

December 19, 2001

LEGAL BULLETIN NO. 01-2

SUBJECT: The Garrity Rule

The "Garrity Rule" or "Garrity Warning" is a phrase that is frequently used but also probably frequently misunderstood in terms of what the rule or warning may and may not accomplish. The purpose of this Legal Bulletin is to provide some insight into the Garrity Warning and the items that are and are not covered by such a warning.

By way of background, the Fifth Amendment to the United States Constitution provides that, "No person...shall be compelled in any criminal trial to be a witness against himself." In 1967, the United States Supreme Court established the fundamental principle that information obtained from public employees during investigations after a threat of discharge was "compelled" and could not be used in criminal proceedings. *Garrity v. New Jersey*, 385 U.S. 493 (1967). Also in 1967, the United States Supreme Court held that the principles established in *Garrity* applied to the states through the Fourteenth Amendment to the United States Constitution. *Spevack v. Klein*, 385 U.S. 511 (1967).

As suggested by its title, the *Garrity* case originated in the State of New Jersey. The appellants in that case were police officers in certain New Jersey boroughs. The Attorney General of the state investigated alleged irregularities in the handling of cases in the Municipal Courts brought in those boroughs. Several police officers were questioned concerning the alleged fixing of traffic tickets and before being questioned each officer was told that anything he said might be used against him, that he had the privilege to refuse to answer if the disclosure would tend to incriminate him but that if he refused to answer he would be subject to removal from office. No immunity was granted and several officers answered questions. Over their objections, some of the answers given were used in subsequent prosecutions for conspiracy to obstruct the administration of the traffic laws. The officers were convicted over their protest that their statements were coerced by reason of the fact that if they refused to answer they could lose their positions with the police department. The United States Supreme Court reversed the convictions and established what is now known as the Garrity Rule.

Thus, the basic thrust of the Garrity Rule is that a department member may be compelled to give statements under threat of discipline or discharge but those statements may not be used in the criminal prosecution of the individual officer. This means that the Garrity Rule only protects a department member from criminal prosecution based upon statements he or she might make under threat of discipline or discharge. The rule applies only to "compelled" statements which means that any

voluntary statement is given without the benefit of the Garrity Rule. In the State of Missouri, independently obtained evidence may be used for criminal prosecution providing the government can demonstrate that it was, in fact, not the product of the employees disclosure. This is known as transactional immunity which has been approved by the United States Supreme Court. *Kastigar v. United States*, 406 U.S. 441 (1972).

As suggested, for purposes of the Garrity Rule, a statement is not compelled if it is voluntary. If the statement is ordered and the individual reasonably believes that he or she must give the statement or be subjected to discipline or discharge, the Department member is protected against the use of that statement in a criminal prosecution against that officer. Unlike a Miranda Warning, a Garrity Warning need not always be given in order for the department personnel to obtain the protection of Garrity. The only requirement is that the statement be "compelled."

There is an exception to the Garrity Rule and there are areas where the Garrity Rule does not apply. The Garrity Rule does not apply in situations where one (1) officer is asked to give a statement against another. No officer has a right to protection against incriminating another person. A "compelled" statement requires a complete and truthful version of what took place. Failure to give such a statement can result in disciplinary action or termination. The exception to the Garrity Rule is that if an officer testifies in a criminal proceeding inconsistent with the "compelled" statement, that statement may be used as a basis for impeaching the officer. Therefore, as suggested above, a truthful statement is required under the Garrity Rule.

Members should be aware that a "compelled" statement may be used in any civil proceeding and may be used in any criminal proceeding except against the person that made the statement, subject to the impeachment provision.

Questions concerning the Garrity Rule may be referred to the Legal Advisor's Office.

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