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# LEGAL DEFENSE TRUST TRAINING BULLETIN

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Vol. II, Issue No. 8

JANUARY 200

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## “FEDERAL COURT RULES COPS’ RIGHT TO SUE UNCONSTITUTIONAL”

Ever been victimized by a citizen’s false complaint? If you have, or if someday you might be, this one will interest you. It asks the question, should cops be able to sue people who make false complaints against them for defamation and related wrongs? All of you would probably say, yes. The ACLU says no, and just got a federal judge in Santa Ana to agree--the law permitting these police suits is, according to the ruling, unconstitutional.

To understand how we got here, we need to look for a moment, where we’ve been. Back in the 80’s, a state appellate court held that citizen complaints, even false ones, were immunized by *California Civil Code §47*, which among other things, protects persons who make statements in official proceedings from liability for defamation. Because citizen complaints are an integral process of a kind of official proceeding--most often the beginning of it--public policy requires that these “statements” be immunized from suits by those harmed, rightly or wrongly, by the statements.

In response to the outcry from police groups and their supporters, the legislature passed *Civil Code §47.5*, an exception to the §47 immunity, for an exceptionally vulnerable class of public employees: law enforcement.

*Civil Code §47.5* carves out a statutory right for peace officers to sue persons who make false complaints about them. The burden of proof is made high, by the statute’s requirements that the plaintiff-officer prove that the defendant knew or reasonably should have known the accusation was false, and that the defendant was motivated by spite, hatred, or ill-will. Even if the officer

could meet that burden, the cases were tough, because usually real damages were difficult to prove. Most times, the officer didn’t lose work time, and had no medical expenses or treatment. While over the years we had some dramatic results, collecting a judgment in such a case was also problematic. Truth be told, most of the “slam-dunk” liability cases were nevertheless, economically unsound to pursue. Well, we could always “threaten” to bring suit.

Recently, a Los Angeles area officer threatened to bring a §47.5 suit against a person if he did not withdraw his “false complaint”. It was just what the ACLU was waiting for. The civil rights bar has been a long and steady foe of these suits, because, these lawyers say, the threat of a defamation suit impermissibly “chills” the right of citizens to complain against police misconduct--and that, they say, is unconstitutional and violative of the First Amendment. So, the ACLU sponsored the suit, the “citizen” sued the cop, in federal court, under civil rights laws (*42 USC §1983*) and won. The judge found that §47.5 violates the First Amendment because it singles out *one type* of citizen complaint about public employee or official misconduct (police) for prosecution, when all other forms of official misconduct complaints are immunized by §47. The worst part is, the “citizen” is the prevailing party in this civil rights suit, and so is entitled to recover his costs and attorney’s fees from the officer who lost.

Now, a couple of points, this federal decision is not necessarily binding on a state court enforcing state law, but you can imagine the “chilling effect” it has on §47.5 suits wherever they are brought. State judges

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would certainly take note of the ruling. And, both would-be §47.5 plaintiff-officers and their counsel would be well-advised to proceed cautiously in the face of this holding, which we expect Judge Taylor to publish in the official reports.

This ruling will be appealed, so Judge Taylor's opinion of §47.5 isn't the last word we'll hear on the subject. We will keep you advised of developments. Perhaps the statute will need to be re-written to cure the problem, but that will be after a lot of study of the final outcome.

If there are any questions or comments raised by this article, feel free to give us a call at the Riverside Sheriff's Association, Legal Defense Trust (909) 653-5152 or at our Pasadena office at (626) 683-5600.

Stay safe!

-Michael P. Stone

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