

The Legal Trooper: How To Stay Out Of Trouble and Be Ready To Defend Yourself

“Troopers serving the North Carolina Highway Patrol have challenging, difficult, stressful and dangerous jobs.... it is desired that law enforcement officers be near perfect; however, that is not a realistic standard.” *Andreas Dietrich v. N.C. Highway Patrol*, 2001 WL 34055881, adopted by N.C. State Personnel Commission.

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1. The McGuinness Law Firm concentrates in the representation of Troopers and law enforcement officers in virtually all types of police legal disputes. The firm provides trial and appellate advocacy, consulting to officer and police associations, research, education programs and specialized advocacy for law enforcement officers. These ideas are gleaned from experience in advising, counseling and representing hundreds of North Carolina law enforcement officers and Troopers since 1984.

2. Retired Chief Melvin L. Tucker is a law enforcement expert witness, consultant and trainer. He began his career as an FBI agent in 1969. After retiring as Chief of Police in Tallahassee, Florida, Chief Tucker has been involved in all types of police liability litigation including work on behalf of North Carolina Troopers.

The following are suggestions to promote your survival as a North Carolina State Trooper. These suggestions are a checklist of ideas for information, but are not a substitute for legal advice and counsel when issues arise. The failure to comply with these ideas will not necessarily constitute just cause for discipline.

1. There are numerous potential legal adversaries who may investigate, charge, prosecute, sue or otherwise challenge North Carolina Troopers: anti-Trooper interest groups, disgruntled arrestees, the N.C. State Bureau of Investigation, the Federal Bureau of Investigation, the United States Department of Justice and the Law Enforcement Prosecutions section, the Special Prosecutions Unit of the North Carolina Attorney General's Office, the United States Attorney, the local District Attorney, the N.C. Criminal Justice Education & Training Standards Commission, some politicians, the news media, Highway Patrol Internal Affairs, and others. Troopers often have to deal with several of these entities arising from a single allegation.

2. Protect yourself. Always be prepared to defend your life physically as authorized by law. Always be prepared to defend your career legally as authorized by law.

3. Sooner or later, you will likely be the subject of a false, frivolous or misleading complaint. Be knowledgeable and ready in advance to defend and defeat complaints. See Directive H.2, *N.C. Highway Patrol Policy Manual*.

4. Do not assume that a complaint will not be serious or a "big deal." Take every complaint very seriously.

5. Be fully prepared to defend yourself at all times by being ready to assemble a team of specialized advocates to help if you are accused of criminal conduct, an alleged policy or other violation.

6. Plan in advance of who you will call in the event of a criminal investigation, a critical incident or significant allegation of misconduct.

7. Keep the contact phone numbers of a well qualified police liability counsel with you at all times.

8. Do not throw away your constitutional, civil and other legal rights.
9. Have at least two family members designated for contact in the event of a critical incident or emergency. Know who you can depend upon to deal with posting bond if you are criminally charged and securing legal counsel.
10. Know and properly perform your job functions and duties. Know the operational protocols of your position.
11. Know every aspect of your Patrol Policy Manual. Keep an extra copy of your Policy Manual with you at all times, on and off duty.
12. Study your Policy Manual regularly. Keep all updates.
13. Stay abreast of relevant developments in the law. The North Carolina Office of Administrative Hearings publishes some Trooper personnel cases. See <http://www.oah.state.nc.us/hearings/decisions/>. You should be generally familiar with the basics of North Carolina state personnel policy in the *N.C. State Personnel Manual*, available online at <http://www.osp.state.nc.us/manuals/man5.html>.
14. Do your best to comply with Patrol and State Personnel policy at all times unless a true emergency necessitates deviation.
15. Undertake additional quality training and keep complete records of your training.
16. The use of force is a critically important aspect of effective law enforcement. Troopers must be versed in North Carolina use of force law including the controlling statute, N.C.G.S. 15A-401(d).
17. You must know the law in order for you to be in compliance. For a detailed overview, see McGuinness, *A Primer On North Carolina And Federal Use of Force Law; Trends In Fourth Amendment Doctrine, Qualified Immunity; And State Law Issues*, 31 *Campbell Law Review* 431 (2009). See <http://law.campbell.edu/lawreview/articles/31-3-431.pdf>. Patrol policy in Directive B within the *Patrol Policy Manual* provides “guidelines” relating to the use of force, reporting and review. State and federal law is obviously controlling and most important, thus you must also know and

comply with the law.

18. When a death results from police use of force, you must be prepared for a different kind of intense and protracted wrath. Deaths from police use of force present complex investigative and advocacy issues. See Melvin Tucker, Dr. Henry Lee, Dr. Cyril Wecht and D.P. Van Blaricom, *Prevention of Officer Involved Deaths* (forthcoming 2010, CRC Press).

19. Be specifically familiar with the Patrol's *Rules of Personal Conduct and Job Performance*, which appears in Patrol policy at Directive H.

20. Keep your personal police equipment in proper functioning order and timely report any defects or problems.

21. Report apparent misconduct immediately to the appropriate authority. Seek legal advice if it is not clear who is the appropriate authority.

22. Do not consume any alcohol the day before any shift. Do not risk having residual effects of alcohol in your body or on your breath.

23. When taking prescribed medication, read and comply with all instructions. Make sure that you know the potential side effects of your medicines. Do not exceed your prescribed dosage.

24. Seek advice from your physician if you have any question about your own fitness for duty or any medical issue.

25. If you have any doubt about your fitness for duty, seek leave. You must be completely fit for service.

26. Follow all lawful orders of superiors unless there is a true emergency or other exigent circumstances which requires deviation.

27. Following an incident where you may become an accused, such as use of force, do not volunteer any statements to anyone. Await a proper order from a supervisor.

28. As soon as you learn that you are the subject of any internal

affairs inquiry, immediately obtain legal advice and counsel.

29. Wherever possible, thoroughly prepare for all internal affairs interviews. Anticipate the questions. Be ready. Refresh your recollection with any written statement and other evidence. A poorly delivered internal affairs interview may doom your entire career.

30. If subjected to any pressures, subtle or otherwise, in an internal affairs interview, confer with counsel and immediately report the pressures through appropriate channels. If subjected to any inappropriate tactics, consider requesting appropriate relief following consultation with counsel. Resist intimidation.

31. When preparing written statements, always prepare a draft and analyze it before preparing the final statement. Make sure that your final submitted statement is complete, true and accurate. Seek counsel if you have questions.

32. Make sure that all verbal and written statements that you provide are complete, accurate and true. Provide a supplement or modification when necessary.

33. Be truthful at all times. If you realize that you have made any significant error in any communications, initiate timely corrective action and make sure that your corrective actions are documented.

34. Be prepared to tape record any statement that warrants recording, but you must be compliant with state and federal law. Seek legal advice.

35. If contacted by a criminal investigator about your conduct, inquire generally about the nature of the inquiry. If you are in any way a possible suspect or person of interest, seek immediate legal advice before making any statement. Do not allow yourself to be pressured, influenced or tricked into an immediate waiver of rights.

36. State Bureau of Investigation and other criminal investigations into Trooper involved shootings often begin within minutes of the incident; be ready to immediately obtain counsel and defend your interests prior to making statements to criminal investigators. Get your help to the scene

and to you to immediately begin investigating and evaluating. Do not delay.

37. A federal criminal investigation may soon follow the state investigation. Seek legal counsel and advice before interviewing or providing evidence to the Federal Bureau of Investigation or the U.S. Department of Justice. There are federal statutes that govern statements of witnesses or suspects, and there are criminal penalties.

38. Make sure that you invoke your *Garrity* rights by asserting those rights before you make a statement to the Patrol following an order or request that you provide a statement.

39. Following a critical incident or a complaint involving you, await an order by a supervisor before making a responsive statement. Do not volunteer statements to investigators or you will likely lose *Garrity* protection.

40. Insert a protective *Garrity* rights invocation on each use of force report, otherwise, the use of force report may be used against you criminally.

41. Safeguard and invoke your constitutional and civil rights to protect your interests.

42. Seek legal advice at the earliest possible opportunity upon notice of any impending personnel, conduct or other dispute with legal implications.

43. Never attempt to self lawyer or self-medicate. Find and use an experienced specialist for your legal and medical needs. He who is his own lawyer has a fool for a client.

44. After any complaint or critical incident, document your position and course of action. Be prepared to defend yourself.

45. Stay away from the news media, and do not speak to them if they inquire about your conduct. Do not give any press release or statement.

46. Show complete respect for all supervisors, all other co-employees

and everyone within the criminal justice system.

47. Always be professional, even when being mistreated.

48. Avoid risk by avoiding significant associations with persons who have engaged in criminal activity.

49. Do not hesitate to seek professional counseling to help with legal, personnel, emotional, marital, financial or other problems.

50. Do not allow personal, family or other problems to adversely affect your performance or conduct. Seek help early.

51. Protect the integrity and accuracy of your personnel file. N.C.G.S. 126-25 affords a means to have inaccurate and misleading information removed from your personnel file. Periodically review your official personnel file to ensure that documents have not been inserted without your knowledge.

52. Keep copies of all documents that relate to your employment and training. Keep all personnel and other evaluations including HP-360s.

53. Keep a file all of your personnel, certification, education, medical and medication records.

54. Maintain compliance with all regulations of the N.C. Criminal Justice Education & Training Standards Commission. Protect your law enforcement certification.

55. Appropriately challenge any document that mischaracterizes your performance or conduct. Seek counsel regarding how to preserve your rights.

56. Develop a positive professional relationship with all judges in your District and show complete respect to all judges at all times, in and out of the courtroom. Never publicly criticize a judicial decision in any case involving you or any other member of the Patrol.

57. Develop a positive professional working relationship with the District Attorney and Assistant District Attorneys in your jurisdiction.

58. Develop and maintain a positive relationship with your State Senator and State Representative.

59. Work hard; be productive; be reasonable.

60. Do not use Patrol equipment or property for personal use.

61. Never use your Patrol email for any personal communications.

62. Never engage in any political activities while on the job.

63. Be careful of your off duty associations. Others can get you into serious trouble.

64. Stay out of strip bars.

65. Do not abuse alcohol.

66. Do not engage in illicit relationships.

67. Be respectful and professional with all supervisors and colleagues.

68. Do not knuckle under to intimidation or implied blackmail. Stand up for yourself.

69. Do not allow co-workers to influence your objective decisionmaking in a personnel dispute. Patrol colleagues are not legal or personnel advisors. Do not unnecessarily put them in the position of being a witness to comments by you relating to an allegation or incident.

70. If an internal affairs investigation starts, you cannot and must not contact witnesses; your counsel must guide that process with or without a private investigator.

71. Be very careful when making any changes to documents. Make sure that such document changes are appropriate, fully justified and documented.

72. Use your agency grievance policy when appropriate after consultation with counsel. Develop grievances carefully and precisely.

73. Do not make remarks that may constitute harassment or intimidation. Do not tell jokes that may offend anyone.

74. Initiate recommendations for improvement of the Patrol.

75. Work to strengthen organized Trooper associational activity.

76. Never allow anyone to interfere with your right to legal counsel. However, current policy does not allow Troopers to have legal counsel present during internal affairs interviews. You are free to seek counsel before such internal affairs interviews in order to best prepare. Seek counsel immediately at the first hint of possible trouble.

77. Fully prepare for the internal affairs process as if it were a homicide case.

78. Work to promote labor and civil rights legislation to help Troopers have basic human rights to workplace safety, decency and fairness.

79. Work to promote the legal rights of Troopers.

80. The Colonel of the Patrol has an extremely difficult job. Give the Colonel the benefit of any doubt. Support the Colonel wherever possible and appropriate. Afford the Colonel complete respect even when you may disagree with some decision by the Colonel.

81. Become more politically active to help advocate for more rights and benefits for Troopers.

82. When in doubt about anything connected with your job, seek legal advice as soon as possible.

83. A resignation may be your best option where there is clear just cause for termination and no legitimate justification or other defense. Resignations have many implications that warrant careful analysis. Resignations may have advantages under certain circumstances.

84. Protect yourself legally. Keep your guard up at all times. Do not be intimidated by anyone.

CONCLUSION

85. Staying out of trouble and protecting your job requires consistent effort. It requires awareness, education, judgment and hard work to survive as a North Carolina Trooper. Invest in associational activities so that you and the next generation of Troopers are better respected and protected.