

# CLIENT ADVISOR

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## Superior Court Judge Says HRD Must Review And Approve Civil Service Bypass Reasons

On February 28, 2014, Superior Court Judge Paul D. Wilson issued a decision in which he found that it is not "practicable" for the state's Human Resources Division (HRD) to delegate to cities and towns its authority to review and approve bypass reasons under G.L. c. 31, s.27. Malloch v. Town of Hanover, SUCV2013-01169 (2014). While the decision has been appealed, if upheld, it will have real life consequences on the civil service appointment process.

At issue in the case is the HRD's authority to delegate its responsibility to "receive" written statements of a city or town's reasons for a bypass. Chapter 31, section 27 provides that in order to bypass a candidate, an appointing authority must immediately file a written statement of reasons for the bypass. Since September 2009, the HRD has delegated its functions under s. 27 to the local appointing authorities.

In its decision, the court agreed with the plaintiff's position that HRD's failure to perform a substantive review of the Town's bypass reasons and the delegation of its obligations under G.L. c. 31, s. 27, was inconsistent with state law. According to the court, "it is illogical for the statutory scheme to allow the Town to review and approve its own statement of reasons." The court remanded the case back to the Civil Service Commission and the HRD with instructions that the Town "is to file its statement of bypass reasons with the Human Resources Division, which is to decide whether to approve those reasons after a substantive review."

With the appeal pending, it is unlikely that the lower court's decision will result in any immediate changes in how cities and towns handle bypasses. We will continue to monitor this situation and keep you informed of any changes.

## Court Slaps Commission for Reducing Police Officer Termination to Suspension

In Town of Maynard v. Civil Service Commission, the superior court overturned the Civil Service Commission's decision to modified the Town's discipline of a police officer from employment termination to a twenty-two month suspension. In doing so, the court chastised the Commission for demonstrating a "a complete lack of recognition" that the power to impose penalties belongs to the Town.

When reviewing discipline decisions, the Commission must decide whether reasonable justification exists for the disciplinary actions taken based on the facts as found by the Commission and the circumstances found to have existed when the appointing authority made its decision. While the Commission is entitled to modify discipline when its findings of fact differ significantly from those reported by the Town, in this case, the Commission agreed with the Town and found that the Town had just cause to discipline the officer for violating the applicable rules, regulations and procedures. Still, the Commission modified the Town's decision to terminate the officer and turned it into a twenty-two month suspension, what the Commission felt was "an adequate disciplinary period to address his violations in the absence of analogous conduct and discipline."

In a straightforward and somewhat blunt decision, the court held that the Commission's decision to modify the penalty exceeded its authority and defied common sense. Because the Commission agreed that the officer had committed the violations alleged, the court found that its decision to disregard the Town's chosen discipline ignored the limits on its authority and usurped the powers assigned by law to the Town. "It appears not to have occurred to the Commission that, as a matter of common sense, if misconduct is sufficiently serious to warrant the suspension of a police officer in a small police department for close to two years . . . it is sufficiently serious to warrant termination."

## SPEAKING ENGAGEMENT

On May 22, 2014, Josh Coleman will present at the Human Resources Boot Camp sponsored by the Massachusetts Municipal Personnel Association. The workshop, "Proper Performance Evaluations" will walk participants through how they can use performance evaluations as a workforce management tool. The program will take place at Clark University in Southborough. Registration is limited to 60 participants and certain registration requirements apply.

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