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# Discussing Career Issues from Your PBA General Counsel

## Understanding the CJSTC Review Process – Part 3

[This is the conclusion of a three-part series explaining the CJSTC disciplinary process and “walking” the reader through the process. The first part of the series covered the disciplinary process through a finding of probable cause against an officer. It is found in June, 2007 issue of the Roll Call. The second part of the series covered options available to an officer who receives an administrative complaint. It is found in the September, 2007 issue of the Roll Call.]

### Issuance of the Administrative Complaint

As the reader was advised in the second part of this series, once an administrative complaint issues from the CJSTC, you have essentially three choices on how to proceed: (1) if you dispute the facts alleged in the complaint, you will normally request a “formal” (trial-type) hearing; (2) if you do not dispute the facts alleged in the complaint, you will normally request an “informal” hearing; and (3) if you do not wish to participate in the process and continue a law enforcement career, you may elect to “voluntarily relinquish” your certification. Under the third

option you will permanently lose your certification as an officer once the voluntary relinquishment is accepted by the CJSTC. **Note: none of these choices should be made without consulting with a PBA attorney!**

Set out below is the typical time-frame for resolution of your case depending on which course of action you elect (from date of filing of election of rights with the CJSTC):

|                              |             |
|------------------------------|-------------|
| Request a formal hearing:    | 6-18 months |
| Request an informal hearing: | 4-8 months  |
| Voluntary relinquishment:    | 4-8 months. |

### Formal Hearing Process

If you dispute the factual allegations of the administrative complaint, then your case will be heard by an administrative law judge in a “bench trial.” The formal hearing process takes anywhere from 6-18 months, sometimes more, for resolution. This is because your case will be heard by both an administrative law judge and the full CJSTC.

The formal hearing process is, in its most basic, a trial. An attorney for the CJSTC serves as the prosecutor. The assigned PBA attorney serves as your defense counsel. Witnesses testify and are subject to examination and cross-examination. Ultimately, the administrative law judge will render a recommended decision on three issues: (1) whether or not the CJSTC proved the factual allegations of misconduct by “clear and convincing evidence,” (2) whether or not the misconduct proven demonstrates a “lack of good moral character,” and (3) if the misconduct proven demonstrates a lack of good moral character, what is the “recommended” punishment for the misconduct?

As already advised, if you request a formal administrative hearing your case will normally be heard by both an administrative law judge and the full CJSTC. The reason for the two step process is because the Commission has the responsibility to review and approve the administrative law judge’s recommended decision. Generally speaking, this review involves the final two issues of “good moral character” and the appropriateness of the recommended punishment. Depending on the circumstances of the case, CJSTC has a fair degree latitude to change a determination on the issue of “good moral character” and a large degree latitude to change the recommended punishment made by the administrative law judge.

In contrast, if the administrative law judge determines that the CJSTC failed to prove the misconduct occurred, the

administrative complaint will usually be dismissed. Unlike the issues of good moral character and the appropriate punishment, the determination of whether the misconduct occurred rests almost exclusively with the administrative law judge and cannot normally be changed by the CJSTC.

The method for reviewing an administrative law judge’s recommended decision is through the filing of “exceptions” with the Commission. These “exceptions” are heard by the Commission during the disciplinary portion of its meetings. Either the CJSTC attorney or your attorney can file “exceptions” to the administrative law judge’s recommended decision. When exceptions are filed, both attorneys are given the opportunity to orally argue the case before the Commission. Then the Commission will resolve the exceptions and decide the case.

### Stipulated Settlement Agreements

A major portion of cases in which formal hearings have been requested are resolved through what is known as a stipulated settlement agreement. This agreement is a

“settlement” of the administrative charges brought against you. **These agreements are negotiated between the CJSTC attorney and you or your PBA attorney. They are strictly voluntary on your part.**

There are many reasons for entering into a stipulated settlement agreement. First and foremost among the reasons, is that it takes the uncertainty out of “going to trial.” You

know exactly the punishment that will be recommended and administered by the Commission. Another reason is that use of a “SSA” gives you the ability to have the administrative complaint resolved quickly. Going to a formal hearing may take anywhere from 6-18 months before the case is resolved. If you enter a stipulated settlement agreement, your case can be resolved in 4-8 months.

Under the terms of most “SSAs”, you are not required to admit the factual allegations of the administrative complaint; however, you do have to “accept” a predetermined punishment from the CJSTC for the alleged misconduct. The types of punishment administered through the stipulated settlement process include retroactive suspensions, prospective suspensions, probation and mandatory training courses.

Stipulated settlement agreements are considered by the Commission during the disciplinary portion of its meeting. These agreements are usually handled at the meeting by your PBA attorney who is present in order to support the settlement if any questions about the agreement are asked by Commission members.

### Informal Hearing Process

If you and your PBA attorney decide not to dispute the factual allegations of the administrative complaint, you may request an informal hearing before the CJSTC (or you can elect to voluntarily relinquish your certification). The purpose of an informal hearing is to allow you an opportunity to speak to the Commission and persuade it to impose a lesser form of discipline for the alleged misconduct.

**An informal hearing should be handled by you and your PBA attorney together. Do not try to handle an informal hearing by yourself!** As previously stated, the purpose of an informal hearing is limited. First, you have to admit to factual allegations of the complaint. So the real purpose of the hearing is to provide the Commission with either a legitimate excuse for the misconduct or other reasons, (known as mitigating

### Lying Under Garrity Immunity

#### What you need to know

According to a recent case decided by U.S. 11th Circuit Court of Appeals, lying under Garrity immunity could get you prosecuted criminally.

Regarding *United States v. Veal*, in which a group of police officers were charged with perjury and making false statements in the case of the death of a known drug dealer, the 11th Circuit ruled:

*Although an accused may not be forced to choose between incriminating himself and losing his job under Garrity, neither Garrity nor the Fifth Amendment prohibits prosecution and punishment for false statements or other crimes committed during the making of Garrity-protected statements. Giving a false statement is an independent criminal act that occurs when the individual makes the false statement; it is separate from the events to which the statement relates, the matter being investigated... We agree with the circuits that have addressed this issue before us and have determined that Garrity-insulated statements regarding past events under investigation must be truthful to avoid future prosecution for such crimes as perjury and obstruction of justice. Garrity protection is not a license to lie or to commit perjury.*

You are subject to prosecution if you lie under Garrity immunity. Chapter 112, Florida Statutes also subjects you to prosecution for perjury.

Source: Law Enforcement Technology

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*“...the Commission has the responsibility to review and approve the administrative law judge’s recommended decision.”*