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Employers Must Provide Public Records Uncovered During Investigations Into Employee's Wrongdoing Or Misconduct Within Reasonable Time

On January 31, 2005, a California Court of Appeal decided in the case of *Gene Moran v. Murtaugh, Miller, Meyer & Nelson, LLP, et al.* that, pursuant to California's Investigative Consumer Reporting Agencies Act (the "Act"), employers must provide employees copies of public records uncovered in the context of an investigation into the employee's wrongdoing or misconduct within a reasonable time after the investigation is complete.

Gene Moran was hired by the Murtagh law firm as a paralegal on April 2, 2003. The next day, an associate in the law firm conducted a computerized legal database search that revealed three unpublished civil appellate decisions in which Moran was a party. These civil cases revealed that Moran had been convicted of several felonies. A few days later, the associate anonymously left copies of the cases on the chairs of two Murtaugh partners, who then sent cases to the firm's two managing partners. The next day, the managing partners met with Moran and asked if he had ever been convicted of a felony. When he confirmed that he had been convicted of a number of felonies, they offered him the opportunity to resign, which he elected.

After his resignation, Moran requested copies of the public records that led to the termination of his employment. Within two days of receiving the request, Murtaugh forwarded copies of the cases reviewed by its partners. Moran later sued and alleged employment discrimination, negligent infliction of emotional distress, and violation of Civil Code § 1786.53 (the provision of the Act relating to disclosure of public records to an employee when an investigative consumer reporting agency is not used). Moran contended that Murtaugh failed to provide him with copies of the records within the time provided by the statute.

Murtaugh successfully argued to the trial court that Moran was required to post a security with the court before proceeding with his claims against his former employer because he fit the definition of a "vexatious litigant" and there was no reasonable probability that he would prevail on his claims. When he failed to post the security, the trial court dismissed the case. Moran appealed, contending that the trial court's finding that there was no reasonable probability that he would prevail on his Civil Code § 1786.53 claim was erroneous.

The California Court of Appeal upheld the trial court's decision dismissing Moran's case and held that Murtaugh had complied with its disclosure obligations under the Act. Specifically, the Court of Appeal found that Murtaugh was not required to provide copies of the public records within the seven day period provided under § 1786.53(b)(1), as argued by Moran. Rather, it was governed by subdivisions (b)(3) and (b)(4) which suspend the seven day requirement when an employer is

investigating "suspicion of wrongdoing or misconduct" by the employee and instead allow an employer to provide the public records "upon completion" of the investigation. The Court of Appeal noted that the statute does not specify how long the employer has after the completion of the investigation to provide the records. It concluded that an employer is required to furnish copies of any public record uncovered in a background check "within a reasonable time after an investigation concludes, according to the circumstances of each case" and that Murtaugh's action in providing the records eight days after confronting Moran was reasonable as a matter of law.

The case serves to clarify the provision of the Act relating to the employer's obligation to provide copies of the public records it uncovers in the context of an investigation into employee wrongdoing or misconduct. It also highlights the importance of compliance with all of the requirements of California law and the federal statutes governing background checks. Employers are advised to consult employment counsel before implementing any background check policies or procedures.

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