

The Truth About a Sad Chapter in the Disciplinary Process

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In the August 2006 edition of the Dispatcher, ALADS Counsel Richard Shinee writes about a disciplinary proceeding in which a deputy fired by LASD was reinstated. The hearing, which occurred almost four years ago, evolved into a legal dispute between the parties regarding my status as a potential witness in the proceedings and the hearing officer's decision to then exclude me from the hearings. In the article, Mr. Shinee lambasts both Counsel for LASD and me for our actions in this matter. Unfortunately, Mr. Shinee's account of this almost four year old episode neglects important facts, distorts others, and misses the point about the eventual outcome of this case.

Tellingly, Mr. Shinee slips past the underlying misconduct case against the deputy as "not important". The fact is that the allegations against the deputy – which were never addressed by the Civil Service Commission because of the procedural dispute – were very serious. The Department had moved to fire the deputy based on the results of the investigation in which the Department had found that the deputy had stopped a Chilean doctor who was driving a motorcycle on the sidewalk, and then had "convinced" the doctor to "sell" the motorcycle to the deputy for \$300, even though the doctor had purchased the motorcycle the day before for \$1500. The deputy then, while on duty, placed the motorcycle in the trunk of his radio car and drove to his girlfriend's house where he dropped off the motorcycle. While still on duty, the deputy then drove to the dealership where the motorcycle had been purchased by the doctor and registered the motorcycle under his name. The \$300 the deputy agreed to "pay" to the doctor was never, in fact, given to him. As a result of this incident, the deputy was charged with a violation of the "bribes, rewards, loans, gifts and favors" policy, making false statements during an internal affairs investigation, conducting personal business while on duty, and making false statements on the DMV registration form and the Department found that the actions justified terminating the deputy.

Mr. Shinee correctly notes that I attended the first day of the hearing as an observer. However, Mr. Shinee's claim that I was "instrumental" in overseeing either the investigation or the disciplinary decision in this case is inaccurate. It was another attorney in my Office who performed OIR's investigatory review and disciplinary recommendation function in this case – a fact that was made abundantly clear at the hearing. This is more than just semantics. Instead, it goes to the legitimacy of the ALADS attorney's actions of that morning: hastily scribbling a subpoena after seeing me in the hearing room in order to "claim" me as a "witness" who would then be barred from observing. At no time in the weeks prior to the convening of the hearing, did the ALADS attorney communicate her intent to call me as a witness, and in fact I had nothing to add as a witness to the case. It is apparent from this that had I not been in attendance at the hearing, I would not have been subpoenaed. This is buttressed by the fact that in other cases, ALADS counsel has attempted to have OIR attorneys who have come to Civil Service hearings removed, claiming they were witnesses or "potential" witnesses and then has never called them to testify.

Mr. Shinee then inaccurately describes the remainder of the hearing, in which he was not in attendance, to suggest that I arrogantly and disdainfully ignored the hearing officer's order to leave. What actually occurred is that counsel for the Department, who was completely surprised by the issue that had arisen, courteously requested that the hearing officer address the issue rather than simply acquiescing to the assertions of the ALADS counsel. I simply listened to the legal arguments that ensued. However, as evidenced by the hearing transcript, I never defied an order by the hearing officer to leave the proceedings – and would never do so.

Counsel for the Department ultimately decided that they wanted to appeal the hearing officer's intended exclusion of me from the proceedings, and requested a continuance from the hearing officer to do so. When the hearing officer denied the continuance, the Department's attorneys decided to adjourn the proceedings so that they could appeal to the Civil Service Commission.

With the advantage of hindsight, there may have been a better way procedurally to have addressed the issue of OIR's status as a witness in disciplinary appeals. However, the issue was an important one – and a new one at that point in OIR's history. In fact, since that case, Mr. Shinee's lawyers have subpoenaed OIR attorneys to hearings on two different occasions and in both cases the hearing officers found that because of OIR's attorney/client relationship with the County of Los Angeles, attorneys for the OIR cannot be called as witnesses to these hearings and quashed the subpoena, allowing us to remain as observers at the hearings, and fulfill our monitoring responsibilities at all critical stages of discipline cases.

Mr. Shinee is correct in representing that the Department's strategy in the motorcycle case did not bear fruit. Eventually, the Department's appeal was denied by the Commission. The hearing officer then determined that because the Department had not proceeded with the hearing, the remedy was to dismiss the charges against the deputy.

The result of the hearing officer's decision is that there will never be a hearing on the substance of the charges. At worst, a deputy who may have violated the public's trust on the day that he allegedly extorted a motorcycle from a foreign visitor, used his patrol car to transport the motorcycle to his girlfriend's house, carried out private business while on duty, and lied in an official document and then during an administrative investigation has been reinstated to full service on a procedural technicality – with all of his accompanying power and authority intact. At best, the public, the Department, and the deputy himself will never have the opportunity for the facts and evidence to get a full hearing. Mr. Shinee may wish to crow to his constituency about another “victory” but I must disagree that in this sad case nobody came out ahead.