



NEW YORK CITY LAW DEPARTMENT
OFFICE OF THE CORPORATION COUNSEL

Michael A. Cardozo, *Corporation Counsel*

Press Release

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For Immediate Release

**STATE'S HIGHEST COURT UNANIMOUSLY AFFIRMS RULING
THAT THE NEW YORK CITY CIVIL SERVICE COMMISSION
DOES NOT HAVE JURISDICTION TO HEAR APPEALS
FROM DISCIPLINARY DETERMINATIONS OF THE FIRE COMMISSIONER**

COURT HOLDS THAT A DISCIPLINED FIREFIGHTER MAY ONLY SEEK REDRESS VIA A JUDICIAL PROCEEDING UNDER ARTICLE 78 OF THE CIVIL PRACTICE LAW AND RULES, THEREBY RECOGNIZING THE FIRE COMMISSIONER'S "SOLE AND EXCLUSIVE" POWER TO RENDER DISCIPLINARY DETERMINATIONS

Contact: Kate O'Brien Ahlers, Communications Director, (212) 788-0400, kahlers@law.nyc.gov

New York, Feb. 22, 2005 – The New York State Court of Appeals ruled unanimously today in favor of the New York City Fire Department and its Commissioner in *Von Essen v. New York City Civil Service Commission* by affirming the Appellate Division, First Department's "thorough and well-reasoned" opinion that the Civil Service Commission does not have jurisdiction to hear appeals from disciplinary determinations of the Fire Commissioner. The Court ruled that a disciplined firefighter's only avenue of redress is, instead, a judicial proceeding in the State Supreme Court under Article 78 of the Civil Practice Law and Rules. The Court put firefighters on equal footing with police officers, finding that its 1999 decision in *Montella v. Bratton*, which reached the same conclusion with respect to police officers, was controlling.

In so ruling, the Court properly reaffirmed that, based on long-established provisions of the New York City Charter and the New York City Administrative Code, the Fire Commissioner has the "sole and exclusive" power to make disciplinary determinations. The Court held that, since those disciplinary provisions were in existence long before the disciplinary provision of Civil Service Law section 75 and the appeals provision of Civil Service Law Section 76, they did not, and could not, affect the Fire Commissioner's power to discipline members of the Fire Department. The Court, therefore, concluded that Fire Department discipline, like Police Department discipline, was "outside the scope" of the Civil Service Law.

Robert Joel was appointed to the Fire Department as a firefighter in October 1983. In July 1997, Joel pled guilty in criminal court to the class A misdemeanor of falsely reporting an incident; he made several 911 calls from his engine company to report a false alarm, so as to assist a fellow firefighter who wanted to claim he was injured while on duty. Thereafter, Joel was suspended from his employment and, ultimately, after a hearing was held before an administrative law judge, the Fire Commissioner approved the judge's recommendation to dismiss Joel from the force, finding his conduct "reprehensible." Joel then appealed that determination to the Civil Service Commission; however, the Fire Department contested the Commission's power to hear the case, arguing that it was outside its jurisdiction. After the Civil Service Commission ruled that it did have jurisdiction, the Fire Department, while the case before the Commission was held in abeyance, unsuccessfully sought to annul that determination in State Supreme Court. The Fire Department then prevailed in the Appellate Division, First Department.

Senior Counsel Julie Steiner of the New York City Law Department's Appeals Division – the attorney who

handled *Von Essen* on the appeals in both the Court of Appeals and the Appellate Division – stated “This is a great victory, not just for the Fire Department and the Fire Commissioner, but for the citizens of this City.” Steiner explained that “since the Fire Commissioner is solely accountable to the public for the integrity of the Fire Department, the Court’s ruling ensures that the Fire Commissioner has the necessary control over the discipline of members of the force, who perform a critical public service fraught with great risk. It is of the utmost importance that the Fire Commissioner be given great deference in disciplining firefighters, because their character and fitness, which bear directly on their ability to perform their job, are not just legitimate concerns of the Fire Department, but also of the millions of people who live in this City who put their trust and their lives in the hands of these skilled individuals.”

Ms. Steiner handled the appeals with assistance from Appeals Assistant Chief Barry Schwartz, Senior Counsel Spencer Fisher of the Legal Counsel Division and Kim Paulk of the Appeals Division’s Practice Unit, who prepared the Record on Appeal in the Appellate Division. Assistant Corporation Counsel Isaac Klepfish, of the Labor and Employment Law Division, represented the Fire Department in the Supreme Court.

Thomas Von Essen was the Fire Commissioner until January 2002 (which is why he is named in the original complaint). The current Fire Commissioner is Nicholas Scoppetta.

The New York City Law Department is one of the oldest, largest and most dynamic law offices in the world, ranking among the top three largest law offices in New York City and the top three largest public law offices in the country. Tracing its roots back to the 1600’s, the Department’s 650-plus lawyers handle more than 100,000 cases and transactions each year in 17 separate legal divisions. The Corporation Counsel heads the Law Department and acts as legal counsel for the Mayor, elected officials, the City and all its agencies. The Department’s attorneys represent the City on a vast array of civil litigation, legislative and legal issues and in the criminal prosecution of juveniles. Its web site can be accessed through the City government home page at www.nyc.gov or via direct link at www.nyc.gov/html/law/home.html.

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