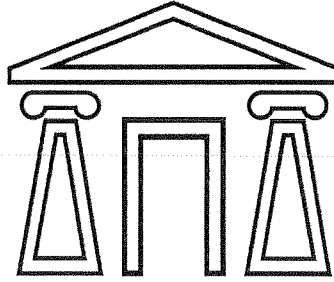


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HOW TO SURVIVE AN ADMINISTRATIVE INVESTIGATION

***By Christopher W. Miller, Esq.
Mastagni, Holstedt, Amick, Miller & Johnson***

As a probation assistant or deputy probation officer, you spend every work day salvaging those juvenile and adult offenders who are most at risk in the criminal justice system. You are called on to counsel minors, guide adults, restrain combative wards, and recommend punishments, programs, and placements that will change the lives of children and adults forever. Yet you may take little time to appreciate the daily risk to yourself and your career of an environment where a single complaint of misconduct in the work you do can leave you fighting a long battle for your reputation and your livelihood in an internal affairs investigation.

How an Investigation Begins

Investigations into alleged misconduct by a probation peace officer usually will come from a ward, a citizen, a co-worker, an adult probationer or a supervisor. The investigation that follows may involve allegations you violated one or more policies, rules or regulations of the Probation Department and/or the County of Sacramento. You may, however, be accused of criminal misconduct as well.

Conduct such as striking a minor, using excessive force, misuse of CJIS or CLETS, filing a false or misleading report of an on-duty incident, making an unsubstantiated workers' compensation claim, depriving a minor of necessary care, personal use of a county vehicle, or even misrepresenting hours or overtime worked all can be the basis of a criminal investigation. An investigation into criminal charges sometimes is referred by the employer to an outside law enforcement agency. Violations of the Penal Code or Vehicle Code nonetheless may be the basis of the administrative investigation even if the Probation Department does not refer your case to an outside agency for a criminal investigation or prosecution.

Contact the Union Immediately

You will not necessarily be notified that you are under investigation for alleged misconduct on the job. The Probation Department must notify you, however, of the nature of the charges against you if the department wants to question you about the incident.

Usually, of course, you will figure out that you are under investigation. Perhaps the rumor mill will tell you of a pending investigation, or you will be placed on administrative leave pending the investigation, or you simply will have the sense that an incident in which you were involved has the potential for trouble.

As soon as you know you are under investigation for alleged misconduct, contact the Sacramento County Probation Association at 368-1485. The union offices are located at 9719 Lincoln Village Drive, Suite 101. You must contact the SCPA for representation.

The POBR: Your Rule Book for Administrative Interviews

Your employer has the right to require you to submit to an interview about the incident. The administrative interview – called an interrogation – must be conducted according to the Public Safety Officers' Procedural Bill of Rights Act, or POBR (Govt. Code § 3300 *et seq.*) You have the right under the POBR to (1) have the representative of your choice present during the interview; (2) be told the nature of the charges against you; and (3) tape-record the interrogation.

You will be represented at the administrative interview by an attorney or union representative working for you on behalf of the SCPA. Peace officers often make the mistake of believing the allegations will go away if the supervisor just hears “their side of the story.” But you should *never* submit to an interrogation on your own -- only a union representative or attorney experienced in internal investigations can adequately represent your interests in the stressful setting of an administrative interview.

“The Truth Shall Set You Free”

No greater mistake can be made by a peace officer subject to an administrative interrogation than to lie about an incident or allegations. Dishonesty by a peace officer is a “capital offense” from which I can do little to save you. The courts repeatedly have emphasized that peace officers are held to a higher standard in society and are expected not to violate the laws they are sworn to enforce. A peace officer who is dishonest – particularly during an internal affairs investigation – is unlikely to keep his or her job no matter what the allegations of misconduct.

You Have the Right to Appeal Disciplinary Action

Should the department decide after the investigation to issue discipline, you have the right to appeal. The POBR requires that you be given the opportunity for an administrative appeal from “punitive action” – defined by the courts and the statute as anything from a letter of counseling to termination, including suspensions without pay, punitive transfers, demotions, and loss of premium or incentive

pay. (Gov. Code § 3304(b).) You also have thirty (30) days to respond to any “adverse comment” placed in your personnel file, such as a supervisor’s memo critical of your performance.

The first level of appeal from punitive action is a predisciplinary, or “Skelly” hearing, at which you and your representative may challenge proposed discipline by presenting evidence or explanations to argue why the discipline should be reduced or withdrawn. Once the department sustains discipline above the level of a letter of reprimand, you have the right to appeal the disciplinary action to binding arbitration, where you will be represented by a SCPA attorney.

Witness Representation

The Sacramento County Probation Department Internal Affairs Policy allows witness officers to be represented in administrative interviews. This provision, which has been in place since 2002, was created in response to threatened litigation from the Sacramento County Probation Association over the recurrent and widespread abuse of witness and subject rights during administrative investigations by the Department. The fact-finding process is best served when all affected employees, whether deemed witness or subject, have an opportunity to be represented in the adverse forum of an internal affairs investigation.

If you receive a notice or order to appear as a witness in an internal affairs investigation, you should contact the Sacramento County Probation Association as soon as possible so representation can be arranged through the union.

You can survive an administrative investigation by keeping in mind this simple set of rules: Call the union; tell the truth; and fight, fight, fight to keep your job and reputation intact.