

Duty to All, Duty to None

Description

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The Public Duty Doctrine provides that, “absent a special relationship between the governmental entity and the injured individual, the governmental entity will not be liable for injury to an individual... the governmental entity owes a duty to the public in general. The doctrine has been commonly described by the oxymoron, ‘duty to all, duty to none.’”^[1]

The concept of “duty” establishes a great moral obligation in those who have taken an oath to serve and to protect the public. Officers are instilled with the principles of honor, integrity, and selflessness. As a result of these basic principles, officers often feel required to take action in certain situations when taking no action is actually the best course of action. Often, officers believe that they have a legal obligation to act above and beyond what is actually required of them.

Law enforcement professionals’ lack of understanding of the legal principles of the public duty doctrine often leads to inappropriate actions on the part of the officer. In addition, the fear of liability for “failure to act,” and the personal code of honor that many sworn public servants hold, mandates that they take action at all costs to protect and defend life and property. While this desire to serve the public is commendable, police officers must understand that they have no obligation to protect any one individual unless a “special relationship” exists. Rather, an officer’s sworn duty is to the general public.

As a general rule, an individual has no duty to come to the aid of another. A person who has not created, by his words or deeds, a danger to another, is not liable for failure to take affirmative action to assist or protect another unless there is some relationship between them which gives rise to a duty to act.^[2] The application of these general principles in the area of law enforcement and other police activities has produced some confusion and conflict. The confusion is further exacerbated by widely held misconceptions concerning the duty owed by police to individual members of the general public.^[3]

By becoming a police officer, an individual does not give up his right to the protection of these general principles. A police officer does not “assume any greater obligation to others individually. The only additional duty undertaken by accepting employment as a police officer is the duty owed to the public at large.”^[4] Following these general principles, “California courts have found no duty of care and have denied liability ‘for injuries caused by the failure of police personnel to respond to requests for assistance, the failure to investigate properly, or the failure to investigate at all, where the police had not induced reliance on a promise, express or implied, that they would provide protection.’”^[5]

The concept of a lack of any special duty owed to any individual member of society who is in need of assistance often flies in the face of law enforcement professionals who have taken an oath of office to “protect and defend.” The oath of office for law enforcement officers, however, as required by the California Constitution, does not mandate duty to an individual.^[6] Rather, the oath cites the support and defense of the Constitution of the United States and the Constitution of California “against all enemies foreign and domestic.”^[7]

While neither the California Constitution's oath of office, nor the International Association of Chiefs of Police model oath of honor^[8], suggest that officers have duties other than the support and defense of the Constitution, and the maintenance of character, integrity, and public trust, no officer wants to see innocent individuals victimized or suffer harm of any sort.

One duty-dilemma issue, for example, may be the concern of contracting a fatal disease from performing CPR on a subject. Indeed, this is a real concern as just this past March, a deputy in Florida died five years after having contracted a virus while conducting CPR on an infant.^[9] Officers must discern the pros and cons of taking action in such a case to balance this unlikely tragic outcome against the more likely heartbreaking consequence of failing to act in a timely manner.

An officer's misconception of his duty owed to the individual, however, may cause that officer to believe he has no choice but to provide assistance in the matter. While the officer is under no legal obligation to render aid to any one individual, once that officer decides to render aid to a victim, a special relationship may be established that produces a duty to an individual. Federal and State case law provide, for example: a police officer's failure, upon stopping an automobile, to advise the passenger to leave the vehicle and find other transportation was not an actionable breach of duty to the passenger;^[10] an officer owed no duty of care to a tow truck driver struck by a passing vehicle while working an accident scene because the officer did not create or increase the risk of harm that led to the injuries;^[11] no duty existed where a police officer, upon responding to a disturbance, confiscated a gun that was later returned to the individual through department procedure and was used sometime thereafter to shoot the complainant because the initial seizure of the weapon did not establish a special relationship with complainant that would continue indefinitely;^[12] a police officer owed no duty to order an accident victim who had sustained a spinal injury not to leave the scene^[13]; police officers who recognized an assailant as a likely perpetrator of a prior assault, and conducted surveillance of assailant in a laundromat in which the victim was present, did not establish a special relationship between the officers and the victim to impose a duty on the officers to protect the victim from the assailant;^[14] a police officer, who stopped a motorcyclist for speeding but did not perform field sobriety test, had no legal duty to use due care to recognize signs of intoxication and prevent the motorcyclist from continuing to drive, and therefore, was not liable when the driver was involved in an accident ten minutes later.^[15]

Courts typically find that no duty has been established and deny recovery for "injuries caused by the failure of police personnel to respond to requests for assistance, the failure to investigate properly, or the failure to investigate at all, where the police had not induced reliance on a promise, express or implied, that they would provide protection."^[16] For example, a plaintiff was unable to establish a duty on behalf of police when police failed to respond to a plea for assistance forty-five minutes before a homicide.^[17]

The courts, however, have found that police officers may create a "special relationship" with individuals in certain circumstances, thereby establishing a duty of care to that individual. This "special relationship" may be created when an officer performs an affirmative act which places a person in peril or increases the risk of harm. For example, an officer who investigated an accident and instructed an individual to follow him to the middle of the intersection, where the individual was hit by another car, established a duty of care for that person;^[18] a highway patrol officer established a duty to an individual when he parked his vehicle with lights engaged behind the stalled motorist, but later left the scene without warning the motorist who had relied upon his protection and was struck by another car.^[19]

Some departments have internal policies that stipulate the circumstances in which a special relationship may exist. The San Jose Police Department's policy for rendering first aid, for example, states that officers who have begun rendering aid have created a special relationship with a victim and now have a duty to continue providing care unless one or more of the following conditions is present: (1) The scene becomes unsafe; (2) The officer is too physically exhausted to continue; (3) The officer is relieved by someone of same or higher medical authority; or (4) The victim revives^[20]

A source of confusion for some officers may be that while federal law is clear that there is no liability for failure to act when no special relationship exists between law enforcement and an individual, some liability may exist in certain situations where the state legislature enacts laws mandating an officer's duty to take action.^[21] One such state mandated duty to an individual arises in the area of domestic violence. Throughout the country for many years, officers failed to take seriously the dangers of family violence. As a result, states enacted legislation mandating special provisions and protections for victims of child and spousal abuse.^[22] As further documented in the California Commission on Peace Officer Standards and Training domestic violence workbook^[23], these requirements include that officers **shall** make every reasonable effort to identify the "dominant aggressor," **shall** complete a report in all domestic violence cases, and **shall** take custody of any firearm or deadly weapon in plain sight.

While legislated exceptions to the public duty doctrine exist, the officer must still understand that in only certain circumstances will he be exposed to liability for failure to act. This misunderstanding can lead an officer to take inappropriate action which violates an individual's constitutional rights and could ultimately lead to litigation against the officer and the department.

Law enforcement personnel are moral and honorable public servants. Most sworn officers take their oaths of office as a solemn pledge; a pledge to safeguard life and property. Officers lose their lives every day attempting to fulfill this oath. Officers, however, often put themselves at risk because they incorrectly believe that they have a duty to act when, in fact, no such duty exists. Officers must balance the pros and cons of taking action against the rights, responsibilities, and the limitations of the profession imposed upon them by the Constitution, statute, and case law.

Proper training on the principles of the public duty doctrine and how it applies to police officers is essential to avoid liability on the part of the department and officers. The training should include a full and comprehensive review of the exceptions to this doctrine and any statutory requirements to act or protect individuals, as well as those situations in which, through an officer's actions or omissions, create a "special relationship" resulting in a duty to persons.

1. Glover, D. (2006). Public duty doctrine in state tort claims act cases. Retrieved March 20th, 2011 from Teague & Glover, P.A. website:
http://www.teagueandgloverlaw.com/media/Public_Duty_Doctrine_State_Tort_Claims_Act_cases.pdf
[?](#)
2. [Rest.2d Torts, § 314](#); 4 Witkin, Summary of Cal.Law (8th ed.) Torts, § 554, p. 2821.) [?](#)
3. *Williams v. State of California*, 34 Cal.3d 18 (1983.) [?](#)

4. *Id.* ?
5. *Id.* ?
6. California Constitution, Article XX, § 3 provides, in pertinent part: “I,, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.” ?
7. *Id.* ?
8. The IACP oath of honor format provides: On my honor, I will never betray my badge, my integrity, my character, or the public trust. I will always have the courage to hold myself and others accountable for our actions. I will always uphold the constitution, my community, and the agency I serve.
<http://www.theiacp.org/PoliceServices/ExecutiveServices/ProfessionalAssistance/Ethics/WhatistheL>
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9. Weiner, J. (2011). Orange County deputy dies from illness he caught trying to save infant, Sheriff's Office says. *The Palm Beach Post News*. <http://www.palmbeachpost.com/news/orange-county-deputy-dies-from-illness-he-caught-1327335.html?sort=desc> (retrieved 03/20/11.) ?
10. *City of Sunnyvale v. Superior Court*, 203 Cal.App.3d 839 (1988). ?
11. *Minch . California Highway Patrol*, 140 Cal.App.4th 895 (2006). ?
12. *Baker v. City of Los Angeles*, 188 Cal.App.3d 902 (1986). ?
13. *Camp v. State of California*, 184 Cal.App.4th 967 (2010). ?
14. *Davidson v. City of Westminster*, 649 P.2d 894 (1982). ?
15. *Hucko v. City of San Diego*, 179 Cal.App.3d 520 (1986).d ?
16. *Williams v. State of California*, 34 Cal.3d at 25. ?

17. *Hartzler v. City of San Jose*, 46 Cal.App.3d 872 (1975). [?](#)
18. *McCorkle v. Los Angeles*, 449 P.2d 453 (1969). [?](#)
19. *Mann v. State*, 70 Cal.App.3d 773 (1977). [?](#)
20. San Jose Police Department, (2008). *Peace Officer First Aid & CPR Guide*. San Jose, CA: Author. [?](#)
21. Cal.Gov.Code § 815.6 (“Mandatory Duty of Public Entity to Protect Against Particular Kinds of Injuries”); See *also*, Avery, M., Rudovsky, D., Blum, K. (2008). *Police misconduct law and litigation* (3rd ed.). Eagan, MN: Thompson Reuters/West [?](#)
22. Cal. Penal Code § 11166(k). [?](#)
23. California Commission on Peace Officer Standards and Training. (2006). *Domestic Violence* (5.2 Ed.). Sacramento, CA: Author. [?](#)

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