

Discussing Career Issues from Your PBA General Counsel



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Understanding the CJSTC Disciplinary Review Process – Part 1

One of the legal benefits provided the Florida PBA to its members is representation before the Criminal Justice Standards and Training Commission (CJSTC) in officer “discipline” cases. Because this process is sometimes confusing, and often confused with an employing agency’s disciplinary process, the Association is running a three-part series explaining the CJSTC disciplinary process and how it works. The first article in the series will cover the “probable cause” hearing process and how it works.

CJSTC and its Disciplinary Responsibilities

As you may be aware, the CJSTC, which is a division of the Florida Department of Law Enforcement (FDLE), is a 19-member state commission made up of corrections and law enforcement personnel of management and rank-in-file officers from throughout the State. One of its major responsibilities is to review allegations of officer misconduct and determine whether to seek disciplinary action against those officer’s corrections or law enforcement certification. The disciplinary authority of the Commission can range from a letter of guidance to revocation of an officer’s certification. The type of discipline the CJSTC will impose depends on the misconduct involved.

Understand that the discipline administered by the CJSTC is different from discipline administered by your employing agency. The discipline administered by CJSTC is taken against your certification based upon a state statute that requires officers to be of “good moral character.” The discipline administered by your employing agency deals with “employment misconduct” and does not necessarily involve a certification unless your “moral character” is placed in question by the alleged misconduct. Unfortunately, very often the two types of disciplinary actions do overlap because they arise out of the same set of facts. The end result is that you may be disciplined by both your employing agency and CJSTC.

Sending a Case for a Probable Cause Hearing

One of the most frequent questions the PBA’s legal office receives is: “How does FDLE get notice of an officer’s alleged misconduct?” The simple answer is that in all likelihood the agency has reported it because the state statute requires that officer misconduct involving an alleged “moral character” violation be reported. There are other sources for such cases also, including individuals, the media and an arresting law enforcement agency. However, more likely than not, the information leading to the FDLE case investigation comes from your employing agency.

Once the disciplinary information is received by FDLE, two matters of significance to you occur. First, your certification is “flagged,” which signals to an inquiring agency that your certification is under disciplinary review. Next a case specialist working for FDLE undertakes a review of the investigative information provided to it.

Normally, this investigation by a case specialist will take 2-4 months. The case specialist can do one of three things: (1) close the investigation and clear your certification, (2) issue you a letter of acknowledgement indicating that the discipline taken by your employing agency is sufficient under CJSTC standards and that no further action is warranted, or (3) set your case for a probable cause hearing. If your case is going to be set for a probable cause hearing, this will usually be done within six [6] months of receipt of the investigative file from your employing agency.

Getting the PBA Involved

Once the case specialist completes the investigation and determines your case needs to be reviewed for a probable cause determination, the CJSTC will send you notice that your

case has been set for a probable cause hearing. When you receive that notice, you need to contact the PBA for assistance, because the PBA can begin to help you at this point in time. It can begin to work with the case specialist assigned to your case to make sure the information in the case file is both accurate and complete. It can get the probable hearing moved to a location near or nearer to you. And, most importantly, it can advise you whether or not you should attend the probable cause hearing at all.

The Purpose of the PC Hearing

So, what is the purpose of the probable cause hearing? The purpose of a probable cause hearing is to have a three [3] member panel of the CJSTC review the disciplinary allegations involved in the case and determine whether or not there is sufficient reason to file an administrative complaint against your corrections or law enforcement certification. The panel may find probable cause (which it does in over 90% of the cases). In the remaining percentage of the cases, the panel may find no probable cause, issue a letter of guidance (which is similar to a letter of counseling) or recommend that you be offered an intervention program.

You need to understand two things about the probable cause hearing. First, it is not really a “hearing” in the sense that you get to call witnesses and present evidence in the case. It is a 5-10 minute presentation designed primarily as an opportunity for you to speak to the panel and try to convince it not to seek disciplinary action against your certification. In many cases, the best and most effective approach involves a simple confession that you made an error and promise that it will not happen again.

Next, the probable cause hearing is not a hearing to “dispute” factual allegations. In other words, if you deny that you engaged in the alleged misconduct (for example, if you were not “drunk” or did not use “excessive force”) this hearing is not the place to make that argument. The reason is that the panel is not deciding who is, or is not, telling the truth (an administrative law judge will decide factual issues). It is merely deciding whether the alleged misconduct warrants taking action against your certification and whether there is some evidence to support the allegation of misconduct.

The Probable Cause Finding

Once the probable cause panel hears your presentation, it will decide whether to find probable cause in your case. (As previously stated, it can also find no probable cause, issue a letter of guidance or place the officer’s case in an intervention program.) If it does find probable cause, you will receive an administrative complaint in 10-20 days after the hearing. But, you will leave the hearing knowing whether your case has been resolved or whether an administrative complaint will be issued against you.

Summary

In closing on this part of the series, you should be aware that the Florida PBA has an attorney present at most probable cause hearings to assist its members in their presentation. However, attendance at the hearing is not for everyone. If your intention is to point-fingers at others or vehemently deny the facts, then your interest may best be served by not attending the hearing. Be assured, you do not lose any rights by not attending. Your case simply moves on to the administrative complaint level for further processing (and assistance by the PBA).

[In the next part of the series, the Association will discuss the CJSTC disciplinary process once probable cause is found and the options available to you. As always, if you have any questions about the process after reading this article please feel free to contact us.]

Socrates and Knowledge

In ancient Greece, Socrates was reputed to hold knowledge in high esteem.

One day an acquaintance met the great philosopher and said, “Do you know what I just heard about your friend?”

“Hold on a minute,” Socrates replied. “Before telling me anything, I’d like you to pass a little test. It’s called the Triple Filter Test.”

“Triple filter?”

“That’s right,” Socrates continued. “Before you talk to me about my friend, it might be a good idea to take a moment and filter what you’re going to say. That’s why I call it the triple filter test.”

“The first filter is TRUTH. Have you made absolutely sure that what you are about to tell me is true?”

“No,” the man said, “actually I just heard about it and...”

“All right,” said Socrates. “So you don’t really know if it’s true or not. Now let’s try the second filter, the filter of GOODNESS. Is what you are about to tell me about my friend something good?”

“No, on the contrary...”

“So,” Socrates continued, “you want to tell me something bad about him, but you’re not certain it’s true. You may still pass the test though, because there’s one filter left: the filter of USEFULNESS. Is what you want to tell me about my friend going to be useful to me?”

“No, not really.”

“Well,” concluded Socrates, “if what you want to tell me is neither true nor good nor even useful, why tell it to me at all?”

This is why Socrates was a great philosopher and held in such high esteem. Friends, use this triple filter each time you hear loose talk about any of your near and dear friends.