

[Questions or comments may be
directed to 609-984-8241.]

MEMORANDUM TO: Municipal Court Judges

FROM: Philip S. Carchman, J.A.D.

**SUBJECT: SUPREME COURT SUPPLEMENTAL ORDER – ALCOTEST CASES
 (SSTATE V. CHUN)**

DATE: January 17, 2006

On January 10, 2006, the Supreme Court issued a supplemental order relating to the Alcotest cases in the context of the litigation pending before Judge King as a Special Master (State v. Chun). This memorandum is intended to clarify two issues regarding that January 10th order.

First, a court may admit evidence of an Alcotest reading, over the objection of defense counsel, without first holding a hearing on the scientific reliability of the Alcotest. Under the Supreme Court's January 10th order, any requests for such a reliability hearing are stayed pending the Supreme Court's final determination regarding scientific reliability after submission by Special Master Judge King of his findings.

Second, the Supreme Court's order does not require a stay of execution of sentence of a repeat offender, unless the case is based solely on an Alcotest reading. However, the Court's order does stay execution of sentence for all first offenders, unless staying execution of such sentence would be contrary to the public interest. Under N.J.S.A. 39:4-50(a) (2) and (3), the penalty for repeat offenders is the same whether the finding of guilt is based on observation or on BAC levels; thus, the outcome regarding the Alcotest reliability hearing would not affect cases where guilt was based on observation. However, for first offenders, the penalty may vary depending on whether the conviction is based on a BAC level or solely on observation. Therefore, the reliability of the BAC is of fundamental importance in such cases.

Please contact Assistant Director Robert Smith of the Municipal Court Services Division at 609-984-8241 with any questions regarding this memorandum, the Supreme Court's January 10th supplemental order, or this subject in general.

P. S. C.

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c: Chief Justice Deborah T. Poritz
Edwin H. Stern, P.J.A.D.
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Presiding Judges-Municipal Courts
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