

COVID CHAOS UPDATE

APPELLATE COURT STAYS INJUNCTION AGAINST GOVERNOR'S EXECUTIVE ORDERS

By Maurice Sinsley

As you may recall from our last bulletin, on November 2, 2020, a Sutter County Superior Court Judge permanently enjoined Governor Newsom from using his emergency powers under the California Emergency Services Act (CESA) to alter or change existing state laws.

The injunction specifically *voided* the Governor's Executive Order N-67-20, which amended the Elections Code to mandate all registered voters receive a vote-by-mail ballot, as "an unconstitutional exercise of legislative power."

If upheld, the injunction would also void Executive Orders 40, 66, and 71, issued between March 30 and June 30, wherein the Governor, without explanation, ***extended the one-year statute of limitations*** under the Public Safety Officers Procedural Bill of Rights Act (POBRA) by 120-days. As you may recall, under *Government Code* §3304(d) (1),

a public agency may not take punitive action against a peace officer if it fails to complete an investigation and serve a notice of discipline within one year of discovering the alleged misconduct.

The Governor immediately appealed the ruling, and the appeals court issued a stay of the injunction pending a full hearing by the court. *So, the order extending the statute of limitations under POBRA remains in force for the time being.*

Remember that whenever discipline is imposed, the POBRA statute of limitations is a complicated subject. While it is easy to determine the end date – when the Notice of Intent is served – the start date of the investigation and the tolling provisions can cause problems in calculating the one year. Now, there may also be an "extension" issue. So, if there is any question about whether the investigation may have taken longer than one year to complete, it is essential to consult with competent legal counsel to protect ***your*** rights.

Stay Alert – Stay Safe – Stay Healthy!