

## **Civil Rights: Divested and Restored**

**By: Wayne C. Fricke; July 2005**

The Ninth Circuit Court of Appeals has again put practitioners on notice to be careful in advising their clients if and when their gun rights have been restored under state statutes. In United States v. Brailey, No. 04-30083, May 19, 2005, the Ninth Circuit upheld the conviction for the unlawful possession of a firearm in violation of 18 U.S.C. § 922(g)(9). The defendant's rights, under Utah law, had been restored when the state legislature changed the statute to allow persons convicted of misdemeanors to possess firearms. The court upheld Judge Bryan of the Western District of Washington finding that the amendment under Utah law did not restore the defendant's civil rights within the meaning of federal law. Federal law provides:

It shall be unlawful for any person who has been convicted in any court of a misdemeanor crime of domestic violence, to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition...

A person shall not be considered to have been convicted of such an offense for purposes of this chapter if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or has had civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense) unless pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

The defendant argued that his civil rights had been restored when Utah changed the law to allow misdemeanants to possess firearms. After the change he purchased and possessed a firearm in Washington.

However, the Ninth Circuit noted that the misdemeanor conviction never deprived him of the right to vote, nor the right to sit as a juror under Utah law. In finding against the defendant, the court noted that most of the circuits that have addressed the question do so in the context of whether one's civil rights have been divested after a misdemeanor conviction. And because "restore" means "to give back," if the civil rights mentioned above were never taken away in the first place, they cannot be restored.

As such, if a person has been convicted of a domestic violence offense in this state, and later has his or her right to possess a firearm restored within the state, it doesn't necessarily follow that his or her right to possess firearms under the federal statutes has been restored. This is because under Washington law one does not lose his or her right to vote or hold public office or sit as a juror based on a misdemeanor conviction. Be careful when advising clients.

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