

Law Enforcement Officer Training with  
Scott O'Mara & Brad Fields

**KNOW YOUR RIGHTS!**

Bradley M. Fields, Esq.  
Bobbitt Pinckard & Fields, APC  
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# Know your rights Topics For Discussion

## Description

Presented by:

Scott O'Mara Esq. and Brad Fields Esq.

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At: 08:30 – 10 AM

## Topics:

1. Retirement / Disability
2. Workers / Comp 4850 / TTD
3. Medical / Care / Impact of Covid
4. Death Benefits
5. Federal Benefits
6. Third Party Accidents
7. Critical Incident
8. Under Investigation and Facing Interrogation
9. Disciplinary Appeals
10. Potential Contract or Policy Violations
11. Posting on Social Media
12. Cell Phone Issues
13. Secure firearms in a vehicle

Info: [knowyourrights@scottomara.com](mailto:knowyourrights@scottomara.com)

# Critical Incidents

- What is a critical incident?
- What should you do immediately after securing the scene?
- What should you do until the attorney arrives to provide representation?

# What Is A Critical Incident?

- Any “course and scope” incident in which a law enforcement officer is the subject of an immediate (likely criminal) investigation and from which the Department and/or other investigators want an immediate statement from the officer that could impact the officer’s career or freedom.

Examples include as follows:

- 1) Officer Involved Shootings...anyone who fired at a suspect or ordered someone to fire their weapon
- 2) Death In Custody / Jail Death Incidents...anyone who touched the deceased or did a jail check on the deceased
- 3) Fatal or Near Fatal Traffic Accidents

# What Should You Do Immediately After Securing The Scene?

- Make sure that the immediate needs of the subject law enforcement officers are attended to by anyone who can assist
- Contact the association attorney ASAP!
  - PORAC LDF # 800-255-5610
- If possible, and as soon as possible, take the subject officers away from the scene to the nearest station
  - Separate subject officers from each other, but do not isolate them...make sure they have formal or informal peer support with them at all times

# What Should You Do Until the Attorney Arrives?

- Continue to insure that the law enforcement officer's needs are met
  - Provide food
  - Assist with Contacting Family
  - Play interference with what can be an overwhelming amount of well-wishers
- Talk to the officer...about anything EXCEPT the incident...there is no peer support or association leader privilege
- Make sure that nobody (including the Department, friends or family) talks to the officer about the incident until the attorney arrives to be briefed by the officer

# Under Investigation & Facing Interrogation

- What do I do if I am given notice of an interrogation?
- What are some important things to be aware of when I'm under investigation and facing interrogation?
- What if my supervisor approaches me for an informal discussion regarding something over which I could be in trouble?

# What Do I Do If I Am Given Notice Of An Interrogation?

- ALWAYS bring a representative to the interview.
- Gov't Code section 3303(i) states that the representative may be anyone not “subject to the same investigation” and that “[t]he representative shall not be required to disclose, nor be subject to any punitive action for refusing to disclose, any information received from the officer under investigation for noncriminal matters.”
- Can be a non-attorney legal rep if the matter is NOT criminal.
- For a serious or potential criminal matter, it is advisable to bring an attorney to the interrogation

# Under Investigation And Facing Interrogation

- Do I really need a representative? Yes...reps cut down on sustained untruthfulness and insubordination findings
- Use rule of reasonableness for scheduling the interrogation
- Make sure to prepare with your rep and review all BWC or other available video prior to the interrogation

# Informal Discussions

- Gov't Code § 3303(i) states: “This section shall not apply to any interrogation of a public safety officer in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer.”
- If a supervisor knew or had reason to know that an employee is under investigation or will be under investigation, they should not engage in a “hallway conversation” in an attempt to gather information to use against the employee.

# Disciplinary Appeals

- If you are served with an advanced notice of/notice of proposed disciplinary action, you have the right to an administrative appeal
- If you do not yet have an attorney on board, you should be able to consult with one at this time to appeal or help you decide whether you want to appeal
- Make sure to obey all timeframes or face waiver of your appeal rights!

# What Should I Do If Some Contract Or Department Policy Issue Is Not Followed?

- Contact your Association leadership for assessment and possible assistance
- If the language is not being followed, the association can attempt to informally work it out or potentially file a grievance or other action (PERB or Court) on behalf of the law enforcement officer and association
- Past practices must be routine and frequent, but can be enforced
- Associations can enforce actual language, but not what the language could or should say

# Social Media Issues

- “The First Amendment prohibits the government from regulating a citizen’s speech on matters of public concern. While Federal employees do not surrender their First Amendment free speech rights by accepting public employment, their speech is subject to limitations arising out of the employer-employee relationship. However, you should recognize that when public employees make statements pursuant to their official duties, they are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline.”
- Safest course of action is to have no social media.
- While you can attempt to cover yourself with some sort of anonymous posting, be aware that these can be traced back to you.
- If you choose to have social media, be aware of controversial postings, especially regarding anything with a “nexus” to your employment.

# Cell Phone Issues

- California enacted the California Electronic Communication Privacy Act effective January 2016, which requires California government entities to obtain a search warrant before obtaining or accessing electronic information, including such information contained on cell phones...don't turn your personal cell phone over to investigators
- However, Penal Code Section 1546.1(k) states as follows: "This chapter shall not be construed to alter the authority of a government entity that owns an electronic device to compel an employee who is authorized to possess the device to return the device to the government entity's possession."
- CPRA requests cover personal cell phones of government employees and can require employees to verify whether or not they have entries that are responsive to a request
- Be careful what you text to others...say it don't text it!

# Securing Handguns in Vehicles

- Cal. Penal Code Section 25140(a) requires that a handgun in an unattended vehicle be stored in one of the following: (1) locked in the trunk; (2) locked in a container placed out of plain view; (3) locked in a container that is permanently affixed to the vehicle's interior and not in plain view; (4) locked in a toolbox or utility box
- Cal. Penal Code Section 25140(b) alternatively allows a peace officer to lock a handgun out of plain view in a center utility console if the vehicle does not have a trunk
- While a violation is only an infraction, it would likely also lead to administrative discipline