



## THE CALIFORNIA APPELLATE COURT HOLDS THAT A CITY'S POLICE CHIEF AND INTERNAL AFFAIRS DEPARTMENT HAD A MINISTERIAL DUTY TO FOLLOW THE DEPARTMENT'S PUBLISHED PROCEDURE FOR ADDRESSING CITIZEN COMPLAINTS



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In *Galzinski v. Somers*, 2 Cal. App. 5th 1164, 207 Cal. Rept. 3d 191 (Cal. Ct. App. 2016), the California Court of Appeals was asked to review a trial court's denial of Plaintiff Harold Mark Galzinski's petition for a writ of mandate. In February 2011, Galzinski submitted a citizen's complaint to the Sacramento Police Department (the Department) against three of the Department's officers related to the taking of biological samples from him following his arrest in December 2003. In July 2014, the Department's Internal Affairs Division notified Galzinski that the Division had "reviewed [his] complaint" but "no further action" would be taken on it because, "[b]ased upon the information [Galzinski] provided, the issues [he] raised pertain[ed] to points of law which should have been litigated during [his] criminal trial in 2005. Therefore, the proper venue for resolving [his] complaint would be through the appeals process."

Galzinski sought a writ of mandate from a trial court to compel Defendant Samuel D. Somers Jr., Chief of the Sacramento Police Department, and three sergeants in the Department's Internal Affairs Division (Pam Seyffert, Charles Husted, and Terrell Marshall) to "properly investigate" his complaint and to "make official findings as to the validity of [his] allegations." The trial court denied Galzinski's petition, concluding that the Department had "essentially" found that the officers who Galzinski accused of misconduct were "exonerated" and that, in any event, the Department did not abuse its discretion "in responding to the complaint in the way that it did." This appeal followed.

The California Court of Appeals began its analysis by explaining that California law required police departments to establish a procedure to investigate complaints made by members of the public against the personnel of the departments and to make a written description of the procedure available to the public. In this case, the Department had made available to the public a "Citizen Complaint procedure" brochure. According to that brochure, once a citizen complaint has been submitted to the Department, "it may be investigated in one of two ways. It will either be forwarded to the employee's supervisor for inquiry or to the Internal Affairs Division for investigation." The brochure further explained that "[e]ach allegation is examined on its own merits" and "[t]he Chief of Police will render a finding in each case. There are four possible findings: (1) "Sustained": The investigation disclosed enough evidence to clearly prove the allegation; (2) "Not sustained": The investigation failed to reveal enough evidence to clearly prove or disprove the allegation; (3) "Exonerated": The act which proved

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the basis for the complaint did occur; however investigation revealed the act was justified, lawful and proper; or (4) “Unfounded”: The investigation has produced sufficient evidence to prove that the act or acts alleged did not occur. The brochure further explained that the Chief of Police’s finding also applied when individual personnel named in the complaint were not involved in an act that occurred. Finally, the procedure also indicated that the complainant would be notified of the finding in writing at the conclusion of the investigation.

On February 8, 2011, Galzinski submitted a citizen’s complaint to the Department against three officers related to his arrest in December 2003. Specifically, Galzinski complained that on the day of his arrest two of the officers had a nurse at the Sacramento County Jail collect biological samples from him without a warrant and without probable cause. Galzinski further complained that none of the reports completed by the three officers explained or confirmed “why, where, when, how, and by who the evidence was collected, and the reason this information was expressly left out of [the] reports.” Finally, Galzinski complained that “[n]o receipt or documentation of the tests done [on the samples] and the results of such tests were [ ]ever turned over to [him] at anytime.”

On May 28, 2014—more than three years after the Department received Galzinski’s complaint—Galzinski wrote to Sergeants Husted and Seyffert and asked for notice of the disposition of his complaint or notice of when the investigation of his complaint would be concluded. By letter dated July 3, 2014, Sergeant Marshall notified Galzinski that the Internal Affairs Division had “reviewed [his] complaint” but “no further action” would be taken on it because, “[b]ased upon the information [Galzinski] provided, the issues [he] raised pertain[ed] to points of law which should have been litigated during [his] criminal trial in 2005. Therefore, the proper venue for resolving [his] complaint would be through the appeals process.”

In July 2014, Galzinski filed a verified petition for a writ of mandate in the Sacramento County Superior Court (“the trial court”) against Police Chief Somers, as respondent, and against Seyffert, Husted, and Marshall, as real parties in interest. Galzinski’s suit sought to compel Defendants to “properly investigate [his] citizen’s complaint . . . and/or make official findings as to the validity of [his] allegations.” In opposing Galzinski’s petition, Defendants argued that the Department had complied with its duty under California law to establish a procedure for the investigation of citizen complaints and to make a written description of that procedure available to the public. Defendants further argued that Galzinski was improperly seeking to control the Internal Affairs Division’s discretion to decide what action to take in response to his complaint. In reply, Galzinski argued that Defendants had a ministerial duty to comply with the Department’s complaint procedure as described in the brochure made available to the public. More specifically, Galzinski argued that he was “not seeking to compel a particular finding;” he was “merely seeking to compel a full and complete investigation of his factual allegations” and “a finding on these allegations made by the Chief of Police, as required by the [department’s] own procedures.” In April 2015, the trial court denied Galzinski’s petition, and Galzinski appealed.

On appeal, the California Court of Appeals determined that the trial court erred in denying Galzinski’s petition. The Court of Appeals explained that there was no dispute that the Department complied with its ministerial duty under California law to “establish a procedure to investigate complaints by members of the public against the personnel of the[ ] department[ ]” and to “make a written description of the procedure available to the public.” The question was whether Defendants had a

ministerial duty to follow that procedure such that they can be compelled to perform that duty by a writ of mandate.

The Court of Appeals determined that Defendants did have such a duty. Essentially, the Court of Appeals posited what good is establishing policies and procedure if a police department is free to ignore its own policies and procedures:

[H]aving chosen to use those terms, the department cannot escape its obligation to follow those terms without defeating the very purpose of the statute pursuant to which the department acted in adopting the procedure in the first place. This is so because the statutory mandate requiring a police department to “establish a procedure to investigate complaints by members of the public against [the department’s] personnel” and to “make a written description of the procedure available to the public” would be meaningless if the department had no duty to comply with its own published procedure. Why publish a procedure if you have no obligation to follow it? To accept defendants’ argument that they had no duty to follow the mandatory terms of the department’s published procedure, because the terms of that procedure were not mandated by regulation or statute, would defeat the very reasonable and settled expectations of the public, who are the intended beneficiaries of [California law]. That is a result we cannot countenance. Thus, we conclude defendants have a ministerial duty to follow the mandatory terms of the department’s published procedure for handling citizen complaints of police misconduct.

Id. at 1174 (emphasis in original).

Thereafter, the California Court of Appeals held that Galzinski had a right to the issuance of a writ of mandate compelling Defendants to perform that ministerial duty with respect to his complaint. The Court of Appeals stated that, although the Department had the discretion to determine what type of investigation to conduct and to what extent the complaint needed investigating, the Department was required to perform some type of investigation. So, while the courts could not compel the Department to conduct a certain type or scope of investigation (i.e., a discretionary act), it could require the Department to comply with its policies and procedures and conduct some type of investigation (i.e., a ministerial act). Because no investigation was conducted on Galzinski’s complaint, the Court of Appeals held that he was entitled to the petition that he sought.

Finally, the Court of Appeals held that Galzinski was entitled to the petition that he sought because the policies and procedures required the Chief of Police to issue some type of finding on a citizen’s complaint. Because the Chief of Police failed to issue a finding on Galzinski’s complaint, the Court of Appeals reversed the trial court’s denial of Galzinski’s petition.

In short, the California Court of Appeals held that, where police departments and internal affairs departments establish policies and procedures to handle or to resolve citizen complaints, the police department and the internal affairs department must follow and must comply with those policies and procedures. If they fail to do so, the citizen may seek relief from a court compelling them to comply with their own policies and procedures. While the court cannot compel the police department or the internal affairs department to perform a discretionary act (such as requiring them to reach a certain result or to engage in a certain type of investigation), the court can compel the police department or

internal affairs department to conduct some type of investigation and to reach a result that is required by their own internal policies and procedures.

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**Note:** *Court holdings can vary significantly between jurisdictions. As such, it is advisable to seek the advice of a local prosecutor or legal adviser regarding questions on specific cases. This article is not intended to constitute legal advice on a specific case.*

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