



148.6 PC Lawsuit

The Penal Code section 148.6 says this: “(a)(1) Every person who files any allegation of misconduct against any peace officer ... knowing the allegation to be false, is guilty of a misdemeanor. (2) A law enforcement agency accepting an allegation of misconduct against a peace officer shall require the complainant to read and sign the following advisory, all in boldface type: **YOU HAVE THE RIGHT TO MAKE A COMPLAINT AGAINST A POLICE OFFICER FOR ANY IMPROPER POLICE CONDUCT. CALIFORNIA LAW REQUIRES THIS AGENCY TO HAVE A PROCEDURE TO INVESTIGATE CIVILIANS’ COMPLAINTS. YOU HAVE A RIGHT TO A WRITTEN DESCRIPTION OF THIS PROCEDURE. THIS AGENCY MAY FIND AFTER INVESTIGATION THAT THERE IS NOT ENOUGH EVIDENCE TO WARRANT ACTION ON YOUR COMPLAINT; EVEN IF THAT IS THE CASE, YOU HAVE THE RIGHT TO MAKE THE COMPLAINT AND HAVE IT INVESTIGATED IF YOU BELIEVE AN OFFICER BEHAVED IMPROPERLY. CIVILIAN COMPLAINTS AND ANY REPORTS OR FINDINGS RELATING TO COMPLAINTS MUST BE RETAINED BY THIS AGENCY FOR AT LEAST FIVE YEARS. IT IS AGAINST THE LAW TO MAKE A COMPLAINT THAT YOU KNOW TO BE FALSE. IF YOU MAKE A COMPLAINT AGAINST AN OFFICER KNOWING THAT IT IS FALSE, YOU CAN BE PROSECUTED ON A MISDEMEANOR CHARGE.** I have read and understood the above statement. Complainant. (3) The advisory shall be available in multiple languages.” (emphasis added)

Department policy is to ignore the “shall” in this plainly stated law. At one time, the warning was attached to personnel complaints, but no more. The League will continue to meet with the Department, the Police Commission and the City Attorney in order to try to resolve this issue.

It is the League’s position that this warning will reduce the number of false personnel complaints, and besides, our members are law enforcement officers who should be following the law. (Duh!)

How did we come to this state? It can be blamed on the consent decree in 2001. Under the decree, LAPD was forbidden to require a citizen to sign any form that limited his or her ability to make a complaint. The consent decree, however, was dismissed in 2013. The Department did not resume following the law under 148.6 PC.

A further cause of legal confusion arose by the potential clash of rulings between the California Supreme Court and the 9th Circuit Court of Appeals in regard to 148.6 PC. In 2002, the California Supreme Court ruled in *People v. Stanistreet* that 148.6 PC was constitutional on its face because it proscribes only constitutionally unprotected speech involving false statement of fact and does not otherwise constitute unconstitutional content discrimination. Translated into simpler language, there is no First Amendment right to lie. However, in 2005, the U.S. Court of Appeals for the 9th Circuit (the most overruled court in the nation), ruled that 148.6 PC was unconstitutional in *Chaker v. Crogan* because it impermissibly discriminates on the basis of viewpoint in violation of the First Amendment.

The federal appellate court can only persuade the California Supreme Court; it takes the U.S. Supreme Court to overrule the California Supreme Court, and the U.S. Supreme Court did not accept the *Chaker* case for review. Therefore, 148.6 PC is good law and should be followed in California. The League's lawsuit, if successful, will force the Department to follow the law.

The League is not an adjudicator

The League membership includes all ranks between police officer and lieutenant. That sometimes causes problems when police officers come to the League complaining of management treating them unfairly. The problem is that although captains and above are not League members, their policies and actions are carried forward and enforced by lieutenants and sergeants. That puts the League in a peculiar position when a League member who is lieutenant or sergeant observes a League Director or League attorney sitting across the table from them defending a police officer whom the lieutenant or sergeant is engaged in enforcing Department orders. The lieutenant or sergeant perceives that their own organization is alienating them.

This is not a problem in places like New York, where police officers, sergeants, lieutenants and detectives all belong to their own unions. They have the number of officers where they can do that and still be a bargaining force. We do not.

The City and command staff would probably love to see us break into three different unions, one for officers, one for sergeants and one for lieutenants. Divide and conquer would be the order of the day.

That is why I point out that the League is not an adjudicator. We are guardians of the process. When an officer comes to the League about perceived abuses, we attempt to address the problem in terms of making sure that the process is followed. The process will eventually end in an adjudication. Maybe from an arbitrator, maybe from a Board of Rights, maybe by settlement.

The solution is that the League needs to protect all its members' rights, whether it be by enforcing the MOU, the law or Department rules. It is not unusual for us to appoint attorneys to officers on both sides of the argument—different attorneys, of course, each charged with protecting the rights of their respective member. There are also nine Directors. As a member, you are entitled to League representation, whether it be by an appointed attorney or another League Director. Do not feel alienated if you see a League Director or League attorney on the other side

of the table from you. If you feel that your rights are being violated, bring it to the League's attention. We are big enough to provide you with representation as well. We are not big enough to let this issue divide us to all our detriment.

As always, please feel free to contact me at CraigLally@lappl.org, or call me at (213) 251-4554.