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August 2010

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TO: ALL STATE PBA DELEGATES

RE: NJ SUPREME COURT DECISION- FORFEITURE OF OFFICE

As we have reported on many occasions in the past, law enforcement officers who are convicted of, or plead guilty to, crimes, even disorderly persons offenses, run the risk that those convictions (or guilty pleas) may result in the forfeiture of their jobs, and any other public employment. Depending on the degree of crime, forfeiture may be automatic. In some cases when it is not automatic, it may depend on the extent to which the crime has some connection to your law enforcement job. Recently, the Supreme Court of New Jersey decided the case that will make it harder to impose forfeiture if the crime has no relationship to the officer's job (assuming that the crime does not result in automatic forfeiture).

The forfeiture of public office statute, N.J.S.A. 2C:51-2, generally provides that forfeiture of office is required if an employee is convicted of, or pleads guilty to, a crime of the first, second or third degree. For crimes of lesser degrees, forfeiture is mandated if it "touches or concerns" the officer's position. This includes disorderly persons or petty disorderly persons offenses.

In State v. Hupka, decided August 3, 2010, a Sheriff's Officer was convicted of fourth-degree criminal sexual contact. The officer voluntarily signed an agreement with his employer

resigning from his position as a sheriff's officer, and agreeing that he would never again seek future employment in New Jersey or any other state as a law enforcement officer. In addition, the employer demanded that the officer also be permanently disqualified from holding any public office pursuant to the forfeiture statute, N.J.S.A. 2C:51-2. The officer would not agree to this provision, and the parties agreed to have the applicability of N.J.S.A. 2C:51-2 resolved by the courts.

N.J.S.A. 2C:51-2 provides, in relevant part, that “[a]ny person convicted of an offense involving or touching on his public office, position or employment shall be forever disqualified from holding any office or position of honor, trust or profit under this State or any of its administrative or political subdivisions.” The issue, therefore, was whether the officer’s crime “involved or touched on” his public office as a sheriff’s officer. The Supreme Court held that it did not.

Specifically, the Court observed that “[t]here was no relationship between defendant’s employment as a police officer, the trappings of that office, or his work-related connections, and the commission of the offense to which he pled guilty, or to his victim.” The officer’s crime occurred while off-duty, in a private home involving someone the officer knew, and had no connection to his position as a sheriff’s officer. He was not in uniform when the crime took place, nor did he hold himself out as a police officer during its commission. Accordingly, because his crime did not “involve or touch on” his public office, the Court held that the provisions of N.J.S.A. 2C:51-2 did not bar the officer from holding public office in the future.

The Court’s decision makes clear that, in less than third degree crimes, forfeiture of public office will only be ordered if there is some direct connection between the crime and the officer’s position. If an officer commits, or pleads guilty to, a crime of the fourth degree forfeiture will not be automatic simply because the individual is a law enforcement officer.

Any criminal charge, no matter how minor it appears to be, must be taken very seriously. Forfeiture must be considered whenever any of your members is charged with a crime, even a disorderly persons or petty disorderly persons offense. The potential impact of forfeiture is an issue that must be discussed with attorney representing your member.