

Why Would I Need Legal Coverage?

by Tom Rice

Thomas S. Rice is a senior partner in the Denver law firm of Senter Goldfarb & Rice, L.L.C., one of the firms on PLEA's approved attorney list for CPPA LDF members. Now in his 27th year of practice, his work focuses on the defense of lawsuits against law enforcement officers and other public officials. His undergraduate degree was received from the University of Michigan, his law degree from the University of Colorado. He's a frequent lecturer/instructor on a variety of law enforcement topics, particularly constitutional law.

For better or worse most law enforcement professionals will at some point in their career need legal representation. Good legal advice isn't just beneficial but critical to protecting reputation, livelihood, even one's liberty.

Here's how a good legal plan benefits you:

Critical Incident Investigations

No one anticipates finding themselves in the midst of a critical incident investigation. When it does occur timelines are short and decisions need to be made quickly. The statement an officer is about to give may prove critical in the ensuing proceedings: the criminal investigation, potential disciplinary proceedings, perhaps a civil lawsuit.

It's a huge benefit to have quick access to experienced legal counsel who can ensure an officer's rights are protected. While the attorney cannot give the statement—that's for the officer alone to do—the calming reassurance from thoughtful legal advice is enormous.

Critical incidents can cause the mind to race and confusion creep in. Helping the officer slow down and think about the matter often generates a clearer, more accurate statement. Sound attorney advice on one's statement can be of tremendous assistance: focus on the question being asked; stick to what you know, don't speculate; don't engage in "what ifs"; be as complete as possible and don't get stuck with partial answers.

Most officers do an admirable job providing critical incident statements under difficult circumstances. A good attorney helps protect the officer's interest and ensure justice is served through accurate information obtained by the investigators.

Disciplinary Proceedings

Disciplinary actions can involve matters big and small, and sometimes the toughest task is determining which one a particular case may prove to be. Successful resolution of disciplinary actions is mainly ensuring the procedures are followed so that an officer's due process rights are protected.

Here's where legal counsel can be of great benefit: making sure proper notice is given, adequate time provided, the correct proceeding takes place, the appropriate standards applied.

Legal counsel can also assist in making sure the disciplinary proceedings are focused. What specifically is it the officer is claimed to have done improperly? What policy or rule is claimed to have been violated? How do these things comport with the directives given by supervisors or training?

Procedures in a disciplinary action can range from an informal interview with an investigator to a full-blown evidentiary hearing. Consider how ill-equipped an officer might be, without benefit of legal counsel, to handle a hearing in which witnesses need to be identified and subpoenaed, documentary evidence discovered and marshaled, rules of evidence applied and objections interposed, expert witnesses required.

Given these complexities and their accompanying costs, a good legal plan and lawyer are a sound investment.

Criminal Proceedings

Fortunately criminal proceedings against police officers are far and few between, but a criminal conviction can lead to loss of certification and threaten an officer's liberty.

Our criminal justice system includes many safeguards intended to protect the rights of the accused. Yet these rights are of cold comfort unless the defendant has adequate means to exercise them. I believe experienced legal counsel is mandatory because criminal prosecutions are more complex than disciplinary actions.

To properly defend a criminal case there must be full investigation, consideration of pretrial suppression motions, and potentially expert witness retention and preparation. The costs can be enormous. Would this be possible without the advantages of a good legal plan?

Civil Lawsuits

Defending civil lawsuits against police officers has been my area of expertise for many years. What I've seen develop is an increasingly lengthy discovery process, a multiplying of legal theories, and an ever more aggressive group of advocates for plaintiffs' interests.

We've been extremely successful defending against these assaults but they require strong and zealous advocates with proper resources.

You will want and need such an advocate to help you through the discovery process in a civil case. When detailed interrogatories and requests for information are served,

legal counsel will be there to help you. When preparing for that deposition, and later, trial testimony, rigorous preparation with your attorney's assistance can be invaluable.

Deciding when and what pretrial motions should be filed is the stock in trade of a good defense attorney. Most civil cases against police officers are dismissed by pretrial motion. Will your attorney be prepared to spot those motions and gain maximum legal advantage for you?

Be Prepared

In most instances your city or county will provide strong legal representation to defend against civil lawsuits. But what about those claims that the city/county or its insurance carrier indicate they have no coverage for or a duty to indemnify? What about those punitive damage allegations for which most public entities have no duty to indemnify the officer?

This is where solid legal representation from a good legal plan can prove most beneficial. In defending civil lawsuits I want the officer to be free to focus his or her energies on the successful defense of the case and not be distracted by concern over who'll pay for the defense or an adverse judgment.

Good legal representation fills that void.

In the hundreds of times I've represented law enforcement professionals, I've found very few who envisioned themselves placed in that position before it happened. Be prepared, then reap the benefits of good legal representation when you need it.