



LEGAL DEFENSE TRUST

MICHAEL P. STONE, GENERAL COUNSEL

6215 River Crest Drive, Suite A, Riverside, CA 92507

Phone (951) 653-0130 Fax (951) 656-0854

TRAINING BULLETIN

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ALWAYS OPT FOR REPRESENTATION WHEN YOU ARE IN TROUBLE, BUT BE FLEXIBLE

*Insisting On One Specific Attorney May Mean
You Will Go Without Representation*

By: Michael P. Stone and Ted Dokko

*Quezada v. City of Los Angeles (January 8, 2014, B245879)
Cal. Rptr 3rd, Cal. App. 2nd Dist*

THE FACTS

Three Los Angeles Police officers, two males and one female, finished their regular work shift at 11 p.m. and went to a local bar. While the female officer only had one drink, the two males consumed numerous drinks and became intoxicated. They left the bar at 2 a.m. and returned to pick up their cars from the station parking lot. The female officer was talking on her cell phone when she turned around at the sound of five or six gunshots. Believing that one or both of her drinking companions had discharged his gun, she disarmed them both. Other officers from the station responded to the scene and the three officers were ordered back on duty by their sergeant and were separated from one another.

An internal affairs investigation commenced immediately. The three officers requested that they be represented by an individual panel attorney. That attorney, however, was not available until late in the evening because he had prior interviews for other LAPD clients scheduled with LAPD Internal Affairs. The attorney advised the three officers that he could represent them at 9 p.m. Internal Affairs determined the situation was exigent and required the officers be interrogated that day, whether or not their requested attorney could represent them. The interrogation of the three officers began at 2:30 p.m., without the presence of the requested attorney.

The three officers filed suit for violation of their POBRA rights. The trial court granted the City's motion for summary judgment. The

three officers appealed but the Court of Appeals affirmed the trial court's decision.

THE HOLDING

The Court determined that even though the officers were at times deprived of access to food and water, kept awake for 30 hours while the two male officers were still drunk and/or hungover, their POBRA rights were *not violated* because the officers had access to food, water and restrooms during their actual interrogation. The Court of Appeal noted that the officers did not request medical attention and concluded that the fact that the officers had been awake for many hours before being interrogated was a result of the incident occurring after they had been on duty for many hours and not because of the Department's unreasonable actions.

More importantly, the Court found the officers were not entitled to wait until their requested attorney was available. The Court has taken the holding from *Upland Police Officers Association v. City of Upland* (111 Cal. App. 4th 1294) which requires that an officer choose a representative who is "reasonably available" and quantified that "reasonable availability" to mean available at least within the six and a half (6.5) hours after his/her services are requested. The attorney in this case was requested at 8 a.m. and the interrogations began at 2:30 p.m., without the attorney's presence. In doing so, the Court relied on the Department's justification that the seriousness of the circumstances - "the drunken random firing of shots by off-duty officers" - required the investigation be conducted at the earliest opportunity while the officers' memories were freshest.

THE RULE FOR YOU

Since the Court of Appeal accepted the questionable assumption that the interrogation must be completed while memories remained the freshest, any members who find themselves confronted with the need for representation should contact their preferred attorney immediately. However, members should also be prepared to contact other attorneys in case their preferred attorney cannot represent them due to scheduling conflicts. The Court of Appeal noted that the three officers *did not seek to find alternate representation when Internal Affairs would not reschedule the preferred attorney's other interrogations in order to represent the three officers*. To sum this up, "be flexible - - anticipate these problems and be prepared to deal with them. Your police association maintains a list of approved panel, LDF or FOP attorneys. Get help locating alternate lawyers!

Michael P. Stone is the founding partner of Stone Busailah, LLP, a Southern California police defense and litigation firm. Ted Dokko is an associate lawyer in the firm.