

# Discussing Career Issues from Your PBA General Counsel



*Hal  
Johnson*

## Update: CJSTC To Make Several Modifications In Its Disciplinary Rules

As was reported in the last *Roll-Call*, the Penalty Guidelines Task Force of the Criminal Justice Standard and Training Commission (CJSTC) met on February 17, 2009 to review the Commission's disciplinary rules and consider modifications to them. The Florida PBA was in attendance at the meeting and made a presentation covering a number of issues that it felt the CJSTC needed to address in order to better serve the interests of the officers in the field.

On May 14, 2009 the full Commission considered the task force's report and recommendation. While not all of the PBA's suggestions were accepted by it, several were adopted and will now move forward in the formal rulemaking process after final Commission action in August, 2009.

Three PBA recommendations received strong support from the Commission. They include: (1) establishing a procedure for the investigation of agency heads by FDLE rather than relying on the agency to investigate its own administrators [the PBA was concerned that a fair investigation could not be conducted without using an impartial, outside investigative agency such as FDLE]; (2) establishing an eight (8) years statute of limitations for the Commission consideration of allegations of misconduct known to the employing agency or other criminal justice agency [this will normally prevent the CJSTC from pursuing

allegations of misconduct that occurred more than eight years prior to being brought to its attention], and (3) clarification of prospective suspensions established in stipulated settlement agreements to provide the affected officer with greater flexibility as to when and how the suspension will be served [this is designed to lessen the circumstances in which an actively employed officer will receive a "double" suspension, first by his agency and then as a result of a suspension required by CJSTC].

While several of these recommendations either have been implemented or can be implemented after final action by the Commission in August, some will have to wait until to completion of the formal rulemaking process. This can take anywhere from six to 10 months.

In closing, the Florida PBA wants to thank the Commission for its full and fair consideration of the PBA recommendations. Also, it wants to say a special thanks to **Florida PBA President John Rivera, Florida PBA Treasurer Ernest George, Southwest Florida PBA President**

**Mick McHale, and former West Central Florida PBA President Kevin Durkin** [all of whom are CJSTC commissioners] and **Palm Beach PBA President John Kazanjian** for their strong and unified voice in guiding these recommendations through the task force and commission process. ■

*"The Florida PBA... made a presentation covering a number of issues that it felt the CJSTC needed to address in order to better serve the interests of the officers in the field."*

*"Any experience can be transformed into something of value."*

*~ Vash Young*

## Guest Commentary...

### A Few Words From A Criminal Defense Attorney (Another View)

By Elisabeth Porter

As a former Assistant Public Defender, I have defended current and former law enforcement officers. I have learned that everyone in the criminal justice system is responsible for doing their best and everyone makes mistakes. A criminal defense attorney's job is to keep what a client tells the attorney confidential, to inform the client of his or her legal rights as well as the consequences of his or her actions and to make sure the client is aware of the possible outcomes.

One of the first lessons I learned as an Assistant Public Defender is the need to treat everyone with respect whether it is a judge, a juvenile detention officer, a clerk or a colleague and hopefully you will be treated with the same respect. The better my relationship with opposing counsel the better the results. I also learned that law enforcement officers have different ideas about what a criminal defense attorney's job is.

As someone who is married to a law enforcement officer, I heard jokes about getting people off, public pretenders, and the dark side. None of these jokes show the appropriate respect for our law enforcement system which differentiates the United States from other countries in terms of the rights given to each of us as individuals under the Constitution. I respect law enforcement officers who conduct themselves appropriately and respect individuals' constitutional rights and still make arrests. The officers who act with the most consistency and who stick to the truth obtain the convictions that stick. I am discouraged when I hear higher level officers encouraging less experienced officers not to follow the rules or to justify their results after the fact. This is discouraging because ours is not an ends justifies the means system.

For example, some officers have asked me about motions to suppress evidence. The standard for motions to suppress is based on what the

officer knows at the moment of the illegal seizure. If the officer has reasonable suspicion, the officer may perform an investigatory stop. If the officer has probable cause, the officer may perform a search. If the person is just acting nervous or fidgety, this is not sufficient to justify a search. However, if the person is in a car that smells of marijuana and is nervous and fidgety, this would be sufficient for a search. If the person was just nervous and fidgety and the officer searched the person illegally and found the marijuana under the car seat, the marijuana would most likely be suppressed. Officers in more senior positions should accept these results as inevitable, because our justice system favors a person committing a criminal act going free rather than an innocent person going to prison. This is just one of the checks used to prevent officers from intruding on a person's right to innocent behaviors.

I understand that there is a learning curve and a lot of learning occurs on the job, but I expect more from law enforcement and corrections officers. I am discouraged each time I read the Professional Compliance Bulletin about law enforcement and corrections officers around the state committing illegal acts. I believe there is a two fold reason for law enforcement and corrections officers committing these acts. Often law enforcement and corrections officers seem to think that they can get away with something because they are law enforcement and corrections. Just because you "can" do something does not mean you "should" do it. Also, law enforcement officers have stressful jobs and little sleep and I believe this impairs judgment. Therefore, it is important to remember to take time off and get the necessary rest. Also, remember there is no voluntary intoxication defense in Florida for crimes committed after October 1, 1999. Wishing you all the best out there and hoping I do not need to defend you. ■