

# THE ZAPPIA LAW FIRM

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— Labor & Employment Law —

## SPECIAL UPDATE

### LAW ENFORCEMENT AND PUBLIC EMPLOYERS

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**CALIFORNIA COURT OF APPEAL HOLDS THAT LOS ANGELES COUNTY SHERIFF'S DEPARTMENT CAN DISCHARGE A DEPUTY SHERIFF FOR MISCONDUCT COMMITTED WHILE THE DEPUTY WAS ON UNPAID, RELIEVED-OF-DUTY STATUS.**

#### Summary

The Court of Appeal held that a deputy sheriff could be held accountable for his conduct even when relieved of his duties, and that the Sheriff's Department has authority to discharge a sheriff based upon such misconduct.

#### Facts

Thomas Negrón had been employed as a Deputy Sheriff with the Los Angeles County Sheriff's Department (the Department) for eight years when he became embroiled in a contentious divorce. The divorce caused him to experience stress, anxiety attacks and other physical symptoms. The continued anxiety issues caused Negrón to take a paid medical leave of absence, during which he was required to report to his superior, Sergeant Walker. The Department later determined that his anxiety problems were not work-related and relieved him of duty in November 2010. He stopped receiving a salary and was no longer required to report to work.

On January 26, 2011, Negrón was stopped by the California Highway Patrol for driving erratically at an excessive speed. After the CHP officer asked Negrón to step out of the vehicle so he could confirm whether Negrón was a law enforcement officer or not, Negrón became impatient and started complaining and waving his arms around. When additional officers arrived, Negrón began yelling and cursing and complaining that they were holding him up from visiting his girlfriend. After a sergeant detected the odor of alcohol and observed Negrón's behavior, he ordered a field sobriety test, which indicated a blood alcohol level of .20. Negrón was arrested, his driver's license was confiscated, and he was issued a driver's license suspension notice, and 30-day temporary license that expired on February 26, 2011.

On March 25, 2011, Negrón drove from his residence to the Newhall CHP office to obtain a copy of his arrest report. After the CHP officer determined that Negrón's temporary permit had expired, he told Negrón he needed to contact someone to drive him home, as he could not drive on the suspended license. A deputy was contacted to bring Negrón and his vehicle back to his station. This deputy also instructed Negrón to debrief his superior, Sergeant Walker, in person about his contact with the CHP at Newhall station. Approximately 20 minutes later, Negrón was seen driving his own car out of the parking lot. He did not report to Sergeant Walker in person, but telephoned her later that day. Negrón told Walker that Deputy Shaw had picked him up at the Newhall station when the CHP officers told him he could not drive

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on a suspended license. After talking to Negron, Walker spoke with Deputy Shaw to confirm Negron's story, and learned that Shaw had instructed Negron to speak with Walker in person, and that Negron had driven his car home. Walker called Negron back and asked how he had gotten home from the station. Negron said his girlfriend had picked him up. When Walker asked how both cars got home, Negron said his girlfriend brought a friend. Later Walker learned that Negron's girlfriend, who also worked at the Department, had been working throughout the time Negron had claimed she had driven him home.

On November 20, 2011, the Department issued a Notice of Intent to Discharge based on the following allegations of misconduct: driving under the influence; being uncooperative, evasive and resistive with the CHP during the stop; driving on a suspended license after being advised by the CHP that his license had been suspended; failing to obey the orders of Deputy Shaw to report to Sergeant Walker in person; and making false statements to Sergeant Walker as to how he had gotten home.

After a *Skelly* hearing, the Department issued a Notice of Discharge sustaining the allegations of misconduct. Negron appealed the termination, and during the three-day appeal hearing Negron argued that the Department lacked authority to discipline him for the conduct alleged in the Notice of Discharge because the conduct occurred while he was on relieved-of-duty status and not receiving pay from the Department.

## **Appeal Hearing**

At the hearing on the appeal of his termination, the hearing officer found that Negron's conduct, including the arrest and conviction for DUI, his interaction with the officers, his driving with a suspended license, and making false statements to his superior officer, all violated the Department's Manual of Policy and Procedures. The hearing officer recommended that the Civil Service Commission sustain Negron's discharge. Over Negron's objection, the Commission adopted the hearing officer's decision.

## **Trial Court**

Negron challenged the final order of the Commission, arguing that the Department was prohibited from disciplining him for misconduct committed while he was not receiving any salary or benefits from the Department. Negron argued the Department's lack of authority to discipline him while on relieved-of-duty status under *Garvin v. Chambers*, a 1924 California Supreme Court Case. In *Garvin*, the California Supreme Court affirmed an order setting aside Garvin's termination, concluding that he could not be fired for insubordination for failing to obey a superior officer's order while an order of indefinite suspension was in force and his status as a policeman was suspended.

Here, the Trial court granted Negron's petition and ordered the Commission's final order be set aside on the ground that the Department lacked authority to discipline Negron for misconduct committed while he was on unpaid, relieved-of-duty status.

## **Court of Appeal**

The California Court of Appeal distinguished *Garvin*, highlighting the fact that Negron was not discharged only for insubordination (as Garvin was), but for violating state law by driving under the

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influence; for driving with a suspended license; for being uncooperative and evasive with CHP officers; and for making false statements to his superior officer. In reversing the trial court's ruling, the Court of Appeal held that Negrón could be held accountable for this conduct even when relieved of his duties as a deputy sheriff.

## **Conclusion**

The California Court of Appeal held that the LA County Sheriff's Department had authority to discharge Negrón and that *Garvin* did not preclude the Department from doing so.

*Negrón v. Los Angeles County Civil Service Commission* (California Court of Appeal, September 2, 2015, Case Number: B258031)

<http://www.courts.ca.gov/opinions/documents/B258031.PDF>