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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION THREE

LOS ANGELES COUNTY  
PROFESSIONAL PEACE  
OFFICERS ASSOCIATION and  
BRIAN MORIGUCHI,

Plaintiffs and Appellants,

v.

COUNTY OF LOS ANGELES et  
al.,

Defendants and Respondents.

B280984

Los Angeles County  
Super. Ct. No. BS148778

APPEAL from a judgment of the Superior Court of Los Angeles County, James C. Chalfant, Judge. Dismissed.

Hayes & Ortega, Dennis J. Hayes, Michelle C. Hribar and Tracy J. Jones for Plaintiffs and Appellants.

Liebert Cassidy Whitmore, Geoffrey S. Sheldon and David A. Urban for Defendants and Respondents.

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## INTRODUCTION

Petitioners Los Angeles County Professional Peace Officers Association (PPOA) and Brian Moriguchi (Moriguchi), the president of PPOA and a lieutenant in the Los Angeles County Sheriff's Department,<sup>1</sup> filed a first amended petition for writ of mandate and complaint (petition) against defendants County of Los Angeles (County) and the Board of Supervisors for the County of Los Angeles (collectively, defendants). The petition alleged defendants violated the collective bargaining agreement between PPOA and the County, as well as petitioners' free speech rights, when the Sheriff's Department reprimanded Moriguchi after he submitted a character reference letter to the judge presiding over the criminal trial of a PPOA member. Petitioners sought a writ of mandate, declaratory relief and an injunction prohibiting defendants from interfering with Moriguchi's ability to issue character reference letters on behalf of other PPOA members.

Although the trial court granted the petition on the grounds that the reprimand violated the agreement, it found the reprimand did not infringe upon petitioners' free speech rights. After entering judgment, the court issued a writ of mandate requiring defendants to rescind and purge the reprimand, and prohibiting them from relying on the reprimand when making future personnel decisions. Defendants complied fully with the court's writ.

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<sup>1</sup> We sometimes collectively refer to PPOA and Moriguchi as petitioners.

On appeal, petitioners contend the court erred in finding that their free speech claim lacked merit. We conclude petitioners were not aggrieved by the court's judgment and, in any event, we cannot provide them with any effective relief. We therefore dismiss the appeal.

## **BACKGROUND**

### **1. The Sheriff's Department Reprimands Moriguchi**

PPOA is the officially recognized representative for Los Angeles County Bargaining Unit No. 612 (Unit 612), which is comprised of supervisory peace officers in the Sheriff's Department and the Los Angeles County District Attorney's Office in the classifications of "Sergeant, Lieutenant, Lieutenant-District Attorney, and Supervising Investigator-District Attorney." PPOA represents Unit 612 for purposes of collective bargaining under the Meyers-Milias-Brown Act (Gov. Code, § 3500 et seq.).

Moriguchi is a lieutenant in the Sheriff's Department, and he currently serves as PPOA's president. While serving as president of PPOA, Moriguchi is on full release from his duties as a lieutenant in the Sheriff's Department. PPOA pays Moriguchi's entire salary and benefits during his tenure as president.

In 2011, Mark Fitzpatrick, a former sergeant in the Sheriff's Department and former member of PPOA, was charged with several felonies. After he was charged, Fitzpatrick asked PPOA to support his criminal defense. In response, PPOA voted to provide financial support for Fitzpatrick's criminal defense. In October 2011, Fitzpatrick was convicted of six felony counts, including forcible sexual penetration, sexual battery, and false imprisonment.

In February 2012, before Fitzpatrick was sentenced, Moriguchi submitted a character reference letter to the judge presiding over Fitzpatrick's criminal trial. In the letter, which was printed on PPOA letterhead, Moriguchi stated he is "a lieutenant with the Los Angeles County Sheriff's Department and currently the president of the Professional Peace Officers Association." Moriguchi then described his professional relationship with Fitzpatrick and opined that Fitzpatrick possesses "good character and respect for others." According to Moriguchi, he would not have drafted the letter had he not been serving as PPOA's president.

On October 17, 2012, the Sheriff's Department issued Moriguchi a Unit Performance Log (UPL), finding that Moriguchi had violated section 3-01/100.20 of the Sheriff's Department's Manual of Policy and Procedures<sup>2</sup> when he submitted the character reference letter on Fitzpatrick's behalf. Although the UPL acknowledged that Moriguchi had acted in his capacity as PPOA's president when he submitted the letter, Moriguchi had violated the Sheriff's Department's Manual of Policy and Procedures because he referenced his "position of employment with the Department as a sergeant assigned to Field Operations Support Services" and described his observations of Fitzpatrick while he was on active duty for the Sheriff's Department. The UPL warned Moriguchi that "a similar violation of this policy in the future may result in discipline."

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<sup>2</sup> Section 3-01/100.20 of the Sheriff's Department Manual of Policy and Procedures provides, "Members shall not author letters of reference whereby their position of employment with the Department implies and/or intends to assist an individual in any criminal or civil matter."

On October 30, 2012, PPOA filed a grievance with the Sheriff's Department on Moriguchi's behalf, complaining that the UPL violated Article 3 of the Memorandum of Understanding (MOU or agreement) between PPOA and the County.<sup>3</sup> The Sheriff's Department denied the grievance on December 3, 2012. PPOA requested that the grievance proceed to advisory arbitration, which the Sheriff's Department opposed. The Employee Relations Commission ordered the parties to participate in advisory arbitration.

In January 2014, an arbitrator issued an advisory award finding the Sheriff's Department violated Article 3 of the MOU when it issued the UPL and threatened Moriguchi with discipline should he commit similar violations of Section 3-01/100.20 of the Sheriff's Department Manual of Policy and Procedures in the future. The arbitrator ordered the Sheriff's Department to "rescind and purge the [UPL] and any and all references thereto from [Moriguchi's] record and to cease and desist from interfering with, intimidating, restraining, coercing, or discriminating against [Moriguchi] for the exercise of his rights [under] Article 3 of the MOU." In January 2014, PPOA accepted the arbitrator's

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<sup>3</sup> Article 3 of the MOU provides: "The parties mutually recognize and agree fully to protect the rights of all employees covered hereby to join and participate in the activities of PPOA and all other rights in the Employee Relations Ordinance and Government Code, Sections 3500 through 3511. No employee shall be interfered with, intimidated, restrained, coerced or discriminated against because of the exercise of these rights. [¶] The provisions of this Memorandum of Understanding shall be applied equally to all employees covered hereby without favor or discrimination because of race, color, sex, age, national origin, political or religious opinions or affiliations."

advisory award. In February 2014, the Sheriff's Department rejected the arbitrator's award.

## **2. Petitioners' Lawsuit**

In November 2014, PPOA and Moriguchi filed the petition against defendants. The petition alleged defendants violated Article 3 of the MOU and Moriguchi's and PPOA's free speech rights under the California Constitution when the Sheriff's Department issued Moriguchi the UPL. The petition asserted four causes of action: one cause of action for violation of Article 3 of the MOU; two causes of action for violation of PPOA's and Moriguchi's free speech rights under Article 1, Section 2 of the California Constitution; and one cause of action for "Declaratory Relief Under California Code of Civil Procedure § 1060" based on defendants' alleged violations of Article 3 of the MOU and petitioners' free speech rights under the California Constitution.

PPOA and Moriguchi sought the following relief in the petition: (1) an order directing defendants to purge the UPL, and any reference to the UPL, from its personnel records and to refrain from relying on the fact that Moriguchi had been issued the UPL for any future personnel decisions; (2) a declaration that defendants had violated Article 3 of the MOU and PPOA's and Moriguchi's free speech rights when the Sheriff's Department issued the UPL; and (3) an injunction restraining defendants from further retaliating against PPOA and Moriguchi in the event they submit character reference letters on behalf of PPOA members in the future. Finally, PPOA and Moriguchi requested attorneys' fees under Code of Civil Procedure sections 1021.5 and 1033.5 based on defendants' alleged violations of the MOU and petitioners' free speech rights.

PPOA and Moriguchi filed opening and reply briefs in support of the petition. In their briefs, PPOA and Moriguchi limited their request for injunctive relief to an order restraining the Sheriff's Department from further interfering with Moriguchi's ability to issue character reference letters in his capacity as PPOA president. PPOA and Moriguchi also did not include any argument in their briefs supporting their request for an award of attorneys' fees for defendants' violations of the agreement and PPOA's and Moriguchi's free speech rights.

On October 18, 2016, the court conducted a hearing on the petition. The court issued a 15-page tentative ruling, which it adopted as its final order. The court granted the petition on the grounds that defendants had violated Article 3 of the MOU and provisions of the Meyers-Milias-Brown Act (Gov. Code, § 3500 et seq.) when the Sheriff's Department issued the UPL. The court found, however, that the Sheriff's Department's issuance of the UPL did not violate PPOA's or Moriguchi's free speech rights. Specifically, the court found the character reference letter Moriguchi submitted to the criminal court on Fitzpatrick's behalf did not constitute a matter of "public concern," and that the Sheriff's Department therefore did not infringe upon PPOA's and Moriguchi's free speech rights by issuing the UPL. The court awarded PPOA and Moriguchi "declaratory relief and an injunction directing the [Sheriff's] Department not to interfere or discriminate against [Moriguchi] for writing in his capacity as PPOA President a character reference letter on behalf of a PPOA member." Petitioners were ordered to prepare a proposed judgment and writ of mandate.

On January 3, 2017, the court entered judgment granting petitioners a writ of mandate. On January 25, 2017, the court

issued a writ directing defendants to (1) rescind and purge the UPL, and any references thereto, from Moriguchi's personnel file and the Sheriff's Department's Personnel Performance Index; and (2) not use the fact that Moriguchi was issued the UPL as a basis for any future personnel action.

On February 15, 2017, PPOA and Moriguchi filed a timely notice of appeal from the judgment. On February 21, 2017, defendants filed a return to the writ of mandate stating they had "rescinded and purged" the UPL, and any references to the UPL, from Moriguchi's personnel file and the Sheriff's Department's "Personnel Performance Index." The return also stated defendants will not use the UPL as a basis for any future personnel action.

## DISCUSSION

Petitioners challenge the judgment granting their petition for a writ of mandate because the court found their free speech claim lacked merit. While this appeal was pending, defendants moved to dismiss the appeal on the ground that petitioners lack standing to challenge the court's judgment. Specifically, defendants argue that although the court rejected petitioners' free speech theory, petitioners obtained a favorable judgment and all the relief they requested in the petition. Having deferred ruling on defendants' motion, we now grant the motion and dismiss the appeal.

"An appeal may be taken only by a party who has standing to appeal. [Citation.] This rule is jurisdictional." (*Sabi v. Sterling* (2010) 183 Cal.App.4th 916, 947.) Only a party who is aggrieved by the trial court's judgment has standing to appeal (Code Civ. Proc., § 902), and a party is "aggrieved" only if its " 'rights or interests are injuriously affected by the judgment.' [Citation.]"





judgment which can be carried into effect, and not give opinions upon moot questions or abstract propositions, or declare principles or rules of law which cannot affect the matter in issue in the case before us. (*Costa Serena Owners Coalition v. Costa Serena Architectural Com.* (2009) 175 Cal.App.4th 1175, 1205–1206; see also *In re Anna S.* (2010) 180 Cal.App.4th 1489, 1498 [a case is moot when it is “ ‘impossible for the appellate court to grant the appellant effective relief’ ”]; *Simi Corp. v. Garamendi* (2003) 109 Cal.App.4th 1496, 1503 [“A case becomes moot when a court ruling can have no practical impact or cannot provide the parties with effective relief”].) When the court cannot grant effective relief to the parties to an appeal, the appeal must be dismissed. (*Costa Serena*, at p. 1206; *In re I.A.*, *supra*, 201 Cal.App.4th at p. 1490.)

Here, petitioners have not shown they would have obtained any additional benefit from the judgment had the court found the Sheriff’s Department’s issuance of the UPL had violated not only Article 3 of the MOU, but also petitioners’ free speech rights. Put differently, even if we were to agree with petitioners’ claim of error, we could not grant them any effective relief. Other than not prevailing under a particular legal theory, petitioners obtained all the relief they sought through the petition. That is, the court’s October 18, 2016 order awarded petitioners declaratory relief and an injunction prohibiting the Sheriff’s Department from further interfering with Moriguchi’s ability to issue character reference letters on behalf of other PPOA members while operating in his capacity as PPOA’s president. In addition, the court issued a writ of mandate requiring defendants to rescind and purge the UPL, and any reference to the UPL, from their records and prohibiting them from relying on the fact that Moriguchi had been issued the

UPL in making future personnel decisions. Quite simply, petitioners have not shown what other relief they would have been entitled to had the court also found their free speech rights had been violated when the Sheriff's Department issued Moriguchi the UPL.<sup>4</sup>

To be sure, in their opposition to defendants' motion to dismiss the appeal, petitioners contend they "sought, but were denied attorney's fees ... because the trial court failed to find a violation of [their] free speech rights." To the extent petitioners suggest they were injuriously affected by the judgment because they did not or could not recover attorneys' fees, they have not shown that their interest in recovering attorneys' fees is " "immediate, pecuniary, and substantial and not nominal or a remote consequence of the judgment." ' ' (See *Carleson, supra*, 5 Cal.3d at p. 737.)

First, although the petition requests attorneys' fees under Code of Civil Procedure section 1021.5 based on defendants' violation of the MOU *and* defendants' alleged violation of petitioners' free speech rights, petitioners never sought attorneys' fees, or even cited Code of Civil Procedure section 1021.5, in their moving papers prior to the court's October 18, 2016 hearing on the merits of the petition. Nor did petitioners request attorneys'

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<sup>4</sup> Besides ordering petitioners to prepare the proposed judgment and writ of mandate, the court ordered them to meet and confer with defendants to determine if there were any objections as to the form of those documents. The record does not contain any objections and it appears the court signed the proposed judgment prepared by petitioners. As such, petitioners have forfeited any contention that the January 3, 2017 judgment does not incorporate all the relief awarded in the October 18, 2016 order.

fees during the October 18, 2016 hearing. And there is nothing in the record showing that the court ruled on any request for attorneys' fees at any point in time. In fact, as conceded by petitioners during oral argument, petitioners never moved for attorneys' fees during the pendency of the litigation. Thus, petitioners have not shown they were denied attorneys' fees based on the court's finding that their free speech claim lacked merit.

Second, to the extent petitioners contend the court is more likely to award them attorneys' fees under Code of Civil Procedure section 1021.5 in a post-judgment order if they were to prevail on their free speech claim, that contention is pure speculation. Nothing in the record suggests the court would be more likely to award petitioners attorneys' fees if they had prevailed on their free speech claim, and petitioners have cited no authority supporting such an assertion.

In sum, petitioners lack standing to appeal because they have not shown they were aggrieved by the judgment and, in any event, the appeal is moot because our ruling on petitioners' free speech claim can have no practical effect or cannot provide them with effective relief. (*Lincoln Place Tenants Assn. v. City of Los Angeles* (2007) 155 Cal.App.4th 425, 454.)

**DISPOSITION**

The appeal is dismissed. No costs are awarded.

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LAVIN, J.

WE CONCUR:

EDMON, P. J.

EGERTON, J.