

ABA Government Law News

State and Local

A 60-Second Update on What's Happening

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Supreme Court Narrows Wetlands' Definition under Clean Water Act: In two consolidated cases from Michigan, *Rapanos* and *Carabell*, the Supreme Court narrowed the reach of the CWA as to wetlands. However, no rationale commanded a majority. Writing for a plurality of four, Justice Scalia found that only wetlands with continuous surface connections to permanently flowing waterways qualify for CWA protection. Chief Justice Roberts concurred in that opinion but filed a separate concurrence. Justice Kennedy concurred in the judgment but offered a different rationale. The cases were remanded to develop a factual record of whether the wetlands in these cases meet that definition. <http://www.supremecourtus.gov/opinions/05pdf/04-1034.pdf>

APA Model Codes Available at No Charge: The American Planning Association has published drafts of 11 model smart growth codes covering mixed-use, live/work, town center, affordable housing density bonus, unified development permit review process, transferable development rights, cluster development, pedestrian overlay district and several parking ordinances. <http://www.planning.org/smartgrowthcodes/phase1.htm>

Prosecutor's Internal Critique of Police Affidavit Not Protected by 1st Amendment: In [Garcetti v. Ceballos](#), a deputy DA advised his supervisors by internal memo that a pending prosecution relied on a false affidavit. The DA's office went ahead with the prosecution and later denied a promotion and transferred the deputy to a lesser assignment. On his claim for retaliation for his exercise of free speech, the Supreme Court voting 5-4 found his speech not protected. The Court adopted a bright line rule: "[W]hen public employees make statements pursuant to their official duties, they are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline." Application of whistle-blower laws were not decided in this case. Several dissenting opinions objected to the "categorical exclusion of First Amendment protection against any official retaliation for things said on the job." <http://www.supremecourtus.gov/opinions/05pdf/04-473.pdf>

Ethical Conflicts of the Boss Can Disqualify Public Law Offices: In [County of San Francisco v. Cobra Solutions, Inc.](#), the Supreme Court of California held that an entire government law office shares a city attorney's conflict of interest. Government law offices are disqualified "when the head of that office has a conflict because that attorney previously, while in private practice, represented a client that is now being sued by the government entity in a matter substantially related to the attorney's prior representation." Timely use of an ethical screen, as was done in this case, will not change the result. <http://www.courtinfo.ca.gov/opinions/documents/S126397.PDF>

ALI-ABA's 22nd Annual Land Use Institute: This year's program, "[Planning, Regulation, Litigation, Eminent Domain, and Compensation](#)" is from Thursday to Saturday, August 17-19, 2006 at the W Chicago City Center, Chicago. To register, call 312) 332-1200 or go to <http://www.ali-aba.org/aliaba/CM004.htm>

Homelessness Prevention, the Lawyer's Role: Affordable housing to house the homeless is, at best, a partial solution to the problem; preventing evictions is another. A recent article in LAWDRAGON, www.lawdragon.com, entitled "[Vow of Decency](http://www.lawdragon.com/index.php/lawdragon/fullstory/vow_of_decency/)," argues that "homelessness prevention can save more lives and house more people than even the most ambitious building plans." David Lash of O'Melveny & Myers LLP, Los Angeles, discusses ways to acquire, refinance and rehabilitate buildings about to be abandoned by landlords without raising rents and discusses how to prevent evictions and compel warranties of habitability.
http://www.lawdragon.com/index.php/lawdragon/fullstory/vow_of_decency/

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