



April, 2014



# CLIENT ADVISOR

## U.S. Supreme Court: Misdemeanor Domestic Violence Offense Disqualifies Individual From License to Carry

In an unanimous decision, the U.S. Supreme Court has strengthened a federal law that forbids anyone convicted of a “misdemeanor crime of domestic violence” from having a gun. 18 USC 922 (g)(9). In *U.S. v. Castleman*, --- S.Ct--- (March 26, 2014) the Court ruled that the federal ban applied even to those domestic violence convicts that plead guilty, when there is no proof of actual “violence” or injury.

In 2009, James Castleman was charged with violating federal gun laws when he was caught with firearms. The Tennessee man argued that the law did not apply to him because although he had pleaded guilty to “causing bodily injury” to the mother of his child, there was no evidence of “physical violence.” In a decision by Justice Sonia Sotomayor, the Court rejected this argument and held that when an act “draws the attention of authorities and leads to a successful prosecution for a misdemeanor offense,” it qualifies as a crime of domestic violence.

The decision distinguishes domestic violence convicts from violent felons. While the Court had previously defined a

violent felony as involving “violent force,” *Castleman* recognizes that the same is not necessary for misdemeanor domestic violence. Rather, the common law definition of battery (any non-consensual offensive touching) is sufficient.

The Court’s decision overturns federal court decisions in several regions and is thought to close a loophole in the law that has existed for almost 20 years.

In Massachusetts, a person convicted of a domestic violence misdemeanor already loses his or her right to possess firearms or obtain a firearms license. Therefore, the *Castleman* decision is unlikely to have a major impact here. As in *Castleman*, it would eliminate an officer’s argument that a conviction for misdemeanor domestic violence that did not actually involve an underlying violent act does not disqualify the officer from being licensed to carry a firearm. Although some officers in Massachusetts are allowed to “carry on the badge” by their Chief, it is highly unlikely that a Chief would extend this privilege to a police officer convicted of misdemeanor domestic violence.

## NOTEWORTHY DECISION

### Police Chief Appointment Vacated: Bypass Called Political Retribution

In *Jebb v. City of Chicopee*, G2-13-153 (March 20, 2014), the Civil Service Commission found that former Mayor Michael Bissonnette bypassed Deputy Chief William Jebb for appointment to Police Chief in June, 2013 to settle a political score from 8 years earlier. Jebb came out of both the assessment center and an interview panel process as the highest ranked candidate. But Bissonnette appointed Captain Thomas Charette, the second ranked candidate.

At the hearing, Bissonnette testified that he believed Jebb leaked details of his prior criminal record to his opponent in his first mayoral campaign in 2005 and, during the Chief selection process, he contacted his opponent’s former campaign manager to confirm his suspicions. Bissonnette said he thought it was appropriate to bypass Jebb for the political incident because it showed that he lacked the integrity to be Chief. Commission Chairman Chris Bowman, who heard the case, not only found that Jebb had not done what he was accused of, but called what Bissonnette did “one of the more egregious and overt examples of political and personal bias I have seen during my tenure on the Commission.”

The Commission found that the usual relief of placing the bypassed applicant at the top of the next list would not work because it would effectively allow the bypass decision against Jebb to stand for years, i.e., until Charette stepped down as Chief. It ordered that Charette’s appointment be vacated and that the newly elected Mayor (Richard Kos) undertake the process to appoint a permanent police chief, with Charette remaining as temporary chief until there was a new appointment.

## SPEAKING ENGAGEMENT

Phil Collins is presenting at the Mayors’ Association Monthly Meeting on April 23, 2014 at the Mount Hood Golf Course in Melrose, MA. The title of the seminar is “Collective Bargaining: Tips for the Table.”

The Mayors’ Association is a member group of the Massachusetts Municipal Association. For additional details or to attend this event please visit the MMA’s website.



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