

## Advanced Disciplinary Challenges in the Fire Service

This 2-day program is intended as a deeper study into the causes of, and solutions for, discipline-related problems in the fire service. Fire officers, HR professionals with responsibility for fire departments, and union representatives who routinely advise members during an internal investigation will gain key insights into advanced areas including advanced interviewing skills, evidence collection, credibility determinations, and dealing with difficult employees. Fire chiefs, HR Directors, attorneys and those responsible for overseeing investigations and implementing penalties will also benefit from the program. The course builds upon the Managing Disciplinary Challenges program, taking a deeper look at the professional standards concept, and the strategic steps that fire service leaders need to consider when addressing disciplinary issues. Due process, *Weingarten*, and *Garrity* are thoroughly covered along with the impact of civil service, collective bargaining and firefighter bill of rights laws.

Course objectives:

Attendees will be able to:

- Identify the problems that commonly arise during administrative disciplinary investigations, and how professional standards addresses those problem areas
- Distinguish between procedural and substantive due process
- Identify the 7 essential components of procedural due process
- Distinguish between pre- and post-deprivation processes, and explain the role of a Loudermill (*Skelly*) hearing in complying with due process
- Identify the six steps to an ideal professional standards system
- Identify the five steps in the investigation process
- Explain how to organize an investigation and identify the options for referring an investigation internally and externally
- Conduct an interview of witnesses, including the complainant, civilian witnesses, non-accused employees and accused employees
- Explain how to document and seize evidence, when to seek expert assistance, how to avoid spoliation claims, how to comply with chain of custody requirements, the importance of a scene diagram, and best practices for investigative photography
- Explain the search and seizure principles that apply to administrative investigations
- Explain when employee drug testing is allowed under the Fourth Amendment, and identify best practices for avoiding challenges to drug tests
- Explain how to conduct a photo or live lineup, the legal challenges that often arise from lineups, and the importance conducting lineups in a way that meets the applicable standard of care
- Explain the *Weingarten* rule, identify when it applies, and explain the best practices for investigators to respect it
- Explain *Garrity* immunity, identify when it applies, and explain the best practices that investigators need to follow
- Distinguish between a *Garrity* problem and a *Gardner* problem
- Identify the states that take a minority view of *Garrity*, and the solutions necessary in those jurisdictions
- Explain the importance of using formal admonishments when interviewing employees; identify the four types of admonishments; distinguish when each type of admonishment should be used; and explain the strategic differences in an interview depending on which admonishment is used
- Define the “Code of Silence” and explain how best to handle it when it arises

- Define the term credibility determination (credibility assessment)
- Identify where a credibility determination should be made, and when doing so would be inappropriate
- Explain how to conduct a credibility determination, including the factors to be considered
- Identify the empirically established indicators of deception, and explain their use in the context of a credibility determination
- Define bias, implicit bias, confirmation bias and the fundamental attribution error, and explain how each poses a challenge to the professional standards process
- Identify the six personality types that are commonly associated with difficult and/or toxic employees, and the challenges each creates in the workplace
- Explain the recommended process for managing the disciplinary concerns associated with difficult and/or toxic employees

Attendees will receive a comprehensive manual and course certificate from Fire Service Legal Training Institute, Inc.

Course contact hours: 14 hours

## **Advanced Disciplinary Issues in the Fire Service**

### **Day 1**

1. Review of Basic Concepts – 9:00am to 10:00am
  - The problem
  - Professional standards
  - Due process
  - Disciplinary time lines
  - Outliers and bell curve problems
2. Evidence Use and Control 10:00am to 12:00pm
  - Introduction
  - Chain of custody
  - Still Photographic Evidence
  - Use of Video
  - Medical evidence
  - Scene Diagram
  - Communications records
  - Searches and the 4<sup>th</sup> Amendment
  - Use of polygraph or voice stress detection
  - Chemical testing, photo & physical lineups
3. Advanced Interviewing 1:00pm to 5:00pm
  - Identifying potential witness
  - Planning the interview process
  - Research each witness to be interviewed
  - Order of the interviews
  - Scheduling interviews
  - Representation during interviews
  - General interview techniques

- Complainant interviews
- Interviews with non-accused employees
- Handling interview problems

## Day 2

4. Advanced Garrity - 9:00am to 10:30am
  - Overview of Garrity
  - Overview of Gardner
  - Strategic considerations
  - Sealing the Record
  - Garrity exceptions: perjury & obstruction
  - Garrity & duty to report
5. Credibility determinations 10:30-12:00pm
  - Overview of credibility determinations
  - Where credibility determinations need to be made
  - How to make a credibility determination
    - Factors to evaluate
  - Common Pitfalls
6. Toxic employees & HR issues 1:00-5:00 pm
  - Identifying toxic employees
  - Fire service challenges with toxic employees
  - Toxic behaviors
  - Legal challenges with toxic employees
    - FMLA,
    - ADA,
    - Title VII
    - Hostile Work Environment
  - Common mistakes FDs make
  - Solutions