment decisions in City Government?

- **Mayor-Council Plans – KRS 83A.130**
  - The Mayor has the power to appoint and to remove at his or her discretion all City employees including police officers.
  - The Mayor's power does not extend to employees of City Council. KRS 83A.130(9)
  - The removal power must be exercised in a manor consistent with federal and state statutes.
- **Commission Plans – KRS 83A.140**
  - Employees who are not employed in classified service positions are appointed and removed by the legislative bodies.
- **City Manager Plans – KSR 83A.150**
  - The City Manager has the power to recommend appointment or removal of employees.
  - Authority to appoint or remove employees rests with the Board of Commissioners.

PART II  
**HOW TO AVOID LIABILITY AND  
MINIMIZE RISK**

## \*BE PROACTIVE

“By failing to prepare, you are preparing to fail.”

— Benjamin Franklin

Some simple steps you can take:

- Keep thorough records
- Have the right forms
- Update personnel policies
- Have regular trainings
- Stay informed on the changing law

## KEEP THOROUGH RECORDS



- Is there a standard location for all records?
- Are your records organized and readily accessible?
- Are all incidents recorded?
- Do you keep detailed notes of conversations with employees?
- Do your notes include times and dates?

**TWO-STEP RECORD RULE:**

- 1. Document every allegation or complaint a person makes;**
- 2. Record what you did to follow-up.**



## HAVE THE RIGHT FORMS

The image shows two forms. The first is a 'MEMBER/CUSTOMER ACCIDENT REPORT' with fields for Name of Member/Phone Number, Address, Age, Sex, Height, Weight, General State, Date of Birth, Year of Birth, Date of Accident, Location of Accident, and a section for 'Was Medical Assistance Required?' with 'Yes' and 'No' checkboxes. The second is an 'EMPLOYEE PERFORMANCE REVIEW' form with a grid for tracking performance metrics over time.

- Do you have a standard incident report?
- Do you have a standard employee write-up form?
- Are these forms easily accessible?
- Are management and supervisors trained to use these forms?

## UPDATE PERSONNEL POLICIES



- Do you have an employee handbook?
- Does the handbook include standard personnel policies?
- Are you employees provided with these policies?
- Are these policies regularly enforced?

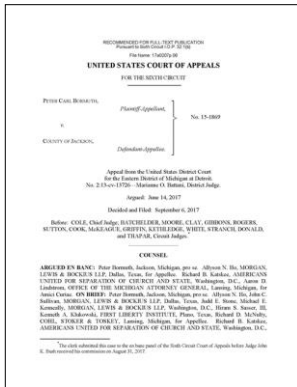
NOTE: Having standard policies and procedures is important, but you must also enforce them.

## HAVE REGULAR TRAININGS



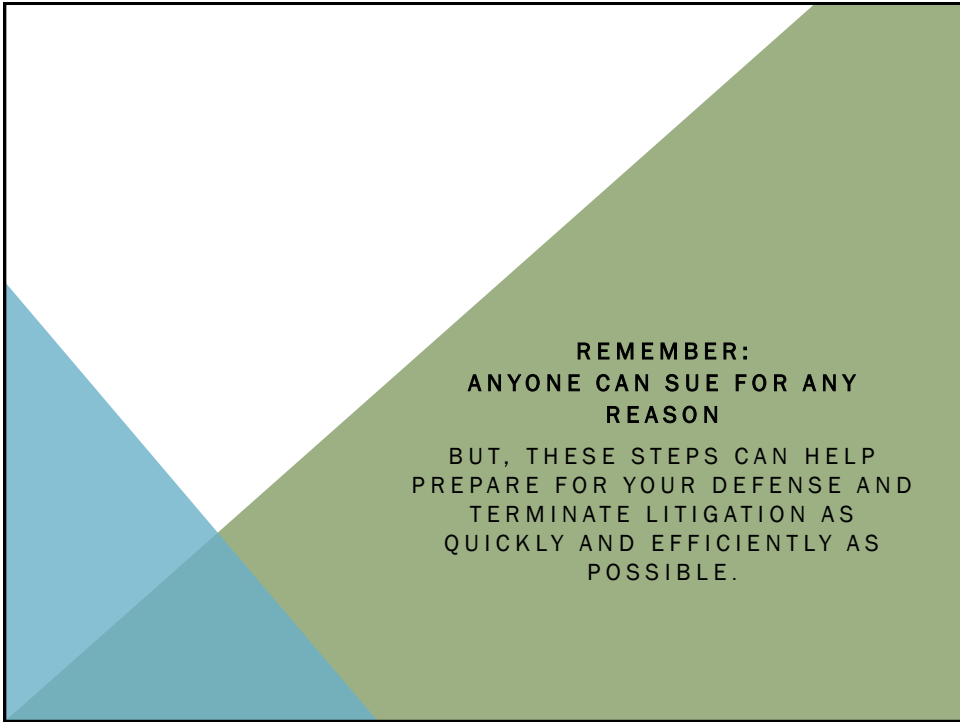
- Do you offer various trainings for employees (i.e., sexual harassment training, de-escalation training, etc.)
- How frequently do you train your employees?
- Is training mandatory?

## STAY INFORMED



## REMEMBER: THE LAW CHANGES

- Have consistent reviews of the law
- Be aware of new standards and how they affect your municipality



**REMEMBER:**  
**ANYONE CAN SUE FOR ANY  
REASON**  
BUT, THESE STEPS CAN HELP  
PREPARE FOR YOUR DEFENSE AND  
TERMINATE LITIGATION AS  
QUICKLY AND EFFICIENTLY AS  
POSSIBLE.