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# LEGAL DEFENSE TRUST TRAINING BULLETIN

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## COURT OF APPEAL RULES POBRA RIGHTS DO NOT APPLY AFTER TERMINATION

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Barber, a parole agent for the California Department of Corrections and Rehabilitation (CDCR), was terminated on April 10, 2009, and filed an appeal with the State Personnel Board (SPB). In June 2009, Barber discovered that the Attorney General's Office had filed a *Pitchess* motion for production of Barber's personnel records in a separate civil case. Barber requested, and was provided, independent counsel to represent him for that motion. The *Pitchess* motion was granted, and Barber's records from 1999 to 2004 were produced by CDCR. In October 2009, Barber sent CDCR a letter requesting copies of his personnel record from 2005 to 2009, with specific reference to certain internal investigations. CDCR advised Barber that his request was denied.

In November 2009, Barber filed an action in Superior Court, arguing he was entitled

to the requested records under "POBRA", specifically *Government Code* § 3306.5, and under the Memorandum of Understanding ("MOU") between the State of California and the California Correctional Peace Officers Association ("CCPOA"). In addition to arguing that he needed to gather information in connection with his termination, and that he was entitled to receive all documents relied on by CDCR in issuing the notice of adverse action, Barber also argued that CDCR had committed fraud and a *Skelly* violation by withholding certain personnel records that should have been produced in connection with previous disciplinary actions in 2004.

*The trial court ruled in favor of CDCR, concluding that Barber was not entitled to POBRA rights or protections after his employment was terminated. The Court of Appeal affirmed the ruling.*

*Government Code* § 3306.5 states in part: “(a) Every employer shall ... **permit that officer to inspect personnel files that are used or have been used to determine that officer’s qualifications for employment, promotion, additional compensation, or termination or other disciplinary action.**” (Emphasis added).

The Court of Appeal rejected all cases cited by Barber and CDCR, on the basis that none of the cases addressed the question whether a terminated peace officer has the right under § 3306.5 to inspect his personnel files. Ultimately, however, the Court agreed with CDCR that Barber was no longer entitled to review his personnel records because he was no longer an officer.

The Court based its decision on the language of § 3306.5 itself, within the context of POBRA as a whole, the purpose of which is to maintain “*stable employer-employee relations* between public safety employees and their employers” (§ 3301 (emphasis added)). The Court observed that *the language in § 3306.5 refers to “employer,” not “former employer,” and to “officer,” not “former officer.”*

The Court also looked at the purpose of 3306.5: “[T]he general purpose [of § 3305, § 3306, and § 3306.5] is to facilitate the officer’s ability to respond to adverse comments potentially affecting the

officer’s employment status.” *McMahon v. City of Los Angeles* (2009) 172 Cal. App. 4<sup>th</sup> 1324, 1332.

Based on this, the Court ruled that § 3306.5 only gives an officer the right to review his or her personnel records up to the effective date of his or her termination, because POBRA only applies while there is an employer-employee relationship; after an officer has been terminated, his or her rights under POBRA no longer apply.

Stay Safe!  
Melanie Smith

*Melanie C. Smith* is an associate with the firm and is a graduate of Loyola Law School, Los Angeles.