

## **Police Officers' Bill of Rights preempts Citizen Review Boards**

Over forty years ago the Florida Legislature enacted the Law Enforcement Officers' Bill of Rights (LEOBR). Similar statutory protections apply to firefighters. Approximately fifteen states have adopted their own version of a LEOBR, which generally extend procedural protections to public safety officers in connection with departmental investigations. More recently, cities and civil rights organizations have advocated for independent review and citizen oversight of police departments. High profile police shooting have elevated these tensions nationally.

In the case of *D'Agastino v. City of Miami* the Florida Supreme Court was presented with a conflict between the unambiguous longstanding protections in the LEOBR and the ability of the City of Miami's Citizen Investigative Panel (CIP) to subpoena police officers after an inconclusive internal investigation. Lower courts had interpreted the LEOBR as providing the exclusive method to interrogate a police officer. Yet, the City of Miami advanced the argument that the LEOBR only applied to "internal" police investigations, not external citizen review boards. Interestingly, the case originally arose in 2009 but sat before a lower court on rehearing for three years.

Recognizing the complexities and difficulties inherent in law enforcement work, the Florida Supreme Court began its analysis by emphasizing that the policy and wisdom of citizen investigative panels was not before the court. Rather, the Court narrowly framed the question as whether the Florida LEOBR has "preemptive force" with regard to the activities of citizen review panels. Pointing to a legislative intent and history of directing disciplinary complaints exclusively to police departments, not outsiders, the Court held that the explicit statutory protections for police officers preempt the ability of a citizen review board to subpoena officers. According to the Court, any other result would render the meaningless the detailed rights conferred to police officers. In other words, if civilian review boards were given the authority to interrogate officers, this would provide a mechanism to circumvent the LEOBR. Indeed, the Court reasoned that the power to issue and enforce a subpoena is among the most powerful tools that a government may wield.

The unanimous opinion avoided addressing the other functions of citizen review boards. The limited holding does not preclude future challenges if a citizen review board intrudes on the field of police discipline. The Court also pointed out that police officers remain exposed to public scrutiny and investigation by their own agency, internal affairs, the State Attorney, the FBI, the United States Department of Justice, and the Criminal Justice Standards and Training Commission. Multiple amicus briefs were submitted in the case, which lasted over eight years, including a friend of the Court brief submitted by Klausner Kaufman Jensen & Levinson on behalf of the Florida PBA.

<http://www.floridasupremecourt.org/decisions/2017/sc16-645.pdf>