



CLIENT ADVISORY

Court of Appeal Permits Waiver of POBR Rights in Limited Circumstances

In ***Lanigan v. City of Los Angeles*** (Cal. Ct. App., Oct. 4, 2011) 2011 WL 4552533, the Court of Appeal for the Second District overturned the trial court, finding POBR protections can be waived in a minority of discipline cases. The case concerned a Los Angeles police officer facing several serious discipline charges resulting from his treatment of an officer from another department. The Department proposed termination and the officer entered into a detailed settlement agreement under which he was reinstated. He also agreed to specific future discipline in the event of additional disciplinary charges being filed against him for harassing or failing to cooperate with officers of an outside agency, and agreed to waive several of his rights under POBR.

Within a year, the officer again faced discipline charges for providing false information and failing to cooperate with an LASD officer. In response, the Department processed his resignation pursuant to the settlement agreement. He petitioned for peremptory writ of mandate to obtain judicial review of the LAPD's decision. The lower court issued a writ ordering the city to set aside its acceptance of the officer's resignation and reinstate him to his position.

The Court of Appeal overruled the trial court, but acknowledged the provisions of POBR are not subject to a blanket waiver because POBR was established for a public purpose. Instead, the Court looked to the California Supreme Court's ruling in ***County of Riverside v. Superior Court*** (2002) 27 Cal.4th 793, and concluded a waiver of POBR rights could be permitted in certain unusual circumstances.

In this case, the Court noted the officer did not waive all of his POBR rights and his waiver applied to discipline for a specific type of alleged misconduct. The Court also emphasized the original settlement was in lieu of almost certain termination.

This case primarily concerned statutory rights. Other pre-termination rights have a federal constitutional dimension that presents additional barriers to waiver. In ***Walls v. Central Contra Costa Transit Authority*** (9th Cir. 2011) 653 F.3d 963, the court found a public employee had not waived his *Skelly* rights. The court noted that, "federal courts 'indulge every reasonable presumption against waiver of fundamental constitutional rights' and 'do not presume acquiescence in the loss of fundamental rights.'" The court therefore concluded "a waiver [of the right to a pre-termination hearing] should not be implied and should not be lightly found."

Learn more about this and other legal developments affecting public safety employees by visiting the firm's **California Public Safety Labor Blog** at mastagnilaw.blogspot.com.

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