



# LEGAL DEFENSE TRUST TRAINING BULLETIN

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## ARE POLICE LAWSUITS FOR FALSE COMPLAINTS A GOOD IDEA IN 2005?

*Continued Judicial Development Of The S.L.A.P.P. Statute In California  
May Suggest Not.*

*Civil Code* §47.5, which gives peace officers a private right of action for malicious false complaints, has so far survived a spate of constitutional challenges, making it possible for peace officers to sue for damages, those who make false personnel complaints against them. Assuming that an officer's agency has determined by investigation that a personnel complaint lodged against the officer is unfounded and vexatious (brought by a complainant who had no good faith belief in the merits of the complaint, but only intended to injure the officer in his employment), does the officer *qualify* as plaintiff under §47.5, entitled to sue the complainant for damages? Yes. But is it a good idea to do so? Maybe not. Here is why.

### *The Civil Code §47.5 Exception To The Absolute Immunity For Complaints Which Trigger Official Proceedings.*

Generally, there is an immunity for persons who cause or initiate "official proceedings" under *Civil Code* §47. A police "citizen's complaint" is among many types of complaints about governmental misconduct that are

protected by the immunity from civil liability under §47. But years ago, the Legislature carved out an exception (*Civil Code* §47.5) for a class of public officials (police officers) who are permitted to sue complainants who acted in bad faith by bringing a false complaint against an officer, to injure his employment relations and professional standing.<sup>1</sup>

This section came under withering attack by First Amendment-minded lawyers who argued that the threat of a police lawsuit for defamation under §47.5 would "chill" the rights of persons to complain about official misconduct, out of fear of being sued by an

<sup>1</sup> *Civil Code* §47.5 states: "Notwithstanding Section 47, a peace officer may bring an action for defamation against an individual who has filed a complaint with that officer's employing agency alleging misconduct, criminal conduct, or incompetence, if that complaint is false, the complaint was made with knowledge that it was false and that it was made with spite, hatred, or ill will. Knowledge that the complaint was false may be proved by a showing that the complainant had no reasonable grounds to believe the statement was true and that the complainant exhibited a reckless disregard for ascertaining the truth."

officer, backed up by the agency determination that the complaint is "unfounded", "frivolous", and in "bad faith". Presently, California courts have upheld §47.5 as constitutional. So, an aggrieved officer is permitted by law to sue a complainant according to the requirements of §47.5.

But is it tactically or strategically a good idea? Maybe not. The reason is found in California's S.L.A.P.P. statute. The S.L.A.P.P. statute's name stands for "Strategic Lawsuits Against Public Participation" (hereafter "SLAPP"), or anti-SLAPP legislation. It is found at *Code of Civil Procedure* §425.16. It permits a defendant to present a special motion to strike a complaint that is argued to be a strategic lawsuit designed to chill the citizen's right to complain about official misconduct. The motion is ripe as soon as the underlying complaint is filed, and calls for a judge to determine whether the complaint has clear merit, or whether it is rather, a "SLAPP suit". To decide this, the judge will determine whether the complaint and evidence available to the plaintiff properly submitted to the court in response to the motion, demonstrates that the plaintiff (officer) "is likely to prevail on the merits".

Remember that the heartland of the SLAPP motion is targeted on a lawsuit which attacks a defendant who has made any "written or oral statement before a government entity," or where made "in connection with an issue under consideration of a government entity", or where made "in a public forum in connection with an issue of public interest". A "citizen's complaint" is clearly within the protection of the anti-SLAPP statute.

Okay, so if our officer-plaintiff's complaint is against a person who has made a false complaint against him or her, and if the defendant-complainant files a SLAPP motion, and further if the judge grants the motion and strikes the complaint, so what? *At least we tried, right?*

If this were the end of the matter, we might agree that officers victimized by false complaints should not be intimidated out of suing because of the SLAPP motion potential. But, read on.

#### *The Consequences For The Plaintiff Who Loses A SLAPP Motion*

The Court of Appeal in *Liu v. Moore*, 69 Cal.App.4th 745 (1999) intimidated that the *purpose* of the anti-SLAPP legislation is to *punish* plaintiffs who bring lawsuits within the heartland of the statute. Sounds like an argument for punitive damages, doesn't it? But damages aren't awarded to victorious defendants in SLAPP motions. Instead, the "punishment" is that the plaintiff (officer) will be ordered to pay the defendant's attorneys fees and costs. There are many cases where the amounts awarded range from \$20,000 to \$35,000.00.

Recent judicial developments in SLAPP law and motion have established in addition: (1) Once the complaint is filed and served, a defendant cannot avoid a SLAPP motion by dismissing the complaint -- *regardless* whether the dismissal occurs after or *even before* the SLAPP motion is filed. Hence, even though the case is "over", by dismissal of the action, the court will decide the motion anyway; (2) Awards of attorneys fees and costs to victorious defendants in SLAPP motions are

*mandatory*; and (3) because the effect of the motion is to "freeze the complaint in time", plaintiffs cannot avoid the problem by amending the complaint, once a SLAPP motion is filed. **In short, the appellate courts so far have refused to permit a plaintiff to dodge or avoid a SLAPP motion by any means. If one is filed against you (as the plaintiff), your *only* hope of avoiding paying the defendant's attorney fees and costs is to defeat the motion, by demonstrating that your complaint (action) is likely to prevail on the merits.** This means that your counsel should not file such a complaint unless and until you have marshaled persuasive and admissible evidence to meet this standard. In other words, in a *Civil Code* §47.5 case (false complaint), get ready to meet the inevitable motion *before* you file your complaint, without the aid of discovery (which can't be done before the SLAPP motion is decided). This can be problematic, because you are basically limited to investigation and information-gathering.

### *Conclusion*

The advent of the SLAPP motion has changed the legal landscape for plaintiff-officers' suits against those who have defamed them by malicious and vexatious false complaints. *Civil Code* §47.5 lawsuits are (so far) constitutional in California, but still subject to the threat and risk of the SLAPP motion. While clearly meritorious cases should be pursued against those who file frivolous, bad faith, and false personnel complaints, officers and their counsel are well-advised to recognize the risks posed by SLAPP law, and be prepared to meet the motion *before* it is presented.

STAY SAFE!

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### Editor's Note:

Michael P. Stone is a police defense attorney who has represented federal, state and local law enforcement officers and agencies for 25 years. He teaches police discipline and civil rights for many California agencies. He is currently General Counsel for the Riverside Sheriffs' Association, Legal Defense Trust, the Los Angeles Police Command Officers Association (Deputy Chiefs, Commanders and Captains), and other Southern California Associations. He is a Panel Attorney for RSA, PORAC-LDF and the Fraternal Order of Police. He has successfully tried to jury verdict a number of cases for officer-plaintiffs against "citizen-complainants", criminal defense attorneys and civil rights lawyers, such as against Milton Grimes (Rodney King's lawyer) for Grimes' press conference statements that Officer David Love, the only black officer present on-scene during the 1991 arrest of King, is a "perjurer" and the "LAPD's House Negro", because Love denied that King was called racially offensive names by any of the officers. Stone successfully defended Officer Love's compensatory and punitive damages jury verdict in the Court of Appeal. He has special expertise in officers' *Civil Code* §47.5 lawsuits and in SLAPP motions.

