

INTERNAL AFFAIRS INTERVIEWS FOR LAW ENFORCEMENT OFFICERS – WHAT TO THINK ABOUT WHEN CONTACTED

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Many law enforcement officers are called for questioning before Internal Affairs regarding matters under investigation. Officers should take several issues under consideration when contacted by Internal Affairs for an interview.

CONSIDERATIONS BEFORE GOING IN

The first area of consideration should always be for the officer to consider what exactly is under investigation by Internal Affairs. Sometimes, officers are aware of the matter under investigation for which they have been contacted. For example, where officers have been involved in a difficult arrest, involving the use of force, it is pretty obvious that they may be called to speak regarding the arrest if a complaint is made. Sometimes, the investigator may even disclose to the officer what the particular investigation is about ahead of time.

Other times, officers may not recognize what the particular interview is in reference to. This is often the case where an incident giving rise to the interview is either too old in time or involves a minor matter, and where they were unaware of any complaint in the first place. Many times, individuals are arrested and later complain (as much as a year or more later) about an officer's conduct. Typically, these types of complaints are an attempt by an arrestee or citizen to retaliate against officers for properly doing their job.

The reality is that Internal Affairs units are generally not bound by statutes of limitation in their investigations. I have seen allegations investigated years after they have occurred. Most Internal Affairs units have little control in immediately dismissing complaints, even when they are baseless or years out of date. Typically, the complaint must still be investigated by Internal Affairs. Many criminals are aware of this fact and sometimes try to file complaints as a means of keeping good officers out of their neighborhood.

In any event, it is important to take any Internal Affairs interview seriously. If the matter involves a serious issue, such as alleged criminal activities, misuse of force, theft or dishonesty, it is especially important to speak to an attorney as quickly as possible for legal advice.

Often times, many officers speak with a union representative or others for advice. Their advice can be invaluable and based on years of experience with a particular Department. They usually have a good insight into the seriousness of an investigation. However, if a matter looks like it might be criminal, the officer must be careful about what discussions they have, because a confidentiality privilege may not attach to conversations or statements made to non-lawyers.

THE INTERVIEW BEGINS

Typically, an Internal Affairs interview starts with 2 or more investigators, a tape recorder and a Garrity statement to sign. Usually, there is enough notice of the interview in order for the officer to obtain a union or legal representative, which the Internal Affairs investigator should not generally have a problem with. Most labor, department, municipal and federal regulations provide officers with the ability to be accompanied by a labor or legal representative.

When the interview begins, the parties at the interview identify themselves on audio tape and the officer is asked to review and sign a Garrity statement of rights. Garrity v. New Jersey, 385 U.S. 493 (1967). This statement usually indicates that the officer is being compelled to talk about the issues under investigation and that the statements will not be used against the officer in a criminal investigation. As a side note, most Internal Affairs units will not interview officers in potentially criminal matters until the case is declined by the local prosecutor or U.S. Attorney's Office. Additionally, not all investigators use Garrity rights statements, but almost all of them do.

Difficulties arise when some agencies request that an officer give a voluntary statement. Often times, it appears to the officer that the statement being sought is not voluntary, but required. However, officers should be on guard to make sure that their statement is being required by their employer. In general, voluntary statements provide little or no protections to an officer being interviewed. United States v. Friedrich, 842 F.2d 382 (D.C. Cir. 1988). If an officer is deemed to have given a voluntary statement, then it might be used against them later in a criminal prosecution or administrative disciplinary matter.

Once the Garrity statement is signed, most interviews usually (depending on the case) last anywhere between 30 minutes to a few hours. Representation during this stage provides some general protections. Many officers are protected against harassment during interviews through their collective bargaining agreements or agency regulations. An officer's representative can usually protect against this sort of treatment in the case that it occurs. As a footnote, most Internal Affairs investigators that I have worked with are very professional and conduct themselves accordingly.

A labor or legal representative at an interview can also help clarify questions asked to an officer if they are unclear, in addition to providing moral support to the officer in what can be a difficult situation. An attorney can also provide legal guidance in serious matters under investigation in the interview process. Often times I find that it is

important to take breaks during an interview to properly advise a client on an area of questioning as sometimes the direction of an investigation can change midway through an interview.

AFTER THE INTERVIEW

When the interview concludes, most of the time an officer is cautioned against speaking to others about the interview. Be very cautious about speaking about the case with anyone other than your representative, as there could be a later investigation on this issue alone if investigators find out about the discussions.

In short, it is always important to be extremely cautious when an officer is confronted with an Internal Affairs interview. As always, I recommend legal representation from the start, either through your union or local attorney. When these issues arise it is well-advised for the law enforcement officer to contact an attorney immediately for specific legal advice and/or representation.

These are only general legal principles and not meant to be interpreted as specific legal advice. Questions regarding strategy for Internal Affairs interviews should be directed to their attorney as individual circumstances require specific legal advice.