



THE BULLETIN

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INSIDE THIS ISSUE

Editor's Message	Page 2
Award Winners	Page 3
IIMC Guidelines	Page 4
Tidbits	Page 9
Robert Freeman	Page 10 (Committee on Open Gov't)
James Meany	Page 11 (Department of Health)
Calendar of Events	Page 13
Committee Listing	Page 15



PRESIDENT'S MESSAGE

Louis DiDomenico, President

It was great to see many of you at the Fall Training School. This year's Fall School was excellent and our thanks to NY-COM and the State Comptroller's Office for organizing and executing yet another excellent training event.

Let me begin by saying how proud I am to serve as President of our Association. I along with the Executive Committee thank you for entrusting us with the management of our organization. We intend to do our very best to serve the needs of the membership. Please feel free to contact any of us with ideas, questions or concerns. We truly want to know how to best serve you.

As I had stated in my remarks at our Annual Meeting, it is our Association's priority to provide training and educational opportunities to our members that are useful and relevant. The Association participates in the planning of the Fall School and if you have ideas or suggestions that you would like to see considered, please feel free to contact any member of the Executive Committee.

Additionally, I along with Daniel Borchert and Sheila Gillespie, serve on the Planning Committee for the Cornell Municipal Clerks Institute and Master Municipal Clerks Academy. Information about these programs will be forthcoming in the spring of 2010. I would encourage you to pursue and to attend the Fall Training School and the Cornell Municipal Clerks Institute or Master Municipal Clerks Academy as they are all excellent training opportunities.

I would like to take this opportunity to thank and commend the members of the Executive Committee for their commitment and dedication to our Association and our profession as demonstrated by their continuing interest in serving as officers of the New York State Association of City and Village Clerks. I would like to welcome Tamara Bonomo, Clerk from the Village of Camden, as the newest member of the Executive Committee. Tamara has been active on the committee level and we look forward to having her be a member of our Executive Committee. I would also like to congratulate NYSACVC Past President Brian Ridgway on his receipt of the Clerk of the Year. Brian's dedication to our Association along with his profession over the years is most deserving of this special recognition. Also, congratulations to Thomas Plowinske who was awarded the Distinguished Service Award. Our thanks to Tom for all he has done to provide us with the great training opportunities. Finally, I would like to thank Brian Ridgway my predecessor, for his leadership and dedication during his tenure as NYSACVC President.

Again, my thanks to all of you for allowing me to serve you as President of this great organization.



EDITOR'S MESSAGE

James R. Koury, Bulletin Editor

Happy New Year one and all! 2010 is upon us and it should prove to be a very productive year for our association under the leadership of President DiDomenico. Congratu-

lations to Lou on becoming our President! We are all confident that he shall do a great job.

Also, congratulations to my compatriots on the Executive Committee for their election as well. We are very honored to welcome Tami Bonomo to the committee. She shall bring good energy and some great ideas to the table. And she can do one hell of an Elaine dance.. ha, ha, ha.

After a brief period away from being The Bulletin Editor, it is with pleasure that I once again take on the job!

I also want to thank Brian Ridgway for taking on the job of editor. It really is a thankless job but someone has to do it. Just joking!!! Or am I? hhhmmmm.

I would like to inform you all that The Bulletin is once again going to be published three times a year. There will be a winter, spring and summer/fall issue.

The Bulletin belongs to you, the membership, so please feel free to submit any articles or tidbits of interest for the publication.

Contained in this issue is a lot of great information. You will see that the complete listing of the changes to the CMC/MMC programs is included. We hope you find this summary useful, as IIMC has changed these quite a bit and we are hopeful that they will stay in place for a while!

Be well, enjoy your lives and see you all soon!

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CLERK OF THE YEAR: BRIAN S. RIDGWAY



Brian Ridgway, Clerk of the Village of Garden City, was presented the 2009 Clerk of the Year Award at the annual meeting of the New York State Association of City and Village Clerks held on September 23rd in Albany.

Brian earned a Bachelor's degree in Business Administration from Adelphi University. He continues to further his education in support of his municipal career, earning him the designations of Registered Municipal Clerk and Certified Municipal Clerk.

He has served on many essential committees vital to enhancing our profession. In addition, he has been an active member of the International Institute of Municipal Clerks and has served as Past-President of the Long Island Village Clerks and Treasurers Association. What more, he has actively served the New York State Association of City and Village Clerks as President.

In addition to Brian's committed professional pursuits, he is quite civic minded. This is demonstrated by the 32 years of service he dedicated to his local fire department, moreover serving as past Chief for the department.

Qualifications for the Clerk of the Year Award

1. Member of the Association for at least three (3) years.
2. Education on a continuous basis - personal and professional development through participation in, for example, Fall Training School, workshops, IIMC Programs, college courses, etc.
3. Experience (on the job training)
4. Must have participated in some professional activities (e.g., State Association, IIMC, local associations).

Additional considerations include the following:

1. Activities that have furthered the goals of the Association
2. Special achievements (awards or accomplishments)
3. Emphasis on current year's activities
4. Community service of some sort (such as civic association and service organizations)
5. Years of municipal service as a Clerk
6. Length of membership in State and other associations
7. IIMC certification
8. Offices/committees in State Association, IIMC and local organizations.

DISTINGUISHED SERVICE AWARD: TOM PLOWINSKI



Thomas Plowinski was presented with the 2009 Distinguished Service Award at the annual meeting of the New York State Association of City and Village Clerks held on September 23rd in Albany.

Tom graduated from Hope College in Michigan with a Bachelor of Science Degree in Business Administration. He joined the Office of the State Comptroller

24 years ago and has worked in several Central Office Units. He started in the Bureau of Research and Statistics, where he was responsible for reviewing the Annual Financial Reports of all classes of local governments.

In 1996 he joined the Bureau of Training and Intergovernmental Affairs where he was involved in local official training, coordinating teleconference programs and working on external publications.

In 1998 he transferred to the Accountability Services Unit and was involved in technical assistance, developing risk assessment indicators, and updating Division publications.

He currently works in the Local Official Training Unit and has been influential in developing, coordinating and presenting many various workshops and schools for local officials.

These schools have proven to be valuable resources providing beneficial education and training to Clerks and Clerk/Treasurers.

Qualifications for Distinguished Service Award

1. A person who has put forth extraordinary effort to:
 - a. Assist the Association
 - b. Promote the goals of the Association
 - c. Provide support and help to Clerks
2. The person must be other than a Clerk.

Additional considerations include:

1. Nomination made by an Executive Committee member and/or a member of the Association.
2. Nominations forwarded to the Clerk of the Year/Distinguished Service Award Chairperson, and consideration of nominations and selection will be made by the five (5) member committee.
3. Nomination to be received by July 1st of each year, with award to be presented at the Fall Training School at the NYSACVC Annual Meeting.
4. More than one award may be made in any given year, as well as no award given, with decision made by the Committee based on nominations received.

IIMC EDUCATION GUIDELINES REVISED

Beginning June 2009 under President Mary Lynne Stratta's direction, IIMC's Program Review/Certification Committee, in concert with the State/Provincial Education Chairs, the Institute Directors and IIMC's Education Department, began working on revising key components of the Education Guidelines. Employing surveys and numerous teleconferences, the PR/C Committee's diligent and exhaustive efforts produced salient changes that were recommended to IIMC's Board of Directors to discuss at the 2009 Mid-Year Meeting. What follows are IIMC Board approved proactive changes to IIMC's Education Guidelines. These changes begin January 1, 2010.

Education Guideline Revisions

- Eliminated the CMC Recertification program. Please note that in order to recognize an IIMC designation, the candidate must be an active member of IIMC.
- Removed the current requirement that requires that MMC candidates receive a minimum number of points per year to remain in the Academy. IIMC still recommends that candidates submit pertinent material and the MMC Application once or twice yearly, in order to stay informed.
- The number of points for MMC is set at 100: 60 points of which are Advanced Education points, 20 of which are Professional and Social Contribution points, as well as 20 Combination points - which can come from either category.
- IIMC-approved Institutes/Academies will continue to receive one (1) education point for every two (2) hours of instruction.
- Removed the requirement for IIMC course review of courses by Institutes/Academies.
- State/Provincial Associations will earn one (1) Continuing Education - Experience point (CMC) for every four (4) hours of instruction with pre-approval or one (1) Advanced Education point (MMC) for every four (4) hours of instruction with pre-approval.
- State/Provincial Associations must continue to submit the Course Review Form in order to get 1 point per 4 hours.
- All other training that meets the guidelines (outside Institutes and State/Provincial Associations) will earn one (1) Experience (CMC) or one (1) Professional and Social Contribution (MMC) point for every six (6) hours of training.
- Approved that caps for college degrees or courses for MMC candidates will mirror the caps for CMC candidates. Applicants can receive 20 Advanced Education points for a B.A. in a related field; 10 points for a B.A. in an unrelated field; and 5 points for an A.A. in a related field (for degrees

that were not used on the CMC application).

- Removed the current cap of 20 points for attendance at IIMC Annual Conferences.
- Removed the CMC-Experience current cap of 10 points on State/Provincial Conference attendance.
- Removed the caps on Distance Education relative to IIMC Education, Institutes or approved courses.
- IIMC Members attending IIMC Annual Conferences can earn up to eight (8) points. IIMC members will be scanned in for attendance. To earn all eight (8) points, a Delegate must attend all educational session time slots during the entire Conference.
- Approved that Clerk presenters/instructors can earn 1 point per 2 hours toward the MMC for teaching at an Institute/Academy/IIMC Annual Conference, and 1 point per 4 hours toward the MMC for teaching a State/Provincial course, including preparation and instruction time, applicable to either Advanced Education or Professional and Social Contributions.

Maaster Municipal Clerk Revisions

At the 2009 Mid-Year Board Meeting, IIMC's Board of Directors voted to make some proactive changes to the Master Municipal Clerk (MMC) Program. Applicants will not lose any points they have already earned in the program. They will not need to start over. Applicants retain all points in the same categories already earned in the MMC Program and accrue all additional points in conformance with the categories listed below.

- The current requirement that requires that MMC candidates receive a minimum number of points per year to remain in the Academy has been removed. IIMC still recommends that candidates submit pertinent material and the MMC Application once or twice yearly, in order to stay informed.
- In order to provide more flexibility to MMC candidates, the number of points for MMC is set at 100: 60 Advanced Education points, 20 Professional and Social Contribution points, as well as 20 Combination points which can come from either category as needed. Candidates may use any mix of Advanced Education and/or Professional and Social Contributions in order to complete the 20 Combination points needed.
- In order for the International Institute of Municipal Clerks (IIMC) to recognize a designation, the applicant must be an IIMC member.

Guidelines (con't)

Starting January 1, 2010, those students who have not completed the requirements for the MMC designation shall complete the remaining portion of the MMC requirements according to the criteria below:

Advanced Education Requirements for MMC Candidates

Advanced Education Points (60 points)

1. Completion of an IIMC- approved Academy program
1 point per 2 hours
2. A Bachelor's degree or higher in Public Administration or a similar field* Points: 20
3. A Bachelor's degree or higher in an unrelated field*
Points: 10
4. Associate of Arts degree in Public Administration or a related field* Points: 5
5. Certification from another organization relevant to your responsibilities as a Municipal Clerk (Minimum 50 hours of Training) Points: 7
6. Completion of a professionally related seminar or course through local State/Provincial/National Association 1 point per 4 hours (with Course Review)
7. Teacher or trainer at an IIMC-recognized Institute or Municipal Clerk Education program** 1 point per 2 hours for teaching, training, and preparation at an IIMC- approved Institute/Academy or IIMC conference session; 1 point per 4 hours of teaching, training, and preparation for a State/Provincial/National course
8. IIMC Annual Conference education*** up to 8 points per conference, for attending the four days of the conference
9. Athenian Leadership Society Dialogues - 2 points per Dialogue
10. Distance Education Courses**** 3 points for IIMC course; 1 point per 6 hours for all other organization courses
11. IIMC CD-Rom Courses 1 point each

*Credits from fields of public administration, urban affairs municipal management, political science, records management, municipal finance, governmental accounting, urban planning and personnel administration and others. Education units or hours may not be credited to both CMC and MMCA programs.

** Teaching and Training credit may be used in either Advanced Education or Professional and Social, not both.

*** IIMC Annual Conference education points shall be used for either Advanced Education or Professional and Social Contribution points, not both.

**** Advanced Education points for the MMC Designation program may be obtained through distance education. All distance Education shall be pre-approved by the Director of Education and Research.

Professional and Social Contribution Requirements for MMC Candidates

*Please note that in addition to the 20 required Professional and Social points needed, MMC candidates must also complete 20 Combination points, which may come from either Advanced Education or Professional and Social Contributions.

Professional and Social Contributions

1. Member of the IIMC Board of Directors Points: 2 per year
2. Chairperson of an IIMC or Municipal Clerks Association Committee Points: 2 per year
3. Officer or trustee of a Municipal Clerks Association or subdivision Points: 2 per year
4. Registration and attendance at an IIMC Regional Meeting, Municipal Clerks Association Annual Conference, or Municipal League Annual Conference Points: 1 point per 4 or more hours in one day of attendance
5. Registration and attendance at an IIMC Annual Conference* Up to 8 points per conference
6. Teacher or trainer at an IIMC-recognized Institute, IIMC Annual Conference or Municipal Clerk Education program** 1 point per 2 hours for teaching, training, preparation at an IIMC- approved Institute/Academy or Conference; 1 point per 4 hours of teaching, training/preparation for a State/ Provincial/National course.
7. IIMC or Municipal Clerks Association Committee member Points: 1 per year
8. Unique on-the-job performance or achievements that benefit the profession or community Points: 2 per year
9. Personal accomplishments of educational benefit to the profession Points: 2 per year
10. Officer in a related professional association Points: 1 per year

Guidelines (con't)

11. Relevant college or university course credits (101 and above) not used for Education. 1 point per credit unit. *** Points: 1 point per credit unit

* IIMC Annual Conference education points shall be used for either Advanced Education or Professional and Social Contribution points, not both.

** Teaching and Training credit may be used in either Advanced Education or Professional and Social Contributions, not both.

**Credits from fields of public administration, urban affairs municipal management, political science, records management, municipal finance, governmental accounting, urban planning and personnel administration and others. Education units or hours may only be used once.

Please feel free to contact Emily Maggard, MMC Specialist, at Emily@iimc.com, with any questions or concerns you may have regarding these changes, or with anything else you may need.

Certified Municipal Clerk Revisions

At the 2009 Mid-Year Board Meeting, IIMC's Board of Directors voted to make some proactive changes to the Certified Municipal Clerk Program:

- Removed the 20 point cap on IIMC Annual Conferences.
- Applicants may now obtain up to 8 points per conference, for attending all four days of the conference.
- Removed the 10 point cap in the Experience section for State/Provincial Association conferences.
- Removed the cap in the Experience section on college work and vocational training.
- State /Provincial Association taught courses with IIMC Course Review are 1 point per 4 hours of in-class time. Starting January 1, 2010, those students in this group who have not completed the Education requirements for the CMC designation shall complete the remaining portion of the CMC requirements according to the following criteria:

Education requirements for the CMC candidates

Education Points (Total of 60 points required)

Satisfactory completion of a 120-hour (60 points of course work at an on-land IIMC approved Municipal Clerks Institute or Academy. 60 (1 point per 2 in-class contact hours)

A Bachelor's degree or higher in Public Administration or similar field* Points: 20

A Bachelor's degree or higher in an unrelated field* Points: 10

Associate of Arts degree in Public Administration or related field* Points: 5

IIMC Annual Conference** up to 8 points per conference, for attending the four days of the conference

IIMC Athenian Leadership Dialogue 2 points each

IIMC CD-Rom Courses 1 point each

*Credits from fields of public administration, urban affairs municipal management, political science, records management, municipal finance, governmental accounting, urban planning and personnel administration and others. Education units or hours may not be credited to both CMC and MMCA programs.

** IIMC Annual Conference education points shall be used for either Education or Experience points, not both.

Education requirements for CMC candidates

CMC Experience Component (total of 50 points required)

Work Experience • Maximum 40 points

- Full-Time municipal or deputy clerk with administrative responsibility 4 per year maximum 40 points
- Part-time municipal or deputy clerk with administrative responsibility 2 per year maximum 40 points
- Part-time municipal or deputy clerk with no administrative responsibility 1 per year maximum 30 points
- Other full-time administrative positions in local government prior to becoming a municipal or deputy clerk 2 per year maximum 30 points
- Administrative position in federal, state or provincial government 1 per year maximum 30 points
- Administrative position in business 1 per year maximum 30 points

CMC Experience Component -- Municipal Clerks Conferences

Conference Attendance

- Attendance at IIMC Conferences* Up to 8 points per conference

Guidelines (con't)

- Attendance at municipal clerk related conferences. Example: IIMC regional, municipal associations, state associations and municipal league conferences 1 point per 4 or more hours in one day of attendance

CMC Experience Component -- Continuing Education

- Continuing education courses through State/ Provincial courses (with Course Review) 1 point per 4 hours
- Satisfactory completion of an IIMC-approved Distance Education or self-study courses** May vary with course
- Misc. courses (that have not gone through the Course Review process), approved on the list of appropriate subjects 1 point per 6 hours

CMC Experience Component -- Business or Vocational School Courses

- Business or Vocational Courses must relate to the municipal clerk's position 1 point per 10 hours of training

CMC Experience Component -- College or University Courses

College or University Courses

- Relevant college or university course credits not used for education points 1 point per credit unit

* IIMC Annual Conference education points can be used for either Education or Experience points, but not for both.

** Distance Education courses must be approved by the Director of Education and Research.

Please feel free to contact Marilyn Sanzo, CMC Specialist, at Marilyn@iimc.com with any questions or concerns you may have regarding these changes, or with anything else you may need.



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2009 Fall Training School, Albany, NY

The NYCOM/OSC Fall Training School was held in Albany, NY at the Crowne Plaza Hotel. Some of the highlights from the school are depicted below.



- 1) Executive Committee being sworn in;
- 2) Peter Baynes, NYCOM Executive Director with Mary Lynne Stratta, President IIMC; Louis DiDomenico, President NYSACVC; Brian Ridgway, Immediate Past President, NYSACVC;
- 3) New RMC Recipient Susan Walsh;
- 4) New RMC Recipient Susan Saylor;
- 5) Lou DiDomenico and Dan Borchert moderating Clerk's Seminar;
- 6) President Lou DiDomenico addressing membership.



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TIDBITS FROM HERE AND THERE

IIMC Region I Meeting - Providence, RI

The Biltmore Hotel, in the heart of downtown Providence, RI, plays host to the Region I annual Meeting, which will take place March 25-26, 2010. Our Region I Directors, Bernice Dixon and Jim Mullen, have held to the tradition of scheduling these annual events at historic hotels of distinction, and the Biltmore proves no exception. It is right in the middle of Providence, a few steps away from New England's first Nordstrom Department Store. The Biltmore was home to former Mayor Buddy Cianci, who some of the New England Clerks may remember from a late night party several years ago during a New England conference.

Former NEACTC President and Central Falls City Clerk and current Rhode Island State Senator Betty Crowley will give attendees a tour of the State House and host a reception for us at the Capitol. Mark that calendar now! The Biltmore will hold the conference rate for three days before and after the meeting, so those wishing to take in the great shopping, restaurants and nightlife of Rhode Island's capitol city may extend their stay in Providence at a reasonable cost.

Registration and Agenda Form will soon be posted on the New England and New York web-sites.

NYCOM Winter Legislative Meeting

NYCOM's Winter Legislative Meeting to be held at the Albany Crowne Plaze February 21-23, is the primary occasion each year when our membership gathers in Albany for the single purpose of advancing NYCOM's Legislative Program. This year, in particular, it is critical for policymakers in Albany to hear our unified message that shifting state taxes and costs onto local governments will hurt our already overburdened real property taxpayers. Do not miss this opportunity to make your concerns heard, while strengthening NYCOM's collective voice in advocating for legislation that benefits municipalities statewide.

For additional information, and to register for these events, visit the NYCOM web site at www.nycom.org.

New Pension Tier Becomes Reality

Governor Paterson has signed into law pension reform legislation that is expected to generate more than \$35 billion in long-term savings for New York taxpayers over the next thirty years. The legislation creates a new Tier V pension benefit plan for civilian employees as well as police and firefighters – something that NYCOM has been advocating for years. The new tier will apply to employees of the state and all localities outside New York City hired after January 1, 2010.

Key components of the new law include:

- Raising the minimum age at which most civilians can retire

without penalty from 55 to 62 and imposing a penalty of up to 38% for any civilian who retires prior to age 62;

- Requiring employees to continue contributing 3% of their salaries toward pension costs so long as they accumulate additional pension credits;
- Increasing the minimum years of service required to draw a pension from 5 years to 10 years; and
- Capping the amount of overtime that can be considered in the calculation of pension benefits for civilians at \$15,000 per year increasing by 3% annually, and for police and firefighters at 15% of regular annual wages.

This much-needed and long overdue pension reform is clearly a significant step toward helping local governments address their rising personnel costs. Unfortunately, it will do little to assist municipalities in the short-term and, as a result, NYCOM will continue to emphasize the need to find ways to ease the immediate impact of rapidly rising pension contribution rates.

Mandate Relief Enacted

The Governor also signed into law a bill containing several mandate relief initiatives that will generate savings at the local level and reduce the burden on New York's taxpayers. The most significant provisions will finally allow local governments to be treated the same as private defendants when determining the impact of collateral source payments in tort claims for personal injury. Specifically, the new law puts an end to the "windfall of double recoveries" to plaintiffs by allowing public employers to offset injury awards with payments from collateral sources, such as insurance.

In addition, the new law (Chapter 494 of the Laws of 2009):

- Increases the local competitive bidding threshold on public works contracts from \$20,000 to \$35,000. (Note: the threshold for purchase contracts remains at \$10,000);
- Reduces the number of municipal entities, from 5 to 3, required to form cooperative health benefit plans, and requires insurers to provide claims data to municipal corporations;
- Facilitates highway shared services agreements among municipalities and between municipalities and State agencies by eliminating certain restrictions regarding the types of services that may be shared as well as the term of such contracts; and
- Authorizes the NYS Municipal Bond Bank Agency (MBBA) to purchase bonds issued by municipalities to provide for public improvements afforded by the American Recovery and Reinvestment Act of 2009, thereby reducing local borrowing costs.

THE PUBLIC'S RIGHT TO SPEAK

BY BOB FREEMAN, COMMITTEE ON OPEN GOVERNMENT

Questions regarding the public's right to speak at meetings arise constantly, and many believe that, like the old-fashioned New England town meeting, everyone has the right to get up and put in his or her two cents. That's not necessarily so today in New York, or even in New England.

While the Open Meetings Law clearly provides the public with the right "to observe the performance of public officials and attend and listen to the deliberations and decisions that go into the making of public policy" (see Open Meetings Law, §100), the law is silent with respect to public participation. When a public body, such as a town board, does permit the public to speak, it should do so based upon reasonable rules that treat members of the public equally.

Although public bodies have the right to adopt rules to govern their own proceedings (see e.g., Town Law, §63), the courts have found in a variety of contexts that such rules must be reasonable. For example, although a board of education may "adopt by laws and rules for its government and operations", in a case in which a board's rule prohibited the use of tape recorders at its meetings, the Appellate Division found that the rule was unreasonable, stating that the authority to adopt rules "is not unbridled" and that "unreasonable rules will not be sanctioned" [see *Mitchell v. Garden City Union Free School District*, 113 AD 2d 924, 925 (1985)]. Similarly, if by rule, a public body chose to permit certain citizens to address it for ten minutes while permitting others to address it for three, or not at all, such a rule, in our view, would be unreasonable.

There are federal court decisions indicating that if commentary is permitted within a certain subject area, negative commentary in the same area cannot be prohibited. It has been held by the United States Supreme Court that a school board meeting in which the public may speak is a "limited" public forum, and that limited public fora involve "public property which the State has opened for use by the public as a place for expressive activity" [*Perry Education Association v. Perry Local Educators' Association*, 460 US 37, 103. S.Ct. 954 (1939); also see *Baca v. Moreno Valley Unified School District*, 936 F. Supp. 719 (1996)]. In *Baca*, a federal court invalidated a bylaw that "allows expression of two points of view (laudatory and neutral) while prohibiting a different point of view (negatively critical) on a particular subject matter (District employees' conduct or performance)" (*id.*, 730). That prohibition "engenders discussion artificially geared toward praising (and maintaining) the status quo, thereby foreclosing meaningful public dialogue and ultimately, dynamic political change" [*Leventhal v. Vista Unified School District*, 973 F.Supp. 951, 960 (1997)]. In a decision rendered by the United States District Court, Eastern District of New York (1997 WL588876 E.D.N.Y.), *Schuloff, v. Murphy*, it was stated that:

"In a traditional public forum, like a street or park, the government may enforce a content-based exclusion only if it is

necessary to serve a compelling state interest and is narrowly drawn to achieve that end. *Perry Educ. Ass'n.*, 460 U.S. at 45. A designated or 'limited' public forum is public property 'that the state has opened for use by the public as a place for expressive activity.' *Id.* So long as the government retains the facility open for speech, it is bound by the same standards that apply to a traditional public forum. Thus, any content-based prohibition must be narrowly drawn to effectuate a compelling state interest. *Id.* at 46."

In short, if the board is willing to permit positive comments by the public regarding particular town employees, it must also permit critical comments. However, if a board wants to establish a rule that prohibits any comments that focus on specific employees, that would be valid, for all members of the public wishing to speak would be treated equally.

Drafts, "Non-final" and Works in Progress

One of the comments that I hear all the time is that "this record doesn't represent a final determination", that it's a draft, or "non-final", or sometimes that it's a "work in progress." When those kinds of records are prepared by town officers or employees or their consultants, they are "intra-agency materials." Although they are referenced in one of the grounds for denying access to records in FOIL, due to the structure of that provision, it often requires disclosure.

Specifically, §87(2)(g) states that an agency may withhold records that "are inter-agency or intra-agency materials which are not:

- i. statistical or factual tabulations or data;
- ii. instructions to staff that affect the public;
- iii. final agency policy or determinations; or
- iv. external audits, including but not limited to audits performed by the comptroller and the federal government..."

It is emphasized that the language quoted above contains what in effect is a double negative. While inter-agency or intra-agency materials may be withheld, portions of such materials consisting of statistical or factual information, instructions to staff that affect the public, final agency policy or determinations or external audits must be made available, unless a different ground for denial could appropriately be asserted. Concurrently, those portions of inter-agency or intra-agency materials that are reflective of opinion, advice, recommendation and the like could in our view be withheld.

There is no exception for "non-final", drafts or what may be characterized as works in progress. Further, insofar as preliminary records or the underlying work papers consist of statistical or factual data, they are accessible under §87(2)(g) (i) and must be provided, unless a separate exception applies. (con't on page 13)

FROM THE DEPARTMENT OF HEALTH

BY JIM MEANY



Identity theft is the fastest growing white collar crime in America. False identities are created and used to commit and conceal criminal acts. This includes terrorism, flight from prosecution, illegal immigration and credit card fraud. It is an undisputed fact that

false identification is a major factor in crime and most federal fugitives and drug trafficking crimes are associated with false identities.

There are numerous methods criminals use to establish a false identity. This article will concentrate on identify theft involving the birth certificate. The birth certificate is viewed as a “breeder document”. One method involves criminal impersonation of the person named on the birth certificate. This is when the applicant poses as the person named on the birth certificate. Usually, the imposter has knowledge that the certificate holder is deceased. Once a criminal has fraudulently obtained a birth certificate, it can be used in turn to obtain other official documents such as a driver’s license, passport, social security card, credit card, etc... With each official document obtained through the acquisition of a fraudulently obtained birth certificate, the imposter’s new identity becomes harder to detect. To prevent this type of fraud, local registrars must issue birth certificate copies only to eligible applicants. A complete list of eligible birth certificate applicants may be found in Chapter IV of the Local Registrars Procedures Manual. Require applicants to provide government issued picture identification such as a drivers license or passport. Ensure that the applicant provides complete and accurate information (name at birth, date of birth father’s first and last names, mother’s first and maiden names) and signs the application form.

A second method used to obtain a false identity is by altering the information entered on a legally issued birth certificate copy or transcript. Criminals have been known to remove the name and other identifying information reported on a birth certificate copies and transcripts and replacing it with their own or fictitious information. This type of fraud is controlled by issuing certified copies and transcripts on secure safety paper. The New York State Department of Health provides local registrars with secure Certified Transcript of Birth (DOH-2673) forms. Currently local registrars must provide their own safety paper stock to issue certified copies. Safety paper features may be found in Chapter IV of the Local Registrars Procedures Manual. The Department of Health plans to make such paper available to local registrars in 2009.

Another method used to obtain a false identity is through counterfeiting. In this method, the criminal attempts to duplicate the official safety paper used by State and local vital records offices. To thwart this enterprise, New York

State is utilizing standardized forms such as the Certified Transcript of Birth containing overt as well as covert state of the art security features.

Local registrars are the custodians of the birth certificates filed within their respective districts. Furthermore, as the gate keeper to the highly personal and confidential information reported on birth certificates, you are required to maintain the highest level of security and diligence to ensure that the birth certificates and information in your charge do not get into the wrong hands. There are steps and measures that you can take to improve the security of your records. The following are additional recommendations from the Office of Vital Records for securing your records:

- Never allow anyone except the deputy registrar and authorized clerical staff to search, retrieve, copy or in any other way handle vital records (this includes historians and law enforcement officials);
- Require clerical staff to sign a confidentiality statement acknowledging the confidentiality of vital records and the penalties for unlawfully releasing vital records information. A sample confidentiality statement is available from NYS Vital Records office;
- Keep records in a safe, lockable filing cabinet or a locked storage area with access limited to vital records personnel;
- Do not leave records or indexes in an area accessible to public view. Do not leave indexes and records on counter-tops;
- Review registration procedures and practices with all new staff and annually thereafter;
- Avoid telephone, fax and e-mail verifications. (Do not fall for the old line “the registrars in all the other towns let me go through the records” or this is “(fill in the blank) from the Court or State Vital Records Office”);
- If a telephone verification is necessary, follow the procedures established in chapter IV of the Local Registrar Procedure manual;
- All electronic data systems that contain confidential information or connect to systems that contain confidential information must be properly secured against loss, theft and intrusion, user id, passwords, etc.
- Report suspicious circumstances to the Vital Records Section.

Thank you for your cooperation.

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BOB FREEMAN, CON'T

One of the contentions offered in a case that went to the state's highest court was that certain reports could be withheld because they are not final and because they relate to incidents for which no final determination had been made. The Court of Appeals rejected that finding and stated that:

"...we note that one court has suggested that complaint follow-up reports are exempt from disclosure because they constitute nonfinal intra-agency material, irrespective of whether the information contained in the reports is 'factual data' (see, *Matter of Scott v. Chief Medical Examiner*, 179 AD2d 443, 444, supra [citing Public Officers Law §87(2)(g)(111)]. However, under a plain reading of §87(2)(g), the exemption for intra-agency material does not apply as long as the material falls within any one of the provision's four enumerated exceptions. Thus, intra-agency documents that contain 'statistical or factual tabulations or data' are subject to FOIL disclosure, whether or not embodied in a final agency policy or determination..." [Gould et al. v. New York City Police Department, 87 NY2d 267, 276 (1996)].

In summary, that a record is predecisional or does not constitute a "final" product does not necessarily signify an end of an analysis of rights of access or an agency's obligation to review the contents of a record.

The Court also dealt with the issue of what constitutes "factual data" that must be disclosed under §87(2)(g)(i). In its consideration of the matter, the Court found that:

"...Although the term 'factual data' is not defined by statute, the meaning of the term can be discerned from the purpose underlying the intra-agency exemption, which is 'to protect the deliberative process of the government by ensuring that persons in an advisory role [will] be able to express their opinions freely to agency decision makers' (*Matter of Xerox Corp. v. Town of Webster*, 65 NY2d 131, 132 [quoting *Matter of Sea Crest Constr. Corp. v. Stubing*, 82 AD2d 546, 549]). Consistent with this limited aim to safeguard internal government consultations and deliberations, the exemption does not apply when the requested material consists of 'statistical or factual tabulations or data' (Public Officers Law §87(2)(g)(i)). Factual data, therefore, simply means objective information, in contrast to opinions, ideas, or advice exchanged as part of the consultative or deliberative process of government decision making (see, *Matter of Johnson Newspaper Corp. v. Stainkamp*, 94 AD2d 825, 827, affd on op below, 61 NY2d 958; *Matter of Miracle Mile Assocs. v. Yudelsohn*, 68 AD2d 176, 181-182) id., 276-277).]

CALENDAR OF EVENTS

MEETINGS

February 21: NYSACVC Executive Committee Meeting
Crowne Plaza Hotel, Albany

February 21-23: NYCOM Winter Legislative Meeting
Crowne Plaza Hotel, Albany

March 25-26: IIMC Region I Meeting
Biltmore Hotel, Providence, RI

April 29: NYSACVC Executive Committee Meeting
Skaneateles

May 23-27: 64th IIMC Annual Conference
Grand Sierra Hotel, Reno/Tahoe, Nevada

July 18-22: 2010 Cornell Municipal Clerks Institute
Cornell University, Ithaca

September 20: NYSACVC Executive Committee Meeting
Crowne Plaza, Lake Placid

September 21: NYSACVC Annual Meeting
Crowne Plaza, Lake Placid

September 20-24: 55th Annual Fall Training School
Crowne Plaza, Lake Placid

NYS Comptroller's Office Governmental Accounting Training

Basic Accounting School: Introduction to Governmental Accounting

March 16-18: Town of Riverhead (Suffolk County)

April 20-22: Town of Aurora (Erie County)

June 15-17: Village of Cornwall-on-Hudson
(Orange County)

October 13-15: City of Oneonta (Otsego County)

Advanced Accounting School: Accounting Principles and Procedures

June 2-4: Village of Manlius (Onondaga County)

August 31- September 2: Town of Aurora (Erie County)

October 26- 28: Town of Riverhead (Suffolk County)

December 7-9: Village of Cornwall-on-Hudson
(Orange County)

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