



Broward County Chiefs of Police Association, Inc.

Legal Update

Legal Advisor Committee

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March 30, 2012

As we discussed at last month's Broward County Police Chiefs meeting, the issue of video recording a law enforcement officer's deposition testimony has been the focus of several recent court arguments in front of a variety of judges in Broward County. On February 1, 2012, the Honorable Andrew Siegel issued a ruling that authorizes law enforcement to avoid submitting to a video taped deposition, citing the protections of Section 119.071(4)(d)(1), Florida Statutes, which exempts the photographs and/or video depictions of current and former law enforcement officers from public disclosure. Although this Court decision is a welcome decision, it is merely persuasive and not necessarily binding on other Courts. When officers receive a subpoena for a video recorded deposition, they can choose to object and should do so well in advance of the scheduled deposition.

- Officers who receive a subpoena for a video recorded deposition may choose to contact defense counsel to assert their objection to the video recording of the deposition. This contact should occur well in advance of the scheduled deposition to avoid inconveniencing defense counsel on the day of the scheduled deposition.
- Officers who choose to assert their objection to the video recording of the deposition should be instructed to advise defense counsel that they are not objecting to a deposition, but the method in which defense counsel intends to preserve the testimony.
- If after notifying defense counsel of the objection to the video recorded deposition, defense counsel chooses not to comply with the request of the Officer, the Officer can choose to recommend postponing the deposition for another date and notifying the assigned prosecutor of the conflict or may choose to simply turn away from the direct view of the video recorder during the deposition.

Most attorneys have chosen to compromise and have complied with the reasonable request of the Officer if the notification is well in advance of the scheduled deposition. The deposition forum is a means of discovery for defense counsel and the Courts recognize the need for compromise when the need arises to satisfy this critical stage of a criminal prosecution. If Officers object timely to the video recorded deposition and do so diplomatically, most, if not all attorneys will accommodate.

The content of this document is intended as general information and educational material.
It is not intended to supplant the advice of your own Police Legal Advisor and/or City Attorney