

RAINS, LUCIA & WILKINSON LLP

★ **KNOW YOUR RIGHTS** ★
A CLIENT INFORMATION BULLETIN
AN ULTIMATE BACKUP NEWSLETTER SUPPLEMENT

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**RIGHTS THAT MUST BE GIVEN TO AN OFFICER
BEFORE BEING INTERROGATED
ABOUT SOMETHING THAT COULD LEAD TO “PUNITIVE ACTION”**
(i.e., something as minor as a written reprimand or as serious as termination)

An officer being interrogated about a matter that could lead to “punitive action”, such as a written reprimand, transfer for purposes of punishment, suspension, demotion, termination, or other reduction in pay, is entitled to the following rights:

1. The officer must be told that an **official investigation** is being conducted, so there is no misunderstanding concerning why questions are about to be asked or why information is being elicited. *City of Los Angeles v. Superior Court (Labio)*, 57 Cal. App. 4th 1506 (1997).
2. The officer must be advised of the **rank, name, and command of the officer in charge of the investigation**. For example, the officer might be told: “This is Sergeant _____, and I will be conducting the interrogation. Present in the room is Lieutenant _____, who may also ask some questions.” (Government Code section 3303(b).) The officer is entitled to have questions asked “by and through” no more than two interrogators. (*Id.*)
3. The officer must be advised of the **“nature of the investigation”** with adequate specificity and enough facts to understand what type of conduct is being alleged, to be able to organize his or her thoughts, and to be able to make an informed choice about whether to seek representation. (Government Code section 3303(c).) For example, the officer might be told: “This investigation concerns an allegation of excessive force. It is alleged that on March 1, 2003, you struck a handcuffed prisoner with your baton.”

☞ An officer should be told the nature of the investigation a reasonable amount of time before the interview is supposed to occur in order to ensure that the officer is able to seek and obtain representation if he or she so chooses. In the event an officer is simply called into Internal Affairs and told the nature of the investigation for the first time, that officer has an absolute right to delay any interrogation until the officer seeks and obtains representation.

4. The officer is entitled to select the representative of his or her choice, who may be present at all times during the interrogation. (Government Code section 3303(i).) When selecting a representative, the officer should keep in mind the following:

☞ The officer is prohibited from selecting a representative who is also “a person subject to the same investigation.”

☞ When the officer is being interrogated for a matter that is **criminal** in nature, the officer should only select a representative who is an attorney or the agent of an attorney’s office.

Government Code section 3303(i) establishes a privilege for an Association representative only in “non-criminal matters.” That section states: The representative shall not be required to disclose, nor be subject to any punitive action for refusing to disclose, any information received from the officer under investigation for *noncriminal* matters.”

5. The officer should be advised of his or her “**Constitutional Rights**”, which has been interpreted by the California Supreme Court to be a “**Lybarger Warning**”. A *Lybarger* warning general consists of an **order** requiring the officer to answer questions, the threat of discipline for non-compliance, and the promise that the use of the statement will not be used against the officer in any criminal proceeding. A typical *Lybarger* warning states: “You are advised that under normal circumstances you have the right to remain silent and to not incriminate yourself, but this is an administrative investigation and, as such, you are ordered and required to give a statement and answer all questions truthfully. If you fail to answer questions related to the allegations in this case, you could be subjected to punitive action, up to and including termination for insubordination.

OTHER RIGHTS DURING THE INTERROGATION

The Public Safety Officers Procedural Bill of Rights Act, Government Code section 300 *et seq.*, affords officers additional rights during the interrogation, but does not mandate that the rights be provided in the form of an admonition before the interrogation occurs:

1. The right to be interrogated when you are on-duty or during your normal waking hours; and the right to overtime compensation if you are interrogated during off-duty hours. (Government Code section 3303(a).)
2. The right to be questioned by no more than two interrogators at one time. (Government Code section 3303(b).)
3. The right to tape record the interrogation. (Government Code section 3303(f).)
4. The right *not* to be subjected to offensive language or threatened with punitive action. (Government Code section 3303(e).)
5. The right *not* to have your photograph given to the press or news media without your consent. (Government Code section 3303(e).)
6. The right to refuse to provide information concerning items of property, income, debts or personal or domestic expenditures and those of your family, unless such information is required by state law or *necessary* for the Police Department to ascertain the desirability of giving you a particular assignment. (Government Code section 3308.)
7. The right, in any interrogation which could lead to punitive action, to be represented by the representative of your *choice* during questioning. (Government Code section 3303(i).) The only restriction is that the representative cannot be someone subject to the same investigation.
8. The right *not* to take a polygraph or other lie detector test. An officer cannot be compelled to take a lie detector test, cannot be disciplined for refusing to take a lie detector test, and no record can be made of any refusal to take a lie detector test. (Government Code section 3307.)

RIGHTS CONCERNING LOCKER SEARCHES

The Public Safety Officers Procedural Bill of Rights Act provides that locker searches can be conducted under the following circumstances (Government Code section 3309):

- ▶ With the officer's consent; or
- ▶ With a valid search warrant; or
- ▶ In the officer's presence (with or without his/her consent); or
- ▶ When the officer has been notified in advance that a search will be conducted.

RIGHTS CONCERNING PERSONNEL FILES

1. An officer has the right to request inspection of his/her entire personnel file (including the Internal Affairs file) during regular business hours. The officer also has a right to request, in writing, that information which is erroneous or which was inserted unlawfully either be corrected or deleted, and the employer is required to either grant the officer's request for correction/deletion within 30 calendar days or to provide the employee the reasons for refusing the request to do so. (Government Code section 3306.5.)
2. An officer has the right to see any adverse comment of any nature or type before it is inserted into a personnel file or any file used for personnel purposes, to initial the document, and to make a written response to the adverse comment within 30 days after it is inserted in the file. (Government Code section 3305/3306.)

If you have any questions concerning your legal rights in internal affairs related matters, critical incident investigations, or criminal investigations, contact:

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at

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