

TEXAS DISCIPLINARY PROCEDURES DO NOT CREATE PROPERTY RIGHT

On May 6, 2014, Stephen Stem, a second-year officer at the Hearne, Texas Police Department, was dispatched to the home of Hearne resident Pearlie Golden. Roy Jones, Golden's nephew, placed the emergency call. Jones said Golden, who had recently failed a driver's license renewal test, threatened him with a gun after he had taken away her car keys. Stem recounted that when he arrived at the home, Golden pointed the gun at him and refused to put it down upon Stem's direction. Stem said he then fired his weapon "in response to the immediate and deadly threat." Golden was wounded and later died.

Four days later, the City fired Stem without providing him with a signed, written complaint from any city official prior to his dismissal. Stem sued, claiming the failure to provide him with a pre-disciplinary hearing violated his due process rights.

A federal court of appeals rejected Stem's lawsuit. For due process to apply, the Court reasoned, Stem must possess a property right. Since the "default" condition of Texas law is that all employees are in "at-will" status, the Court concluded that the City was not required to follow due process in terminating Stem.

Stem argued that Section 614.023 of the Texas Government Code created a property right in his employment as a police offi-

cer. Section 614.023 provides for disciplinary procedures that must be followed with police officers, including the following:

"(a) A copy of a signed complaint...shall be given to the officer...within a reasonable time after the complaint is filed.

"(b) Disciplinary action may not be taken against the officer unless a copy of the signed complaint is given to the officer.

"(c) The officer may not be indefinitely suspended or terminated from employment based on the subject matter of the complaint unless: (1) the complaint is investigated; and (2) there is evidence to prove the allegation of misconduct."

The Court found that Section 614.023 only created procedural

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OFFENSE	EMPLOYER'S PENALTY	RESULT ON APPEAL	DESCRIPTION	CASE NAME
Conduct Unbecoming, Off Duty	45-Day Suspension	10-Day Suspension	Officer suspended for asking for "favor" from traffic officer who stopped him for speeding. Four-year delay in imposing discipline was a factor in the decision to reduce the discipline.	<i>Customs and Border Protection</i> , 135 LA 553 (Abrams, 2015).
Dishonesty	Termination	Termination	Officer terminated for falsely certifying in his divorce proceedings that he did not know the whereabouts of his estranged wife, and for falsely testifying in a separate criminal proceeding. The fact that the false statements were made while the officer was off duty, involved his personal life, and did not concern his duties as a police officer did not make his termination "arbitrary, unreasonable, or unrelated to the requirements of service."	<i>Taylor v. Police Board of Chicago</i> , 2016 IL App. (1st) 142427-U (Ill. App. 2016).
Excessive Force	10-Day Suspension	No Discipline	Corrections officer suspended for pushing inmate against wall and down to the ground. Arbitrator concluded after viewing video of the incident that the officer's conduct "was a viable means for placing the inmate in a position where he could not harm himself or the officers who were accompanying him."	<i>Federal Bureau of Prisons</i> , 135 LA 748 (Riker, 2015).