



TRAINING MEETING
MINUTES OF ACTIONS
Wednesday, September 7, 2011
Art Pick Council Chambers
3900 Main Street, Riverside, CA

Chairman Santore called the meeting to order at 4:00 PM.

PLEDGE OF ALLEGIANCE

Roll Call

Rotker		Johnson	Brandriff		Jackson	Roberts	Santore	Adams
✓		✓	✓		✓	✓	✓	✓

✓ = Present **B** = Absent / Business **S** = Absent / Sick **V** = Absent / Vacation **O** = Absent / Other
UE = Absent / Unexcused **L** = Late **LE** = Left Early **■** = Vacant

STAFF: Frank Hauptmann, CPRC Manager; Phoebe Sherron, Sr. Office Specialist

Public Comment

Ms. Sherron wished Commissioner Jackson "Happy Birthday."

Training

- A) Presentation by Ms. Laura Kalty, Esq. from the Law Offices of Liebert, Cassidy & Whitmore on The Peace Officer Bill of Rights, California Government Code §3300-3312.
- B) Commission Discussion / Question and Answer with Ms. Kalty.

Mr. Hauptmann introduced Attorney Laura Kalty with the Law Offices of Liebert, Cassidy & Whitmore.

Ms. Kalty began by saying that the Public Safety Officer Procedural Bill of Rights, or POBR, was enacted in 1976, codified in Government Code 3300-3313. She said this provides a catalog of the basic rights and protections given to all peace officers by the public entities which employ them.

(The audio for Ms. Kalty's presentation is available on the CPRC website at http://www.riversideca.gov/cprc/Training/Training_Schedule.htm.)

During her presentation, commissioners asked the following questions:

Commissioner Johnson:

- If there is an on-going administrative investigation or interrogation, and they overlap or fail to stop, and they fail to advise of *Miranda*, what happens to the “carry through” on the criminal side?
 - You raise interesting issues in the potential for overlap. At the beginning level in the course of an investigation, during the interrogation, the officer will be given the procedural steps. If there is any tie to the administrative investigation, then POBR rights would be given. In other words, the officer would be allowed to have a representative present with him / her during their interrogation. The officer would be given proper notice of the nature of the interrogation; that the interrogation may be recorded; and the officer has the right to review the recording.

If this is an internal administrative investigation which is potentially dealing with criminal conduct, certain administrative steps will be taken. At the outset of the interrogation, the officer would be read his *Miranda* rights, and the officer would then choose whether or not to waive his 5th Amendment right against self-incrimination. If the officer does not waive his *Miranda* rights, he is given a *Lybarger* warning compelling him to cooperate in the administrative investigation and answer all the questions truthfully with the understanding that these compelled statements cannot be used against him criminally.

- How would a case be affected if raw notes for an administrative or criminal investigation, alleged to have been destroyed, turn up later?
 - Not aware of a specific case, but it would be problematic if the officer said the notes had been destroyed and then they turn up, especially if the notes contradict what was in the investigation report.
- If an officer responds to a subpoena, chooses not to answer, and just leaves, does the Commission have any recourse?
 - Ms. Kalty: The Commission doesn't have many options because it is relying on a thorough investigation from RPD.
 - Mr. Hauptmann: If an officer came before the Commission because a subpoena was issued, he would not have to answer any questions.
 - Ms. Kalty: This is why *Lybarger* was created in the agency context because officers had invoked their 5th Amendment rights against self-incrimination which left the agency stuck: the officer's choice is cooperate in order to work for that police department or he won't be able to work there.
- This shouldn't be a surprise because government hearings that are seen on TV where someone has been subpoenaed, that person has every right to plead the 5th and could just walk out.
 - Ms. Kalty: Good point.
 - Mr. Hauptmann (to Ms. Kalty): Without an understanding of how this fits into the charter, it would be a tough question to answer.

Chairman Santore:

- If there was a locked box that had a combination on it, would you need a search warrant to open that?
 - If the locked box is personal property and not Department property, yes.
- How would it be identified as personal property?
 - Stickers identifying something do not determine whether or not an item is considered personal property. Many officers have a “war bag” containing the items they use when they go in the field and which is kept in their locker. This is very likely considered personal property. A gym bag would also be considered personal property.
- When you say that the Commission is not the employer of an officer, if we were to subpoena them, what weight does the Commission have? Why should we be able to? Does he have to come before us and answer the questions? The Charter (gives us the right to subpoena). All he has to do is plead the 5th. That's his right and we're not the employer of that officer, so why should we have those rights to subpoena him?
 - Ms. Kalty: Where do you get your authority to subpoena? Subpoenas are different from interrogation. It applies to members of the employing public safety department and other licensing agencies. The authority rests with the City Manager, who would be governed by the POBR. If

- o you subpoena an officer for an interview, is he allowed to have a representative with him?
- o Mr. Hauptmann: If a subpoena is issued, the person named would have to appear, but they wouldn't have to provide a statement because the interviewing body is not the commanding officer. What has happened here before, they refused to answer.

Commissioner Brandriff:

- What if the criminal investigation impedes the administrative investigation? It's still only a year no matter what?
 - o Notice on the slide it says "tolling provisions." There are certain events that "toll" or extend the one year statute of limitations. Departments are told to confirm, in writing, if any of the various tolling events apply to a case.
- What if there are policies prohibiting without permission an officer moonlighting in security work or something of that nature?
 - o It's a standard policy that there is a prohibition against outside employment that would interfere with their job. The way departments may discover this information is to put an affirmative obligation on the officer to disclose this type of information. I would be concerned about reviewing income statements, but I am aware of some cases where that may fall under one of these exceptions.
- Is that information always available? If the officer is terminated by and department and he gets hired by another, can the defense find that information from previous employers or since they're at a new department, they start over?
 - o Ms. Kalty: Peace officer personnel records are private. Before they can be used in criminal or civil proceedings, you have to go through what is called the Pitchess process. This doesn't apply in federal court. That's before records can be disclosed. There is a limit of going back only five years. When you're talking about Brady material, there is no five-year limitation. If you're talking about taking it a step further with an officer going to another agency, hopefully that agency would have done a complete background, which is usually kept in a separate file from the personnel file. But I don't know if dishonesty information from another agency would make its way to another agency.
 - o Mr. Hauptmann: It has occurred; it does occur. In Pitchess processes now, many judges are asking to look at background investigations to determine whether or not there was a case where a person had been hired, knowing that there had been punitive discipline or there had been dishonesty. Departments, if they learn during a background that there are issues of this sort, know that they would be hiring a liability. If a department has hired a person with this type of background and that person makes probation, the department is basically stuck.
- With regard to the gag order, that's only for the length of the investigation or is it "forever?" And if something happens in the interview that isn't right, how would this person (a witness) let his representative know about the problem?
 - o It is in place for more than the length of the investigation. If this person thought there was something inappropriate taking place, he or she would have the right to make a complaint regarding the issue. However, the person can't talk about the substance of the investigation beyond the lifetime of the investigation.

Commissioner Rotker:

- If the locker belongs to the city, but the contents are the officer's, and the city wants to make sure that nothing is removed from the locker, can they take the officer to his locker and have him there while the forcibly open the locker?
 - o I would recommend giving the officer an order to go to his locker because his locker is going to be searched. An officer is entitled to have the locker opened in his presence, get his consent to search the locker, obtain a search warrant, or give the officer reasonable notice that the locker is going to be searched.
- Do cities hold police officers to a different standard than other city employees when it comes to lying?
 - o Yes. Public safety employees are held to a higher standard than public employees; police officers are held to an even higher standard than public safety.

Vic-Chair Roberts:

- Do federal agencies have a POBR or something similar?
 - I don't know. We are a California company; I don't know if there's anything on the federal level.
- Can administrative investigations be used civilly against the officer?
 - Ms. Kalty: I think it can, because often these administrative investigations lead to civil litigation.
 - Mr. Hauptmann: It cannot be used civilly in State court. Compelled statements cannot be used in State courts for criminal or civil cases, but not in federal court.

Adjournment

The Commission adjourned at 6:04 PM.

Respectfully submitted,



PHOEBE SHERRON
Sr. Office Specialist