

COUNTIES & THE LAW

This edition of *Counties & the Law* includes decisions of interest to county attorneys published in the Daily Report Opinions Weekly between July 30, 2016, and August 5, 2016.

We welcome your suggestions and opinions regarding Counties & the Law. Please contact Kelly Pridgen at kpridgen@accg.org or Joe Scheuer at jscheuer@accg.org with your comments.

CIVIL PRACTICE

Barnett v. Holt Builders, LLC

Georgia Court of Appeals
August 2, 2016; A16A0340

The LLC owned lots in a subdivision in which Barnett owned a house. The LLC attempted to rezone property adjacent to the subdivision and make it a part of the subdivision. Several homeowners filed a derivative action on behalf of the HOA against the LLC and the president of the HOA asserting breach of duty and declaratory and injunctive relief. An email was sent out by the LLC to all HOA members discussing the suit and naming the homeowners who filed the suit. Barnett used the 'reply all' function to respond to alleged misstatements in the email. The LLC filed a defamation action based upon the reply email. Barnett sought dismissal of the defamation action because it had not been verified as required under the anti-SLAPP law, O.C.G.A. 9-11-11. The trial court denied the motion and the Court of Appeals reversed. The statements in the email clearly fell within the definition of a written statement made in connection with an issue under consideration or review by a judicial body. Consequently, the action should have been dismissed for failure to file the required verification.

IMMUNITY

Kliesrath v. Estate of Davis

Georgia Court of Appeals
August 4, 2016; A15A1934

A suspect died after being tased several times. The suspect's estate sued the police officers. The officers moved for summary judgement based upon official and qualified immunity. The trial court denied the motion and the officers filed a direct appeal to the Court of Appeals which affirmed without opinion. The Supreme Court reversed following the *Turner* case. An order denying a motion based upon an immunity

defense is interlocutory. It is not directly appealable under the collateral order doctrine and must proceed through the interlocutory appeal procedures of O.C.G.A. 5-6-34 (b). The Court of Appeals adopted the Supreme Court's opinion as its own and dismissed the appeal.

INSURANCE

Georgia Interlocal Risk Management Agency v. City of Sandy Springs

Georgia Court of Appeals
August 4, 2016; A16A0134

The city was sued by several adult entertainment businesses who alleged the city's adult entertainment ordinance was unconstitutional. The businesses sought declaratory and injunctive relief. The city participated in the GIRMA program so GIRMA provided a defense to the suit, but, did so under a 'reservation of rights'. The ROR excluded coverage for claims arising out of or connected with equitable claims or claims seeking relief other than money damages. The city filed a nuisance action against the businesses and the businesses filed an amended complaint seeking compensatory damages for the retaliatory nuisance suit. GIRMA sent out a revised ROR which for the first time explicitly reserved the right to recover future advanced defense costs from that date forward if determined that GIRMA had no obligation to defend the city. The city did not sign the ROR and GIRMA filed a declaratory judgement action against the city asserting there was no coverage for the city and it was not obligated to pay for the city's defense in the suit brought by the businesses. The trial court dismissed the declaratory judgement action on the basis that GIRMA had to defend the suit until the city had a final judgement on the claims against the city. The Court of Appeals reversed. The monetary claims arose out of a claim for equitable relief, thus the exclusion applies and there was no duty to defend. However, GIRMA was not entitled to recoup defense costs because the ROR to seek reimbursement of those costs was not timely.

OPEN MEETINGS OPEN RECORDS

Media General Operations v. St. Lawrence

Georgia Court of Appeals
August 5, 2016; A16A0280

A suspect died while in the custody of the sheriff. Following investigation into the matter, nine deputies were fired and two were indicted. A TV station then submitted an OR request under O.C.G.A 50-18-70 for records pertaining to the deceased inmate. The sheriff refused the request asserting the 'on-going criminal investigation' exemption from disclosure under O.C.G.A.50-18-72(a)(4). The TV station asserted that the exemption did not apply to an agency that was itself the subject of the investigation. The sheriff and the district attorney filed a declaratory judgement action seeking a declaration that the records were exempt. The trial court issued the declaration. The Court of Appeals affirmed. The agency here, the sheriff's office,

was not under investigation. Rather, individuals were. Agency is not synonymous with employees so the exemption applies.