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## Cicero loses case against former police superintendent

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The Town of Cicero didn't stand on firm legal ground when it alleged that a former employee violated a confidentiality agreement when he talked to newspaper reporters about the police department, a state appeals panel has ruled.

The case focused on whether Wayne A. Johnson, the town's police superintendent and inspector general from February 2003 to April 2005, violated a confidential severance agreement that he signed before he resigned.

The agreement stated that Johnson could not talk about the terms of the severance with anybody except his lawyers, tax advisers and immediate family. Under the deal, Johnson was paid \$88,000.

The agreement also stated that Johnson couldn't "disclose anything relating to his employment" to the media, people who do business with the town, former town employees and prospective town employees.

In October 2006, Johnson was quoted in a Chicago Sun-Times story saying that he never stopped conducting an internal investigation into alleged misconduct by the deputy police superintendent.

Cicero sued Johnson two months later, alleging that he violated the agreement.

In April 2007, Johnson told *El Norte*, a Spanish-language newspaper, that the police career of Cicero's town president was "a joke." He also blasted the president's crime-fighting philosophy and said the president resisted management training.

Cicero then amended its complaint twice and ultimately alleged breach of

contract and promissory fraud.

Included in Johnson's defense arguments was the position that the confidentiality clause was "overbroad" and thus, unenforceable.

In June 2009, Cook County Circuit Judge Barbara A. McDonald granted Johnson's motion for summary judgment on the breach of contract allegations. Five months later, McDonald disposed of the case altogether when she dismissed Cicero's promissory fraud allegation with prejudice.

Cicero appealed, contending that the confidentiality clause was enforceable.

The 1st District Appellate Court sided with Johnson and affirmed McDonald's rulings in a 17-page unpublished order written by Justice Joy V. Cunningham. Justices Mary Jane Theis and Themis N. Karnezis concurred in last week's ruling.

The panel held that prohibiting Johnson from speaking about "anything" related to his work for Cicero would contradict public policy that favors public disclosure.

"We find that enforcement of the confidentiality clause of the agreement would cause injury to the public because it would prevent the public from knowing what activities Cicero, as a governmental entity, or its employees, engaged in during Johnson's tenure," Cunningham wrote.

"As the superintendent of police and inspector general of Cicero, Johnson was obligated to investigate allegations of corruption within Cicero's police community, the process and results of which the public had a right to know," Cunningham wrote.

The panel also ruled that enforcing the confidentiality agreement would cause an

undue hardship on Johnson because it requires him to avoid speaking about his tenure with Cicero to former town employees and others. In order to follow the terms of the agreement, the panel held, Johnson would have to find out the employment history of everybody he meets when trying to find a new job.

In his appellate brief, Johnson urged the panel to sanction Cicero and its attorneys under Supreme Court Rule 375. Johnson said Cicero's appeal was frivolous and was filed to harass him and to force him to pay legal expenses.

He also argued that Cicero should be sanctioned because its initial appellate brief violated other Supreme Court rules by not providing a standard of review and a jurisdiction statement. Johnson also alleged that Cicero's brief failed to provide: a reference to the record in the statement of facts, a proper appendix, a certificate of service, sufficient points and authorities.

The panel agreed that the Cicero's brief had multiple violations, but the justices couldn't conclude that Cicero willfully violated the rules. The panel also rejected Johnson's argument that the appeal was only filed to harass him and make him spend money on a legal defense.

As a result, the panel didn't issue any sanctions.

Johnson was represented by Terence J. Moran and Karyn L. Bass Ehler of Hughes, Socol, Piers, Resnick & Dym Ltd.

Cicero was represented by George S. Spataro of Del Galdo Law Group LLC.

Neither Moran nor Spataro could be reached for comment.

The case is *The Town of Cicero v. Wayne A. Johnson*, No. 1-09-3132