# Shots Fired! How to Respond to an Officer Involved Shooting

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**Notes:**

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# How to Respond to an Officer Involved Shooting

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# 1. INTRODUCTION

In the event of an officer involved shooting (OIS) that involves a city police officer, there will most likely be two separate investigations: a criminal investigation and an administrative investigation. A third investigation may also be conducted for the specific purpose of assessing civil liability exposure. A city attorney is less likely to have any significant involvement in the criminal investigation; criminal investigators will conduct the investigation of the underlying crime(s), if any, and the shooting itself. They will report their findings to prosecutors. A city attorney is most likely to give advice in connection with an administrative investigation into whether the shooting complied with the employing agency's policies and any investigation that focuses on civil liability issues. This paper is designed to provide a city attorney with an overview of the administrative and, to a lesser degree, the liability investigation process and the applicable authorities.

# 2. INITIAL CHECKLIST

The response to an OIS can seem chaotic. It may help for a city attorney to have an initial checklist of the various issues to be considered in the aftermath of an OIS. The following checklist is intended to provide a broad overview of issues that will warrant attention in the hours and first few days following an OIS.

- Before an incident occurs, an agency should consider adopting a protocol that will help to answer in advance some of the questions that are raised below, including but not limited to who will respond to the scene, who is responsible to handle specific issues and when things will happen.
- After the incident occurs, then the following issues will need to be considered.
- Decide whether City Attorney personnel will respond to the scene, be available by phone, etc.
- Circumstances of Incident known at time. *Note: the facts and circumstances will likely change substantially based upon continued investigation.*
    - Status of involved officer(s);
    - Status of suspect(s) and any special considerations that may draw public scrutiny;
    - Status of civilians/bystanders;
    - Static Event v. Ongoing Investigation?
- Notification to City Manager/City Council

- Who makes notification? If notification is made by the City Attorney, then the communications may be privileged.

- How is notice to be given? *Note: Care must be given to avoid Brown Act violations. E.g. emails and phone calls between council members can evolve into serial meetings.*

- When should notification be given? Presuming it will not interfere with the investigation, then providing notice as soon as practical will help ensure executives and elected officials are prepared to address inquires.

- Public Relations
  - Contact Public Information Officer or equivalent;
  - Who will prepare a press release?
  - Who will provide updates to the media and respond to media requests?
- Debriefing of Incident
  - Who will conduct and attend debrief?
  - When? 24 / 48 hours.
  - Will the city attorney or other legal counsel attend? Is the debrief privileged?
- Collection of Evidence
  - Criminal Evidence v. Civil Evidence to Defend Case
  - Statement of Involved Officer
    - Will the officer provide a voluntary statement to criminal investigators?
    - Or, will the officer only provide a compelled statement to administrative investigators?
- Initiation of Defense of Civil Litigation
  - Who is going to represent city / officers
  - When retained?
  - Conflict Issues?

## 3. APPLICATION OF THE POBR TO THE ADMINISTRATIVE INVESTIGATION

It is important for a city attorney to know that the criminal investigation will be subject to criminal laws and procedures, but the administrative investigation is subject to the Public Safety Officers Procedural Bill of Rights Act ("POBR"), enacted by the California Legislature in 1976 as a "labor relations statute."[1] It "provides a catalog of basic rights and protections that must be afforded all peace officers by the public entities which employ them" and applies to the majority of peace officers employed by the State of California, its counties, cities, and other local agencies.[2]

Government Code section 3303(i)[3] of the POBR provides that the POBR does not apply to investigations that are "concerned solely and directly with alleged criminal activities." For example, in *Van Winkle v. County of Ventura*,[4] a sheriff's department uncovered evidence that a deputy had embezzled firearms from the department. The department's major crimes bureau (MCB) ─ which had authority to conduct criminal investigations, but not to recommend discipline ─ conducted a criminal investigation into an allegation that the deputy received weapons required to be destroyed and subsequently kept the weapons without booking them for destruction. MCB conducted a sting operation, during which the deputy made several incriminating statements. The MCB arrested the deputy. At the start of the post-arrest interrogation of the deputy, a MCB detective told the deputy, "this is a criminal matter, it's not [an] administrative matter so I can't order you to speak." The deputy then waived his Miranda rights and admitted that he took home one of the guns turned over for destruction. The department later terminated the deputy's employment. The deputy argued that the department violated the POBR by obtaining statements from him during the criminal investigation without providing him with various POBR rights. The California Court of Appeal upheld the termination decision, finding that the POBR provisions do not apply to officers that are subjected to criminal investigations conducted by their employers.

However, another court has held that an outside agency must afford officers the rights proscribed in section 3303 if its criminal investigation is one which is "inextricably intertwined" with the employer's administrative investigation. In *California Correctional Peace Officer's Assoc. v. State of California*, the Department of Justice (DOJ) began a criminal investigation regarding claims of abuse of inmates by correctional officers at Corcoran State Prison. The correctional officers were interviewed by DOJ investigators and were not afforded the rights provided by the POBR. The California Department of Corrections (CDC) argued that since it was the DOJ conducting the investigation and not CDC staff, the provisions of the POBR did not apply. This argument was based on the fact that Section 3303 provides that the POBR applies "[w]hen any public safety officer is under investigation and subjected to interrogation by his or her commanding officer, or any other member of the employing public safety department, that could lead to punitive action…" In finding that the POBR did apply to the investigation by the DOJ, the Court stated that "…the DOJ's involvement does not serve to immunize the CDC from the provisions of section 3303. The CDC and DOJ must be considered to have been acting together in this investigation. The CDC did not merely order the correctional officers to cooperate with the DOJ investigation, but delivered interviewees to DOJ investigators, and threatened them with arrest and/or discipline if they asserted their rights during interrogation by DOJ agents." The Court then went on to hold that in order for the criminal investigation exemption to apply, a criminal investigation must be one "conducted primarily by [an] outside agenc[y] without significant active involvement or assistance by the employer."[5]

## 4. THE SUBJECT OFFICER'S STATUS WHILE UNDER INVESTIGATION

An involved officer may be assigned to administrative leave with pay pending the outcome of the investigation or a possible fitness for duty examination. The POBR only prohibits an agency from loaning or temporarily reassigning a police officer to a location or duty assignment if a police officer in the department would not normally be sent to that location or would not normally be given that duty assignment under similar circumstances.[6]

Leave is typically with pay. Most city police officers have constitutionally protected property interests in their positions and are entitled to both pre-removal and post-removal due process. Some agencies have rules that permit employees who face criminal charges to be placed on unpaid status pending the outcome of a criminal case. In rare circumstances, when an employee has been indicted or is otherwise charged by prosecutors with a serious criminal offense, an agency may consider placing the employee on unpaid leave while the investigation is pending.[7] Nevertheless, under Section 3304(b) and constitutional due process principals, an employee who is placed on unpaid status based on pending criminal charges will be entitled to at least a post-deprivation appeal.

In *Assoc. of Los Angeles Deputy Sheriffs v. County of Los Angeles*, four deputy sheriffs charged with felonies were suspended without pay while the charges were pending. The County returned them to paid status after the charges were dropped or they were acquitted. The deputies requested appeal hearings to receive backpay for the time they were suspended. Two of the deputies retired before they received their hearings. Two of the deputies received hearings and the hearing officers recommended that the deputies receive backpay.

The Civil Service Commission upheld the suspensions based on an alleged County policy of upholding suspensions based upon a showing of felony charges only, and not commission of the actual charges. The deputies filed 42 U.S.C .Section 1983 claims against the County, the County Supervisors, the Civil Service Commissioners, and the Sheriff alleging violation of their procedural due process rights. The District Court dismissed the complaint, finding that the deputies could not state a *Monell* claim and that the individual defendants were entitled to qualified immunity.

The Ninth Circuit held that although the Civil Service Commission lacked jurisdiction under the County charter to hear the retired deputies' appeals, the County was still required to provide them with post-suspension hearings. Consequently, the retired deputies stated plausible due process claims. The Court further held that the deputies who received hearings stated plausible due process claims based on their allegation that the County should have proved actual misconduct during their post suspension hearings, and not just that they were charged with felonies. The Court did not decide whether post-suspension hearings based only on the filing of felony charges are unconstitutional, but remanded the case for further factfinding.

## 5. SELECTING AN INVESTIGATOR

In advance of any officer involved shooting, a police department should establish protocols for who will conduct the administrative investigation into the shooting. The protocol should afford

the chief of police discretion to choose an internal or an external investigator depending on the circumstances. In many California counties, a protocol has been established for criminal review of officer involved shootings by the district attorney's investigators. Agencies should be equally prepared for the administrative investigation.

The administrative investigator will be responsible for:

- Conducting the investigation
- Rendering factual findings
- Writing a report

Conducting an investigation is a significant responsibility. If discipline results, an officer may challenge the fairness or accuracy of the investigation, making the investigation itself subject to scrutiny in a hearing or judicial proceeding. If discipline is imposed against an officer, he or she will have access to the records of the investigation. These materials may also be discoverable in any subsequent litigation. It is therefore crucial that the agency choose an appropriate individual who is capable of conducting a prompt, fair, and thorough investigation.
To fulfill his/her responsibility for acting promptly and fairly, the investigator must be provided the necessary resources, training and access to information and potential witnesses.

In general, it is preferable to have the investigation conducted by someone who outranks the subjects and witnesses and who has established credibility within the department. That said, a lower ranking investigator can be vested with authority by a supervisor to require employees who are otherwise above him/her in the chain of command to participate in an administrative interview.

Administrative investigations should always be conducted in a professional and courteous manner. Nevertheless, any proceeding which can result in the imposition of discipline may become adversarial and confrontational. The most effective investigator is not viewed as an advocate for the complainant, the alleged wrongdoer, or the agency. Neutrality and objectivity enhance the credibility of the investigator and the investigation. Investigators who demonstrate impartiality and integrity will be more effective in conducting investigations.

The investigator should also be someone who is patient, thorough, and assertive. Many investigations involve interviewing people who are reluctant to provide information. The investigator must be capable of pursuing lines of questioning with individuals who are reluctant or deceptive during an interview — while remaining unbiased and maintaining a non-accusatory, positive rapport with interviewees.

Perhaps the most important quality of an investigator is impartiality. To conduct a fair investigation and to minimize conflict of interest claims, the investigator must not be biased in any manner toward the people involved in the investigation. Additionally, the investigator must not have any biases toward the nature of the allegations being investigated. If there is any doubt as to the investigator's ability to remain impartial throughout the course of the investigation, another investigator should be assigned.

The investigator must have the ability to compile and analyze the data from the investigation in a concise and organized manner. A well-written report will include credibility assessments and will support conclusions (if allowed to be made) with specific factual evidence. The investigator must understand the difference between making factual findings and inappropriate conclusions of law.

## 6. General Format for Conducting an Administrative Investigation

Each administrative investigation must be conducted according to its own unique facts and circumstances. For example, witness availability may impact the order of witness interviews or the gathering of other evidence. The following approach will generally be used in conducting most administrative investigations.

- Decide whether to prohibit the subject employee and employee[8] witnesses from discussing the shooting with any other employees other than their representatives. Investigations must be processed as confidentially as possible. The subject employee and witnesses may be ordered not to discuss the subject matter of the investigation with anyone other than their legal representatives.[9] Moreover, identities should not be disclosed, except to the extent necessary to continue the investigation. Statements made by witnesses should not be disclosed to other employees, unless it is necessary to elicit specific, relevant, and necessary information from the employee. An employer should be careful to lift the restriction on discussing the investigation when confidentiality is no longer required.
- One appellate court held that an agency's "anti-huddling" policy, which precluded officers from meeting in a group with other officers and a lawyer before the initial interrogation, did not create an unreasonable limit on the right to representation.[10] More recently, the Public Employment Relations Board, which typically does not have jurisdiction over city police officers, has nonetheless instructed that gag orders issued to employees must be justified on a case by case basis for reasons such as the need to protect witnesses, the danger of destruction of evidence, or the risk of fabrication of testimony;
- Interview all witnesses (including individuals who may have seen nothing but who could have seen misconduct had it been occurring); generally, non-suspect employee witnesses will be interviewed first in order to allow a concluding interview with the suspect employee to be the most comprehensive, yet circumstances do exist where the subject employee should be interviewed first in order to obtain unrehearsed answers and testimony that is not tainted by the subject having been advised of the investigation by individuals previously interviewed. Note that under *Santa Ana Police Officers Association v. City of Santa Ana*,[11] discussed more below, conducting more than one interrogation of a subject officer may result in having to disclose investigation records to the subject officer before the officer is interviewed a second or subsequent time;
- Collect physical evidence (videotapes, documents, etc.);

- Audio record all interviews;
- Transcribe witness interviews for department's use in interrogating the subject employee. Note that the interview of a subject employee is commonly referred to as an interrogation, which sounds adversarial, but is consistent with the statutory language in Section 3303;
- Interrogate subject employee;
- Conduct necessary follow-up interviews and investigation;
- Prepare a report which includes synopses, transcripts, evidentiary documents, findings of fact and statement of rules, orders and/or statutes violated.

# 7. INTERROGATION OF THE SUBJECT EMPLOYEE

In almost all instances, an administrative investigation culminates with the interrogation of the public safety employee who is suspected of wrongdoing. Section 3303 establishes the conditions under which such interrogations might occur. Violating these statutes may lead to suppression of valuable evidence in a disciplinary appeal proceeding. Some of the more significant aspects of Section 3303 are discussed below.

## A. WHEN IS CONTACT WITH AN EMPLOYEE CONSIDERED AN "INTERROGATION"?

By its own terms, the rights afforded to public safety employee under Section 3303 only applies when an employee is "under investigation" and subjected to "interrogation." The initial contact with an officer following a shooting may not rise to the level of an interrogation. Asking an officer basic safety questions in the immediate aftermath of a shooting, including about the officer's status, i.e. are they injured; are there any subjects and what is their status; how many shots were fired in what direction, etc., is most likely not going to be considered an interrogation that triggers the officer's rights under the POBR. Section 3303(i) states that the POBR does "not apply to any interrogation of a public safety officer in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer."

What type of contact with an employee is considered an "interrogation" under Section 3303?

The line at which contact with an employee becomes an "interrogation" for which Section 3303 rights attach is often blurry. For example, in *City of Los Angeles v. Superior Court* ("*Labio*"),[12] Officer Labio was on duty during the late evening/early morning hours. While he was on duty, a fatal traffic accident occurred on his beat. Labio did not respond to the call.

After the incident was resolved, Labio's watch commander and another supervisor went into a local donut shop. The owner of the donut shop told the watch commander that he saw a male Filipino officer drive past the fatal accident scene when it first occurred without stopping to render aid. The watch commander went back to the station and checked the deployment log. When he did, he discovered that Labio was the only officer on duty at the time who matched the

donut shop owner's description. The watch commander also discovered that Labio did not have permission to drive a City vehicle on the night in question.

Upon discovering this information, the watch commander called Labio into his office and questioned him about his whereabouts and his use of a City vehicle during his shift. Prior to questioning Labio, the watch commander never advised Labio he was under investigation or that he had rights under the POBR. After his interview with Labio, the watch commander filed a personnel complaint with the department's internal affairs bureau.

Labio was later interviewed by the department's internal affairs investigators. During this interview, the investigator used statements Labio had previously provided to the watch commander in their questioning. Labio's attorney objected to the use of those statements claiming they could not be used because the watch commander never advised Labio of his rights under the POBR. Labio was eventually terminated for failing to stop and render aid, for using a City vehicle without authorization, and for making false and misleading statements to the watch commander. Labio appealed his dismissal, and during the appeal he moved to suppress the statements made to the watch commander on the grounds he was never advised he was under investigation (a violation of Section 3303(c).)

Both the trial court and the Court of Appeal agreed with Labio. The Court of Appeal held that the watch commander's contact was not "routine" questioning within the meaning of Section 3303(i), and it rejected the department's assertion that Section 3303 rights only apply when an officer is interrogated in the internal affairs setting. Instead, the Court held that since the watch commander suspected Labio had engaged in misconduct at the time he interviewed him, Labio was entitled to all the protections afforded to officers during interrogations. Since the watch commander failed to advise Labio that he was suspected of misconduct before he interviewed him, the Court suppressed all of Labio's statements to the watch commander except for purposes of impeachment.

Similarly, in *Paterson v. City of Los Angeles*,[13] a supervisor suspected that an officer was abusing sick leave after the officer called into work sick. The supervisor sent a police sergeant to the officer's house to see if he was home. When the officer was not home, the sergeant called him on his cell phone and tape recorded the conversation. The sergeant asked the officer where he was and the officer said that he was at home sleeping. The sergeant subsequently called her supervisor and said, "Guess what…he's not at home. I have it all on tape." The officer was later charged with making a false and misleading statement to a supervisor. The California Court of Appeal found that the supervisor conducted an investigation as defined by the POBR and the POBR's protections applied.

Contrast *Labio* and *Paterson* with *Steinert v. City of Covina*.[14] In *Steinert*, the Department of Justice ("DOJ") performed a routine audit of the City of Covina's use of the CLETS system. As a result of the audit, the DOJ reported to the City that one of its officers, Steinert, had performed a records search on an individual named Robert Tirado. Officer Steinert designated the Tirado search as "TRNG," signifying it was used for training purposes. Both the DOJ and the City's policies prohibited the use of actual criminal records for training purposes.

A support services manager examined the Department's records the day that Steinert ran the Tirado search, and discovered that Steinert had taken a vandalism report for a citizen (Roff). The vandalism report did not specifically mention Tirado's name, but a link between the location on the report and Tirado's rap sheet indicated there was a possible connection between the victim and Tirado. The support services manager provided the possible link to Steinert's supervisor, Sgt. Curley. Since Steinert had legal justification to run Tirado's name, Sgt. Curley believed Steinert made a simple "user error" when she ran the search, *i.e.*, Sgt. Curley believed Steinert mis-designated the search as a "TRNG" search rather than entering the crime report number associated with the vandalism report.

With this belief in mind, Sgt. Curley called Steinert into his office and counseled/trained her on the proper way to designate a CLETS search. As she was leaving, Sgt. Curley asked Steinert whether she had disclosed any of Tirado's confidential information to the victim (Roff). Steinert replied that she had not.

During a routine audit of crime reports, the victims of crimes were contacted to see whether they were satisfied with the Department's customer service. One of the victims contacted was Roff. During this contact, Roff reported that Steinert had disclosed Tirado's confidential rap sheet to her. When this information came to light, Sgt. Curley initiated an internal affairs investigation for possible dishonesty. Steinert was terminated as a result of the investigation.

Steinert filed a petition for writ petition seeking to exclude statements she made to Sgt. Curley during the CLETS counseling session, *i.e.*, her denial that she disclosed Tirado's rap sheet to Roff. Steinert argued that since she could have been disciplined for the mis-designation of the CLETS search, Sgt. Curley should have afforded her the protections specified in Section 3303, *i.e.*, she should have been advised of the nature of the charges against her, given the right to a representative, etc. The City (and Sgt. Curley) argued that since the intent behind the meeting was solely to counsel and train Steinert on the proper way to designate a CLETS search, rather than to investigate or discipline her, the contact between Sgt. Curley and Steinert was outside the scope of Section 3303. Stated another way, the City argued that the meeting was one which was simply "in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor."

The Court of Appeal agreed with the City. The Court weighed the evidence and found that Sgt. Curley's testimony that he only intended to train and counsel Steinert on the proper way to designate a CLETS search was credible. The Court also found that Sgt. Curley was credible when he denied that he suspected that Steinert had committed misconduct during the counseling meeting. The *Steinert* Court distinguished the *Labio* case on this basis.

The *Labio* and *Steinert* cases demonstrate that the line between an "interrogation" and routine counseling is ambiguous. If a supervisor has a reasonable suspicion that an officer has engaged in misconduct, the supervisor should assure he/she complies with Section 3303 before questioning the employee about his/her suspicions.

## B. PRE-INTERROGATION DISCOVERY RIGHTS

An officer who is the subject of an administrative investigation regarding an OIS may request to be provided with information known to the investigators prior to being interrogated. In some cases, providing the officer with information in advance is in the best interests of the investigation. In other cases, the investigators may determine that providing the officer with information in advance will undermine the investigation. One particularly controversial issue is whether the involved officer should be shown any video recordings of the OIS before being interrogated. Some experts feel strongly that the involved officer should be shown videos in order to refresh the officer's recollection and to give the officer the best opportunity to provide a cogent explanation of what happened. Other experts believe that showing the video to the officer in advance can undermine the officer's credibility and even lead an officer to form beliefs about the facts and circumstances around the OIS that they did not have at the time of the incident. As a matter of law, at least with regard to the initial interrogation of the subject officer, the investigators have discretion whether to provide information in advance.

In 1990, the California Supreme Court held in *Pasadena Police Officers Association v. City of Pasadena*[15] that the POBR does not compel an employing public safety department to provide pre-interrogation discovery rights to a peace officer who is the subject of an internal affairs investigation. If the interview is recorded and the officer is subsequently interrogated as part of the same investigation, however, he/she is entitled to receive a copy of the first recording before the second interrogation.[16]

The Court of Appeal in 2017 expanded the subject's rights to discovery prior to a second or further interrogation in *Santa Ana Police Officers Association v. City of Santa Ana*.[17] This opinion held, for the first time, that the officer's right to receive "the tape" prior to a further investigation includes the right to receive the complaints, the investigator's notes, and the interviews of *other* witnesses. The safest course of action is to provide an officer with the recording of his or her prior interview(s) and as well as complaints and reports prior to conducting a second interrogation. However, if you are concerned that doing so could undermine the effectiveness or integrity of an ongoing investigation, then you may consider:

- Only conduct one interview near the completion of the investigation. The law still does not entitle an officer to discovery prior to his or her first interrogation. If a second or latter interrogation is not conducted, then the *Santa Ana* decision is not implicated.
- Do not transcribe witness interviews or draft any reports until you are certain that there is no need to conduct any further interrogation of the subject employee. That way there are no stenographer notes or reports to have to provide.
- Consider declaring the reports and complaints confidential and do not place them in the officer's personnel file pending completion of the investigation, including any follow-up interrogations. Section 3303(g) provides: "[t]he public safety officer shall be entitled to a transcribed copy of any notes made by a stenographer or to any reports or complaints made by investigators or other persons, except those which are deemed by the investigating agency to be confidential. No notes or reports that are deemed to be confidential may be entered in the officer's personnel file." [Emphasis added.] Note that no case has ever interpreted this

provision in the specific context of an officer's potential right to discovery prior to a second or latter interrogation.

## C. TIMING OF THE INTERROGATION

Section 3303(a) provides that an interrogation must be conducted "at a reasonable hour, preferably at a time when the public safety officer is on duty, or during the normal waking hours for the public safety officer, unless the seriousness of the investigation requires otherwise." Again, there can be differences of opinion regarding the best time to interrogate an involved officer regarding an OIS. Many experts believe that an officer should be afforded time to decompress before being interrogated. Some other experts believe that the sooner the better so that the officer does not forget critical details and is not influenced by outside information that may cloud their recollection.

In 2014, the Court of Appeal in *Quezada v. City of Los Angeles* held that the seriousness of an investigation into the drunken, random firing of firearms by off-duty officers mandated that the Department conduct its investigation at the earliest opportunity while the officers' memories were still the freshest.[18] The incident occurred slightly after 2:00 a.m. and the officers were kept awake until approximately 2:30 p.m. the next day before interrogation. The fact that the officers were awake for many hours before being interrogated was because the incident occurred after the officers had been on duty for many hours and not because of the Department.

Section 3303(d) provides that the interrogating session "shall be for a reasonable period taking into consideration the gravity and complexity of the issues." The Act also require that the subject employee be given the opportunity to attend to his or her own personal physical necessities.[19] In *Quezada*, the Court held that section 3303(d) was not violated where the officers were occasionally denied access to food and water, where the officers did have access to food, water, and restrooms during the process.[20]

If an interrogation continues for an unreasonable amount of time, the subject employee later claims that fatigue caused a variety of responses that he/she now deems are inaccurate. Periodic inquiries into an employer's ability to continue with a lengthy interrogation should be made in order to protect the validity of the record.

## D. THE RIGHT TO REPRESENTATION

### 1. *"Subject" versus "Witness" Employees*

Section 3303(i) states that, "[u]pon filing of a formal written statement of charges, or whenever an interrogation focuses on matters that are likely to result in punitive action against any public safety officer, that officer, at his or her request, shall have the right to be represented by a representative of his or her choice who may be present at all times during the interrogation."

Section 3303(i) also states that, "[t]he representative shall not be a person subject to the same investigation," and "[t]he representative shall not be required to disclose, nor be the subject of

punitive action for refusing to disclose, any information received from the officer under investigation for noncriminal matters."

Under Section 3303, it is clear that an officer who is the subject of an investigation of an OIS has a right to be represented during his or her interrogation. But it is not uncommon for public safety employees who are being treated as investigation *witnesses* to demand a representative during said interview. In many instances, this demand has no legal basis and can be denied. Nevertheless, it should be kept in mind that circumstances do exist where an individual, who is seemingly a witness, can momentarily become a person who may or is likely to be punished. Thus, care should be exercised in determining whether or not to grant to a witness's demand for a representative. We recommend that an agency err on the side of caution in allowing representatives when demanded. But a firm line should be drawn where such demands are nothing more than obstructive tactics and where there is no reasonable claim that the witness may become a disciplinary subject.

### 2. *Who May Serve as the Employee's "Representative?"*

Section 3303(i) states that an officer has the right to a "representative of his or her choice" subject only to the qualification that the chosen representative "shall not be a person subject to the same investigation." This does not mean that an investigator must wait indefinitely or repeatedly postpone an interrogation of a suspect employee when the employee's chosen representative is unavailable. In *Upland Police Officers Assn. v. City of Upland* ("*Kac*"),[21] the Court of Appeal held that, under the POBR, the right to a representative of an officer's choice is limited by a requirement of reasonableness, and it does not require rescheduling of an interrogation or a hearing every time a chosen representative is unavailable. The *Kac* Court held that it was unreasonable for the officer to insist on one attorney from one law firm be his representative when the Department had already continued the interrogation once at this attorney's request, the attorney then called to cancel the continued interrogation at the eleventh hour, and there were other attorneys in the chosen representative's law firm that could have represented the officer.

In 2014, the Court of Appeal followed *Kac* in deciding *Quezada v. City of Los Angeles* ("*Quezada*").[22] In *Quezada*, the police officers to be interrogated had, under the influence of alcohol, randomly fired their firearms. The officers requested to be represented by a particular attorney and that attorney was contacted; however, it was reported at 8:00 a.m. that the attorney would not be available until late that evening. To provide the officers an opportunity to find another attorney, the department waited until approximately 2:30 p.m. before interrogating the officers. The Court held that the deputies were not entitled to wait until the particular attorney was available, and that the seriousness of the circumstances prompting the investigation be conducted at the earliest opportunity. In addition, the officers made little to no effort to obtain alternative counsel.

## E. WHO MAY BE PRESENT DURING THE INTERROGATION ON BEHALF OF THE DEPARTMENT?

Section 3303(b) provides for no more than two interrogators asking questions and provision of notice prior to the interrogation of the rank, name, and command of the officer in charge of the interrogation and identity of all others to be present during the interrogation. The POBR does not clearly delineate whether or not non-peace officers can act as interrogators. Based on our experience, non-sworn personnel, particularly attorneys, do frequently become involved acting as interrogators. In highly sensitive proceedings, such practice may be the most productive manner in which to proceed. At a minimum, legal counsel could be present and provide a sworn interrogator with advice during the proceedings.

## F. WHAT MUST AN EMPLOYEE BE TOLD ABOUT THE NATURE OF THE INVESTIGATION PRIOR TO INTERROGATION?

Section 3303(c) provides that the employing department shall inform the officer under investigation of the nature of the investigation prior to any interrogation. Thus, a department typically should consider informing the officer of the following prior to any interrogation: (1) the dates(s) of action(s) under investigation; (2) a brief description of allegation of misconduct; and (3) statute(s) and/or administrative rules or orders that may have been violated. In the case of an OIS, of course, the nature of the investigation is likely to be clear to everyone involved. But there may still be nuances to the investigation and careful consideration should be given to the description of the nature of the investigation.

In *Hinrichs v. County of Orange*,[23] a deputy claimed that the Department violated her rights under section 3303 because it failed to inform her of the nature of its investigation prior to her initial interrogation. However, the court found that prior to asking any questions, the supervisor informed the deputy that he smelled alcohol on her breath, and only then did he ask if she had been drinking. The prefatory statement and initial question should have adequately put the deputy on notice that she was being investigated for use of alcohol, and the failure to otherwise expressly say so was harmless.

In *Ellins v. City of Sierra Madre*,[24] the California Court of Appeal provided some clarification as to how much prior notice is necessary to satisfy Section 3303(c). The Court rejected the officer's argument that the statute required a minimum of one to five days' advance notice, and held that the notice given must be "with enough time for the officer to meaningfully consult with any representative he elects to have present. The time necessary to do so may depend upon whether the officer has already retained a representative (or instead needs time to secure one) and upon the nature of the allegations; their complexity; and, if they are unrelated, their number." Further, the Court held, "an employing department with reason to believe that providing this information might risk the safety of interested parties or the integrity of evidence in the officer's control may delay the notice until the time scheduled for interrogation as long as it thereafter grants sufficient time for consultation."

In *Ellins*, the City initially gave the employee more general notice of the nature of the investigation – that Ellins was being investigated for an alleged abuse of his peace officer powers – and then on the day of the interrogation, provided a more specific verbal and written

interrogation admonition prior to any questions being asked, and also granted the employee's request for time to confer with his representative. The employee chose not to use all the time the City permitted, but instead refused to submit to the interrogation. The Court found that, under these circumstances, the notice provided was sufficient and the City did not violate the statute.

## G. RECORDING OF INTERROGATION

Section 3303(g) allows for the interrogation to be recorded by one or both parties. We recommend that *every* interrogation, whether of a "subject" or "witness" employee, be tape recorded. Section 3303(g) gives a public safety employee the right of access to the tape if any further proceedings are contemplated or prior to any further interrogation at a subsequent time.

## H. OFFENSIVE LANGUAGE/THREATS

Following an OIS, particularly if the circumstances are attracting public scrutiny, emotions can run high. It can be important to remind supervisors and investigators that Section 3303(e) provides that the public safety employee under interrogation shall not be subjected to offensive language or threatened with punitive action. Likewise, a promise of reward shall not be made as an inducement to answering any question.[25] But the officer can specifically be advised that his/her refusal to respond to questions or submit to the interrogation may result in punitive action up to and including dismissal for insubordination in refusing a direct order to participate in the interrogation.

## I. ADVISEMENT OF CONSTITUTIONAL RIGHTS PRIOR TO INTERROGATION

Section 3303(h) provides that if, prior to or during the interrogation of a peace officer, it is deemed that he or she *may be charged with a criminal offense*, the employee shall be immediately informed of his or her constitutional rights. In *Lybarger v. City of Los Angeles*,[26] a case interpreting the POBR, the California Supreme Court held that this means that the employee should be advised of his or her *Miranda*[27] rights, i.e. the right to remain silent, the right to presence and assistance of counsel, and the admonition that any statements may be used against the employee in a court of law. Of course, many administrative investigations have potential criminal implications, e.g. misuse of the station fuel pump could be petty or grand theft as well as administrative misconduct. Thus, at the outset of an investigation, careful consideration should be paid to whether criminal charges are possible.

In *Spielbauer v. County of Santa Clara*,[28] the California Supreme Court held that a public employer may compel an employee to answer questions in an administrative investigation regarding the employee's job performance without first obtaining a formal grant of immunity from criminal use of the employee's statements, as long as the employer does not force the employee to waive the employee's constitutional protection against criminal use of those statements. Based on this decision, an employer can require a public employee, under threat of discipline, to answer any job related questions as long as the employer does not require the employee to surrender his or her right against the use of any such statements in a subsequent criminal proceeding. While the Court did not specifically hold that a *Lybarger* admonition must

be provided to non-peace officer public employees in that situation, the County of Santa Clara did provide a *Lybarger* admonition to Spielbauer, who was a deputy public defender and not a peace officer. The Court made clear that a public employer may compel answers in an administrative investigation if it first provides a *Lybarger* admonition to a public employee and does not otherwise force the employee to waive his or her constitutional rights.

# 8. TIME LIMITATIONS FOR COMPLETION OF INVESTIGATION AND NOTIFICATION TO PUBLIC SAFETY EMPLOYEE OF PROPOSED DISCIPLINARY ACTION

## A. THE GENERAL RULE: THE POBR HAS A ONE YEAR STATUTE OF LIMITATIONS

Subject to certain exceptions, Section 3304(d) states that no punitive action or denial of promotion on grounds other than merit may be taken for misconduct if the investigation of the allegation of misconduct is not completed within *one year*. Under the POBR, the one-year statute of limitations is triggered by the date "of the public agency's discovery by a person authorized to initiate an investigation of the allegation.…"

A public safety employer must not only complete its investigation within one year of the discovery of possible misconduct, but the employer must serve the employee with notice of its proposed disciplinary action within that one year. A 2009 amendment to the POBR requires that the notice of proposed disciplinary action articulate the proposed discipline, but specifies that the public agency is not required to impose the discipline within that one-year period. Because the POBR statute of limitations is a complete defense to what would otherwise be a legitimate disciplinary action, agencies are advised to serve the subject employee with the notice of proposed disciplinary action, articulating the specific discipline proposed, as soon as reasonably possible.

Under the POBR, the issue of when an agency has "discovered" that an officer has engaged in misconduct has been the subject of litigation. In *Jackson v. City of Los Angeles*,[29] for example, Officer Jackson told his partner, Officer Shaw, that he had a plan to kill several of his colleagues with an assault rifle. Believing Officer Jackson might go through with his plan, Officer Shaw told a supervising sergeant about Jackson's plan on March 25, 1999. Officer Shaw also told a fellow officer about Jackson's plan the next day, and that officer, in turn, notified his supervisor (Sgt. Sciarrillo) on March 26 or 27, 1999.

On April 12, 1999, Sgt. Sciarrillo advised a sergeant in the department's internal affairs group about what he had been told about Jackson's plan. An internal affairs investigation ensued. On March 31, 2000, less than one year after the investigation was initiated, the chief of police issued an administrative complaint against Officer Jackson. After a Board of Rights hearing, the Chief of Police terminated Jackson effective November 14, 2000.

Officer Jackson filed an action under the POBR alleging he could not be terminated because the investigation was not completed within one year of the department's discovery of the plot. The trial court denied Officer Jackson the relief he requested, and he appealed.

The California Court of Appeal reversed and held that Officer Jackson could not be disciplined based on the one year statute of limitations in Section 3304(d). The *Jackson* Court held that the date that Sgt. Sciarrillo was told about the plot, March 26 or 27, 1999, was the date the statute of limitations began to run because Sgt. Sciarrillo was authorized to initiate an investigation under the department's rules. Since the department was five or six days late in issuing the administrative complaint (March 31, 2000), the Court overturned Officer Jackson's termination. This case demonstrates the severe problems the statute of limitations can cause an agency that needs to impose discipline.

Further, the Court of Appeal in *Pedro v. City of Los Angeles*,[30] held that the statute of limitations begins to run upon the discovery of the misconduct, even if the agency does not know the identity of the officer who committed the misconduct. In *Pedro*, a citizen sent a letter to the Chief of Police stating his suspicions that an officer driving an unmarked police car was conducting personal business while on duty on November 9 and 30, 2009. The letter was received on December 3, forwarded for investigation on December 10, and assigned to a lieutenant on December 16, 2009. The officer was charged with misconduct on December 16, 2010. The Court held that ignorance of the identity of the accused officer does not delay commencement of the limitations period, and that the limitations period began to run when a person authorized to initiate an investigation first became aware of an allegation of misconduct.

Further still, the Court of Appeal in *Earl v. State Personnel Board*,[31] held that the employee must be given ***actual***, rather than constructive notice of the discipline within one year of the discovery of the misconduct. The agency sent the officer notice of its intent to discipline, by certified mail, exactly one year after the date of discovery of the misconduct. The notice therefore was not delivered until after one year from the date of discovery. The Court of Appeal held that because the statute is silent as to the manner of service, personal service or an equivalent method imparting actual knowledge is required. The Court did, however, note that this was not a case in which the employee willfully evaded service, leaving open the possibility that the one-year statute may be extended to allow an agency to accomplish service where the employee willfully evades.

## B. THE EXCEPTIONS

Exceptions to the one year statute of limitations include when:

- The act, omission or other allegation of misconduct is also the subject of a criminal investigation or criminal prosecution. In such case, the one year period to complete an administrative investigation does not start running until the criminal investigation or criminal prosecution is completed. So long as this investigation is "pending," it need not be "actual and active."[32] This is true whether the criminal investigation is external or conducted internally by the employing agency.[33]

- The employee agrees to waive the one year statute of limitations *in writing*.[34]
- The administrative investigation is a *multi-jurisdictional investigation* that requires a reasonable extension for coordination of the involved agencies.[35]
- The employee is under investigation is incapacitated or otherwise unavailable.[36]
- The administrative investigation involves a matter in civil litigation where the officer is named as a party defendant.[37] In such case, the one year completion time period shall be tolled while the civil action is pending.
- The administrative investigation involves a matter in criminal litigation where the complainant is a criminal defendant.[38] In such a case, the one year administrative investigation completion time limit will be tolled during the period of that defendant's criminal investigation and prosecution.
- The situation where the administrative investigation involves an allegation of workers' compensation fraud on the part of the officer, whether the investigation is internal or external.[39]
- If the administrative investigation involves multiple employees, and is such that a "reasonable" extension is required.[40] The mere fact that an administrative investigation has focused upon multiple employees, alone, will likely be insufficient to extend the investigation completion deadline. A department seeking the benefit of this exception must also demonstrate that the multi-employee investigation requires a reasonable extension, and a department should prepare this justification in writing before the one year statute of limitations period expires.

Section 3304(g) also states that the one-year time period may be reopened against a public safety employee if significant new evidence has been discovered that is likely to affect the outcome of the investigation *and* either of the following conditions exist:
(1) The evidence could not reasonably have been discovered in the normal course of investigation without resorting to extraordinary measures by the agency; or

(2) The evidence resulted from the public safety employee's predisciplinary response or procedure.[41]

In addition to these statutory exceptions, in the POBR context, the California Court of Appeal has also noted that where an officer was terminated and later reinstated, the POBR statute of limitations did not run while he was not employed as a peace officer. Consequently, for practical purposes, the statute of limitations was tolled while he was not employed as a peace officer.[42]

## 9. OFFICERS' RIGHTS TO INVESTIGATION MATERIALS

Section 3303(g) states, in part, "If a tape recording is made of the interrogation, the public safety [employee] shall have access to the tape if any further proceedings are contemplated or prior to any further interrogation at a subsequent time. The public safety [employee] shall be entitled to a transcribed copy of any notes made by a stenographer or to any reports or complaints made by

investigators or other persons, except those which are deemed by the investigating agency to be confidential. No notes or reports that are deemed to be confidential may be entered in the [employee's] personnel file.…"

Penal Code section 135.5 provides that "Any person who knowingly alters, tampers with, conceals, or destroys relevant evidence in any disciplinary proceeding against a public safety officer, for the purpose of harming that public safety officer, is guilty of a misdemeanor."

As noted above, the California Supreme Court has held that an officer has no right to *pre-interrogation* discovery under the POBR.[43] But, after an investigation has been concluded, Section 3303(g) gives an officer the right to view some of the non-confidential portions of the investigation materials.

In *San Diego Police Officers Association v. City of San Diego*,[44] the department's practice was to provide a subject officer with only the investigators' final written report and a copy of the complaint that initiated the particular investigation, and only at the conclusion of the investigation. The union representing the city's officers filed a petition for writ of mandate asserting that Section 3303(g) required the department, at the conclusion of an internal affairs investigation, to provide not only the final report and complaint, but also the investigators' raw notes and any tape-recorded interviews of witnesses. Both the trial court and the Fourth District Court of Appeal, Division One, agreed with the union's interpretation of Section 3033(g). However, the court did note that an investigator's raw notes may be destroyed.

Three years after *San Diego Police Officers Association* was decided, another Court of Appeal reached a markedly different conclusion. In *Gilbert v. City of Sunnyvale*,[45] an officer who had been terminated filed a petition for writ of mandate alleging his former employer violated Section 3303(g) when it did not provide him with all the documents and videotapes referenced in the investigator's report. Those materials were withheld by the department because they were not relied upon in reaching the decision to terminate and because their release would compromise an on-going criminal investigation being conducted by an outside agency. The Sixth District Court of Appeal expressly disagreed with the *San Diego Police Officers Association* Court and held the other court's expansive interpretation of the phrase "reports or complaints" in Section 3303(g) was not consistent with the Legislative intent of the statute.

Thus, as it now stands, there are conflicting opinions concerning the scope of materials that must be provided to officers under Section 3303(g). Until there is further clarification from the courts, we recommend that agencies follow the more recent *Gilbert* decision (unless a particular agency is within the geographic area covered by the Fourth District Court of Appeal, Division One) and take a limited view of Section 3303(g).

## 10. THE PUBLIC'S RIGHT TO RECORDS OF OIS INVESTIGATIONS

Once confidential, the records of an OIS investigation are now open for public inspection as a result of Senate Bill 1421, which took effect January 1, 2019. The California Public Records Act ("CPRA"), Section 6250 et seq., was enacted in 1968 on the notion that "access to information concerning the conduct of the people's business is a fundamental and necessary right of every

person in this state." (Gov. Code, § 6250.) Generally, under the CPRA all public records are open for inspection and copying, except those categories of records specifically designated as "exempt" from disclosure, such as records of investigations by local public safety agencies. (Gov. Code, §§ 6253, subd. (b), 6254.) Penal Code sections 832.7 and 832.8 make the personnel records of peace officers and/or custodial officers confidential, and also prevent such records from being disclosed in any criminal, civil or administrative proceeding, except through a procedure commonly called a "Pitchess motion," pursuant to Evidence Code sections 1043 and 1046.

Nonetheless, even before recent statutory amendments discussed below, the names of officers involved in a shooting were determined to be subject to public disclosure. *Long Beach Police Officers Ass'n v. City of Long Beach*, concerned a PRA request for the names of the officers involved in a fatal shooting, along with the names of Long Beach police officers involved in other shootings over the preceding five years. The police officers association sought to enjoin the City from complying with the request. In support of its position, the association expressed safety concerns about releasing the names of the shooting officers, referring to an incident in which an anonymous blog post contained a threat to a shooting officer's family and to another incident in which an officer involved in a shooting was reassigned to another area following death threats. The City, aligning itself with the association, asserted that its policy was not to release the names of officers involved in an officer-involved shooting because those officers become the subject of an administrative and/or criminal investigation, and the investigation materials become part of the officers' personnel records. The City asserted that upon completion of the investigation process, the officers names were kept confidential unless a motion was filed pursuant to *Pitchess*, or they were sought through discovery in a civil or criminal case.

The trial court denied the request for an injunction because the officers' names were not subject to any PRA exemption and consequently had to be disclosed. The California Court of Appeal affirmed.

The California Supreme Court affirmed the judgment of the Court of Appeal, upholding the trial court's denial of the Union's requested injunctive relief.[46] The Supreme Court declined to read Penal Code section 832.8 broadly and determined that, in general, only records generated in connection with officer appraisal or discipline are protected by Section 832.8, not records that could possibly be considered for officer appraisal or discipline. The Supreme Court held that, although the Penal Code makes complaints or investigations of complaints confidential, the newspaper's request here was not for complaints against officers. As to the privacy arguments, the Supreme Court determined that the public interest in peace officer conduct is significant and, in the circumstances presented in this case, outweighs an officer's privacy interest in maintaining the confidentiality of his or her name. To prevent disclosure in a case such as this one, there would need to be evidence that disclosing a particular officer's identity would jeopardize that officer's safety or efficacy.

The Supreme Court's opinion specifically noted that a public safety department may still prevent disclosure of the names of officers involved in shootings if they make a particularized evidentiary showing that disclosing a particular officer's name would compromise that officer's safety or the safety of the officer's family. Generalized assertions regarding the risks officers face following a shooting are insufficient.

On September 30, 2018, former-Governor Edmund G. Brown, Jr. signed Senate Bill 1421 and Assembly Bill 748, which dramatically increase the public's access to certain peace officer personnel records relating to police misconduct and serious uses of force, in response to CPRA requests.

Effective January 1, SB 1421 amended Penal Code Section 832.7 to generally require disclosure of records and information relating to the following types of incidents in response to a request under the CPRA:

(1) Records relating to the report, investigation, or findings of an incident involving the discharge of a firearm at a person by a peace officer or custodial officer.
(2) Records relating to the report, investigation or findings of an incident in which the use of force by a peace officer or custodial officer against a person results in death or great bodily injury.
(3) Records relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that a peace officer or custodial officer engaged in a statutorily defined sexual assault involving a member of the public.
(4) Records relating to an incident in which a sustained finding of dishonesty by a peace officer or custodial officer directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another peace officer or custodial officer.

Effective July 1, 2019, AB 748 similarly requires agencies to produce video and audio recordings of "critical incidents," defined as an incident involving the discharge of a firearm at a person by a peace officer or custodial officer, or an incident in which the use of force by a peace officer or custodial officer against a person resulted in death or great bodily injury, in response to CPRA requests.

The law does not require immediate disclosure and permits records to be withheld for various reasons described with some particularity in the statute. A city attorney should carefully review the timing mechanisms in the statute before authorizing release.

## 11. REMEDIES FOR POBR VIOLATIONS

The Superior Court has initial jurisdiction over alleged POBR claims.[47] A court may order injunctive or other extraordinary relief to remedy the violation and prevent similar future violations.[48] If a court finds that a public safety department has maliciously violated the POBR, the public safety department can be liable for a civil penalty of up to $25,000 for each violation.[49] A public safety department may also be liable for any actual damages a public safety employee has suffered as a result of a POBR violation.

If a court finds that a public safety employee has filed a bad faith or frivolous action or filed a claim for an improper purpose, the court may order sanctions against the employee and/or the employee's attorney. Sanctions may include reasonable expenses including attorney's fees incurred by the public safety department.

[1] Gov. Code, § 3300, *et seq*.; *California Correctional Peace Officers Assn. v. State of California* (2000) 82 Cal.App.4th 294 [98 Cal.Rptr.2d 302].

[2] *California Correctional Peace Officers Assn. v. State of California* (2000) 82 Cal.App.4th 294 [98 Cal.Rptr.2d 302].

[3] Unless other stated, statutory references are to the California Government Code.

[4] *Van Winkle v. County of Ventura* (2007) 158 Cal.App.4th 492 [69 Cal.Rptr.3d 809].

[5] *California Correctional Peace Officers Assn. v. State of California* (2000) 82 Cal.App.4th 294 [98 Cal.Rptr.2d 302].

[6] Gov. Code, § 3303, subd. (j); *Crupi v. City of Los Angeles* (1990) 219 Cal.App.3d 1111 [268 Cal.Rptr. 875], rehg. den. & opn. mod. (May 18, 1990).

[7] See, *Gilbert v. Homar* (1997) 520 U.S. 924 [117 S.Ct. 1807].

[8] *Perez v. Los Angeles Community College District* (2014) PERB Dec. No. 2404.

[9] *Los Angeles Police Protective League v. Gates* (1984) 579 F.Supp. 36.

[10] *Association for Los Angeles Deputy Sheriffs (ALADS) v. County of Los Angeles* (2008) 166 Cal.App.4th 1625, 83 Cal.Rptr.3d 494.

[11] *Santa Ana Police Officers Association v. City of Santa Ana* (2017) 13 Cal.App.5th 317.

[12] *City of Los Angeles v. Superior Court* (1997) 57 Cal.App.4th 1506 [67 Cal.Rptr.2d 775], review den. (Dec. 17, 1997).

[13] *Paterson v. City of Los Angeles* (2009) 174 Cal.App.4th 1393 [95 Cal.Rptr.3d 333].

[14] *Steinert v. City of Covina* (2006) 146 Cal.App.4th 458 [53 Cal.Rptr.3d 1].

[15] *Pasadena Police Officers Assn. v. City of Pasadena* (1990) 51 Cal.3d 564 [273 Cal.Rptr. 584].

[16] Gov. Code, § 3303, subd. (g). (Proposed legislation).

[17] *Santa Ana Police Officers Association v. City of Santa Ana* (2017) 13 Cal.App.5th 317.

[18] *Quezada v. City of Los Angeles* (2014) 222 Cal. App. 4th 993 [166 Cal. Rptr. 3d 479].

[19] Gov. Code, §§ 3303, subd. (d).

[20] *Quezada v. City of Los Angeles* (2014) 222 Cal. App. 4th 993 [166 Cal. Rptr. 3d 479].

[21] *Upland Police Officers Assn. v. City of Upland* (2003) 111 Cal.App.4th 1294 [4 Cal.Rptr.3d 629], review den. (Dec. 17, 2003).

[22] *Quezada v. City of Los Angeles* (2014) 222 Cal. App. 4th 993 [166 Cal. Rptr. 3d 479].

[23] *Hinrichs v. County of Orange* (2004) 125 Cal.App.4th 921 [23 Cal.Rptr.3d 186].

[24] Case No. B261968 (CITATION UNAVAILABLE).

[25] Gov. Code, §§ 3303, subd. (e).

[26] *Lybarger v. City of Los Angeles* (1985) 40 Cal.3d 822, 829 [221 Cal.Rptr. 529, 332].

[27] *Miranda v. Arizona* (1966) 384 U.S. 436 [86 S.Ct. 1602], superseded by statute, called into doubt.

[28] *Spielbauer v. County of Santa Clara* (2009) 45 Cal.4th 704 [88 Cal.Rptr.3d 590], cert. den. (2009) 557 U.S. 921 [129 S.Ct. 2841].

[29] *Jackson v. City of Los Angeles* (2003) 111 Cal.App.4th 899 [4 Cal.Rptr.3d 325], review den. (Nov. 25, 2003).

[30] *Pedro v. City of Los Angeles* (2014) 229 Cal.App.4th 87 [176 Cal.Rptr.3d 777].

[31] *Earl v. State Personnel Board*.

[32] Gov. Code, §§ 3304, subd. (d)(1); *Richardson v. City and County of San Francisco* (2013) 214 Cal.App.4th 671 [154 Cal.Rptr.3d 145].

[33] *Dep't of Corrections and Rehab. v. State Personnel Bd.* (Iqbal) (2016) 247 Cal.App.4th 700 [202 Cal.Rptr.3d 732].

[34] Gov. Code, §§ 3304, subd. (d)(2).

[35] Gov. Code, §§ 3304, subd. (d)(3).

[36] Gov. Code, §§ 3304, subd. (d)(5).

[37] Gov. Code, §§ 3304, subd. (d)(6).

[38] Gov. Code, §§ 3304, subd. (d)(7).

[39] Gov. Code, §§ 3304, subd. (d)(8); *California Dept. of Corrections and Rehabilitation v. State Personnel Board* (2013) 215 Cal.App.4th 1101 [155 Cal.Rptr.3d 838].

[40] Gov. Code, § 3304, subd. (d)(4).

[41] Gov. Code, §§ 3303, subd. (g).

[42] *Melkonians v. Los Angeles County Civil Service Com'n* (2009) 174 Cal.App.4th 1159 [95 Cal.Rptr.3d 415], review den. (Aug. 26, 2009).

[43] *Pasadena Police Officers Assn. v. City of Pasadena* (1990) 51 Cal.3d 564 [273 Cal.Rptr. 584].

[44] *San Diego Police Officers Assn. v. City of San Diego* (2002) 98 Cal.App.4th 779 [120 Cal.Rptr.2d 609], review den. (Sept. 25, 2002).

[45] *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264 [31 Cal.Rptr.3d 297].

[46] *Long Beach Police Officers Assn. v. City of Long Beach* (2014) 59 Cal. 4th 59.

[47] Gov. Code, §§ 3309.5, subd. (b).

[48] Gov. Code, §§ 3309.5, subd. (c)(1).

[49] Gov. Code, §§ 3309.5, subd. (d).