

# Kimball, Tirey & St. John LLP

## Legal Alert

April 2010

### Appeals Court Rules on Megan's Law

Recently, the Second District Court of Appeals issued a ruling affirming the decision of a Los Angeles County Superior Court on issues pertaining to use of information from the "Megan's Law" sex offender registry. The case, Mendoza v. ADP Screening and Selection Services, Inc., B2146543, involved the question of whether an employment screening service has the right to republish information from the Megan's Law registry as part of its screening services for employers.

In this case, the plaintiff (Mr. Mendoza) alleged that he was denied gainful employment by a prospective employer because the employer had been provided with information from the Megan's Law registry by the defendant (ADP Screening and Selection Services). The plaintiff brought an action alleging, among other things, that the defendant had violated the provisions of Megan's Law that prohibit use of the information from the sex offender registry for any purpose related to employment.

The court found that 1) the defendant's republishing of information from the sex offender registry to its clients as part of its employment screening service business was constitutionally protected free speech and 2) the defendant did not "use" the information from the sex offender registry for any unlawful purpose relating to employment.

The court did seem to indicate that the employer might have unlawfully used the information provided by the defendant to deny employment (however the employer was not named as a defendant in this case). Since Megan's Law similarly prohibits use of information from the sex offender registry for any purpose relating to housing or accommodations, owners and managers should take note of this decision.

Some owners and management companies have taken the position that there is no violation of Megan's Law if housing is denied to a sex offender when the information about the sex offense did not come directly from the Megan's Law registry. In other words, if the information was provided by a rental screening service rather than by the landlord accessing the Megan's Law registry directly, no violation has occurred. This case seems to indicate that had the plaintiff sued the prospective employer, the court may well have ruled that the employer violated Megan's Law.

The question still remains whether a landlord violates Megan's Law by denying housing to a registered sex offender if the information comes from some other source, such as a criminal records search conducted by a screening service. It may behoove owners and management

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companies to ask their screening services where the criminal information they provide is derived. If any portion of the information is derived directly from the sex offender registry, this case seems to indicate there could be a violation of Megan's Law if that information is then used to deny housing or other accommodations. Violations of Megan's Law can carry civil penalties of up to \$25,000 per occurrence.

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