

SURVEY OF ILLINOIS LAW: ADMINISTRATIVE LAW

CARL A. DRAPER* AND WILLIAM A. PRICE**

INTRODUCTION TO THIS ARTICLE

This article will start with a discussion of case law that has caused considerable confusion over the years. It will discuss how to properly name and serve administrative agencies when appellants seek court review of agency decisions, and statutory revisions to the state Administrative Review Law that have sought to make it easier to get court review, despite initial failure to name and serve all possible persons who should be defendants in such proceedings.

This article will then summarize state and federal appellate and Supreme Court cases that resulted from challenges to, or actions in support of, State of Illinois agency authority, decisions, and jurisdiction during 2015. These could come up for review in the context of contested cases under the Administrative Procedure Act¹, with review under the Administrative Review Law,² or might, despite the claims to exclusivity in the latter, be raised in common law certiorari, or in due process challenges under the Constitution or under federal civil rights laws. More detail on all

* Mr. Draper has extensive experience in dealing with various aspects of the law as it relates to individual rights and government regulation. His practice focuses on civil rights claims for individuals, state government regulation, municipal and local government regulation, and all types of administrative hearings. He has served as an assistant attorney general for Illinois, acted as a legal counsel to the governor of Illinois, and has been in private practice for the past 20 years, using those skills to protect the rights of small businesses and individuals. He has experience addressing appeals to the Illinois Appellate Court, the Illinois Supreme Court, and the United States Court of Appeals for the Seventh and Third Circuits. Carl is a Member of the Illinois State Bar Association Board of Governors and Assembly, and is a Member of the Section Council, Section of Administrative Law, Illinois State Bar Association (and past Chair.)

** Bill Price is an attorney in private practice in Warrenville, Illinois. He is the 2012 recipient of the ISBA Section of General Practice "Tradition of Excellence" award. He is the Chairman of the Institute for Illinois Business Laws, in which capacity he chaired the subcommittees that wrote both versions of the state Limited Liability Companies Act. He served as the 2007–08 Chairman for the Corporation, Securities, and Business Law Section Council of the ISBA, and is a 2015–16 member of that Section Council. Mr. Price is also a 2015–16 member of the Administrative Law Section Council, for which he is general editor for both editions of the ISBA Handbook of Illinois Administrative Law, and has co-edited the Section newsletter for many years, tracking Seventh Circuit and other appellate cases arising out of Illinois regulatory and contested case proceedings. He is also a past Chairman of that Section Council.

1. 5 ILL. COMP. STAT. 100/1-1 to 100/15-10 (2014).
2. 735 ILL. COMP. STAT. 5/3-101 to 5/3-113 (2014).

these alternative methods of review is available in the Handbook of Illinois Administrative Law, 2d Edition.³

POST-*LOCKETT* CASELAW ON PARTIES AND SERVICE IN
ADMINISTRATIVE APPEALS, WITH ATTEMPTED CORRECTIVE
LEGISLATION

In the field of administrative law, lawyers must learn specific statutory rights and procedures for regulatory agencies. Many regulatory actions by administrative agencies adjudicate the rights of individuals or private businesses including regulations on the operation of business, education, professional licensing, and many forms of civil remedies. In addition to learning regulatory schemes contained in the statutes and rules of administrative bodies, the right to obtain review in our courts of administrative decisions is vital to assure that the law is being followed and that regulatory action for decisions are supported by appropriate evidence. In Illinois, the most commonly used vehicle for judicial oversight is the Administrative Review Law,⁴ under which the courts take on an appellate type role to review administrative decisions.

A recent, and perhaps surprising, appellate court decision brought into sharp focus the complex procedural maze that runs between an administrative decision and the opportunity for judicial review. No topic concerning judicial review in the State of Illinois has received more attention over the last sixty-five years than the complexity of naming and serving the correct parties within the short time limits allowed by the Administrative Review Law.

One of the outstanding decisions in 2015 arose in *Mannheim School Dist. No. 83 v. Teachers' Retirement System of Ill.*⁵ The fundamental issue in that case was whether the school district complied with mandatory requirements of the Administrative Review Law ("ARL") when it attempted to challenge an administrative decision received from the Teachers' Retirement System ("TRS") concerning the pension contributions it owed to the system.⁶

The fundamental backdrop to the dispute starts with the legal requirement that judicial review under the ARL is a statutory process and strict compliance with the statutory requirements has always been a necessary prerequisite to obtaining review in court.⁷ In this case, TRS

3. Price, William A., *Handbook of Illinois Administrative Law*, ISBA (Second Ed., 2008).

4. 735 ILL. COMP. STAT. 5/3-101 to 5/3-113 (2014).

5. *Mannheim Sch. Dist. No. 83 v. Teachers' Ret. Sys. of Ill.*, 2015 IL App (4th) 140531.

6. *Id.* at ¶ 3.

7. *Id.* at ¶ 12.

moved to dismiss the complaint for judicial review that was timely filed on the basis that a defendant was named as “Teachers’ Retirement System of Illinois,” rather than, “Board of Trustees of the Teachers’ Retirement System of Illinois.”⁸ The second issue in the case was the Appellate Court’s interpretation of a legislative amendment to the ARL, whose purpose was believed to have intended to create an opportunity to correct a misnomer of this kind rather than allowing the case to be simply dismissed.⁹ The fourth district of the appellate court held that the requirements of the ARL to name the agency issuing a determination was not met and that the remedial legislation did not afford an opportunity to cure the error.¹⁰

In civil actions that are initiated in the circuit court the misnomer of a party is rarely fatal. Misnomer problems can easily be avoided given that the statute of limitations for civil actions is two years for personal injury,¹¹ ten years for actions on written instruments like contracts or deeds,¹² and five years as the general time limitation when a specific limitation period is not otherwise established.¹³ By contrast, a complaint for administrative review, while an independent legal proceeding rather than a continuation of the administrative hearing, has a thirty-five day time limitation for filing a complaint and seeking the issuance of summons.¹⁴

While the nature of administrative review works like appellate review from the circuit court, and while the time limit in other civil actions to file a notice of appeal is generally thirty days, judicial review requires initiating an entirely independent legal proceeding, rather than treating judicial review as an extension of the administrative hearing. In civil actions, therefore, the right to appeal is perfected by filing a notice of appeal in the circuit court and serving written notice that the notice of appeal was filed on the opposing parties or their counsel.¹⁵ By contrast, the requirement of initiating a new proceeding mandates the preparation of a proper complaint alleging all of the jurisdictional requirements of the ARL and correctly identifying each party to the proceeding as well as the correct name of the administrative body or official having the power to make the determination that will be under review.¹⁶ This latter step is not as easy as it might seem. Many administrative decisions come in the form of

8. *Id.* at ¶ 5.

9. *Id.* at ¶ 17–18.

10. *Id.* at ¶ 23.

11. 735 ILL. COMP. STAT. 5/13-202 (2014).

12. *Id.* at § 5/13-206.

13. *Id.* at § 5/13-205.

14. *Id.* at § 5/3-103.

15. *See* ILL. SUP. CT. R. 301; ILL. SUP. CT. R. 303.

16. *Mannheim Sch. Dist. No. 83 v. Teachers’ Ret. Sys. of Illinois*, 2015 IL App (4th) 140531, ¶ 12

correspondence on agency letterhead. Many administrative determinations are made that do not have a formal caption identifying the parties that is otherwise customary in the circuit court. As will be seen in this article, in numerous instances attorneys have failed to recognize a necessary party or to properly identify and name the board, commission, department, public official, or other entity issuing the final administrative decision.

A. History

In order to understand the rulings in *Mannheim*, the historical underpinnings of the decision must be understood. The core provisions of the ARL have been in existence since before 1950. In 1951, the Illinois Supreme Court considered the requirements of the law then known as the Administrative Review Act and held that the fundamental purpose of that law was to provide a single, uniform avenue for review of final administrative decisions.¹⁷ Unless review is sought of an administrative decision within the time and in the manner provided, the parties to the proceeding shall be barred from obtaining review.¹⁸ In *Winston*, the Supreme Court decided that the statutory requirement of naming all persons who were parties of record to the proceeding was not met.¹⁹ The court held for the first time that this statutory requirement was mandatory and specific and admits of no modification.²⁰ Because the act was relatively new and a departure from common law, the statutory procedures must be followed or a complaint for administrative review must be dismissed.²¹

Forty years later, the Supreme Court re-emphasized the mandatory nature of naming and serving summons on all necessary parties in *Lockett v. Chicago Police Board*.²² In that case, the Supreme Court, relying on *Winston*, examined the record revealing that the superintendent of police was a party to the administrative proceedings but was not named in the complaint in the circuit court.²³ The circuit court found the failure to name the superintendent was a fatal defect depriving the court of jurisdiction, and dismissed the complaint without granting requested leave to amend.²⁴ The appellate court reviewed the decision and determined that the superintendent's interests coincided with that of the police board, and

17. *Moline Tool Co. v. Dep't of Revenue*, 410 Ill. 35, 37, 101 N.E.2d 71, 72 (1951).

18. *Winston v. Zoning Bd. of Appeals of Peoria Cty.*, 407 Ill. 588, 95 N.E.2d 864 (1950).

19. *Id.* at 595-96, 95 N.E.2d at 869.

20. *Id.*

21. *Id.* at 596, 95 N.E.2d at 869.

22. *Lockett v. Chicago Police Bd.*, 133 Ill.2d 349, 549 N.E.2d 1266 (1990).

23. *Id.* at 355, 549 N.E.2d at 1269.

24. *Lockett v. Chicago Police Bd.*, 176 Ill. App. 3d 792, 792-93 531 N.E.2d 837, 837 (1988).

consequently, was not a necessary party.²⁵ The appellate court reversed the judgment on that basis.²⁶ The Supreme Court reversed the appellate court and reinstated the judgment of the circuit court finding that the superintendent was a party to the proceeding and the statute admitted of no exception.²⁷ Importantly, the Supreme Court also ruled that the failure to comply with the procedures for initiating such a complaint could not be cured by amendment after the initial thirty-five day time limit under the law.²⁸

In 1997, the ARL was amended with procedures to allow joinder of necessary parties.²⁹ Many practitioners hoped that this would resolve the problems of *Winston*, and *Lockett*, until the Supreme Court again had a case raising the issue of proper and necessary parties in *Ultsch v. Illinois Municipal Retirement Fund*.³⁰ In that case Sheree Ultsch filed a complaint for administrative review of a decision denying her application for temporary disability benefits under the provisions of the Illinois Municipal Retirement Fund.³¹ She filed a timely complaint concerning the denial of her disability benefits naming the “Illinois Municipal Retirement Fund” (IMRF) and had a summons issued to the IMRF at their regular address.³² The IMRF filed a motion to dismiss claiming that the official name of the governing body that issued the decision was the Board of Trustees of the Illinois Municipal Retirement Fund and not the IMRF.³³ Plaintiff filed a motion to amend her complaint under §3-103(2) of the law which had been amended to allow the addition of necessary parties under limited circumstances.³⁴ The legislative changes had come after the decision in *Lockett*.³⁵ The IMRF objected and argued that the corrected legislation allowed amendments of a complaint to name a necessary party only under very limited circumstances which did not apply in this case.³⁶ The Supreme Court gave a complete history of the kind of analysis that really is applied when questions of this kind are raised in administrative review.³⁷

In *Ultsch*, the Supreme Court noted that the Illinois Constitution grants appeal as a matter of right from all final judgments of the circuit

25. *Id.* at 794, 531 N.E.2d at 838.

26. *Id.*

27. *Lockett*, at 356, 549 N.E.2d at 1269.

28. *Id.* at 355, 549 N.E.2d at 1269.

29. 1996 Ill. Legis. Serv. P.A. 89-685 (H.B. 346) (WEST).

30. *Ultsch v. Illinois Mun. Ret. Fund*, 226 Ill.2d 169, 874 N.E.2d 1 (2007).

31. *Id.* at 174, 874 N.E.2d at 5.

32. *Id.*

33. *Id.*

34. *Id.*

35. *Lockett v. Chi. Police Bd.*, 133 Ill.2d 349, 549 N.E.2d 1266 (1990).

36. *Ultsch*, at 184, 874 N.E.2d at 10.

37. *Id.* at 179, 874 N.E.2d at 7–8.

court in the judicial article, and also provides in that article that final administrative decisions of administrative agencies are appealable only “as provided by law.”³⁸ The court went on to explain that because review of administrative decisions can only be obtained as provided by a statute, the ARL creates a “special statutory jurisdiction” for courts reviewing decisions under that law.³⁹ As noted in *Winston*, this action is in derogation of the common law and a party seeking to invoke a court’s special statutory jurisdiction must strictly comply with the statutory procedures.⁴⁰

When the Supreme Court reviewed the record in *Ultsch*, including the provision in the law concerning parties, it continued to follow the reasoning found in *Winston*.⁴¹ The court noted, however, that in 1997, Public Act 89-685 was enacted into law—which permitted amending a timely complaint to add either an absent employee, agent, or member of an administrative body who is necessary to the proceeding, but only so long as the agency, board, or governmental entity was already named.⁴² Likewise, if the director or agency head was named in his or her official capacity, a timely complaint could be amended to add the actual agency, board, or government entity that was missing.⁴³

The problem according to the majority opinion was that the two opportunities for amending required that either a proper executive head responsible for the decision be named or the entity issuing the decision had to be properly named.⁴⁴ In this case, defendants essentially claimed that the IMRF did not do anything, but only its board of trustees constituted the governmental body issuing the decision because IMRF was not an agency head like a director would be, the proper board could not be added pursuant to the statutory amendment.⁴⁵ Given this, the statutory amendment from 1997 was found insufficient to provide relief to the disappointed plaintiff.⁴⁶

Following *Ultsch*, another legislative amendment was attempted to bring a complete resolution to this issue that would allow timely complaints to be amended to add any missing necessary party. Following the decision in *Lockett*, and after other appellate court opinions following *Lockett*’s directives, the General Assembly ultimately enacted remedial legislation that was presumably intended to ameliorate some of the harsh consequences

38. *Id.* at 178, 874 N.E.2d at 7.

39. *Id.* at 179, 874 N.E.2d at 7

40. *Id.*

41. *Id.* (citing *Winston v. Zoning Board of Appeals*, 407 Ill. 588, 95 N.E.2d 864 (1950)).

42. *Ultsch*, at 185, 874 N.E.2d at 11.

43. *Id.*

44. *Id.*

45. *Id.* at 189, 874 N.E.2d at 13.

46. *Id.* at 191, 874 N.E.2d at 15.

of these exacting procedural steps simply to have a properly filed action for judicial review.

In 2008, Senate Bill 2111 was passed and was enacted as P.A. 95-831.⁴⁷ It provided that if the court determines in a case that an agency that issued the decision was not made a party then the court shall grant the plaintiff 35 days after such a court order to amend the complaint naming the missing agency and serving it with summons.⁴⁸ Additionally, section 3-111 of the ARL was amended to give the court power not only to dismiss parties or realign them, but also “to correct misnomers,” or “to join agencies or parties.”⁴⁹

This brings us full circle back to *Mannheim*. The court noted that the issue before it was substantially identical to the decision in *Ultsch*.⁵⁰ Notably, *Ultsch* also had a vigorous dissent by Justices Kilbride and Karmerier noting the fundamental unfairness of what appears to be meticulous hairsplitting over the court’s interpretation of the mandatory requirements of the ARL.⁵¹ The *Mannheim* court in also noted that the response to *Ultsch* was another legislative amendment a year later that authorized the circuit court to correct misnomers or join agencies or parties as reflected in the law.⁵² The *Mannheim* court agreed with the circuit court decision that the amendment still was limited to situations where either a plaintiff named only the administrative agency but fails to name other necessary parties or if the director or agency head is named, leave can be granted to allow amendment to add the necessary administrative agency, board or governmental entity.⁵³

In its analysis, the court noted that the name “Illinois Teachers’ Retirement System” is simply a name of a pension system.⁵⁴ In other words, the appellate court noted that there is no real entity known as the “Illinois Municipal Retirement Fund” but that the only governmental entity that exists and operates it is the governing board of trustees for the IMRF.⁵⁵ The appellate court even reviewed the debate on the floor of the Illinois House of Representatives specifically stating that the bill was intended to address the issue in *Ultsch* and to make it fairer for these proceedings to be heard.⁵⁶

47. 2008 Ill. Legis. Serv. P.A. 95-831 (S.B. 211) (WEST) (eff. Aug. 14, 2008).

48. *Id.*

49. *Id.*

50. *Mannheim Sch. Dist. No. 83 v. Teachers’ Ret. Sys. of Ill.*, 2015 IL App (4th) 140531, ¶ 17.

51. *Ultsch*, 226 Ill.2d at 196, 874 N.E.2d at 17.

52. *Mannheim*, 2015 IL App (4th) 140531, ¶ 18.

53. *Id.* at ¶ 22.

54. *Id.* at ¶ 7.

55. *Id.* at ¶ 16.

56. *Id.* at ¶¶ 18–19.

In its summary of its decision, the *Mannheim* court stated that: “The issue presented in *Ultsch* remains, even after the legislature amended the statute in 2008.”⁵⁷ In other words, the appellate court found that the legislative attempt failed to accomplish its intended purpose. The court went on, noting that the definitions state that an “administrative agency” includes any “body of persons, group, officer, board,” but stated that the board must be named as a defendant in its own name.⁵⁸ Criticism of the *Mannheim* decision could focus on the court’s recognition that the term agency, which the *Mannheim* court used repeatedly to refer to the IMRF, includes the board. This is either a simple misnomer which the ARL amendments intended to allow the circuit court to correct, or constituted a timely filed complaint, for which the missing board of trustees could have been added as a necessary party pursuant to the legislative change in Illinois Public Act 95-831.

B. Where do we go from here?

Because this is a statutory action, the only place to go from these rulings appears to be further legislative changes to clearly and specifically set out what exceptions, if any, should be allowed for a timely filed action that does not name all necessary parties. Already the Illinois General Assembly has before it House Bill 4372, which makes a new attempt to accomplish that purpose.⁵⁹ It is unknown whether that bill will pass or whether there will be debate and amendments to the law balancing the interests of both the governmental agencies as well as the rights of the individuals and businesses that appear before them. Unfortunately, there was no petition for leave to appeal the *Mannheim* decision.⁶⁰ It would have been interesting to see if the Illinois Supreme Court, especially with the two dissenting judges in *Ultsch*, might have ruled differently than the Fourth District. The unique nature of administrative review, however, remains a field of law where some technical precision and attention to detail is required. Lawyers for governmental agencies as well as individuals in businesses are well advised to continue following these developments and to stay current with the necessary elements for actions under the Illinois Administrative Review Law.

57. *Id.* at ¶ 27.

58. *Id.* at ¶ 28.

59. H.B. 4372, 99th ILL. GEN. ASSEMB., Reg. Sess. (Ill. 2016). However, H.B. 4372 has been referred to Rules Committee, and the deadline for passage is closed, so there is no possibility that H.B. 4372 will be called for a vote in this legislative session. See 98TH ILL. GEN. ASSEMB., *Bill Status of HB4372*, <http://www.ilga.gov/legislation/BillStatus.asp?DocNum=4372&GAID=13&DocTypeID=HB&LegId=93124&SessionID=88&GA=99> (last visited May 16, 2016).

60. See *Mannheim*, 2015 IL App (4th) 140531.

ILLINOIS ADMINISTRATIVE-LAW RELATED COURT DECISIONS,
2015

A. 2015 Illinois Supreme Court Pending Cases

1. *Petrovic v. Dep't of Employ't Sec.*⁶¹

The issue presented is does an agency have standing to appeal an adverse decision where neither of the parties before it appeals?⁶²

The case is unusual in that most unemployment insurance matters have stakes too small to justify the expense of appeals. The trial court overruled the Department's internal review panel, the Board of Review, which held that claimant flight attendant was properly denied benefits based on a provision upgrading a ticket to first class for a "friend of a friend" without employer permission, even though no harm had been shown to the employer and the employer did not appeal the trial court's decision reversing the Board of Review. The appellate court reversed the trial court.⁶³ The Illinois First District court of appeals held that the legislature intended to confer standing on the Department of Employment Security, its Director, and the Board of Review to prosecute appeals from adverse trial court decisions, even if the employer does not appeal, and the Board's finding that plaintiff's actions constituted misconduct was not clearly erroneous.⁶⁴

Civil procedure trumps all; standing to sue, not the reasonableness of the agency decision or the economic consequences of the decision to the otherwise economically responsible employer, is why the appellate and Supreme Courts were willing to hear an appeal.⁶⁵

2. *Bayer v. Panduit*⁶⁶

The issue presented is whether trial court properly granted plaintiff-injured worker's motion for attorney fees under section 5(b) of Workers' Compensation Act for future medical bills.⁶⁷ The First District court had reversed the trial court holding these items, paid to third parties, were not

61. *Petrovic v. Dep't of Employment Sec.*, 2016 IL 118562.

62. *Id.* at ¶ 15.

63. *See generally Petrovic v. Dep't of Employ't Sec.*, 2014 IL App (1st) 131813, *rev'd*, 2016 IL 118562.

64. *Id.* at ¶ 33.

65. *See generally Petrovic*, 2016 IL 118562.

66. 2015 IL App (1st) 132252.

67. *Id.* at ¶ 14.

“compensation” to client, and so not subject to statutorily allowable 25% attorney fee.⁶⁸

Access to counsel is a right which determines whether any other rights exist.

B. 2015 Illinois Supreme Court Opinions Issued

1. Illinois State Treasurer v. Illinois Workers’ Comp. Comm’n⁶⁹

The issue presented was whether the Treasurer had to file an appeal (including the filing of an appeal bond) to permit appellate review of a decision of the Illinois Workers’ Compensation Commission.⁷⁰

In this case, the Treasurer was acting as custodian of a fund for payment of claims on behalf of employers who lacked workers compensation insurance.⁷¹ An arbitrator’s decision was affirmed by the Workers Compensation Commission, and the Treasurer appealed to the Circuit Court under 820 ILCS 305/19(f).⁷² The Circuit Court upheld the Commission’s decision.⁷³ The Treasurer subsequently sought further review of the Commission’s decision in the appellate court.⁷⁴ Initially, the appellate court reversed the Commission’s award of benefits based on its determination that the plaintiff, Zakarzecka, “had failed to present evidence supporting a reasonable inference that her injuries arose out of a risk associated with her employment.”⁷⁵ Following that ruling, however, Zakarzecka filed a timely petition for rehearing, arguing, for the first time on appeal that the courts lacked jurisdiction to consider the Treasurer’s appeal.⁷⁶

The Supreme Court noted that the standard of review for this challenge to an agency decision was *de novo* review because the issue was a question of law: the statutory construction of the Section 19(f) requirement for an appeal bond.⁷⁷

The Treasurer argued that the plain language of section 19(f)(2) was “specifically directed toward employers and insurers, and there was nothing

68. *Id.* at ¶ 49.

69. 2015 IL 117418.

70. *Id.* at ¶ 1.

71. *Id.* at ¶ 6.

72. *Id.* at ¶¶ 6–7.

73. *Id.* at ¶ 9.

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.* at ¶ 13.

in the statute which reflected an intent to include the Treasurer.⁷⁸ The court applied general principles of statutory construction and held that as a person or organization liable to make payments under the Workers' Compensation Act, the Treasurer was subject to the appeal bond unless a specific exception was included by the legislature in the text of that statute.⁷⁹ The state itself was not a party, rather the lawsuit was directed at the fund, so none of the appellate requirements changes for same in other caselaw applied.⁸⁰

Ultimately, the appellate court's decision was affirmed by the Supreme Court, as the court lacked jurisdiction to hear the appeal, due to the Treasurer's failure to post the requisite bond.⁸¹

Here, the "If it looks like a duck, and quacks like a duck, it is a duck" principle of law applies: where acting in the stead of private employers or other private parties (*e.g.*, a state guardian agency acting for a ward of the state, or here, the Treasurer acting like an insurance company in a workers compensation appeal), the rules applying to such private parties, and not those usually applied to the state, usually the party whose decisions (like the Commission's, here) are appealed, apply—and the state has the same time, appeal bond, and other "move the process forward" duties private parties do.⁸² Here, the appellate and supreme court review depended on questions of civil procedure, specifically, the issue of jurisdiction, not the substantive issues decided below.⁸³ Waiver of issues, if not raised earlier, is moot if a reviewing court lacks the jurisdiction to hear the issue in the first place. Notably, in this case, the jurisdictional challenge was allowed even at the rehearing stage, though not previously raised in the Circuit Court or in prior appellate proceedings.⁸⁴

2. *Leetaru v. Bd. of Tr. of the Univ. of Illinois*⁸⁵

Here, the supreme court addressed whether violations of due process by a state university and its officers could be enjoined in a Circuit Court action, or would a litigant have to prove damages in the Illinois Court of Claims and wait for that organization's slow process of recovery, under sovereign immunity principles.⁸⁶

78. *Id.* at ¶ 25.

79. *Id.* at ¶¶ 25, 29.

80. *Id.* at ¶¶ 32–35.

81. *Id.* at ¶ 43.

82. *Id.* at ¶¶ 35–38.

83. *Id.* at ¶ 43.

84. *See generally id.*

85. 2015 IL 117485.

86. *Id.* at ¶ 2.

The plaintiff, Kelly Leetaru, sued to enjoin the University of Illinois and one of its administrators from taking further action in connection with an investigation they were pursuing against him, as a student at the university, regarding allegations that he engaged in misconduct which violated the University's "Policy and Procedures on Academic Integrity in Research and Publication."⁸⁷ He alleged "that in conducting their investigation, defendants have failed to comply with the University's rules and regulations governing discipline of students and that defendants' actions thereby exceeded their lawful authority, were arbitrary, and resulted in a gross injustice and deprived him of due process."⁸⁸ He alleged, in addition to multiple due process and procedural violations, that a university center director had initiated initial disciplinary proceedings and sequestered his files and research results because they competed with the center.⁸⁹ The University filed a 735 ILCS 5/2-619 motion to dismiss based on sovereign immunity, alleging that Mr. Leetaru sought relief available only in the Court of Claims.⁹⁰

The court noted that "[c]onsistent with their decision to invoke section 2-619, defendants therefore do not and could not challenge the legal sufficiency of Leetaru's complaint."⁹¹ The only question was, therefore, which tribunal had authority to review the University's actions.⁹²

On the sovereign immunity challenge, the Court held: "The doctrine of sovereign immunity 'affords no protection, however, when it is alleged that the State's agent acted in violation of statutory or constitutional law or in excess of his authority, and in those instances an action may be brought in circuit court.'"⁹³

Next, the court distinguished breaches of contract or allegations of error when a state officer acts within his or her authority from an *ultra vires* (without authority) challenge such as was present in Leetaru:

Of course, not every legal wrong committed by an officer of the State will trigger this exception. For example, where the challenged conduct amounts to simple breach of contract and nothing more, the exception is inapplicable. [(citation omitted)]. Similarly, a state official's actions will not be considered *ultra vires* for purposes of the doctrine merely because

87. *Id.* at ¶ 1.

88. *Id.*

89. *Id.* at ¶ 34.

90. *Id.* at ¶ 36.

91. *Id.* at ¶ 40 (citing *Smith v. Waukegan Park Dist.*, 231 Ill. 2d 111, 121, 896 N.E.2d 232, 236 (2008) (To raise a challenge pursuant to section 2-619, a defendant "must admit the legal sufficiency" of plaintiff's complaint).

92. *Id.* at ¶¶ 39-42.

93. *Id.* at ¶ 45 (quoting *Healy v. Vaupel*, 133 Ill. 2d 295, 308 549 N.E.2d 1240, 1247 (1990)).

the official has exercised the authority delegated to him or her erroneously. The exception is aimed, instead, at situations where the official is not doing the business which the sovereign has empowered him or her to do or is doing it in a way which the law forbids.⁹⁴

The Court noted that *ultra vires* challenges had regularly been used to allow injunctions to enforce the requirements of laws and regulations.⁹⁵

The Court further noted that Mr. Leetaru was not trying to recover damages for past wrongs, which distinguished this case from cases claiming older damages.

Leetaru's action does not seek redress for some past wrong. As we have explained, it seeks only to prohibit future conduct (proceeding with the disciplinary process) undertaken by agents of the State in violation of statutory or constitutional law or in excess of their authority. Claims of this kind are not against the State at all and do not threaten the State's sovereign immunity.⁹⁶

From an administrative law viewpoint, the complainant, hearing officer, and process violations in the Leetaru case arise from a familiar context—conflict of interest, which inherently causes bias.⁹⁷ The circuit court's authority over and review of final results from University of Illinois proceedings could and should proceed under the supervisory authority provided in 735 ILCS 5/3-111. Since matters have proceeded to hearing only in part, with substantial due process questions pending, the Court could act under section 5/3-111(a)(6) “where a hearing has been held by the agency, to reverse and remand the decision in whole or in part, and, in that case, to state the questions requiring further hearing or proceedings and to give such other instructions as may be proper;”⁹⁸ or could otherwise use section 5/3-111(a)(2) general supervisory powers to ensure a fair record and process.⁹⁹ This does not mean that a reviewing court should act as the administrative agency, and conduct the hearing itself, or make the administrative agency decision subject to court review. It can, and must preserve due process when there is a violation.

It is likely that the parties will, by the time this article is published, be long past consideration of these Administrative Review Law sections. If the University had paid attention to its own due process rules, and to the

94. *Id.* at ¶ 47.

95. *Id.* at ¶¶ 47–48.

96. *Id.* at ¶ 51.

97. *Id.* at ¶ 26 (discussing the potential for bias).

98. 735 ILL. COMP. STAT. 5/3-111(a)(6) (2014).

99. *Id.* at § 5/3-111(a)(2).

contested case hearing procedures (including impartial hearing officers) mandated by the Administrative Procedure Act, then the appeal at issue would not have needed to be made.¹⁰⁰

3. *McElwain v. Office of Illinois Sec. of State*

McElwain v. Office of the Secretary of State was a direct appeal “from a circuit court order which found section 11-501.6 of the Illinois Vehicle Code was unconstitutional as applied to the plaintiff.”¹⁰¹ “Section 11-501.6 states “a driver who is arrested for a traffic violation related to a fatality or other serious personal injury automatically consents to having his or her blood, breath or urine tested for the presence of alcohol or drugs.”¹⁰² [A driver who refuses] to submit to testing automatically receives a suspension of their driver’s license.”¹⁰³ In *McElwain*, “the circuit court of Cook County found section 11-501.6 unconstitutional as applied because the police requested a blood alcohol test almost 48 hours after the accident.”¹⁰⁴

In *McElwain*, the Geneva police found in Plaintiff’s car drug paraphernalia and a substance that appeared to be marijuana while investigating an accident on May 20th.¹⁰⁵ At the time of the accident, police did not believe Plaintiff was under the influence of marijuana.¹⁰⁶ Then two days later, they called him into the police station, read him his rights and questioned him about his marijuana use.¹⁰⁷ The police then issued him a traffic citation and asked if Plaintiff would consent to a chemical test.¹⁰⁸ Plaintiff refused to consent and his driver’s license was suspended three years.¹⁰⁹

Plaintiff challenged the suspension on the grounds that the delay in requesting the chemical tests was too long.¹¹⁰ The administrative law judge rejected the challenge, holding that police met all the requirements to issue the ticket.¹¹¹ Having adopted the ALJ’s determination, the Secretary of

100. 5 ILL. COMP. STAT.100/10-5.to 100/10-70 (2014); *see also* 5 ILL. COMP. STAT. 100/10-30 (2014) (explaining hearing officer disqualification)

101. 2015 IL 117170, ¶¶ 1–2.

102. *Id.* at ¶ 1.

103. *Id.*

104. *Id.*

105. *Id.* at ¶ 3

106. *Id.*

107. *Id.* at ¶ 4

108. *Id.*

109. *Id.*

110. *Id.* at ¶ 5. (“All that is required [for a summary suspension for failure to submit to a chemical test] is that a Uniform Traffic Ticket be issued to the Petitioner, the Petitioner be read the appropriate traffic accident warnings to motorist and the Petitioner refuse to take a chemical test.”)

111. *Id.*

State issued a final administrative decision upholding the circuit court.¹¹² Plaintiff then filed for administrative review, arguing that “his due process and fourth amendment rights were violated when the police sought chemical testing two days after the accident.”¹¹³ The Circuit Court agreed, noting that the two days between the initial accident and later questioning was more than sufficient to obtain a search warrant.¹¹⁴ It held that two days were too long for there to continue to be the “essential nexus” between the state’s interest in preventing driving by intoxicated persons and the requirement of a warrantless test without any need to prove probable cause for testing.¹¹⁵ There was no “bright line” for what amount of time would be reasonable.¹¹⁶

Due process rights issues determined the result here; the police waited too long, and any “special need” exemption was no longer valid, as they could have obtained a valid search warrant to administer the test.¹¹⁷ Such non-probable cause testing and intrusion is routine in highly regulated industries—e.g., child care or public utilities. And similar due process challenges to agency decisions could be brought in other contexts besides driver’s license suspensions; especially situations where testing or inspection requirements are sought long time after they would be reasonable.

4. *Folta v. Ferro Engineering*

In *Folta v. Ferro Engineering*, the Illinois Supreme Court held the exclusive remedy provisions of the Workers’ Compensation Act and the Workers’ Occupational Diseases Act barred an employee’s action against their employer “when the employee’s injury or disease first manifests after the expiration of certain time limitations under those acts.”¹¹⁸ In *Folta*, the shipping clerk and product tester for the defendant was exposed to products containing asbestos between the years of 1966 and 1970.¹¹⁹ Forty-one years later, in May 2011, James Folta was diagnosed with mesothelioma, a disease associated with asbestos exposure. One month later, he brought a civil action in the circuit court of Cook County against 15 defendants, including Ferro Engineering, to recover damages for the disease he

112. *Id.* at ¶¶ 5–6.

113. *Id.* at ¶ 6.

114. *Id.* at ¶¶ 7–8.

115. *Id.* at ¶ 29.

116. *Id.* at ¶ 31.

117. *Id.* at ¶¶ 7–8.

118. 2015 IL 118070, ¶ 1.

119. *Id.* at ¶ 3.

developed allegedly as a consequence of his exposure to the asbestos-containing products while employed by Ferro Engineering; such relief was sought under several theories, including negligence. He argued that his negligence claim was not barred by 6(c) of the Workers' Occupational Diseases Act because his "symptoms . . . did not manifest until more than 40 years after his last exposure to asbestos."¹²⁰

The Court ruled that the exclusive remedy provisions of the Workers' Compensation Act and the Workers' Occupational Diseases Act were statutes of repose that barred an employee's action when the employee's injury or disease manifests itself after certain time period.¹²¹ The Court noted that "[i]n exchange for a system of no-fault liability upon the employer, the employee is subject to statutory limitations on recovery for injuries and occupational diseases arising out of and in the course of employment."¹²² This the Court said was different from cases where injuries were deliberately caused by employers. The exclusive remedy provisions did not apply since these injuries are not incidental to ordinary employment.¹²³

The Court applied section 1(f) of the Workers' Occupational Diseases Act three year statute of limitations for injury resulting from inhalation of asbestos, despite the harsh result of barring the Plaintiff from recovery.¹²⁴ The Court also rejected the argument that the Act "categorically" barred "employees who suffer from occupational diseases with long latency periods."¹²⁵ The Act only operated to "restrict the class of potential defendants from whom [Plaintiff] could seek a remedy."¹²⁶ Plaintiff remained free to seek damages from third party manufacturers.¹²⁷

Here, it is clear statutory compensation schemes, whether privately funded or allowed from public moneys, all have limits in amounts which can be recovered, and time requirements for filing for compensation. Agencies administer a lot of these, while some go to court, or, like the 9/11 recovery or many asbestos claims, go to a Special Master for claim and administration.¹²⁸ Torts and product liability recoveries usually have had

120. *Id.* at ¶ 4.

121. *Id.* ¶¶ 32–37. "[6(c)] acts as a statute of repose, and creates an absolute bar on the right to bring a claim." *See id.* at ¶ 33. "We do not find that the provisions in section 1(f) of the Workers' Occupational Diseases Act would lead us to a different result." *See id.* ¶ 37.

122. *Id.* at ¶ 12.

123. *Id.* at ¶ 15.

124. *Id.* at ¶ 37.

125. *Id.* at ¶ 48.

126. *Id.* at ¶ 50.

127. *Id.*

128. James Zadroga, 9/11 Health and Compensation Act of 2010, Pub. L. No. 111-347, § 203; and cf. Wayne Brazil, *Special Masters in Complex Cases: Extending the Judiciary or Reshaping Adjudication?*, 53 U. CHI. L. REV. 394, 396 (1986).

the longest periods to claim, while disaster relief or other short term programs have had the least time available to “get your act together.” *Folta* represents an attempt to change the goal posts, by allowing recovery after discovery, not recovery within a defined period after employment. This could be allowed, but would require statutory change. The limitations and statute of repose periods here were otherwise too clear for even a sympathetic court to find an exception.¹²⁹

5. People ex rel. Madigan v. Illinois Commerce Commission

In *People ex rel. Madigan v. Illinois Commerce Commission*, the Illinois Supreme Court held that the Illinois Commerce Commission (ICC) did not abuse its discretion when it approved, as part of a just and reasonable rate, a volume-balancing-adjustment rider which imposed revenue decoupling on the companies’ customers.¹³⁰ Implicit in the ICC’s ruling was a belief that the rider comported with the Public Utilities Act and rate-of-return principles.¹³¹ The rider does not constitute single-issue ratemaking.

The Court held the ICC was “entitled to substantial deference.”¹³² The court stated that:

Section 10-201(d) of the Act states that any decision by the Commission is “prima facie reasonable” (220 ILCS 5/10-201(d) (West 2010)), so a party challenging such a decision bears the burden of proof to show it is unreasonable. Thus, in an appeal like this one, our authority is deferential by statute, but it is also by nature. Simply put, we are judges, not utility regulators.¹³³

129. The court expressed that the legislature was better suited to make the policy choices over how long an injured employee should have to bring a claim against its employer. *Folta*, 2015 IL 118070, ¶ 43.

130. 2015 IL 116005, ¶ 1.

131. *See id.* at ¶ 29.

132. *Id.* at ¶ 25.

133. *Id.* at ¶ 22.

C. Illinois Appellate Court Decisions: Proof of Harm Required For An Injunction Against Implementation of Proposed Rules

In *Smith v. The Department of Natural Resources* plaintiffs, individual landowners in various counties and a not-for-profit corporation, “SAFE,” “sought a preliminary injunction to prevent implementation of rules adopted by...the Illinois Department of Natural Resources (DNR) under the Hydraulic Fracturing Regulatory Act.”¹³⁴ The court held that Plaintiffs failed to establish a fair question that they will suffer “imminent, cognizable harm as a result of use of allegedly invalid rules during pendency of litigation.”¹³⁵ Therefore it was proper for the trial court to deny the Plaintiffs’ request because it was too speculative to justify extraordinary relief of a preliminary injunction.¹³⁶

D. Illinois Appellate Court Decisions: Proper Party Defendant and Proper Service Required

1. *Palos Bank & Trust Co. v. Illinois Property Tax Appeal Board*

In *Palos Bank & Trust Co. v. Illinois Property Tax Appeal Board*, Plaintiff, in a consolidated action, challenged the Cook County Board of Review’s tax assessment of its property.¹³⁷ The circuit court dismissed Plaintiff’s action because it had not properly served the Property Tax Appeal Board (PTAB).¹³⁸ The Appellate Court of the First District of Illinois affirmed the dismissal, because Plaintiff had not properly followed the procedures of the Act.¹³⁹ The Court held that strict compliance with 735 ILCS 5/3-105 required service on all defendants, not just a good faith attempt at service, and that failure to serve the right defendant defeated court jurisdiction over these administrative appeals under the Administrative Review Law.¹⁴⁰ There was no waiver of rights by Board appearance in one of the three cases, since the service requirement was jurisdictional, and so could not be waived.¹⁴¹

134. 2015 IL App (5th) 140583, ¶¶ 1–2.

135. *Id.* at ¶ 30.

136. *Id.*

137. 2015 IL App (1st) 143324, ¶ 1.

138. *Id.* at ¶ 8.

139. *Id.* at ¶ 15.

140. *Id.* at ¶ 28.

141. *Id.* at ¶ 21.

2. Solomon v. Ramsey¹⁴²

Here, an election Board was properly named and timely served, however, failure to name all members of the Board correctly and to serve them separately did not defeat jurisdiction over an appeal, since the members were named based on an outdated Board letterhead used in letters to appellant before the Board hearing.¹⁴³ The Appellate Court's ruling was based on a Supreme Court supervisory order requiring reconsideration based on that court's decision in *Bettis v. Marsaglia*.¹⁴⁴

The case arose under the court appeals process specified in the Election Code.¹⁴⁵ The Supreme Court had ruled in *Bettis* that service on an election Board was sufficient, without separate service on each Board member, which had been the position of the Third and Fifth Appellate Circuits, and not the First.¹⁴⁶ Accordingly, service in this case was, upon reconsideration, ruled sufficient.¹⁴⁷

The Court's approach to the election code service rules avoided the *Lockett* and post-*Lockett* case's hyper-technical requirements for service and naming of parties to an appeal under the Administrative Review Law. As stated in Carl Draper's comments earlier in this article note, the Administrative Law Section Council has for some years been attempting to allow access to courts where substantial and/or good faith efforts are made to serve the opposing parties in administrative review, with limited success.¹⁴⁸ If courts follow the *Bettis* principle, and look to the substance of notice, less appeals are likely to be dismissed for lack of notice where the parties named or related to those named knew very well that an appeal was pending.

E. Illinois Appellate Court Decisions: Standard of Review Cases

There are several different standards of review for administrative law contested cases that come up for review in circuit, appellate, and Illinois Supreme Court decisions. All of the Supreme Court administrative review decisions this year were made on a "de novo" basis, since what was at issue was a question of interpretation of law, where the court has as much expertise as the administrative agency.¹⁴⁹ Typically de novo review is

142. 2015 IL App (1st) 140339-B.

143. *Id.* at ¶ 6.

144. *Id.* at ¶¶ 18–19 (citing *Bettis v. Marsaglia*, 2014 IL 117050).

145. 10 ILL. COMP. STAT. 5/10-10.1(a) (2014).

146. *Solomon*, 2015 IL App (1st) 140339-B, ¶¶ 18–19.

147. *Id.* at ¶ 20.

148. See *infra* notes 4–63 and accompanying text.

149. Ill. State Treasurer v. Ill. Workers' Comp. Comms'n, 2015 IL 117418, ¶ 13.

“independent and not deferential,”¹⁵⁰ yet when concerning statutory construction, the reviewing court should give the interpretation of the agency charged with the statute’s administration “substantial weight and deference.”¹⁵¹ This is in recognition of the agency’s role as an informed source of the legislature’s intent, in addition to the agency’s expertise and experience.¹⁵² Ultimately, the administrative agency’s interpretation is not binding and a court may reject it if it is unreasonable or erroneous.¹⁵³

Where the question under review is a mixed question of law and fact, an intermediate standard of review applies.¹⁵⁴ Thus, it is a mixed question of law and fact is one

involv[ing] an examination of the legal effect of a given set of facts. Stated another way, a mixed question is one in which the historical facts are admitted or established, the rule of law is undisputed, and the issue is whether the facts satisfy the statutory standard, or . . . whether the rule of law as applied to the established facts is or is not violated. In *City of Belvidere*, we held that the standard of review applicable to agency decisions that present a mixed question of law and fact is the “clearly erroneous” standard.¹⁵⁵

We described this standard of review as lying between the manifest weight of the evidence standard and a *de novo* standard, so as to provide “some deference” to the agency’s decision.¹⁵⁶

When what is at issue is a question of fact, the appellant is least likely to obtain relief from a reviewing court. “Rulings on questions of fact will be reversed only if against the manifest weight of the evidence.”¹⁵⁷ Where the question of an agency’s decision is one of fact, an administrative agency’s findings and conclusions of fact are deemed to be *prima facie* true and correct.¹⁵⁸ If the issue before the reviewing court is merely one of conflicting testimony and credibility of witnesses, the administrative

150. *Goodman v. Ward*, 241 Ill. 2d 398, 406, 948 N.E.2d 580 (2nd Dist. 2011).

151. *Provena Covenant Medical Center v. Dep’t of Revenue*, 236 Ill. 2d 368, 387 n.9, 925 N.E.2d 1131, 1143 (2nd Dist. 2010).

152. *Id.*

153. *Shields v. Judges’ Retirement System of Ill.*, 204 Ill. 2d 488, 492, 791 N.E.2d 516, 518 (2nd Dist. 2003).

154. *AFM Messenger Serv. v. Dept. of Employment Security*, 198 Ill.2d 380, 390, 763 N.E.2d 272, 279 (2nd Dist. 2001).

155. *City of Belvidere*, 181 Ill. 2d 191, 205, 229, 692 N.E.2d 295, 302 (1998).

156. *Id.*

157. *Marconi v. Chicago Heights Police Pension*, 225 Ill. 2d 497, 531–32, 870 N.E.2d 273, 292–93 (2nd Dist. 2006).

158. 735 ILL. COMP. STAT. 5/3-110 (2014); *O’Boyle v. Personnel Bd.*, 119 Ill. App. 3d 648, 653, 456 N.E.2d 998, 1002 (3rd Dist. 1983).

board's decision should be sustained.¹⁵⁹ A reviewing court is limited to ascertaining whether such findings of fact are against the manifest weight of the evidence.¹⁶⁰ An administrative agency's factual findings are against the manifest weight of the evidence if no trier of fact could have agreed with the agency or an opposite conclusion than that reached by the agency is clearly evident.¹⁶¹

F. Illinois Appellate Court Decisions: If Arguments Are Not Timely Made In The Administrative Hearing Process, They Are Waived

In *Citizens Utility Board v. Illinois Commerce Comm'n*,¹⁶² the Citizen's Utility Board (CUB) alleged that the agency had applied the wrong standard of proof ("clear and convincing," not "preponderance of the evidence") when it ordered a NICOR refund.¹⁶³ The court determined that CUB had not included the issue of standards of proof in its application for rehearing, so waived same.¹⁶⁴ In addition, the court held that the Commission's decision was supported by substantial evidence in the record, and so was upheld.¹⁶⁵

G. Illinois Appellate Court Decisions: Constitutional Challenges to Statute Providing Agency Jurisdiction

Moline School District No. 40 Board of Education v. Quinn.¹⁶⁶ The court held that a statute which provided property tax exemptions for a fixed base operator that leased land from a specific airport in order to save jobs from same for Illinois instead of other states where no property tax applied was unconstitutional "special legislation," as there was no reasonable basis for providing exemptions to this separate class of for profit businesses.¹⁶⁷

159. *O'Boyle*, 119 Ill. App. 3d at 653, 456 N.E.2d 998 at 1002.

160. *City of Belvidere*, 181 Ill. 2d at 204, 692 N.E.2d at 302.

161. *Wade v. City of North Chicago Police Pension Board*, 226 Ill. 2d 485, 504, 877 N.E.2d 1101, 1112 (2nd Dist. 2007).

162. 2015 IL App (2d) 130817.

163. *Id.* at ¶ 42.

164. *Id.* at ¶ 45.

165. *Id.* at ¶ 56.

166. 2015 IL App (3d) 140535.

167. *Id.* at ¶ 29.

H. Illinois Appellate Court Decisions: Other Challenges to Agency Jurisdiction

Administrative agencies are creatures of statute, so they cannot act beyond whatever jurisdiction the underlying state statutes or municipal codes give them. They may also have exclusive jurisdiction, by statute. 2015 Illinois appellate court cases that raised jurisdictional issues included the following cases.

1. *Hawkins v. Commonwealth Edison Co.*¹⁶⁸

Plaintiffs filed a class-action complaint in a circuit court alleging that Commonwealth Edison Co.'s (ComEd) noncompliance with the Illinois Commerce Commission's (ICC) June 2012 order, as to ComEd's smart meter deployment plan, violated the Illinois Public Utilities Act, and alleging that as a result, the deployment would be delayed more than two years.¹⁶⁹ Where a complaint goes directly to ComEd's infrastructure and service, their complaint is within exclusive jurisdiction of the Commerce Commission, not a circuit court.¹⁷⁰

2. *Nationwide Freight Systems v. Ill. Commerce Commission*¹⁷¹

The Seventh Circuit ruled that the district court did not err in granting defendants' motion for summary judgment in action seeking declaration that defendant-ICC's investigation of plaintiffs for engaging in Illinois intrastate trucking operations without license from ICC, as well as its demand that plaintiffs produce documents with respect to plaintiffs' rates, routes and services provided to plaintiffs' customers during preceding five to six month period prior to date that ICC found plaintiffs to be in violation of ICC's requirement that they carry sufficient insurance, were preempted by Federal Aviation Administration Authorization Act (FAAAA).¹⁷² While said request for documents "related to" instant rates, routes and services so as to potentially qualify for preemption treatment, plaintiffs failed to show how defendants' request for said documents had "significant impact" on plaintiffs' rates, routes or services so as to be preempted by FAAAA. Moreover, the safety/insurance exemption in FAAAA applied so as to allow defendants to make an instant request for documents to verify the

168. 2015 IL App (1st) 133678.

169. *Id.* ¶ 7.

170. *Id.* at ¶ 25.

171. 784 F.3d 367 (7th Cir. 2015), *cert. denied*, 84 U.S.L.W. 3163 (U.S. Oct. 5, 2015) (No. 15-103).

172. *See id.*

nature and extent of plaintiffs' alleged violation of state licensing/insurance requirements.¹⁷³

3. *Durica v. Commonwealth Edison Company*¹⁷⁴

Plaintiffs were owners of property in LaGrange Park, Illinois, next to railroad tracks, and subject to a power line easement.¹⁷⁵ They sued Commonwealth Edison, the power company, as members of a class of similarly injured owners, alleging negligence, conversion, and violation of the Wrongful Tree Cutting Act, 740 ILCS 185/2.¹⁷⁶ The Circuit Court dismissed their claims as legally insufficient under Civil Practice Act, 735 ILCS 5/2-619(a)(1), based on the Illinois Commerce Commission's exclusive jurisdiction to investigate public utility vegetation management program damages under 220 ILCS 5/8-505.1(a).¹⁷⁷ Plaintiffs argued that the statute does not "diminish or replace other civil or administrative remedies."¹⁷⁸ The court noted the general liability of public utilities for other civil wrongs under 220 ILCS 5/5-201, and held that the "exclusive jurisdiction" for investigation of 220 ILCS 5/5-201 did not require dismissal of other valid civil claims against the utility.¹⁷⁹

4. *J&J Ventures Gaming v. Wild, Inc.*¹⁸⁰

The court held that the Illinois Gaming Board, not the circuit court, had exclusive jurisdiction over gaming related joint venture contracts, and so rejected a circuit court opinion resolving a dispute on such a contract between two parties.¹⁸¹

173. *Id.* at 377–78.

174. 2015 IL App (1st) 140076.

175. *Id.* at ¶ 3. Plaintiffs planted vegetation and trees as a buffer between the property and railroads. Commonwealth Edwards trimmed the trees for many years, but then completely cut the trees down in 2011. *Id.* at ¶ 4.

176. *Id.* at ¶ 7; 740 ILL. COMP. STAT. 185/2 (2014) (allowing for recovery of treble damages for intentional violations of the Wrongful Tree Cutting Act.).

177. *Durica*, 2015 IL App (1st) 140076, ¶ 16; 220 ILL. COMP. STAT. 5/8-505.1 (2014) ("The Commission shall have sole authority to investigate, issue, and hear complaints against the utility under this subsection (a).").

178. 220 ILL. COMP. STAT. 5/8-505.1 (2014).

179. *Durica*, 2015 IL App. (1st) 140076, ¶¶ 31, 44

180. 2015 IL App (5th) 140092.

181. *Id.* at ¶¶ 4, 29, 32; *accord*, *Hyperactive Gaming v. Williamson* Post 147, 2015 IL App (5th) 140312-U, ¶ 27.

I. Illinois Appellate Court Decisions: Court of Appeals Jurisdiction Decisions

1. Grimm v. Calica¹⁸²

A department's notice of decision was so unclear that plaintiff was allowed to appeal a decision even though he filed with the circuit court beyond the 35-day ARL deadline.¹⁸³ The agency had a due process duty and because the agency failed to provide adequate and timely notice of its decision, the court had jurisdiction to review its decision, even though it was not otherwise timely filed.¹⁸⁴

2. International Union of Operating Engineers Local 965 v. Illinois Labor Relations Board¹⁸⁵

The appellate court upheld the circuit court's dismissal of a union petition for a declaratory judgment as untimely, for failure to exhaust administrative remedies.¹⁸⁶ The other party previously filed a bargaining unit clarification petition before the Illinois Labor Relations Board, which was pending, and which, if adverse, could be appealed under the Administrative Review Law.¹⁸⁷ Therefore, the court did not have jurisdiction to hear an appeal in the absence of a final administrative decision.¹⁸⁸

3. Sunrise Assisted Living v. Banach¹⁸⁹

On appeal, Banach argued that she was entitled to interest under section 2-1303 of the Illinois Code of Civil Procedure.¹⁹⁰ Sunrise responded that (1) the trial court did not have jurisdiction to consider Banach's section 19(g) application because section 19(h) required petitions for changes in future benefits to be heard by the Illinois Worker's Compensation Commission, and (2) that the appellate court lacked jurisdiction to review the denial because Banach's petition to increase the

182. 2015 IL App (2d) 140820.

183. *Id.* at ¶ 14.

184. *Id.* at ¶¶ 15–16, 23.

185. 2015 IL App (4th) 140352.

186. *Id.* at ¶¶ 2, 9.

187. *Id.* at ¶¶ 19–21.

188. *Id.*

189. 2015 IL App (2d) 140037.

190. *Id.* at ¶ 2; 735 ILL. COMP. STAT. 5/2-1303 (stating that judgments recovered shall draw an interest rate of 6% per annum if the debtor is a unit of local government).

arbitration award under sections 19(h) and 8(a) was still pending when the application was filed.¹⁹¹ Sunrise alternatively argued that Banach is not entitled to interest under section 2-1303 because the Commission's award was not a "judgment," and because Sunrise timely paid the amounts due under the arbitration award, including interest under section 19(n).¹⁹² The appellate court held that the trial court had jurisdiction to consider the section 19(g) application based on other issues pending besides changes in future payment amounts, the appellate court had jurisdiction to review the denial, and the trial court did not err in denying Banach interest under section 2-1303.¹⁹³

4. Estate of Burns v. Consolidation Coal Company¹⁹⁴

The Fifth District held that a section 19(g) agency award enforcement proceedings in workers' compensation cases can proceed to judgment for the full amount of the agency's award, whether or not there was a federal award for the same injury.¹⁹⁵ Private agreements for offset should be enforced in different proceedings.¹⁹⁶

5. Modrytzki v. City of Chicago¹⁹⁷

The appellate court ruled that, under the ARL, no judicial review could be heard because appellant failed to request review of the animal control commission's determination (that her dogs were "dangerous animals") within the 7-day period established by city ordinance.¹⁹⁸ No court review could be had from the decision of an agency that lacked jurisdiction.¹⁹⁹

191. *Banach*, 2015 IL App (2d) 140037, ¶¶ 8–9, 14 (referring to sections of the Illinois Workers' Compensation Act, 820 ILL. COMP. STAT. 305 (2014)).

192. *Id.* at ¶ 12.

193. *Id.* at ¶¶ 25, 35.

194. 2015 IL App (5th) 140503.

195. *Id.* at ¶ 22 (referring to section of the Illinois Workers' Compensation Act, 820 ILL. COMP. STAT. 305 (2014)).

196. *Id.* at ¶ 24.

197. 2015 IL App (1st) 141874.

198. *Id.* at ¶¶ 12, 14 (explaining that appellant had the right to appeal to the Chicago Department of Administrative Hearings within 7 days of the animal control commission's determination.).

199. *Id.* at ¶ 15.

6. Lakewood Nursing & Rehabilitation Center, LLC v. The Department of Public Health²⁰⁰

The court allowed review of an Illinois Department of Public Health order to require a nursing home to allow a resident to stay beyond ten days, even though the order was not the final order in the resident's case and the resident was no longer a resident at the home.²⁰¹ The Department's challenge for mootness was defeated because there was no other way besides an ARL review to challenge the legality of the Department's statutory interpretations that led to the challenged order, where such orders were likely to occur again.²⁰²

J. Illinois Appellate Court Decisions: Failure to Exhaust Administrative Remedies

1. Tipton v. Madison County, Illinois²⁰³

The court held that a plaintiff who sought review of a denial of planned business district designation for his property had failed to properly appeal a zoning administrator's determination to the zoning board of appeals and upheld that board's rejection of a subsequent petition for designation of the site as a planned business district based on the local authority's policy determination, given objections from neighbors to the proposed use.²⁰⁴ The local authority's rezoning decision was therefore not against the manifest weight of the evidence, and no decision on current zoning was yet before the court based on the failure to exhaust available administrative remedies.²⁰⁵

K. Illinois Appellate Court Decisions: Attorney's Fees Claims

1. Bremer v. City of Rockford²⁰⁶

A city firefighter suffering from heart condition obtained an occupational disease disability pension under Section 4-110.1 of the Illinois Pension Code, and the court ruled that the pension qualified him for

200. 2015 IL App (3d) 140899.

201. *Id.* at ¶¶ 5, 18.

202. *Id.* at ¶ 29.

203. 2015 IL App (5th) 140186.

204. *Id.* at ¶¶ 2, 19.

205. *Id.* at ¶¶ 20–21.

206. 2015 IL App (2d) 130920.

benefits under section 10 of the Public Safety Employee Benefits Act.²⁰⁷ The plaintiff was not, however, entitled to recover attorney fees under the Wage Actions Act, because even if he prevailed on his claim for post-employment health care benefits under the Public Safety Employee Benefits Act, those benefits would not qualify as “wages earned and due and owing according to terms of the employment.”²⁰⁸

2. Loyola University of Chicago v. Illinois Workers’ Compensation Commission²⁰⁹

The Court overturned a Circuit Court order rejecting a Commission determination that it could review settlement contracts in matters before the Commission, limiting a Commission requirement that third party payors of disability would need to be reimbursed by defendant in addition to settlement payments, and rejecting terms in the settlement contract limiting Commission authority to make awards of damages and attorney fees for breach of contract.²¹⁰

3. The Estate of Slightom v. The Pollution Control Board²¹¹

The Court invalidated a state EPA rule imposing a \$100,000 deductible for claims against the state leaking underground storage tank fund for a gas station cleanup, ruling that the state Fire Marshal’s rules \$10,000 deductible applied.²¹² The Court noted that the applicable statutes allowed the Fire Marshal’s office to approve budgets and deductible, without equivalent authority for the IEPA, which was, instead, to review expenditures against budgets and process payment applications.²¹³ The *de novo* review, therefore, struck the EPA regulation providing for deductibles, which mean that attorney’s fee claims could be made by the estate, even though IEPA paid in full before the end of the case and sought to render the determination moot.²¹⁴

207. *Id.* at ¶¶ 43, 54.

208. *Id.* at ¶¶ 59–60.

209. 2015 IL App (1st) 130984WC.

210. *Id.* at ¶ 21.

211. 2015 IL App (4th) 140593.

212. *Id.* at ¶¶ 26–27.

213. *Id.*

214. *Id.* at ¶¶ 15–16, 27.

L. Illinois Appellate Court Decisions: Pick the Right Way To Get A Remedy, Since Courts Will Not Review Cases Not Properly Before Them

The leading instance in 2015 cases was *Benz v. Department of Children & Family Services*.²¹⁵ Plaintiffs were foster parents for a nine month old, but after the child sustained second-degree burns from a hot curling iron while in the care of the Plaintiffs' twenty-two year old daughter, the Department of Child and Family Services (DCFS) removed minor from their care.²¹⁶ Plaintiffs appealed from DCFS' final administrative determination that the child should remain with relatives in Tennessee, however, minor's adoption by that relative was finalized during pendency of this case, rendering the case moot.²¹⁷

The Court held the Circuit Court was within its discretion in rejecting Plaintiff's request for Rule 137 sanctions, as Rule 137 does not allow for sanctions at administrative level, except as to factual allegations.²¹⁸ DCFS administrative regulations specify that emergency review is not available to any party when the issue is removal or change of placement of child.²¹⁹ Thus, DCFS was entitled to remove child from home of foster parents without prior notice, as they determined immediate risk of harm in current placement.²²⁰ The proper remedy for administrative agency misconduct—which was not shown here, in any case—would be a claim under 5 ILCS 100/10-55, not a Rule 137 complaint.

Another case where a different process would have been appropriate at the agency level was *Gruby v. Department of Public Health*,²²¹ where the court ruled a complaint based on failure to follow regulations after refusal of re-admission, not a pre-discharge hearing, was the appropriate administrative process, denying a court review of the lack of hearing before discharge.²²² The usual administrative law doctrine denying court review in cases like these is failure to exhaust administrative remedies.

In *Adams County Property Owners and Tenant Farmers v. The Illinois Commerce Commission*,²²³ the Court ruled that individual owners had not proved loss of their property, and, therefore, could not challenge an

215. 2015 IL App (1st) 130414.

216. *Id.* at ¶ 5.

217. *Id.* at ¶¶ 19–20, 23.

218. *Id.* at ¶¶ 46–49; *see also* ILL. SUP. CT. R. 137(c) (providing that the State of Illinois or any agency thereof is subject to the provisions of Rule 137, as if it was an attorney who signed off); 5 ILL. COMP. STAT. 100/10-55 (2014).

219. *Benz*, 2015 IL App (1st) 130414, ¶ 52.

220. *Id.*

221. 2015 IL App (2d) 140790.

222. *Id.* at ¶ 54.

223. 2015 IL App (4th) 130907.

agency certificate of public interest, convenience, and necessity proceeding allowing establishment of routes for high speed electric energy transmission lines, under a violation of due process claim.²²⁴

ALTERNATIVE MEANS OF REVIEW BESIDES ADMINISTRATIVE REVIEW LAW

A. Federal Civil Rights Laws

1. *Lalowski v. City of Des Plaines*²²⁵

The District Court did not err in granting defendant-employer's motion for summary judgment in a section 1983 denial of civil rights action alleging that plaintiff-police officer was terminated in retaliation for his protected speech arising out of incident in which plaintiff confronted protesters in front of abortion clinic.²²⁶ The record showed that defendant had received a report detailing plaintiff's use of harsh and profane language, when questioning protesters' use of signs in front of clinic and the court.²²⁷ Using the Pickering test, the Court found none of his statements made during instant confrontation was protected under First Amendment, where his statements to protesters: (1) had potential to create problems in maintaining discipline in police force; (2) had potential for disruption within police force; (3) conflicted with plaintiff's responsibility of fostering trust and respect with public; and (4) were unjustified in terms of manner in which they were uttered. District Court erred, though, in granting defendant's motion for summary judgment, with respect to plaintiff's claim for administrative review of his termination, where plaintiff had never been given opportunity to brief said claim.²²⁸

224. *Id.* at ¶ 51 (“[T]he Commission neither conferred property rights on ATXI nor deprived landowners of their protected property interests. As a result, ACPO’s members were not entitled to due process during those proceedings and cannot assert a due process violation.”). Further, route selections were supported by evidence in the record and a different result from such evidence was not clearly apparent, so the manifest weight of the evidence test upheld the Commission’s determination. *Id.* at ¶ 67.

225. 789 F.3d 784 (7th Cir. 2015).

226. *Id.* at 786.

227. *Id.* at 789.

228. *Id.* at 791–93.

B. Review on Petition of Certiorari

1. *Smoke N Stuff v. City of Chicago*²²⁹

The Court reviewed a City of Chicago Department Business and Affairs and Consumer Protection (and Department of Administrative Hearings) decision,²³⁰ which was appealed through common law writ of *certiorari*.²³¹ The court noted, while, traditionally, “administrative decisions are appealed the Administrative Review Law,”²³² common law writ of *certiorari* is permitted “[w]hen an administrative agency does not expressly adopt the Administrative Review Law and does not provide for alternative methods of reviewing its decisions, the common law writ of *certiorari* is an available method for litigants seeking circuit court review of administrative decisions.”²³³

Here, however, *Smoke N Stuff* improperly sought review under writ of *certiorari*—as Chicago’s municipal code requires any administrative decisions shall progress under the Administrative Law Review.²³⁴ But, as the standards for writ based review and Administrative Review Law are identical, the Court nevertheless agreed to hear the case.²³⁵ Therefore, even if Administrative Review Law has been adopted, review of an administrative review decision may be appealed under common law writ of *certiorari*.²³⁶

The Court, further, held that the doctrine of “one act, one crime,” from criminal prosecutions, did not apply to civil administrative enforcement, where a series of violations could be relevant to an ultimate penalty.²³⁷ Thus, the Department’s revocation of Plaintiff’s license was not an arbitrary or capricious sanction, because Plaintiff attempted to conceal over 1,000 untaxed cigarette packs in a back room, and failed to present appropriate record of cigarette transactions; moreover, Plaintiff failed to present any mitigating evidence.²³⁸

229. 2015 IL App (1st) 140936.

230. *Id.* at ¶ 1.

231. *Id.* at ¶ 14.

232. *See generally* 735 ILL. COMP. STAT. 5/3-101 to 5/3-113 (2014).

233. *Smoke N Stuff*, 2015 IL App (1st) 140936, ¶ 14.

234. *Id.* at ¶ 14.

235. *Id.* at ¶ 15.

236. *See id.*

237. *Id.* at ¶ 21.

238. *Id.* at ¶ 27.

2. Rodriguez v. Chicago Housing Authority²³⁹

Here, the Petitioner, Maribely Rodriguez, sought review, under common law writ of *certiorari*, of the Chicago Housing Authority's (CHA) decision to deny her the right to participate in a public housing voucher program, based on her child's felony charge.²⁴⁰ And, as CHA operates under the Housing Authorities Act,²⁴¹ which has not adopted the Administrative Review law, seeking appeal under writ was proper.²⁴² But the Court proceeded as if Administrative Review Law was applicable, because the "standards of review in either instance are essentially the same."²⁴³

However, by applying the clearly erroneous standard, pursuant to Administrative Review Law, the Court held that CHA's decision to remove the Petitioner from the voucher program was clearly erroneous.²⁴⁴ While it is not contested Petitioner's child was arrested, which would impose an obligation to notify CHA, it is contested whether Petitioner's child was a member of Petitioner's household.²⁴⁵ Although "[t]he evidence of record admits of but a single conclusion; namely, that [Petitioner's child] was not a member of the petitioner's household on the date he was arrested."²⁴⁶ Thus, Petitioner was not obligated to notify CHA, and such finding to the contrary by CHA was erroneous.²⁴⁷

CONCLUSION

Overall, 2015 was a typical year for Illinois administrative law statutes and appeals. The statutory changes—apart from routine references to the administrative review law, and administrative procedure act in various substantive new program laws—were focused on clarification of ways for citizens to get access to courts without excessive complications of agency name, member of decision making board names, or other items more significant to the theory of why courts have jurisdiction over the state than to the actual amount of notice agencies and boards receive.

Another focus in 2015 decisions was on the proper statutory or administrative regulatory process basis for getting court review. Unless this

239. 2015 IL App (1st) 142458.

240. *Id.* at ¶ 1.

241. *See generally* 310 ILL. COMP. STAT. 10/1 to 10/32 (2014).

242. *Id.* at ¶ 12.

243. *Id.* at ¶ 13.

244. *Id.* at ¶ 19.

245. *Id.* at ¶¶ 17–19.

246. *Id.* at ¶ 19.

247. *Id.*

was proper, appeals were denied. These decisions remind practitioners of a very simple principle: Know the rules of the game before entering the arena. The agency process is, in administrative decisions, the “trial court,” and most decisions made there are upheld on appeal. The agency appoints the prosecutor, the agency administrative law judge determines the application of law to the facts unless overruled, and the best place to win the case is on first contact with agency staff. Their objectives are usually ones of statutory compliance, and if this can be shown, appeals will not be needed. If they are, careful documentation of legal and factual errors, with a proper and timely appeal route and notices, will be needed to win.