

## **Court Rejects Statute of Limitations Defense to Disciplinary Action**

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California's Third District Court of Appeal last week rejected a parole agent's attempt to have the disciplinary action against him dismissed under the statute of limitations in the Public Safety Officers Procedural Bill of Rights Act. In *Department of Corrections and Rehabilitation v. State Personnel Board* (2016) 2016 Cal.App. LEXIS 414, the court held the agent, Shiekh Iqbal, had been timely served with discipline because the one-year limitations period was tolled during the department's internal criminal investigation of the agent for unauthorized access to CLETS.

The Public Safety Officers Procedural Bill of Rights Act, or POBRA, protects peace officers against stale claims by imposing a one-year statute of limitations on proposed discipline. A law enforcement agency must investigate and propose discipline within one year of the date a person authorized to initiate an investigation learns of an alleged act of misconduct.

### ***CDCR Conducted Both Criminal and Administrative Investigations***

There are several exceptions to the POBRA statute of limitations. Whenever the officer is the subject of a criminal investigation related to the same conduct, the one year is "tolled", or stayed, pending the outcome of that investigation.

Criminal investigations of peace officer misconduct often are conducted by an outside agency, such as a district attorney's office, while the administrative investigations covered by POBRA are conducted by the employing agency. In this case, however, the CDCR conducted both the criminal and administrative investigations, delaying the internal investigation until the criminal investigation was complete.

In his discipline case, Iqbal persuaded the State Personnel Board his employer had exceeded the statute of limitations by serving him with notice of proposed discipline six days after the one year period expired. The SPB ruled the limitations period was not tolled because CDCR had conducted the criminal investigation itself instead of referring it to an outside agency. The CDCR appealed the decision.

### ***Court Finds Limitations Period Tolled by Criminal Investigation***

On appeal, the court found Iqbal and the SPB relied on a misinterpretation of the POBRA tolling requirements. POBRA does not *require*

criminal investigations to be conducted by outside agencies before the tolling provision applies. The erroneous argument to the contrary, the court said, is traceable to a prior decision in which a court applied POBRA standards to a criminal investigation conducted by the CDCR in which prison guards were forced to cooperate with a Department of Justice investigation under threat of discipline. The court upheld the disciplinary action against Iqbal after ruling the statute of limitations was tolled by the CDCR's own criminal investigation.

This decision knocks the final leg out from under from any argument the POBRA limitations period is not tolled by some types of criminal investigations. Another recent decision held the limitations period is stayed until a prosecuting authority *notifies* the employing agency its investigation is concluded, even if that investigation concluded months earlier. (*Richardson v. San Francisco* (2013) 214 Cal.App.4<sup>th</sup> 671.) In short, virtually any criminal investigation, however and by whomever conducted, will toll the one year statute of limitations for investigating and proposing discipline.