



RISK MANAGEMENT INFORMATION  
**LEGAL SURVIVAL SKILLS FOR POLICE OFFICERS**

*\*This information was originally developed in conjunction with the League of Minnesota Cities Insurance Trust's PATROL program (Police Accredited TRaining OnLine). For information on PATROL, contact Laura Honeck at patrol@lmc.org or 651-281-1280. For questions about the material in this memo, contact Ann Gergen at agergen@lmc.org or 651-281-1291.*

**Introduction:**

Peace officers receive ample training on officer safety and how to survive on the street. While nothing is more important than officer safety, there is another aspect of survival that can be just as important in an officer's career— legal survival. Legal survival involves making officers a less tempting target for citizen complaints and civil lawsuits.

Legal survival is similar to officer safety in that there is no single act or trick that an officer can do to eliminate the threat of a lawsuit. However, there are several good habits and “tactics” that officers can learn to reduce the likelihood of a lawsuit. This lesson describes seven habits that an officer can employ to reduce his or her own exposure to liability.

**No. 1 - Be Nice or at least professionally detached:**

Being nice is treating people with basic kindness and respect no matter how rude or unpleasant they may be towards officers. Being professionally detached means not allowing personal feelings and emotions to influence how an officer acts in a confrontation. While these legal survival skills may be obvious, they are often the hardest to learn and utilize.

Peace officers have a tendency to take things personally. Whether it's a suspect who won't comply with a simple command or a driver who argues with an officer at a traffic stop, police often have to deal with people that won't “go with the program.” Some people may even try to bait officers into a confrontation. If an officer gets overly frustrated every time this happens, the odds increase that the officer will eventually be involved in a lawsuit.

In circumstances where it's impossible to be nice, officers should at least remain professionally detached. Officers need to remember that an angry person is not directing their words or actions towards the officer as a person, but at the uniform. It's always easy to be nice to people that are pleasant and respectful, but it takes a professional to maintain composure during such encounters.

This material is provided as general information and is not a substitute for legal advice.  
Consult your attorney for advice concerning specific situations.

**No. 2 - Minimize the harm:**

Physical confrontations and arrests are part of being a peace officer. While sometimes these events happen too fast to formulate a plan, often there is time for officers to think ahead. In these cases, officers should look for ways to get the suspect under control and into custody with the least amount of harm possible. Minimal injuries equate to minimal liability. Severe injuries equate to the potential for a suspect to sue and receive a significant amount of money. In situations where officers know that an arrest is likely, a simple plan can go a long way to reducing liability.

Also, officers should avoid doing harm to people's dignity as much as possible. While many lawsuits are about broken bones, some lawsuits arise because of insults to personal dignity. Respecting the dignity of people, even in the heat of battle, can reduce the likelihood of being sued.

**No. 3 - Know and follow department policy:**

Official immunity is doctrine of law that can shield police officers and other government employees from lawsuits.<sup>1</sup> Official immunity protects officers' discretionary decisions; decisions where an officer has a choice between different options.<sup>2</sup> The law of official immunity has evolved to the point where compliance with department policy is very relevant to liability.<sup>3</sup>

For example, if a policy statement indicates that an officer shall or shall not do something, then the officer has no discretion to violate the policy. If the officer then violates the policy, official immunity will likely be lost.<sup>4</sup> On the other hand, if the policy indicates that an officer "may" do something or gives officers a list of factors to consider, the officer then has discretion to choose a course of action. If that decision is later questioned, the officer will likely have official immunity.<sup>5</sup> Officers should make mental notes of which policies give them discretion and which ones don't, and then be sure they follow the policies.

**No. 4 - Perfect your presence and verbalization:**

Officers should make sure their level of authority is accurately calibrated to the needs of the situation. People can take offense if an officer uses too much authority. On the other hand, using too little authority can leave an officer appearing vulnerable to manipulation and assault.

Also, officers need to remember the three audiences they are communicating with when they speak during a physical or verbal confrontation. These are (1) the suspect; (2) witnesses; and (3) other officers. Officers need to remain professional and avoid displays of temper or frustration. Officers are giving witnesses a soundtrack to use while viewing the action, as well as words to repeat when they are testifying.

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<sup>1</sup> *Elwood v. Rice County*, 423 N.W.2d 671, 677 (Minn. 1988).

<sup>2</sup> *See id.*

<sup>3</sup> *See Mumm v. Mornson*, 708 N.W.2d 475, 491 (Minn. 2006).

<sup>4</sup> *Id.* at 493 (officers that no longer had discretion to continue a pursuit under department policy are not entitled to official immunity).

<sup>5</sup> *Pletan v. Gaines*, 494 N.W.2d 38, 41 (Minn. 1992) (officers granted official immunity where pursuit policy gave them broad discretion to act).

**No. 5 - Document injuries:**

If someone is injured – officer or suspect – officers need to make sure photographs are taken. Taking pictures of the suspect's injuries prevents them from exaggerating injuries later on. Similarly, pictures of even minor scrapes and bruises on an officer can create permanent evidence of the suspect's behavior during the incident.

Too often officers don't think their injuries are significant enough to warrant taking pictures or mentioning in their reports. Failing to take pictures of injuries to officers allows a suspect to claim that officers weren't injured in an encounter. If the suspect can convince a jury that officers weren't injured, any response by the police may look like it was unprovoked. This can cause major problems for the officers (and their lawyers) when they are trying to defending the police in lawsuit.

**No. 6 - When an excellent report is needed, write one:**

Sometimes by reading the clues and connecting the dots, officers can see that a lawsuit or citizen complaint might be coming. If officers feel that they may be sued, they need to take the time to write an extraordinarily excellent report. The following list of factors is not exhaustive, but may indicate that a lawsuit is likely:

- Significant force was used (baton, hard impact, deadly force)
- Someone sustained more than a minor injury
- The suspect later had medical complications
- It's clear that officers made a mistake
- The person has a history of litigation or making complaints against law enforcement
- The person threatened to sue the officers

Writing a detailed report can also benefit officers down the road. Cases in civil court move much slower than they do in criminal court. It may be the better part of a decade before an officer is called testify about an incident in a civil case. While the details of the event may quickly blur in the officer's head with the thousands of other incidents officers deal with, the plaintiff will probably come forward with an excellent, detailed recollection of the event. Officers don't want to be in a place where all they can say is, "I don't remember." Writing an excellent report immediately following the event will give officers the details they will need years later to testify about an incident.

**No. 7 - Identify the witnesses:**

If an officer has followed the first six habits in this lesson - minimized the harm, remained nice or at least detached, used good verbalization, etc. - any witnesses to an event will likely be favorable to the officers. Officers should carefully document as much about the witnesses as they can. There is no need to lose good witnesses by failing to get their names and contact information. If officers have followed the other survival skills, then having the names of witnesses who can testify for you at trial is going to be very helpful years later.

**Conclusion:**

Learning legal survival skills can make an officer a less tempting target for civil lawsuits. Like officer safety, building good legal survival skills takes time and practice. By taking the time to learn the seven “tactics” discussed in this lesson, officers will be less likely to be involved in a suit and better able assist in their defense should a lawsuit occur.

Ann Gergen 2/08