

GARRITY RIGHT

PROCEDURE TO FOLLOW TO PROPERLY ASSERT THE RIGHT

INFORMATION YOU SUBMIT TO THE EMPLOYER, THROUGH ANY FORMAT, INCLUDING, BUT NOT LIMITED TO: STATEMENTS; REPORTS; VERBAL AND/OR WRITTEN ANSWERS TO QUESTIONS; AND INVESTIGATORY INTERVIEWS, UNLESS PROTECTED BY ASSERTION OF THE *GARRITY* RIGHT (5TH AMENDMENT), MAY BE USED AGAINST YOU IN A CRIMINAL PROCEEDING.

THE PROCEDURE SET FORTH HEREIN **MUST** BE FOLLOWED TO PROTECT THE INFORMATION YOU SUBMIT TO THE EMPLOYER.

PROCEDURE:

1. IF A SUPERIOR OFFICER ISSUES TO YOU, VERBALLY OR IN WRITING, AN ORDER TO TRANSMIT INFORMATION UNDER THREAT OF ADVERSE EMPLOYMENT ACTION (INCLUDING, BUT NOT LIMITED TO: DISCIPLINE—SUSPENSION AND/OR TERMINATION):

A. “COMPULSION,” AS MANDATED BY THE CONSTITUTION, WILL EXIST, GIVEN YOU THE RIGHT TO INVOKE THE *GARRITY* PROTECTION (5TH AMENDMENT?). (REMEMBER, BOTH THE ORDER AND THREAT MUST ISSUE FOR COMPULSION TO EXIST).

B. USE THE **POAM *GARRITY* RIGHTS FORM—FILLED OUT TO IDENTIFY WHICH SUPERIOR OFFICER COMPELLED THE INFORMATION.**

C. THE FORM MUST BE ATTACHED TO THE TRANSMITTAL OF INFORMATION.

D. IF THE INFORMATION TRANSMITTAL IS ELECTRONIC/COMPUTER GENERATED, SUCH THAT THE FORM CANNOT BE TRANSMITTED, THE FORM SHOULD STILL BE PREPARED AND SUBMITTED TO THE SUPERIOR OFFICER THAT ISSUED THE ORDER. IN ADDITION, THE FIRST LINE IN THE NARRATIVE OF THE ELECTRONIC/COMPUTER GENERATED TRANSMITTAL **MUST ASSERT THE *GARRITY* RIGHT. THE FOLLOWING LANGUAGE IS RECOMMENDED:**

I HAVE BEEN ORDERED BY A SUPERIOR OFFICER, UNDER THREAT OF ADVERSE EMPLOYMENT ACTION, TO SUBMIT THIS INFORMATION. I SUBMIT THIS COMPELLED INFORMATION UNDER ASSERTION AND PROTECTION OF MY U.S. CONSTITUTION 5TH AMENDMENT RIGHT, AS SET FORTH IN *GARRITY V. NEW JERSEY*, AND MY STATUTORY RIGHT, AS SET FORTH IN PA 563 OF 2006, MCL 15.391 ET. SEQ.

2. IF A SUPERIOR OFFICER DOES NOT ISSUE TO YOU, AN ORDER TO TRANSMIT INFORMATION UNDER THREAT OF ADVERSE EMPLOYMENT ACTION:

A. THE REQUISITE COMPULSION WILL NOT EXIST. YOU CANNOT ASSERT THE *GARRITY* RIGHT. POAM DOES NOT RECOMMEND TRANSMITTAL OF ANY INFORMATION UNTIL YOU ARE COMPELLED (ORDER AND THREAT).

B. PREFERABLY, THROUGH, OR WITH ASSISTANCE OF, A UNION REPRESENTATIVE, COMMUNICATE WITH YOUR SUPERIOR OFFICER TO RECEIVE THE ORDER AND THREAT. THIS WILL ASSURE THAT THE REQUISITE “COMPULSION” EXISTS.

C. FOLLOW THE PROCEDURE SET FORTH IN **STEPS 1. A THROUGH D.**

D. IF A SUPERIOR OFFICER REFUSES TO ISSUE THE ORDER AND THREAT, COMPULSION WILL NOT BE DEEMED TO EXIST AND ANY INFORMATION TRANSMITTED WILL **NOT** BE PROTECTED. UNDER THIS CIRCUMSTANCE, TRANSMIT TO YOUR SUPERIOR THE COMPLETED **POAM NOTICE-ASSERTION OF CONSTITUTIONAL RIGHTS-COMPLIANCE WITH COMPELLED INFORMATION FORM:**

(1) THE FORM SERVES AS NOTICE TO THE EMPLOYER THAT YOU ARE ASSERTING YOUR 5TH AMENDMENT RIGHT TO REMAIN SILENT, BUT THAT YOU WILL COMPLY WITH AN ORDER/THREAT AND GIVE COMPELLED INFORMATION UNDER YOUR *GARRITY* RIGHT AND PROTECTION.

(2) IF A SUPERIOR OFFICER ISSUES THE REQUISITE ORDER AND THREAT, THEN COMPULSION WILL EXIST. AT THAT POINT, FOLLOW THE PROCEDURE SET FORTH IN **STEPS 1. A THROUGH D.**

NOTICE

ASSERTION OF CONSTITUTIONAL RIGHTS

COMPLIANCE WITH COMPELLED INFORMATION

I, _____, hereby assert my 5th and 14th Amendment right under the United States Constitution and corresponding provisions of the Michigan Constitution, to remain silent regarding incident/case # _____.

In the event the Employer, through a superior officer, compels me to submit information (including, but not limited to: statements, reports, and answer to questions) under order and threat of adverse employment action (including, but not limited to: suspension and/or termination), I shall comply and submit the compelled information, subject to my assertion of the right and protection afforded to me under *Garrity v. New Jersey*, its progeny, Michigan statute, PA 563 of 2006, MCL 15.391, *et. seq.*, and the United States and Michigan Constitutions, notice of which shall be given, by written declaration, prior to submitting the compelled information.

Officer/Deputy

"On _____ (date) _____ (time), at _____ (place) I asserted the right to remain silent. I was thereafter ordered by _____ (superior officer, name & rank) to submit information (which includes a report, statement or answers to questions) as a condition of continued employment. In view of possible job forfeiture, I have no alternative but to abide by this order and to submit this compelled information. I reply specifically upon the protection afforded me under the doctrines set forth in Garritty v New Jersey, 385 US 493 (1967), Gardner v Broderick, 392 US 273 (1968), and their progeny, as well as PA 563 of 2006, MCL 15.391 et seq.

It is my belief and understanding that this information will not and can not be used against me by any government agency or related entity in any subsequent proceedings, other than disciplinary proceedings within the confines of the department itself. For any and all other purposes, I continue assertion of my constitutional right to remain silent under the FIFTH and FOURTEENTH AMENDMENT to the UNITED STATES CONSTITUTION and any other rights prescribed by Michigan laws.

This assertion of the right applies to information (report/statement/answers to questions) in # _____.

Officer

Date

Witness

Date