Politics are Rough and Tumble

Why Should Pools be Concerned about Civility?

The Lack of Decorum Causes Civil Rights and Defamation Claims. Discord also makes it more difficult to effectively manage any government.
How Can Pools Help Members Maintain Decorum?

1. Seminar for Elected Officials
2. Resource Section on Web Site
3. Model Ordinance
4. Model By laws

What Do We Need to Teach Local Officials?

Supreme Court Standards on Free Speech:
- Traditional Public Forums
- Limited Public Forums
- Non Public Forums

The Supreme Court recognizes that government has business to conduct.

White v. Norwalk (1990)

“In dealing with agenda items, the Council does not violate the first amendment when it restricts speakers to the subject at hand…. While a speaker may not be stopped from speaking because the moderator disagrees with the viewpoint the speaker is expressing, it certainly may stop him if his speech becomes irrelevant or repetitious.”
Lesson from White v. Norwalk (1990)

Local government cannot regulate speech per se, but under some circumstances may regulate conduct that impedes the process of government.

However, the distinction between speech and conduct can vary by state and is constantly shifting.

Defamation

A public official who alleges defamation must prove actual malice. In other words, the official must show that the person being sued knew the statement was false or was guilty of reckless disregard of the truth.

NY Times v Sullivan (1964)

Practical Ways to Control Meetings

1. Establish the protocols at the reorganization meeting.
2. Consistently enforce the protocols.
3. Establish time limits for speakers.
4. Establish a meeting curfew.
Practical Ways to Control Meetings

5. Close debate before a roll call vote.
6. Avoid getting into a debate with the public.
7. Be careful of your body language.
8. Call a short recess when things are getting out of hand.

Conclusion

1. Federal Law recognizes that public bodies must maintain reasonable decorum and speakers can be cut off if they stray from the issue, are redundant or disruptive.
2. Some states such as New Jersey and California make it more difficult to cut off speakers.
3. Even in these states, a skilled presiding officer can still maintain decorum.
4. Pools can help by offering training and model ordinances/bylaws

Wayne Carlson
Executive Director
Nevada pools

I am their leader.
Which way did they go?

CITIZEN TO LEADER
Gaining on Governance

- Coping with my election: Once I was one of us, now I am one of them
- When my behind hits the seat, I am an expert
- I'm on a team now: Collaboration, Teamwork and Civility Matter
- People, potholes and poop

Now We Are One

- Dialogue with many voices
- Consider many alternatives
- Be cautious and considerate
- Learn the facts
- Decide What's Best for All Citizens
- Speak with One Voice

Governance

- Public Office is an Act of Service to All of the People
- Citizens value: trust, integrity, lawfulness, benevolence and selflessness
- Governance: balancing power and trust
- Seek first to understand, then to be understood
- Lead, follow or get out of the way
POSITIVE GOVERNANCE

Power is granted by consent of the governed. Positive governance graciously guides the people willing to be lead.

GOVERNING

Using Simplified Roberts Rules of Order

Role of the Board

- Collective Oversight
- Objective Review of Issues
- Collaborative Discussion of Options
- Debate Solutions
- Vote
Conflicts is neither positive nor negative. If managed properly, it is an opportunity for personal growth. If mismanaged, it can be destructive both personally and professionally. Our purpose is to maximize positive benefits and minimize negative impact.” – Dick Clark

**ROLE OF THE BOARD CHAIR**

- Orchestrate Meeting
- Assure Members Participation
- Maintain Integrity of Board Process
- Maintain Public Order
- Follow Agenda
- Call for Motions
- If None, Move On

3 principles to guide boards

I. The person running the meeting is the servant of the group, and the group is the final authority.
3 principles to guide boards

II. All members have equal rights, privileges and obligations. To ensure this, no one may speak a second time until everyone who wishes to do so has spoken once.

III. Courtesy and respect are required at all times by chair, board members and the public. It is vital to the democratic process.

Open meeting law

- Follow OML law
- Read OML Legal Opinions
- Be Transparent
- Expect Civility to get Civility
Case Studies

“Those who cannot remember history are condemned to repeat it.”

George Santayana
Life of Reason 1905

Case 1: Facts

1. At a Council meeting just before an election, a Council Member publicly attacked another Council Member who was running for re-election and also complained to the State Ethics Board about the candidate’s conduct.

2. The candidate sued for defamation.

3. The Judge rejected a motion for summary judgement, citing the fact that much of this occurred just before the election when the candidate was in a poor position to mount a public defense.
Case 1: Issue

The defendant then requested the Appellate Court to intervene before the trial could proceed.

Did the Appellate Court agree with the Judge’s ruling that there was sufficient reason to allow a jury to decide the matter because the attacks occurred just before an election?

YES or NO

Case 1: Decision

NO: In *Rosenblatt v Camilla*, the appellate court ruled that this was simply the normal give and take in an election and is exactly the type of suit that is barred under *NY Times v. Sullivan*.

Case 2: Facts

1. A candidate for Mayor created a newspaper to attack the incumbent Mayor. In this paper, he would take one or two “facts” and contend that these “facts” proved corruption.

2. For example, in one story he wrote falsely that the Mayor was using tax dollars for his home in Florida.

3. The Mayor sued the would-be newspaper tycoon for defamation.

4. The defendant defended himself.
Case 2: Issue

Was the would be newspaper tycoon sufficiently reckless to sustain a defamation action?

YES or NO?

Case 2: Decision

**YES:** In *Newman v Delahunty*, a jury awarded the Mayor punitive damages of $200,000 and the appeals court upheld the award. However, this case was highly unusual because the defendant acted as his own lawyer. The consensus is that the case would probably been thrown out if the defendant had been properly represented.

Case 3: Facts

1. Two members of the governing body sued the operator of an on-line community bulletin board who refused to remove clearly defamatory postings from unidentified writers.

2. There was no question that the postings were defamatory even under the tough Sullivan standard.

3. If the bulletin board was a newspaper, an editor would be liable for printing defamatory letters from unidentified writers.
**Case 3: Facts**

4. Under Federal law operators of web sites are not considered editors and have immunity.

5. In this case, the web master also exercised editorial control by deciding which postings to remove from the site. For example, he quickly removed anything critical of himself.

6. The web master also admitted in deposition that he had a personal grudge against one of the Council Members.

**Case 3: Issue**

Did the court find the web master liable because he was really an editor?

YES or NO?

**Case 3: Decision**

**NO:** In Donato and Calogero v Moldow the court ruled that the exemption under the Federal Communications Act even applies when the web master exercises judgment on what is allowed to remain on the site. However, this exemption does not apply if the web master actually writes the defamatory material.
Case 4: Facts

1. After a Council Member was repeatedly ruled out of order, he was arrested and charged with a criminal disorderly persons offense.

2. The County Prosecutor threw out the complaint and the Council Member sued the Council President for malicious prosecution.

3. The Council Member admitted to disrupting the meeting, but contended that his behavior was necessary to be heard.

Case 4: Issue

Did the court rule that the facts were sufficient to allow the suit for malicious prosecution?

YES or NO?

Case 4: Decision

**NO:** In *Olasz v Welsh*, the US Court of Appeals ruled that:

The Council President's actions to constrain the Council Member's "badgering, constant interruptions, and disregard for the rules of decorum constitute appropriate time, place and manner regulation."
Case 5: Facts

1. A Citizen was told on numerous occasions citizen to stop interjecting into the regular council discussion.
2. The speaker continued and was escorted out of the room without resistance. Later he was charged with being a disorderly person.
3. He sued for malicious prosecution.

Case 5: Issue

Did charging the speaker with a criminal disorderly persons’ offense violate the speaker’s civil rights?

YES or NO?

Case 5: Decision

**YES**: In *State v Charzewski*, the New Jersey Appellate Court ruled that merely being disorderly at a council meeting was not per se a criminal offense. The court wrote that:

The speaker’s “conduct may have been rude and excessive, but it was not criminal. Not every interruption constitutes a criminal disruption.”
Case 6: Facts

1. During the public part of a council meeting, the operator of a towing company got into an argument with the town supervisor over a license.

2. During that argument, the operator said, “We’re sick and tired of getting screwed. That’s why you are in a (expletive deleted) lawsuit.”

3. He was charged under the state’s anti-profanity statute.

Case 6: Issue

Were the speaker’s rights violated when he was charged under the state’s anti-profanity statute?

YES or NO?

Case 6: Decision

Yes: The court ruled in Leonard v Robinson that the state law was unconstitutionally vague. Specifically:

“Allowing prosecution where one utters ‘insulting’ language could possibly subject a vast percentage of the populace to a misdemeanor conviction.”
Case 7: Facts

1. A street performer in Los Angeles frequently spoke council meetings about a dispute over using amplified music in parks, and often attacked Council Members personally, used profanities and rarely stayed on the issue.

2. The Chair directed the speaker to sit down, and when he didn’t, he was removed from the room.

3. Unlike the previous two cases, he was not charged with a criminal offense.

Case 7: Issue

Were the speaker’s civil rights violated by removing him from the room for violating the council’s decorum rules?

YES or NO?

Case 7: Decision

YES: In Dowd v Los Angeles, a California Court agreed with the Federal Decision in White v Norwalk, but emphasized that in the open portion of the meeting speech can only be curtailed if it is truly disruptive, and the California Courts have a very narrow view of what is actually disruptive.

“It is asking much of City Council members ... to tolerate profanities and personal attacks, but that is what is required by the First Amendment.”

“While the City Council has the right to keep meetings on topic and moving forward, it cannot sacrifice political speech to a formula of civility.”
Case 7: Impact

The plaintiff received an award of $2 and the plaintiff's attorney received $618,000.

Case 7: Impact

"Just get kicked out of public meetings and collect a check."

Case 8: Facts

1. A parent complained to a BOE that a coach used profanity with a girl’s basketball team. When the parent didn’t receive what he considered to be a satisfactory response, he filed suit.

2. For eight consecutive meetings, he spoke about the case and criticized the coach personally.

3. Finally, the board president read a statement that speakers should not attack individuals, talk about pending litigation or otherwise repeat themselves.
Case 8: Issue

A few minutes later when the parent was recognized, he again returned to the same argument and was cut off by the President. He sued and a jury agreed with the speaker and awarded damages. The Board appealed to the NJ Supreme Court.

Did the Board of Education violate the parent’s rights by cutting him off after he repeated himself in numerous meetings, verbally attacked employees and talked about pending litigation?

YES or NO?

Case 8: Decision

**YES:** In *Besler v West Windsor-Plainsboro BOE* the New Jersey Supreme Court ruled that:

1. This was a jury question and that the burden of proof was on the Board to show that its actions were reasonable.

2. Because the Board established its decorum rules just before this speaker was to be recognized, a reasonable juror could conclude that the Board was singling out this particular speaker.

Case 9: Facts

1. An apartment owner was ejected on a number of occasions from the Rent Control Board for trying to speak at various times throughout the meeting.

2. He argued that limiting comment to the end of the meeting meant that he could not share his views when the resolutions were actually being decided.

3. He was also a true gadfly who often heckled the board and other speakers.
Case 9: Issue

Are a speakers rights violated when the time set aside for public comment is restricted to the end of a meeting after the resolutions have already been decided?

YES or NO?

Case 9: Decision

NO: In Kindt v Santa Monica the court ruled that:

“The Board regulations restricting public commentary to three minutes per item at the end of each meeting are the kind of reasonable time, place and manner restrictions that preserve a board’s legitimate interest in conducting efficient and orderly meetings.”

Case 10: Facts

1. A Muslim congregation proposed to build a conforming mosque and educational center on a site of a former hotel in a residential zone.

2. Within two months, the Council adopted a revised zoning code that required any new church to seek a conditional use variance if located in a residential zone.

3. At the hearing, no less than 500 citizens attended. The audience shouted, booed and made statements such “Get out of town” and worse.
Case 10: Issue

Was the town liable for violating the mosque’s civil rights even though the mosque could locate in non residential zones without seeking a conditional use variance?

YES or NO

Case 10: Decision

**YES:** In *Al Falah Center v Bridgewater*, the Federal court was swayed by the ugly public hearing and how quickly the council then moved to change the zone. The court wrote that:

“Bare animus towards a group or fear, unsubstantiated by factors which are properly cognizable in zoning proceedings may constitute sufficient evidence for a zoning ordinance to fail under an equal protection challenge.”

Case 10: Impact

The town paid $2.5 million to purchase another property for the mosque and the township’s insurer paid the mosque’s legal bills that amounted to $5 million.
Conclusion

The local unit attorney is the first line of defense. The attorney’s role at meetings is to help the presiding officer maintain decorum and not become a combatant.

Questions