



**STATE OF NEW JERSEY
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May 29, 2008

MEMORANDUM

TO: Commissioners

FROM: Ira W. Mintz
General Counsel

SUBJECT: Supplemental Report on Developments in the Counsel's Office Since April 24, 2008

Other Cases

In John Cicchetti v. Morris County Sheriff's Office, __ N.J. __ (2008) (5/28/08), the New Jersey Supreme Court answered two novel questions relating to workplace discrimination claims. The Court unanimously held that a law enforcement employee's failure to disclose an expunged conviction does not prohibit the employee from pursuing a workplace discrimination complaint, but evidence of the conviction can be used to limit or potentially eliminate economic damages. Although the expungement statute requires that information included in expunged records be disclosed when seeking employment in law enforcement, there is not an absolute bar on employment with a law enforcement agency. The alleged discrimination was harassment by co-workers after the employee was diagnosed with Hepatitis C. The Court also held that individual supervisory defendants did not bear any personal liability because the statutory basis for personal liability by an individual is limited to acts that constitute aiding or abetting, and the record revealed no act by either of the individual supervisory defendants sufficient to meet that statutory test. At most, there was evidence that the supervisors failed to act to protect the employee or to effectively respond to his complaints of discrimination. Standing alone, this fell well short of the "active and purposeful conduct" the Court has required to constitute aiding and abetting for purposes of individual liability.