

New Jersey Law Journal

VOL. CLIV - NO. 2 - INDEX 120

OCTOBER 12, 1998

ESTABLISHED 1878

IN PRACTICE

LABOR & EMPLOYMENT

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Is the Crown Always Right?

Tomorrow, the New Jersey Supreme Court will be hearing arguments, including mine, about a case with important implications for the rights of government employees.

Chasin v. Montclair State University arose when Professor Barbara Chasin was sued by one of her students for awarding him an "incomplete" grade in a sociology class.

As a state employee, Chasin asked the attorney general to represent her, but her request was denied. After the action was resolved in her favor, Chasin sought reimbursement of her legal fees, under the Tort Claims Act. The attorney general refused, however, alleging that Chasin refused to obey the state's direction.

The attorney general's refusal to indemnify Chasin could jeopardize the important public policies underlying the New Jersey Tort Claims Act and place state employees at risk for merely doing their jobs.

The New Jersey Tort Claims Act, N.J.S.A. 59:10A-1, provides that the attorney general must represent state employees, or reimburse them for legal

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fees incurred, in any action brought "on account of an act or omission in the scope of his [or her] employment," subject to the exceptions of N.J.S.A. 59:10A-2.

The three exceptions under the act are: (1) that the act or omission was not within the scope of employment; (2) the act or failure to act was because of actual fraud, willful misconduct or actual malice; or (3) representation would create a conflict of interest. Even where one of the three exceptions applies, the attorney general still has discretion to represent the employee pursuant to N.J.S.A. 59:10A-3.

As the 1972 Attorney General's Task Force stated at the time of its enactment, the New Jersey Tort Claims Act strikes a balance between providing the public employee with an "absolutely essential measure of security from liability in the performance of his duties while at the same time providing for a necessary element of accountability for his performance."

Public employees are given broad protection from civil liability as long as their conduct is within the scope of employment and does not constitute fraud, willful misconduct or actual malice.

Chasin v. Montclair State University

Chasin is a professor at Montclair State University. In 1992, James Lloyd,

a former student, sued her and the university for awarding him an "incomplete" in her sociology course. As a Marine reservist, Lloyd was called to active duty in the Persian Gulf as part of "Desert Storm" after about 10 weeks of classes.

Chasin gave Lloyd an "incomplete" for the course but Lloyd contended he was entitled to an "A" (based on a quiz and midterm exam). His contention was based on the "Desert Storm Law," which provided that a student called to duty who had completed eight weeks of classes should receive a grade based on the work completed.

However, Chasin believed that any change to the "incomplete" already awarded Lloyd could only be made by the administrative channels of the university, rather than by her. Her position was vindicated when Lloyd's lawsuit was settled with the university administratively awarding Lloyd a grade, but annotating his transcript to show that the grade was administratively awarded. All claims against Dr. Chasin were dismissed with prejudice. The settlement was signed by the Attorney General's Office.

Despite her vindication, the state refused to reimburse Chasin's legal fees. Chasin filed suit, and the Law Division granted summary judgment, awarding Chasin the fees she incurred in defending Lloyd's actions.

