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TO: Commissioners
From: Counsel Staff
Subject: Developments in Counsel's Office Since September 26, 2024
Date: October 16, 2024

Commission Cases

Appeals from Commission Decisions

No new appeals were filed since September 26.

Commission Court Decisions

No new Commission court decisions have been issued since September 26.

Non-Commission Court Decisions Related to the Commission's Jurisdiction

Appellate Division affirms, in part, reverses and remands, in part, trial court's ruling in
OPRA/Common Law Right of Access dispute over release of police IA records

New Jersey Is An Equal Opportunity Employer

States Newsroom Inc. v. City of Jersey City, 2024 N.J. Super. Unpub. LEXIS 2244 (App. Div. Dkt. No. A-2721-22)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms in part, and reverses and remands in part, a trial court's order that denied plaintiff States Newsroom Inc.'s request for defendants City of Jersey City and its records custodian to unseal and release certain internal affairs (IA) records and for attorneys' fees, in connection with plaintiff's Open Public Records Act (OPRA) request for a copy of the IA report on a 2019 incident involving the discharge of a shotgun by a Jersey City Police Department (JCPD) lieutenant during a backyard barbecue at the lieutenant's home. Initially charged with making terroristic threats and possession of a weapon for an unlawful purpose, the lieutenant pled guilty to a lesser charge and completed pre-trial intervention (PTI). Afterwards, he sent notice to all relevant agencies to expunge their records of his criminal matter, pursuant to N.J.S.A. 2C:52-1. The IA report separately concluded the lieutenant negligently used a firearm while under the influence. JCPD suspended the lieutenant for ninety days. The punishment was anonymized, then published in the JCPD's 2020 major discipline report. In 2021, our Supreme Court ordered all law enforcement agencies to de-anonymize their discipline reports, and in 2022 the Court ruled IA reports can be accessed pursuant to a common law right of access (CLRA). In June 2022, plaintiff sued for access to the IA report regarding the lieutenant. Relying on a provision of the expungement law, the trial court denied plaintiff access to the IA records, continued to seal the case, and denied plaintiff attorneys' fees and costs. The Appellate Division held: (1) because the expungement statute does not list IA reports as an expunged record, but an IA report can reference or include documents covered by the expungement law, the trial court should have determined whether the IA records included expunged records and what could be released rather than hold the statute was an absolute bar to the information sought; (2) on remand, the trial court must review the IA report in camera, and if satisfied the relevant factors have been met to warrant disclosure, make appropriate redactions and release the information; (3) the trial court should not have sealed the entire file without finding good cause to overcome the strong presumption of public access to court records, and on remand it must examine each document individually and make factual findings with regard to whether the presumption of public access has been overcome; and (4) the trial court's denial of fees was appropriate because CLRA claims are not an exception to the American rule, which bars fee shifting.

Appellate Division affirms revocation of teaching certificates of former schoolteacher in connection with his arrest at scene of a drug transaction within a school zone

In re D'Alessio, 2024 N.J. Super. Unpub. LEXIS 2318 (App. Div. Dkt. No. A-1951-22)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms an order of the New Jersey State Commission of Education (Commissioner) affirming the State Board of Examiners' (Board's) revocation of D'Alessio's teaching certificates after a hearing conducted by

the Office of Administrative Law (OAL) found he engaged in unbecoming conduct, in connection with D'Alessio's arrest at the scene of a drug transaction within a school zone, while D'Alessio was employed as a Middletown Township school teacher. In affirming, the Appellate Division found: (1) the record amply supported a finding that D'Alessio facilitated the dangerous distribution of narcotics in a public parking lot within 1,000 feet of a school zone during the day, while his child was in the car; and (2) D'Alessio did not demonstrate that the Commissioner's chosen discipline was arbitrary, capricious, or unreasonable.

Appellate Division affirms removal of corrections officer for failing random drug test

In re McGee, 2024 N.J. Super. Unpub. LEXIS 2326 (App. Div. Dkt. No. A-0566-22)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms a final agency decision of the New Jersey Transit Corporation (NJT), which terminated McGee's employment as an NJT police officer for testing positive for a prohibited substance under NJT's drug and alcohol policy following a random drug test. In terminating McGee, the NJT modified the initial decision of an administrative law judge (ALJ), who questioned the reliability of the drug test but found McGee violated NJT Policy by failing to report that he was using CBD products, and recommended a 90-day suspension without pay. In its final agency decision, NJT's police chief concluded termination was required because: McGee violated NJT policy and rules for using THC, a controlled dangerous substance, which McGee admittedly used on a regular basis; he tested positive for illegal levels of THC on a drug test administered in accordance with NJT policy and federal regulations; and McGee used CBD oil products without seeking advice from NJT's medical professionals. In affirming, the Appellate Division rejected McGee's due-process challenge to the police chief's oversight of the charging process and final decision in this matter and held: (1) there was no evidence of either unfairness or actual bias to question the process by which NJT's police chief issued the final agency decision; (2) there was ample evidence in the record to support the chief's final decision, and no error in his evaluation of the ALJ's findings of fact or conclusions of law; (3) given that the applicable policies do not require knowledge or intentional use of a product containing elevated levels of THC, there was no error in the chief's decision; (4) McGee's asserted lack of notice regarding the same did not amount to a violation of procedural due process; and (5) the decision to terminate McGee was not arbitrary or capricious.

Appellate Division affirms removal of corrections officer who failed to pass background check as condition for reinstatement following other disciplinary charges

In re Singleton, 2024 N.J. Super. Unpub. LEXIS 2378 (App. Div. Dkt. No. A-0892-22)

The Appellate Division of the Superior Court, in an unpublished opinion, affirms the Civil Service Commission's (CSC) final administrative action adopting an administrative law judge's

(ALJ) initial decision to terminate petitioner Singleton's employment as a New Jersey Department of Corrections (DOC) officer. The DOC terminated Singleton's employment on charges of conduct unbecoming after she failed to pass a background check, which was a condition for her reinstatement following other disciplinary action stemming from DWI charges. In affirming, the Appellate Division held: (1) the ALJ's findings, as adopted by the CSC, that Singleton inquired on social media as to methods to circumvent a drug test and discussed her use of prohibited substances, coupled with her failure to secure her department uniform (Singleton's social media showed pictures of her child's father wearing it in public), and failing to report her license suspensions and prior criminal charges, provided an adequate basis for the CSC's decision; (2) the transgressions uncovered in the background check were such that progressive discipline was not appropriate; and (3) the CSC's final decision was based on substantial evidence in the record, and the decision to remove her was not arbitrary, capricious, or unreasonable.