



## Alerts

### Illinois Appellate Court Holds Union Appointed Lawyers Are Immune From Individual Malpractice Suits Filed By Members

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*Zander v. Carlson*, 2019 IL App (1st) 181868, November 21, 2019

#### Brief Summary

Union-appointed lawyers are immune from malpractice lawsuits filed by formerly represented union members, an Illinois appeals court has affirmed. The First District Appellate Court based its ruling on both the Labor Board's exclusive jurisdiction of such disputes, and the longstanding principle of immunity for agents and employees of the union who act within the scope of their representational authority.

#### Complete Summary

Plaintiff Russell Zander ("Zander"), a police officer with the Village of Fox Lake, Illinois ("Fox Lake"), initially retained the services of defendant attorney Roy Carlson ("Carlson"), a union staff attorney, in response to a call for his dismissal from the force. To challenge the dismissal, Zander waived his right to a hearing before the Fox Lake police board; he instead opted to pursue arbitration as provided for in the collective bargaining agreement between Fox Lake and Mr. Zander's police union, the Illinois Fraternal Order of Police Labor Counsel ("FOP"). The FOP's collective bargaining agreement provided two options for aggrieved officers to challenge a dismissal: (1) via a police board hearing or (2) through arbitration. Carlson, as a staff attorney for the FOP, initially advised Zander to opt for the arbitration proceeding, and later represented him throughout the arbitration process.

Upon receiving an unfavorable arbitration ruling (his dismissal was upheld), Zander sued Carlson, individually, for legal malpractice. Relying on the United States Supreme Court's decision in *Atkinson v. Sinclair Refining Co.*, the trial court dismissed the complaint, holding that Carlson, a union-appointed attorney, was immune from individual liability for actions taken on behalf of the FOP pursuant to a collective bargaining agreement. Zander petitioned for a rehearing, arguing that despite such immunity, Carlson should be subject to *personal* liability, to the extent of his individual malpractice insurance coverage. The court again denied this request, and Zander appealed.

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In affirming the dismissal of Zander's complaint on appeal, the court focused on the absolute applicability of *Atkinson* to immunity of labor board employees. Specifically, *Atkinson* held that under the Illinois Public Relations Act, agents of the union are not personally liable for alleged wrongdoings performed on behalf of the union. Such an application to the public sector, as a whole, was essential to "preserve the integrity of the National Labor Relations Act's statutory scheme." In interpreting *Atkinson*, the court reasoned that if a plaintiff was able to individually hold union agents and employees responsible for acts performed within the scope of their employment, such an action would be tantamount to holding a union's employees to a higher standard than the union itself. Such a result would be in direct contradiction to the purpose of a union.

The court went on to confirm that despite Zander's arguments that individual malpractice claims should somehow be permitted in the traditional circuit court jurisdiction, any claim against a union agent or employee falls squarely within the jurisdiction of the Illinois Labor Board. The court noted, however, that there is one exception to such exclusive jurisdiction: in circumstances when an attorney "specifically agrees" to provide exclusive representation to the union member as an individual client and not purely out of his employment-based obligations to represent the member on behalf of the union. Such an exception was not present in the case at hand. Accordingly, based on the exclusive subject matter jurisdiction of the Illinois Labor Board—coupled with the blanket immunity provided to union employees and agents with the scope of their employment—the court affirmed that Zander "could not avoid the National Labor Relations Board's statutory scheme through creative pleading."

## Significance of Decision

This opinion conforms with the longstanding and well-rooted principle that union-appointed attorneys are shielded from individual lawsuits filed by aggrieved members, so long as they act within the scope of their representational authority on behalf of the union. Since the holding specifically stated that an exception applies in circumstances where attorneys perform work for the individual union member outside the scope of their employment, union-appointed attorneys should make sure to regularly and clearly outline the limits of the attorney-client relationship during their representation in union matters.