

# Employee Speech, Expression and Social Networking

## 1058.1 PURPOSE AND SCOPE

Public employees are public servants and are entrusted with the public trust. Because of this public trust, law enforcement personnel are held to a higher standard of professionalism than private citizens. Law enforcement personnel must work hard to gain the trust and confidence of the community they serve. This policy applies to all members of the Department, including sworn and professional staff, volunteers, contract employees, and Reserve personnel.

This policy is intended to address workplace privacy expectations, and issues associated with the necessary regulation and balancing of Member speech and expression (including social networking and other electronic communication) with the legitimate operational needs of the Department.

Nothing in this policy is intended to prohibit or infringe upon any communication, speech, or expression that is protected or privileged under law. This includes speech and expression protected under the Constitution of the United States and the Constitution of the State of California, labor statutes and regulations (e.g., Meyers-Milias-Brown Act), and other applicable laws. For example, this policy does not restrict a Member from engaging in protected labor-speech and activities.

Employees are encouraged to consult with their supervisor regarding any questions arising from the application or potential application of this policy.

### 1058.1.1 APPLICABILITY

This policy applies to all forms of communication including, but not limited to, film, video, print media, public or private speech, use of all Internet services, including e-mail, news services, social networking, social media, instant messaging, text messaging, blogs, podcasts, forums, video and other file-sharing sites.

## 1058.2 POLICY

Public employees, especially deputy sheriffs and Department personnel, occupy a trusted position in the community, and thus, their statements have the potential to contravene the policies, performance, and legitimate operational interests of this Department. Due to the nature of the work and influence associated with the law enforcement profession, it is necessary that Members of this Department be subject to certain reasonable limitations on their speech and expression. To achieve its mission and efficiently provide service to the public, the Orange County Sheriff-Coroner Department will carefully balance the individual rights of Members against the Department's needs and interests when exercising a reasonable degree of control over its Members' speech and expression.

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#### **1058.3 SAFETY**

Members should carefully consider the implications of their speech or any other form of expression, particularly when using the Internet and other technology that can be widely disseminated. Speech and expression that negatively affects the safety of Orange County Sheriff's Department Members, such as posting personal information in a public forum, can result in compromising a Member's home address or family ties. Members should therefore not disseminate or post any information on any forum or medium that could reasonably be anticipated to compromise the safety of any Member, or a Member's family or associates. Examples of this type of information that, depending on the circumstances, could reasonably be expected to compromise Member safety include:

1. Disclosing a photograph and name or address of a Member who is working undercover.
2. Disclosing the home address and other personal contact information (e.g. telephone number or personal email address) of another Member.
3. Publicly disclosing where another Member can be located off-duty.
4. Publicly identifying another Member's family as having a relationship with the law enforcement community.

While such conduct is not expressly prohibited in every circumstance, Members are cautioned to exercise reasonable judgment before providing another Member's personal information to any outside party to the extent such information could threaten or adversely affect the other Member's safety.

#### **1058.4 PROHIBITED SPEECH, EXPRESSION AND CONDUCT**

To meet the Department's safety, performance, and public-trust needs, the following are prohibited unless the speech is otherwise protected (for example, a Member speaking as a private citizen on a matter of public concern, or as an authorized member of a recognized bargaining unit):

1. Speech or expression made pursuant to an official job duty that tends to compromise or damage the mission, function, reputation, professionalism, or the ability of the Orange County Sheriff-Coroner Department or its Members to serve the public. The determination of whether speech is made pursuant to an "official job duty" is made on a case-by-case basis. *Garcetti v. Ceballos*, 547 U.S. 410 (2006).
2. Speech or expression that, while not made pursuant to an official duty, is significantly linked to, or related to, the Orange County Sheriff-Coroner Department and tends to compromise or damage the mission, function, reputation or professionalism of the Orange County Sheriff-Coroner Department or its Members. Examples may include:
  - Statements that indicate disregard for the law or the state or U.S. Constitution.
  - Expression that demonstrates support for criminal activity.
  - Participating in sexually explicit photographs or videos for compensation or distribution.

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3. Speech or expression that could reasonably be foreseen as having a negative impact on the credibility of the Member as a witness. For example, posting statements or expressions to a public website that glorify or endorse dishonesty by the Member, endorse unlawful discrimination, express racial bias, or promote illegal behavior may compromise a Member's credibility as a witness.
4. Speech or expression of any form that could reasonably be foreseen as having a negative impact on the safety of the Members of the Orange County Sheriff's Department. For example, a statement on a blog that provides specific details as to how and when a tactical operation will be made could reasonably be foreseen as potentially jeopardizing Members by informing criminals of details that could facilitate an armed response or escape by the target of the operation. Similarly, advising a suspect that s/he is under surveillance could threaten officer safety.
5. Speech or expression that is contrary to the canons of the Law Enforcement Code of Ethics as adopted by the Orange County Sheriff-Coroner Department.
6. Use or disclosure, through whatever means, of any information, photograph, video or other recording obtained or accessible as a result of employment with the Department, and not otherwise available to the public, without the express authorization of the Sheriff or the authorized designee, including for financial or personal gain. (Penal Code § 146g.)

Members must take reasonable and prompt action to remove any content, including content posted by others, that is in violation of this policy from any web page or website maintained by the Member (e.g., social or personal website). In order for the Member to remove such content, reasonable accommodations shall be made as necessary to permit the Member to access his/her personal accounts in a manner that will not compromise the privacy rights of the Member.

#### 1058.4.1 UNAUTHORIZED ENDORSEMENTS AND ADVERTISEMENTS

Members are not restricted from engaging in any political endorsements or social activities as private citizens, or as authorized members of a recognized bargaining unit. While nothing in this policy shall prevent a Member from identifying himself or herself as a member of a law enforcement agency in conjunction with his or her political speech, Members may not represent that their political, social, or other personal views are those of the Orange County Sheriff-Coroner Department. Unless specifically authorized by the Sheriff, Members shall not identify themselves in any way that could be reasonably perceived as speaking on behalf of, or officially representing the Orange County Sheriff's Department in order to do any of the following:

1. Endorse, support, oppose or contradict any political campaign or initiative.
2. Endorse, support, oppose, or contradict any social issue, cause or religion.
3. Endorse, support or oppose any product, service, company or other commercial entity.
4. Appear in any commercial, social or nonprofit publication or any motion picture, film, video, public broadcast or on any website.

Members retain their right to vote as they choose, to support candidates of their choice, and to express their opinions as private citizens, including as authorized members of a recognized

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bargaining unit, on political subjects and candidates at all times while off-duty. However, Members may not use their official authority or influence to interfere with or affect the result of an election or a nomination for office. Members are also prohibited from directly or indirectly using their official authority to coerce, command or advise another employee to pay, lend, or contribute anything of value to a party, committee, organization, agency, or person for political purposes. (5 USC § 1502.)

### **1058.5 PRIVACY EXPECTATION**

The Department retains the right to require a Member to divulge social media reasonably believed to be relevant to an investigation of allegations of Member misconduct or Member violation of applicable laws and regulations, provided that the social media information is used solely for purposes of that investigation or a related proceeding.

The Department also retains the right to require a Member to disclose a username, password, or other method for the purpose of accessing an employer-issued electronic device.

The Department will not request or require a Member to disclose his or her username or password for the purpose of accessing personal social media. Also, when unrelated to an investigation or related proceeding, the Department will not request the Member to access personal social media in the presence of the Department. The Department will not discharge, discipline, threaten to discharge or discipline, or otherwise retaliate against a Member solely for not complying with a request to access his or her personal media in the presence of the Department.

Members are cautioned that they should have no expectation of privacy regarding any communication or information accessed, transmitted, reviewed, or received over any technology issued or maintained by the Department, including but not limited to the Department e-mail system, computer network, department-issued cellular phones, laptops, or tablets. The Department reserves the right to access, audit and disclose any such information or communication. This includes records of all key strokes or web-browsing history made at any Department computer or over any Department network. The fact that access to a database, service or website requires a user name or password will not create an expectation of privacy if accessed through a Department computer or network.

Members are advised that the content of personal cameras and audio recording devices acquired by a Member while acting in an official capacity at a crime scene, accident, or natural disaster shall be provided to the Department as case evidence in a manner that will not compromise the privacy of other personal or unrelated content maintained on the device. Absent the express authorization of the Sheriff, a Member shall not make available to any member of the public such content provided to the Department as case evidence.

Members should also be aware that even where the Department recognizes a Member's privacy interest, certain communications may nonetheless be legally subject to disclosure. (For example, under the Public Records Act or civil or criminal discovery rules, etc.)