

FIREFIGHTERS' BILL
of
RIGHTS



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INTERNAL AFFAIRS INVESTIGATION

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Introducton

This booklet is intended to provide Firefighting personnel with a brief overview of the main elements of the Firefighters' Bill of Rights Act, also known as " the FBR" or "AB 220" which is codified in *California Government Code §3250-3262*.

All employees should be aware of their rights when confronted with a potential disciplinary situation. It is recommend that you always contact your lawyer or labor representative for advice before answering any question that could possibly lead to punitive action. There are at least seven reasons why you should always contact your labor representative or lawyer:

1. Never under-estimate the effort your department, the District Attorney, or any other prosecuting agency will put into an investigation if they want to make an example out of you.
2. Firefighters are in control and on the offensive as they perform their duties. When under investigation, the department is in control and place the firefighter on the defensive. This is an unfamiliar position for most firefighters.
3. Your loyalty, devotion, and service to your department may be completely overlooked when you are under investigation.
4. If you are the subject of a criminal investigation, the District Attorney or other prosecuting agency has a duty to investigate and attempt to develop a case against you.
5. Many incidents that arise in the workplace not only give rise to disciplinary action, but also, criminal and civil liability. If you are also injured in an incident, your workers' compensation and disability rights may also be in jeopardy.
6. Your years of experience as a firefighter do not adequately prepare you for a situation in which **YOU** are the subject of the investigation.
7. There is never any personal charge to you for an initial consultation with Adams, Ferrone & Ferrone. Their offices have 24 hour emergency service.

Firefighters' Bill Of Rights

During any workday you may make numerous citizen contacts which creates personal and department liability. Firefighters respond to medical aid calls, engage in a Code 3 responses, transport patients and fight fires. These incidents are documented in written reports or conversations with supervisors.

Accordingly, firefighters are exposed to potential disciplinary action through citizen complaints or complaints generated internally by co-workers, supervisors, etc. Unsafe tactics, traffic collisions, discrimination, sexual harassment any situation involving serious bodily harm or death; or, a supervisors claim of insubordination. The potential for discipline is limitless. Each of these situations may ultimately lead to your being interrogated.

With this in mind, the legislature enacted California Government Code Section 3250 through 3262, commonly known as the Firefighters' Bill of Rights Act. In this booklet, we refer to the Act as " the FBR".

The FBR will not be discussed in extensive detail in this booklet. This booklet is designed to provide a rapid reference guide for the working firefighter and to answer the most common questions which will arise during the workday. Your Association attorney or labor representative should be contacted as soon as possible before an interrogation in order to provide you more detailed guidance.

To Whom Does The Act Apply?

The FBR applies to firefighters, paramedics, and EMT's irrespective of rank acting in their official capacity. We will refer to them collectively as "firefighter." Do not let an investigator convince you that the FBR or its principles do not apply to you or your case without consulting with your Attorneys.

When Do My Rights Under The FBR Apply?

1. Performance of Official Duties

One of the most difficult questions you could face during an investigation is when rights under the FBR apply?

In our opinion, one of the most significant aspects of the FBR is that the rights contained in it only apply to firefighters "*during events and circumstances involving the performance of his or her official duties.*" Government Code Section 3262.

We believe Government Code Section 3262 will be the most critical hurdle in determining whether the FBR protections apply. Unlike the Public Safety Officers' Procedural Bill of Rights (POBR) (Government Code sections 3300 *et seq.*) the FBR does not provide

protections for off duty misconduct or misconduct found not to be in the performance of their official duties. For example, the FBR won't apply to DUI's or domestic issues. However, will the FBR apply to on duty incidents such as pranks, sexual harassment or discrimination? We expect agencies trying to argue that the rights don't apply in these and other situations because they do not involve "the performance of his or her official duties." We can anticipate an agency's argument that "sexually harassing a co-worker does not involve the performance of a firefighter's official duties."

We do not believe that the entitlement to the FBR rights is as simple as it seems. For instance, there is an official duties requirement for the department to provide you a defense in any civil suit against you involving your official duties. Cases, however, have found that this duty arises and the employer must defend the employee even where the allegation against the employee is *rape*. Again, ***do not let an investigator convince you that the FBR or its principles do not apply to you or your case without consulting with your Attorneys.***

2. Interrogation Could Lead to Punitive Action

The interrogation rights, especially the right to representation, attach when the interrogation could potentially lead to punitive action. We take the position that virtually any investigation could lead to punitive action against you. If an investigator wants to talk to you, the first questions you should ask is; (1) whether you are under investigation? and (2) whether the investigation could lead to any form of, punitive, or adverse action against you.

Unless you are purely a witness to an incident, (which means you are not under investigation yourself), an investigation always has the opportunity to lead to adverse action. Even in situations where you are only considered a witness, knowledge you have could possibly implicate you in a manner not known to your Agency. You should consult with your labor representative or attorney before **ANY** interrogation even if you are told you are just a witness.

One case interpreting similar provisions of the Public Safety Officers' Procedural Bill of Rights (*White v. County of Sacramento*, (1982) 31 Cal.3d. 676.) states that when an investigation or interrogation concerns a matter that could lead to punitive action, POBR applies. *White v. County of Sacramento* also defines punitive action ***very broadly***.

What Are My Obligations And Rights When I Have Been Ordered To Submit To An Interrogation?

Under California law, a firefighter is subject to discipline for insubordination if he fails to cooperate in an investigation being conducted by their department/licensing/certifying agency after being ordered to do so. This obligation requires that you respond to such inquiries by appropriate department/licensing/certifying agency. Thus, irrespective of your constitutional right to protect yourself against self-incrimination, you can be disciplined for failing to comply with orders to cooperate.

A significant exception to this requirement to answer questions under the threat of discipline for insubordination exists **if the allegations involve allegations of conduct that is potentially criminal in nature.** The FBR provides that a firefighter cannot be compelled to answer questions into allegations of misconduct.

Government Code Section 3251 (e) (1) provides:

- The employer shall provide to, and obtain from, an employee a formal grant of immunity from criminal prosecution, in writing, before the employee may be compelled to respond to incriminating questions in an interrogation. Subject to that grant of immunity, a firefighter refusing to respond to questions or submit to interrogations shall be informed that failure to answer questions directly related to the investigation or interrogation may result in punitive action.

In investigations into possible criminal misconduct, a firefighter cannot be disciplined for refusing to answer questions after being ordered to do so, unless, the agency has sought and obtained a formal grant of immunity from criminal prosecution in writing. We take the position that this means that the agency must obtain a grant of immunity from County District Attorneys, the State Attorney General and Federal Prosecutors before a firefighter will be required to answer questions in regard to potential criminal misconduct.

We advise that you always follow an order from your department/licensing/certifying agency at the time the order is given in **non-criminal** situations. We can later attack the order and possibly the entire proceedings if the order was illegal. However, by failing to follow the order you will not only face disciplinary action for the underlying allegation, but also, severe disciplinary action for insubordination. Once terminated for insubordination it will take many months or years before we gain your reinstatement.

In potentially criminal situations, you should consult with an attorney before you decide whether or not to answer questions.

Should I Volunteer Information To The Investigators?

Absolutely not. From a legal point of view, there is absolutely no reason for you to make any voluntary statements. As noted above, any statement you make should only be in response to an order from your superior so that its future use can be restricted. The fact that your statement is a reply to such order should be verified and documented as clearly as possible, preferably by tape recording it.

Many firefighters have significantly compromised their cases by giving voluntary statements. In addition, because voluntary statements are accessible in both civil and criminal proceedings, giving one could damage you in a civil or criminal lawsuit and expose you, your agency or both to a civil judgment. It is our strongest advice that you not give voluntary statements because it will only work to your disadvantage.

Am I Ever Entitled To Be Informed Of My Constitutional Rights?

Yes, but don't panic. If prior to or during the interrogation it is deemed that you may be charged with a criminal offense, you shall be read your Fifth Amendment *Miranda* rights or informed of your constitutional rights against self incrimination.

As a rule, you should never waive your *Miranda* or constitutional rights. This concept is closely related to our advice that you never give a voluntary statement. In most cases, when a department Mirandizes a firefighter, and the firefighter refuses to waive his or her rights, the department/licensing/certifying agency then get the written grant of immunity discussed above before they can order the officer to answer questions under the threat of insubordination. Remember, any statement made in response to an order is deemed coerced and may not be used against you in a criminal proceeding (after the grant of immunity) and most parts of a civil proceeding.

How Must My Interrogation Be Conducted?

Once the FBR applies, Section 3253 provides that interrogations by the department/licensing/certifying agency be conducted as follows:

1. The interrogation shall be conducted at a reasonable hour, preferably at a time when you are on duty or during your normal waking hours unless the seriousness of the investigation requires otherwise. If your interrogation is during off duty hours, you are entitled to appropriate overtime compensation.
2. Prior to the interrogation, you are entitled to know the rank, name and command of the officer in charge of the investigation, as well as the identity of any other individuals present during the interrogation. No more than two interrogators may ask questions at any one time.
3. You must be informed of the nature of the investigation *prior* to commencing the interrogation.
4. The interrogating session shall not extend beyond a reasonable time, considering the gravity of the issue being investigated. You shall be allowed to attend to your own personal physical necessities.
5. You cannot be subjected to offensive language, threats or promises of reward, nor shall your home address or photograph be given to the press or media without your consent. However, as noted earlier, if you refuse to respond to the interrogation, you may be informed that your failure to answer questions directly related to the interrogation may result in punitive action.
6. Both you and the department representative may record the interrogation.

7. You cannot be loaned or temporarily reassigned to a location or duty assignment if a sworn member of your department would not normally be sent to that assignment under similar circumstances.
8. Significantly, if you have given a prior statement or interview you are entitled to review that statement prior to your next interview. You may also be entitled to any reports or complaints made by investigators or other persons prior to a subsequent interview (except those deemed confidential).

NOTE: Always be on the lookout for your prior statements. For example, if you write a report, ask for the report before the interview. Also, if any supervisor asks you to briefly explain what happened in an incident, he may document that conversation in a memorandum to his superiors or record the conversation. If you have any prior conversation with a supervisor about the matter for which you are being investigated, always ask for any reports, tapes, notes, documents, etc., the supervisor created from that conversation before giving a subsequent interview.

When Am I Entitled To A Representative?

Upon filing a formal statement of charges or during any interrogation that could result in punitive action, **and at your request**, you have the right to be represented by a representative of your choice (including an attorney) who may be present at all times during the interrogation.

If your representative is a fellow firefighter or non-attorney, he cannot be required to disclose the nature of the conversation you and he/she have had, nor can they be disciplined for refusing to disclose the conversation, **unless** the interrogation focuses upon **criminal** matters. You should keep in mind that statements made to your attorney are protected from disclosure by the attorney-client privilege regardless of the nature of the investigation.

The importance of having representation during an interrogation by a commanding officer or other supervisor was concisely stated in *National Labor Relations Board v. J. Weingarten, Inc.*, (1975) 450 U.S. 251, 260-263, 95 S.Ct. 959, 967, where the court stated:

A single employee confronted by an employer investigating whether certain conduct deserves discipline may be too fearful or inarticulate to relate accurately the incident being investigated or too ignorant to raise extenuating factors. A knowledgeable... representative could assist the employee by eliciting favorable facts and save the employer production time by getting to the bottom of the incident occasioning the interview....

Although firefighters are typically thought of as resilient and capable in performance of their duties. Interrogation by a commanding officer is unfamiliar to most firefighters, the questioning is inherently coercive and stressful in nature. Having a representative present to clarify questions, reduce stress and protect your rights is an invaluable benefit.

We always recommend that you use your labor representative or attorney during an interrogation. At the very least, and only if no other option is available, you should have your Association representative or shop steward sit in with you during the interrogation. It has been our experience that another member of your department will be a less effective representative, especially in a contentious or controversial interrogation. In any serious matter, especially an investigation with criminal implications, your lawyer should be present.

Tips To Keep In Mind When Being Questioned

- . Just because the department isn't calling your interview an official Internal Affairs (IA) investigation doesn't mean it isn't one. The right to representation is not triggered by the department's description of the interview but rather the circumstances and your state of mind. **If you have a reasonable basis to believe that the interview involves allegations that "could" result in disciplinary action, you have the right to representation.** When in doubt, seek advice from an experienced labor representative or attorney.
- . Ask for a copy of the complaint if one exists. Remember that there does not have to be a complaint, written or otherwise, for your department to review a job-related matter that comes to its attention. Under the current law, you are not entitled to review any documents, including complaints, prior to an initial interview although many investigators will provide you with such information if you ask.
- . Always ask for any materials documenting your prior statements regarding the matter under investigation including any reports you have written, if applicable.
- . Insist that the investigator inform you of the specific charges or allegations. At the very least, the investigator is required to inform you of the general nature of the investigation prior to the interview commencing.
- . Keep your demeanor as pleasant as possible. Remember, other parties, such as a department head, hearing officer, judge or jury may ultimately hear the tape recording of your interview.
- . Tape record your interrogation. Make it a habit to have immediate access to a tape recorder.
- . Keep a proper perspective on what is happening. Keep in mind that the purpose of the investigation is to gather facts. Your role as the person being interviewed is to provide those facts, in response to questions. The interrogation may not be the appropriate forum to mount a proactive defense of your actions. You provide the

facts during the interrogation. Then, if management believes that you acted inappropriately, they will notify you, and at that point you will be able to work on a defense (if you have one), or at least raise mitigating circumstances. You will also then have greater access to the other facts gathered in the investigation (the complaint, witness statements, etc.)

Tell The Truth Or Face Termination For Dishonesty

Do not answer unless a question is pending.

Do not volunteer unnecessary information during the interview. At the end of the interview, ask for a break during which you can determine (especially with the assistance of your attorney or representative) if there is information that would be to your benefit to provide; for example, a witness that the department may not be aware of. It is also important, however, to make a complete and forthright statement so that additional interviews are not necessary. The more statements that you make about the same incident, the greater chance that you will not be consistent. Inconsistency raises concerns as to your credibility. Remember that you have already made one statement when you complete a report about an incident.

Only answer one question at a time. If a question requires multiple answers, have the question restated to focus on one issue at a time.

If the question deals with a matter that you have already responded to in writing; for example in a report, refer to the report prior to your response. If possible, direct the interrogator to the report for the answer to the question so that you are not restating verbally what you already stated in writing.

If you started the interrogation without a representative but then become uncomfortable during the interview and decide that you need or simply want one, invoke your right to representation: "I will, of course, answer all of your questions, but at this point in time I request to have a representative assist me prior to answering any more questions, as I am entitled to under Government Code §3253."

Ask for a break if you need one, whether to attend to personal necessities, clear your mind or talk to your representative.

Don't discuss the investigation with other employees or persons as they may be interviewed about your statements. This is especially true if you are ordered not to communicate with others. Any conversation after such an order could lead to a charge of insubordination and your subsequent termination.

Don't be intimidated by procedural admonishments that management may give you prior to questioning, such as reading you your *Miranda* rights, the FBR requires this type of formality.

Remember, your mannerisms and tone of voice during the stress of an internal affairs investigation is as much an opportunity for the department to gain a positive impression of you (honesty, integrity, etc.) as it is for it to get a negative impression.

When Do The Guidelines For Conducting An Interrogation Not Apply?

The guidelines set forth in Section 3253 do not apply when your contact with the supervisor, department/licensing/certifying agency results from the normal course of duty, counseling and instruction, or informal verbal admonishment or other routine or unplanned contact with your supervisor or other officer.

However, nearly every interrogation is the result of planned contact, and is not the result of normal or informal contact with you. If a commanding officer or supervisor department/licensing/certifying agency has particular questions to ask of you, then it can hardly be said that the contact with you is routine or unplanned. You should assess your rights under the FBR in every interrogation, including written inquiries.

Is There A Deadline For The Department To Complete The Investigation?

The FBR provides that the department/licensing/certifying agency must conclude the investigation and commence discipline within one year of the date of discovery of the actions serving as the basis for discipline.

The exceptions are:(1) If the act, omission, or other allegation of misconduct is also the subject of a criminal investigation or criminal prosecution, the time during which the criminal investigation or criminal prosecution is pending shall toll the one-year time period; (2) If the firefighter waives the one-year time period in writing, the time period shall be tolled for the period of time specified in the written waiver; (3) If the investigation is a multijurisdictional investigation that requires a reasonable extension for coordination of the involved agencies; (4) If the investigation involves more than one employee and requires a reasonable extension; (5) If the investigation involves an employee who is incapacitated or otherwise unavailable; (6) If the investigation involves a matter in civil litigation where the firefighter is named as a party defendant, the one-year time period shall be tolled while that civil action is pending; (7) If the investigation involves a matter in criminal litigation where the complainant is a criminal defendant, the one-year time period shall be tolled during the period of that defendant's criminal investigation and prosecution; and, (8) If the investigation involves an allegation of workers' compensation fraud on the part of the firefighter. Where a pre-disciplinary response or grievance procedure is required or utilized, the time for this response or procedure shall not be governed or limited by this one year statute.

Notwithstanding the one-year time period, an investigation may be reopened against a firefighter if both of the following circumstances exist: (1) Significant new evidence has been discovered that is likely to affect the outcome of the investigation; (2) One of the following conditions exist: (A) The evidence could not reasonably have been discovered in the normal course of investigation without resorting to extraordinary measures by the agency; (B) The

evidence resulted from the firefighter's pre-disciplinary response or procedure.

The department must notify an employee of its intent to discipline the firefighter within thirty (30) days of the decision to discipline.

What If The Department/Licensing/Certifying Agency Imposes Discipline?

You are entitled to appeal any disciplinary action taken against you. If the discipline is serious, the department must provide you with pre-disciplinary safeguards. They must give you notice of the proposed action, copies of all materials upon which the action is based and an opportunity to meet with the individual initially proposing the discipline prior to imposing the discipline. This is not an evidentiary hearing. It is an informal opportunity for you and/or your representative to respond to the charges.

No fire chief may be removed by a public agency, or appointing authority, without providing the chief with written notice and the reason or reasons therefor and an opportunity for administrative appeal.

If, after this pre-disciplinary process, the department imposes the discipline and you wish to contest it, then you are entitled to an administrative appeal hearing in accordance with rules adopted by the agency. The hearing is conducted like a miniature trial. The rules of evidence are not strictly enforced. The hearing may take place before many different types of tribunals including, but not limited to an arbitrator, a hearing officer, a city council, a board of supervisors, a personnel commission, a city manager etc. The decision may or may not be binding. In our experience, generally, the most effective tribunal is an arbitrator whose authority is final and binding.

At the hearing, the burden is on the department to prove by a preponderance of evidence that the facts underlying the discipline are true and that the conduct violated a specific policy or policies. As such, the department must go first at the hearing. You are entitled to due process which means at a minimum you must be given the opportunity to cross examine the witnesses against you, present witnesses on your behalf and present evidence in your defense.

Hearsay evidence (statements made outside of the hearing by individuals not called to testify) is admissible, however, it alone cannot be used as a basis to support a finding of misconduct. It must supplement or explain other direct evidence in order to sustain discipline. This means that the department has to call witnesses to testify against you to prove its case. They cannot simply call the internal affairs investigator and have them testify as to what people told them.

After the hearing, the decision is typically subject to review by the superior court. Either the department or you can seek judicial review of the decision. The type of review depends on who is seeking it and whether the decision being reviewed came from a binding or non-binding process. You must consult with an attorney if you wish to avail yourself of this opportunity.

WARNING: THERE ARE TIME DEADLINES WHICH MUST BE MET IN ORDER TO SEEK JUDICIAL REVIEW OF THE DECISION. FAILURE TO MEET THESE DEADLINES WILL RESULT IN YOU FOREVER BEING PRECLUDED FROM SEEKING JUDICIAL REVIEW. YOU SHOULD CONSULT WITH AN ATTORNEY IMMEDIATELY UPON LEARNING THE RESULTS AFTER THE ADMINISTRATIVE HEARING.

Does The FBR Apply To Probationary Employees Or The Employees Serving At The Pleasure Of The Employer?

No. The FBR specifically excludes new hire, probationary firefighters.

The law, however, provides that a probationary employee is entitled to an opportunity for an administrative appeal if they are terminated for cause. In the case of a probationary termination, the department is under no obligation to reinstate the firefighter or consider the cause of that termination. It is also unclear as to what type of hearing you are entitled to as a probationary employee. If you are a probationary employee you should thoroughly consult with your labor representative or lawyer if you become the subject of a disciplinary investigation.

May Adverse Material Be Entered In My File And, If So, What Can Be Done About This?

Pursuant to Section 3255, adverse material may be placed in your file, but you must first be given the opportunity to read and sign the document indicating that you are aware it is being placed in your file. Pursuant to Section 3256, you have thirty (30) days (presumably from the date that you have been made aware of the existence of the adverse material) to file a written response, which shall be attached to the adverse material and placed in the file. This rule applies to all files your department maintains on you for personnel purposes, not just the file your department titles "personnel file."

You should frequently check your personnel file(s) to remain aware of its contents. Section 3256.5 requires departments to allow firefighters to inspect their file(s) at reasonable intervals and without loss in compensation.

If the firefighter finds materials in his/her file(s) which they believe are mistakenly/illegally placed there, he/she may request in writing that the items be removed or corrected. The request must describe the material to be removed/corrected and the reasons for the removal/correction.

The department must respond to the request within thirty (30) days either denying the request in whole or in part or granting the request. If the department denies all or part of the request, it must explain the reasons for the denial in writing. Both the request and the department's response will become part of the personnel file.

Must I And Should I Take A Lie Detector Test?

No, and usually not. Pursuant to Section 3257 of the FBR, you cannot be compelled to submit to a lie detector test against your will. Likewise, you cannot be disciplined or otherwise punished because of your failure to submit to an examination. Nor may evidence of your refusal be utilized at a subsequent hearing, trial or other proceeding, whether judicial or administrative.

A lie detector test is defined as: (1) a polygraph; (2) a deceptograph; (3) a voice stress analyzer; or, (4) any other device, whether mechanical or electrical, which is used for the purpose of rendering an opinion regarding honesty/ dishonesty of an individual.

You may elect under certain rare circumstances to waive your rights and submit to a lie detector test for tactical reasons. Before making such a decision, your attorney should be contacted, inasmuch as submitting to an exam is the rare exception, not the rule.

Practical Note: Our experience is that if you fail a departmentally administered examination it will confirm your department's earlier belief that you are a liar. If you pass that same examination, the department will usually disregard the results because these examinations are inherently unreliable and often not admissible at the subsequent hearing.

Is The Department Entitled To Inquire About The Status Of My Property, Income, Assets, Sources Of Income, Debts Or Personal Expenditures?

Generally no, but the department can under some circumstances. Pursuant to Section 3258 of the FBR, the department is not entitled to inquire regarding the above, unless such information is obtained or required under a state law or a court order.

Is My Locker Or Storage Space Sacred Ground?

Although Government Code Section 3259 seems to provide that your locker or other storage space that has been assigned to you may not be searched, the exceptions almost negate the rule. The locker or storage space may be searched if you are present when it is done, if you have consented, if there is a warrant, or if you have been told in advance of the search that a search will be conducted.

The same rule applies to your briefcase, locked desk, or other equipment or storage facilities in the workplace. Do not automatically consent to the department's request to search your locker or briefcase. At the very least, try to get the department to order you to allow them to search your locker/storage.

Can The Department Interfere With My Political Activities?

Yes and no. Under Section 3252, a firefighter cannot be prohibited from engaging in or coerced into engaging in, political activities. Moreover, a firefighter cannot be prohibited from seeking election to or serving as a member of the governing board of a school district in City/County/District other than where employed.

This, however, is not carte blanche permission to engage in political activities whenever and however you want. The department does have the ability to limit the activities while you are on duty and/or in uniform. Care should be taken in avoiding political action in uniform and/or on duty as much as possible. Failure to do so could result in discipline. Wearing

Association attire (e.g. golf shirts with the union logo) while off duty is by and large permissible, but again, it is not a license to go berserk! Remember, that logo connects you directly to the department and if your actions bring discredit upon the department while engaging in political activities, you may be subject to investigation and discipline. When in doubt, consult legal counsel.

What If The Department Violates My Rights?

From time to time over-zealous or ignorant investigators or department administrators will violate your rights. Do not panic. The department may destroy its entire case if you handle the situation correctly. The most difficult cases to prove a violation of the FBR arise where the department will not allow you time to contact your labor representative or attorney. In those cases, try to document the fact that the department has violated your rights. If possible, document these events on a tape recorder. Remember, you have the right to tape record any interview that could lead to punitive action. (NOTE: Never secretly tape record confidential communication between an investigator or other department representative. It may be a crime.) If the investigator or department will not order you to give a statement, document this and then walk away. You are never required to give a voluntary statement.

The FBR also provides that it shall be unlawful for a local public safety department to deny or refuse to provide the rights and protections guaranteed under the FBR. Furthermore, the Superior Court has been given initial jurisdiction over proceedings regarding violations of the FBR. The court has clear authority to order injunctive or other extraordinary relief to remedy both past and future violations. This authorizes the court to order a grant of relief which would prohibit the imposition of punitive action, in appropriate cases where your rights have been violated.

The court's authority allows your attorney to block any future violations of the FBR. We may also be able to suppress unlawfully obtained evidence or information even in an administrative proceeding or disciplinary hearing following a violation of the FBR.

The various methods of relief support the proposition that you are better off obeying the orders of your supervisors even if they contravene your rights under the FBR (with the exception of answering questions of a criminal nature without a grant of immunity in writing). By obeying the orders, you will avoid charges of insubordination and the potentially fatal results. Remember, you have a remedy to address the infringement upon your rights.

Section 3260 provides that sanctions and attorneys' fees may be awarded against any party filing a bad faith or frivolous action under that section. Most importantly, the section provides that monetary damages may be recovered against a public safety department, its employees, agents, or assigns, for maliciously violating any of the rights afforded by the FBR with the intent to injure the firefighter.

Moreover, the public safety department shall, for each and every violation, be liable for a civil penalty not to exceed twenty-five thousand dollars (\$25,000) to be awarded to the firefighter whose right or protection was denied and for reasonable attorney's fees as may be determined by the court. If the court so finds, and there is sufficient evidence to establish actual damages suffered by the firefighter whose right or protection was denied, the public safety department shall also be liable for the amount of the actual damages.

Do Not Ever Resign!

There are few if any exceptions to this rule. In serious investigations, it is not uncommon for a department to propose that you resign. This offer is usually made when you are most vulnerable. Do not do it! Your resignation usually only works to the benefit of your department and directly to your detriment. You should thoroughly consult with counsel regarding all options before you submit a letter of resignation. Once you submit a letter of resignation it is difficult if not impossible to rescind it. In other words, even if you change your mind, the resignation cannot be undone once it is accepted by your department. If you resign from your job, it may also interfere with your Legal Defense benefits through your association. Resignation could also have disastrous consequences for your workers compensation or disability pension benefits. Extreme care must be used when considering resigning from your job. Carefully discuss this option with your representative or attorney before you do anything.

Caution

Inasmuch as this area of law is constantly in flux, legal counsel should be contacted when there is any question as to your rights under the FBR.

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FIREFIGHTERS' BILL *of* RIGHTS

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