



A T T O R N E Y S

SMITH, RODGERS &
STRICKLAND, PLLC

24 Hour Legal Support for Law Enforcement

SOME WAYS TO REDUCE YOU EXPOSURE TO CIVIL LAW SUITS AND COMPLAINTS TO YOUR AGENCY

By *The All the Boys @ S, R & S: Kachina Kevin, Gerah
Greg, Raticide Ralph and Trona Trimmer*

ALWAYS REMEMBER THE FOLLOWING FORMULA FOR LAW ENFORCEMENT SUCCESS:

S, R & S + T = DAMN FINE ADVICE

The Idea: Limiting Liability Exposure

We live in a society that more and more settles its differences in a courtroom. This is especially true when those of us in law enforcement come into contact with the people we serve. Americans are a freedom loving people, and are not appreciative of being even merely “touched” by an officer during a detention, much less being arrested and transported. Many of them race to the courtroom for relief.

What can we do that, while maintaining our authority to do our job, can help us in limiting false or questionable complaints or lawsuits? How can we keep ourselves and the office we serve from internal investigations and public trials? I think that there are some fairly reasonable and easy ways of doing so, and ways that do not adversely affect the integrity of our authority or office.

We have discussed this problem on many occasions. Ralph and Reece originally settled on five simple rules which we all thought of especial benefit to new officers but which are certainly applicable to experienced officers as well. Those five rules may be found on this website, the Reece & Ralph page, under the heading of *Supervisory Advice for New Officers*. Rookie or veteran, that article is worth reading. Following its rules will make your career much more pleasurable. And lengthy.

How to Further Limit Liability Exposure

Some other thoughts that we have:

1. We know it goes without saying, but **never do an intentional wrong**. Everybody knows this and it sounds silly to say it, but if you do so, you will lose your “I acted in good faith” defense and you no longer have a qualified immunity from suit or judgment. Your agency would not be obligated to defend you, or pay any judgment. Finally, we suspect your Sheriff or Chief, would, and let us say this as politely as possible, release you from active employment. Come to think of it in an *impolite* way, he just might fire the hell out of you,

PO Box 4803
Greensboro, NC 27404
Phone (336) 691-7058
Fax (336) 969-1879
www.policehelp.net

REECE & RALPH

Reece Trimmer
Ralph B. Strickland, Jr.

The two mature geezers of SR&S Opine
on resist, obstruct & delay
NCGS 14-223

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LIMITING LIABILITY

which an officer committing intentional wrongs would so richly deserve. So sorry, but true. Thus, never ever do an intentional wrong, and you probably will never ever richly deserve a termination. We are you friends, and friends do not let friends screw up intentionally.

2. **When feasible, give as many warnings as possible before you take an official action.** You need never place yourself at a tactical disadvantage by giving a warning or otherwise jeopardizing officer safety, but you should give several warnings where you can safely do so. Judges at the trial and appellate levels often remark favorably on how many times a warning was given before the officer acted. Remain patient, be heard, and then if you must act, do so.
3. **Never arrest anyone solely because that person refuses to identify himself or show you an ID.** In North Carolina, that person is NOT guilty of resist, obstruct or obey (GS 14-223.) If you do so, you risk making an illegal arrest. The only exception is the driver of a vehicle that you have stopped – if you are in uniform, he must present you with a valid operator’s license (See GS 20-29).
4. You have great discretion whether to charge most misdemeanors or not. **However, if you are assaulted or resisted, obstructed or delayed in the performance of your official duties, or both, then I advise you to arrest the suspect or at least cite him for those crimes.** Your community needs to know that such behavior toward you is not acceptable, and actually a magistrate’s finding of probable cause for an arrest is some protection for you if the suspect either complains or files a lawsuit based on his contact with you.
5. **Be very careful in making an arrest based solely on a person using profane language toward you. Truthfully, you should not do it.** It is difficult to prove that such language was likely to provoke a violent retaliation because you are a certified officer. The judiciary knows you to be a capable and able officer. It is aware that we as officers must allow a person to remonstrate (to argue in objection; to reason or plead in protest) and that the Constitution protects almost most speech, even rude, profane speech. If the language is being used toward a third person (who appears upset by it) then a disorderly conduct charge may be appropriate (and/or a communicating a threat charge, depending on the language used.) But, like it or not, it is never a good idea to arrest some one merely (and we say “merely” fully aware of what you are going through) because they are cursing you, but otherwise not causing or likely to cause a disturbance, and are not threatening you.

Bonus Tip: if you are performing secondary employment you are either performing **off-duty** employment (where you are **not** expected to enforce the law) or **extra-duty** employment (where you are very much expected to enforce the law.) If you are performing extra-duty employment you shall enforce the law **BUT YOU SHOULD NEVER ENFORCE MERE RULES OF YOUR EMPLOYER.** If you see a rule of the business (shirts and shoes required) being violated (in comes a dude - with no shirt and no shoes), you should not enforce the rule. You may tell the patron that management will not allow him access to the premises unless he is properly attired, but you should not force him to leave if he refuses to dress appropriately. You generally may not act as an agent of your employer in that regard. **You must act within the scope and course of your employment as a law enforcement officer.** If the person refuses to leave, have the manager or a person so authorized tell him to leave. If he refuses while you are standing there, then he is committing a misdemeanor in your presence and you may act accordingly.

Bonus Tip 2: if you are working either extra or off-duty for a private business or other government agency you need to determine if you are an employee of that concern or an independent contractor. The employer can tell you whether you are on his books as an employee. If you are an independent contractor, and get hurt or sued while at the secondary employment, that employer is not responsible to you for worker's compensation or defense of suit nor payment of judgment.

If you are working secondary employment in an extra-duty status, and you are acting in the course and scope of your law enforcement duties and are injured or sued, you should be protected by your agency as if you were on-duty and working for it.

The Big Hurt: if you are working extra-duty employment as an independent contractor, and act outside the scope and course of an officer or deputy, and consequently are hurt or sued, you are on your own. Neither the county nor the secondary employer is responsible for you in any way. Therefore, enforce the law fairly and honestly whether on-duty or at an extra-duty job, never stray from the course and scope of your law enforcement authority, and never enforce an employer's business rules.

This memo contains some ramblings from four attorneys with over 100 years of experience in these matters. No one can guarantee that you will never face a lawsuit or a complaint. We sincerely believe what we have written will limit the number of times when you face such exposure during your career.

P.S. Greg Here: those guys are so long winded, aren't they? Want to know what to do? Never do an intentional wrong act, and always act as a reasonable law enforcement officer should (just as you were taught in BLET, by your FTO, and what you have learned from the "School of Answering Calls.") There, not so bad, is it?