
Handling Internal Sheriff Investigations with the Garrity Warning

When an employee misconduct case is likely to lead to criminal charges in a sheriff's office, consideration has to be made whether to conduct the investigation in a way that preserves the right to pursue criminal charges. It may be more important to develop the facts fully and forego the right to pursue criminal charges. Often, it's not clear which course of action is best at the outset so an investigation must take into account the likelihood that the officer will assert his or her right to remain silent. The key to this process is the use of the Garrity warning.

Internal affairs officers may reach a point in the investigation in which an officer refuses to testify for fear of a criminal action against them. The officer might suffer job loss as a result of refusing to testify but the U.S. Supreme Court has ruled that they must be given a warning called the Garrity warning. In this situation, if an officer has a right to refuse to testify or give evidence against himself or herself for a possible criminal proceeding, his or her cooperation can be gained with a written promise not to pursue criminal charges.

Those investigators are then allowed to compel truthful testimony on questions that are narrowly tailored to the scope of the employee's job as a police officer. In order to compel these answers, the officer must be given the Garrity warning which states that cooperation with the investigation and giving truthful answers to the job-related questions protects the officer from criminal charges but that refusing to testify might result in criminal charges.

Under those circumstances, if the officer testifies after having been given the immunity from criminal charges, the officer still might suffer job loss-- but only if there was a violation of internal rules, not due to suspected criminal activity.

In order to qualify, the questions must be specific, directly

and narrowly related to the employee's official conduct or job duties. For Garrity to apply, the statements must be compelled by a commanding officer, and not voluntary. If the statements or testimony are compelled or coerced, then it would be a violation of the Constitutional right to avoid self-incrimination to use them to pursue criminal action against the employee. Once the Garrity immunity warning is given, all of the testimony and questions may be protected.

The warning (immunity) does not give the employee the right to lie in his or her answers. In any investigation in which a Garrity warning is given, the courts decided under the Fifth Amendment, an officer's compelled incriminating statements may not be used in a later prosecution for the conduct under investigation. However, it does not preclude the prosecution of a crime of making false statements or obstruction of official business.

What This Means For Counties

Be aware of the following pitfalls:

The warning (immunity) is given and the statements are still provided to criminal investigators. This leaves the criminal prosecution subject to a claim the statements are inadmissible.

The warning (immunity) is given prior to questions that are routine and would have been answered without any objection. In this situation the use of such routine information in a report may become the topic of an objection. It's better to only administer the Garrity warning (immunity) at the point at which all routine questions have been asked and answered voluntarily, and the ones likely to raise a refusal may then be re-asked under the Garrity warning process.

For more information, contact CTSI at 303.861.0507.