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TRAINING BULLETIN



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RSA LDT MEMBER REINSTATED WITH BACK PAY—HEARING OFFICER AND COURTS ALL AGREE REPORT WAS NOT “DISHONEST”

By: Robert Rabe, Esq.

After a long and hard fought process, Deputy Probation Correctional Officer II Jason Rawlings (Rawlings), finally has confirmation from the Court of Appeal that he was not dishonest in a report prepared after he witnessed a use of force by another officer. The nightmare for Rawlings began when, on November 21, 2009, he wrote a report the Probation Department (Department) claimed was "dishonest" because he used the words "escort" and "counsel" and not the word "push" to describe what he had seen.

On November 21, 2009, Rawlings was on duty in the Juvenile Hall. Rawlings was also working with other PCOs. In the course of the evening one PCO became involved in an altercation with a ward in the facility named Alberto S. This altercation was recorded by video cameras. Prior to this altercation, the PCO had ordered Alberto S. to go to his room. The two of them proceeded down the hall to his room. In the course of going down the hall the

PCO pushed Alberto S. several times. At the end of the hall the altercation escalated. This escalation was not an exchange of blows so much as it was an exchange of attempts to grab each other's arms and hands. All of this was captured by the video cameras. At the end of the hall, the PCO and Alberto S. disappear from the view of the video camera.

The hearing officer who presided over the administrative hearing in this matter made findings about what could be seen on the video recordings. "The video recording is very blurry. The video of the hall is very clear, but because [Rawlings] was standing far from the camera it is also difficult foremost of the hall video to identify [Rawlings]. Neither video ... confirms what [Rawlings] saw or did not see occurring in the hall."

The term 'dishonesty' has been defined in disciplinary proceedings as follows: 'Dishonesty' necessarily includes

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the element of bad faith. As defined in the dictionaries and in judicial decisions, it means fraud, deception, betrayal, faithlessness. ‘Dishonesty’ denotes an absence of integrity; a disposition to cheat, deceive, or defraud; deceive and betray. The hearing officer understood the law and properly applied it. He stated in his opinion, "There is no direct evidence of an intent to deceive; this intent must be inferred from the facts. There is no evidence of a conspiracy, there is no evidence that the [Rawlings] changed the report at the behest of anyone else; there is no confession of intent; there is no history of this kind of misrepresentation or of any other dishonesty for that matter." The hearing officer also stated, "What [Rawlings] did not do was use the word ‘push’ in his report. I cannot bring myself to infer intent to deceive from [his] failure to use the word ‘push’.... the burden is on the Department to prove the mental element and the mere failure to use the term push is not enough to convince me."

The hearing officer did not find Rawlings was dishonest, but did find he had been careless and negligent in his report writing. The Court of Appeal agreed with the hearing officer that the evidence did not support a finding Rawlings had been "dishonest" when he wrote the report. The Court of Appeal decision affirmed the decision of the Superior Court, which denied the writ filed by the Department challenging the hearing officer's decision to reinstate Rawlings.

Deputy Probation Correctional Officer II Jason Rawlings should soon be reinstated to a position in the classification held immediately prior to his discharge. He has already received back pay and fringe benefits from April 16, 2012, to the date of his reinstatement. This is an example of how a Department can waste funds trying to terminate an officer, instead of using those funds to pay him and others to perform their duties.

The administrative hearing in this case was handled by Michael Williamson of this firm. The writ proceeding and the briefs filed in the Court of Appeal were handled and prepared by Robert Rabe of this firm.

Stay Safe!

Robert Rabe is an associate attorney in the firm. He has been a member of the California bar for almost 40 years, specializing in criminal law, appellate practice and police administrative matters.