

	<p style="text-align: center;"><b>Are Off-Duty Incidents within the Scope of Garrity?</b></p> <p style="text-align: center;">Article 5 of 6 on Garrity by Jack Ryan</p>	
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In accordance with the ruling in *Gardner v. Broderick, supra*, a police officer may be compelled to answer questions specifically, directly, and narrowly relating to the performance of his official duties as long as he or she has not been required to waive his or her privilege against self-incrimination.

This raises the question as to how a department may deal with off-duty conduct within the context of official duties.

In *Duran v. Safir*,<sup>1</sup> the federal district court reviewed the dismissal of a New York City police officer who had been terminated following his refusal to testify before a grand jury. The facts of the case revolve around a business establishment, “Tropical Travel” that was being investigated by DEA and the IRS. While conducting a surveillance of Tropical Travel, agents observed Officer Duran who was visiting his sister. When Officer Duran observed a person watching the business through binoculars he approached one of the agents and questioned him. Officer Duran wrote down the license plate of one of the surveillance vehicles and returned to Tropical Travel to call the police. The agents, believing the surveillance was compromised decided to enter the business. Officer Duran was arrested but subsequently released. Some time after the incident Officer Duran was subpoenaed to the Grand Jury where he exercised his Fifth Amendment privilege. He was terminated from the New York City Police Department. After being fired, Officer Duran filed a lawsuit against the police department and federal agents involved in his arrest.

In its review of the case, the federal district court refused to grant the City of New York summary judgment. The court pointed out that the subject of the grand jury did not relate to the officer’s official duties rejecting the City’s argument that the officer’s involvement in a money laundering scheme was relevant to his law

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<sup>1</sup> *Duran v. Safir*, 1998 U.S. Dist. Lexis 14370 (S.D. Dist. New York 1998),

enforcement duties. The court did not address the fact that to the point of this appeal, all of the questioning was related to criminal acts and the officer, under the facts outlined in the appeal, was never offered any type of immunity.

In dealing with off-duty conduct, the United States Court of Appeals for the 6<sup>th</sup> Circuit has concluded that off-duty incidents are a proper subject for *Garrity* interviews.<sup>2</sup> In *Michigan State Police Troopers Association v. Hough*, the troopers association sought injunctive relief from the use of statements made by two troopers, regarding distinct off-duty incidents, from being used for any purpose. One of the troopers had given a compelled statement admitting that he had stabbed a man outside of a bar. The second trooper admitted to firing his gun in the air after drinking 10-12 beers. In both instances the troopers were off-duty. In reviewing the case, the court focused on the language from *Gardner v. Broderick*, that indicated that an officer who has been given immunity from the use of any statement in a subsequent criminal case, could be compelled to answer questions “specifically, directly, and narrowly relating to the performance of official duties.” The court held that the questions in these two instances fit the criteria set out in *Gardner v. Broderick*. The court concluded that the officers’ off-duty conduct was related to their official duties asserting: “We reject the notion that a policeman can fight crime by day and commit crime by night with no cost to his effectiveness as a policeman. As the district court’s opinion correctly points out, criminal conduct by police officers—whenever it occurs—tends to reduce public trust in the police. It draws their judgment into serious question, and it opens up the officers to the possibility of impeachment when they appear in court as witnesses. The state has an obvious and legitimate interest in a law-abiding police force, and the questioning of the troopers here was in furtherance of that interest.”

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<sup>2</sup> See, *Michigan State Police Troopers Association v. Hough*, 872 F.2d 1026 (1989).