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## **CLIENT BULLETIN**

**February 4, 2016**

### **APPELLATE COURT DEFINES POBRA NOTICE REQUIREMENTS**

Government Code section 3303(c), one of several sections of the Public Safety Officers Procedural Bill of Rights Act (POBRA) that describes the rights available to public safety officers in administrative interrogations, provides that “[t]he public safety officer under investigation shall be informed of the nature of the investigation prior to any interrogation.” Many agencies withhold notice of the nature of an investigation until the time of the scheduled interview. The Second District Court of Appeal issued a ruling last week in *Ellins v. City of Sierra Madre* holding section 3303(c) means subject officers must be told the nature of an investigation “reasonably prior” to any interrogation.

The court said “reasonably prior” means sufficient time for a **meaningful consultation** with an attorney or other representative before the interview. The ruling allows officers to postpone an interrogation for a time that is “reasonable” based on the nature of the allegations, whether the officer needs time to obtain an attorney, and whether the allegations are numerous or complex. The employer may postpone disclosure until the interview only when earlier notice would risk the safety of another party or the destruction of evidence under the officer’s control.

The *Ellins* decision is **significant** because it is the first published case to define how long notice must be given to an officer before an administrative interrogation. The ruling also is important because the court implied officers must be given enough information about the investigation to have a meaningful conference with a representative; i.e., both the timing and the substance of the notice must be adequate to allow the officer to prepare for the interrogation.

“Advanced disclosure of the nature of the investigation,” wrote the court, serves the purposes of POBRA by promoting efficient investigations while protecting officers from unfair treatment. Timely disclosure before a scheduled interview should help officers present “justifications, explanations, extenuating circumstances, and other mitigating factors” in internal affairs investigations.

The case will have the **greatest impact** in those jurisdictions where investigators routinely withhold disclosure of the nature of the investigation until the interview. In those circumstances, *Ellins* grants a public safety officer the right to postpone an interrogation until the officer has had an adequate opportunity to consult with a representative.

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