



Dear Legally Liz,

I was recently served a complaint alleging I had committed misconduct based upon a discretionary decision I made in the field, despite the fact that there was no Departmental rule prohibiting the decision I reached. My decision was the result of careful consideration of the circumstances and in light of my many years as a police officer in the Department. Do I have grounds to fight this?

Signed,
Officer W. Didado

Dear Officer Didado,

You should challenge the misconduct charges in this case. A disciplinary action must be based upon a specific duty imposed by either Department policy or by law. In a recent court case funded by the League, the Superior Court reversed the decision of the Board of Rights, which determined that a patrol officer engaged in misconduct by permitting a responsible 15-year-old sister to care for her younger siblings after their mother's arrest at the residence where it was anticipated that an adult would arrive within a reasonable period of time. The Court found that there was no Department policy that required police officers to wait until the arrival of a responsible adult or representative of the Department of Children and Family Services in cases where there is the presence of a competent older minor supervising his or her siblings. The Court concluded that there was no evidence that such a decision by the officer violated a specific regulation, and the Board of Rights' decision did not offer any explanation or argument on which the officer could be charged with misconduct, let alone impose serious disciplinary action. Furthermore, the Court stated that even if the officer's conduct fell below the best practice of a profession, it may nonetheless be acceptable and not warrant punishment. Without a disciplinary standard to which the officer may be held, the purported violation has no meaning. An officer must be on notice that his or her conduct may result in disciplinary action. The police officer was represented in the court case by Richard Levine of the law firm of Silver, Hadden, Silver, Wexler & Levine.

Legally,
Liz

Names have been changed to protect privacy. Send your anonymous questions to legallyliz@lappl.org.