

By Christopher W. Miller, Esq.  
SCOPO General Counsel

A deputy who retired while his administrative appeal from a suspension without pay was pending before the San Bernardino County Civil Service Commission will have his day in court after the Fourth District Court of Appeal upheld his right to a hearing. Ruling last week in *Hughes v. County of San Bernardino*, the court said the deputy's voluntary retirement did not deprive him of the right to appeal.

In 2011, Robert Hughes appealed a 15-day suspension that cost him \$7,000 in lost wages. While he was in the hospital recovering from a heart attack, his lawyer reached a tentative settlement agreement in the discipline case without Hughes's permission. The County never reduced the agreement to writing, however, and Hughes never signed anything.

Armed with a new lawyer in 2012, Hughes asked the Civil Service Commission to proceed with his appeal. The County balked, claiming the tentative settlement agreement had resolved the case. Hughes retired but sued to enforce his right to a hearing under the county's civil service rules and the Public Safety Officers Procedural Bill of Rights Act.

Retirement did not deprive Hughes of his right to an appeal, the court said, because nothing in the County civil service rules prohibited retired employees from appealing disciplinary actions. The Civil Service Commission retained jurisdiction over Hughes's appeal and was required to afford him due process, despite the County's claim Hughes had to remain employed to be entitled to a hearing. The court recognized the unfairness of that claim: "It seems to us quite inequitable to require, as the trial court explicitly did here, that an ill, injured or retirement-age employee put at risk his well-being by continuing to work in order to see to completion his administrative appeal of an adverse personnel action."

The *Hughes* case joins other recent decisions in which the Courts of Appeal have upheld the right of public employees to appeal disciplinary actions, including termination, even after the employee has been forced to retire for medical or financial reasons. Employees should check local civil service rules and consult with counsel, however, before making the decision to retire while a disciplinary action is pending.