Personnel Complaints

1009.1 PURPOSE AND SCOPE

The purpose of this procedure is to provide guidelines for the reporting, investigation and disposition of complaints regarding the conduct of members and employees of this department.

1009.1.1 PERSONNEL COMPLAINTS DEFINED

Personnel complaints consist of any allegation of misconduct or improper job performance against any department employee that, if true, would constitute a violation of department policy or federal, state, or local law.

Inquiries about employee conduct which, even if true, would not qualify as a personnel complaint should be handled informally by a department supervisor and shall not be considered complaints.

This policy shall not apply to any interrogation, counseling, instruction, informal verbal admonishment or other routine or unplanned contact of an employee in the normal course of duty, by a supervisor or any other employee, nor shall this policy apply to an investigation concerned solely and directly with alleged criminal activities (Cal. Govt. Code 3303(i)).

Complaints shall be classified in one of the following categories:

Informal - A matter in which the complaining party is satisfied that appropriate action has been taken by a department supervisor of rank greater than the accused employee. Informal complaints need not be documented on a personnel complaint form, and the responsible supervisor shall have the discretion to handle the complaint in any manner consistent with this policy.

Formal - A matter in which the complaining party requests further investigation or in which a department supervisor determines that further action is warranted. Such complaints may be investigated by a department supervisor of rank greater than the accused employee or referred to the Internal Affairs Bureau, depending on the seriousness and complexity of the investigation.

Incomplete - A matter in which the complaining party either refuses to cooperate or becomes unavailable after diligent follow-up investigation. At the discretion of the assigned supervisor and the Internal Affairs Bureau, such matters need not be documented as personnel complaints, but may be further investigated, depending on the seriousness of the complaint and the availability of sufficient information.

Previous Administrative Review – A matter in which the actions of the employee(s) have been determined to be within policy in a previous Supervisor Administrative Review or administrative investigation. The department supervisor, with approval of his or her commanding officer and the Internal Affairs Lieutenant, need not document the matter as a personnel complaint, unless the nature and seriousness of the allegations merit further investigation.

Other Judicial Review – (For Internal Affairs Use Only) – This classification is intended to address two types of complaints:

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- CIVIL MATTERS – Other Judicial Review (OJR) is an appropriate disposition for personnel complaints in which the accused employee's official position does not play a role in the alleged actions. Matters subject to this disposition include:
  - Violations of restraining orders,
  - Child custody/support disputes, and
  - Other non-duty-related civil disputes.
- COURT PROCEEDINGS – The use of OJR as disposition for personnel complaints is appropriate in matters in which complainants have been accused or convicted of a crime or crimes, or in which the employee's conduct that forms the basis of the complaint has already been adjudicated during a court proceeding. The disposition of OJR applies to situations in which:
  - The complainant alleges misconduct by an employee in the scope of his or her duties, and the employee's conduct was previously addressed in a criminal or civil court proceeding.
  - The complaint pertains to assertions of the complainant's innocence regarding the crime or crimes alleged.

Inquiry - If an uninvolved supervisor determines that a citizen is merely requesting clarification of a policy or procedure, or the alleged misconduct or improper job performance, even if true, would not constitute a violation of law or Department policy or procedure, the supervisor, with approval of his or her commanding officer and the Internal Affairs Lieutenant, may classify the matter as an inquiry and need not take a complaint.

Frivolous - Complaints that are lacking in any arguable basis or merit, or which are made for the purpose of harassing a police employee may be deemed frivolous by the Internal Affairs Lieutenant or a Chief Officer, and need not be documented as a complaint.

1009.2 AVAILABILITY AND ACCEPTANCE OF COMPLAINTS

1009.2.1 AVAILABILITY OF COMPLAINT FORMS

Personnel complaint forms will be maintained in a clearly visible location in the public lobbies of the Orange, Magnolia, and Lincoln police stations. Forms may also be available at other government facilities, such as the office of the Citizens' Police Review Commission (CPRC) at City Hall. Personnel complaints may also be made online directly to the Police Department or CPRC.

1009.2.2 SOURCE OF COMPLAINTS

(a) A department employee becoming aware of alleged misconduct that may result in criminal misconduct that may reasonably result in criminal prosecution or discipline shall immediately notify a supervisor.

(b) A supervisor receiving a complaint from any source alleging misconduct of an employee which, if true, could result in disciplinary action.

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(c) Anonymous complaints and third party complaints should be accepted and investigated to the extent that sufficient information is provided.

1009.2.3 ACCEPTANCE OF COMPLAINTS

A complaint may be filed in person, in writing, or by telephoning the Department. Although not required, every effort should be made to have the complainant appear in person. The following should be considered before taking a complaint:

(a) Complaints shall not be prepared unless the alleged misconduct or job performance is of a nature which, if true, would normally result in disciplinary action.

(b) When an uninvolved supervisor or the Watch Commander determines that the reporting person is satisfied that their complaint required nothing more than an explanation regarding the proper/improper implementation of department policy or procedure, a complaint need not be taken.

(c) When the complainant is intoxicated to the point where his/her credibility appears to be unreliable, identifying information should be obtained and the person should be provided with a Personnel Complaint form.

(d) Depending on the urgency and seriousness of the allegations involved, complaints from juveniles should generally be taken only with their parents or guardians present and after the parents or guardians have been informed of the circumstances prompting the complaint.

1009.2.4 COMPLAINT DOCUMENTATION

Formal complaints of alleged misconduct shall be documented by a supervisor on a personnel complaint form. The supervisor shall ensure that the nature of the complaint is defined as clearly as possible.

When a Personnel Complaint form is completed in person, the complainant should legibly write a detailed narrative of his/her complaint. If circumstances indicate that this is not feasible, the complaint may be dictated to the receiving supervisor. In an effort to ensure accuracy in any complaint, a recorded statement shall be obtained from the reporting party. A refusal by a party to be recorded shall not alone be grounds to refuse to accept a complaint. Whether the complaint is handwritten or dictated, the complainant's signature should be obtained at the conclusion of the statement. The complainant should be provided with a copy of his/her own original complaint per Penal Code § 832.7.

1009.3 SUPERVISOR RESPONSIBILITY

A supervisor who becomes aware of alleged misconduct shall take reasonable steps to prevent aggravation of the situation. Moreover, supervisors shall also maintain the ability to engage in the interrogation of an employee in the normal course of duty, counseling, instruction, or informal verbal admonishment, or other routine or unplanned contact (Cal. Govt. Code 3303(i)).

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In general, the primary responsibility for the investigation of a personnel complaint shall rest with the employee's immediate supervisor. The Chief of Police or authorized designee may, however, direct that another supervisor investigate it. The supervisor shall be responsible for the following:

(a) A supervisor receiving a formal complaint involving allegations of a potentially serious nature shall ensure that the Watch Commander, Commanding Officer and Chief of Police are notified as soon as practicable.

(b) A supervisor receiving or initiating any formal complaint shall ensure that a Personnel Complaint form has been completed as fully as possible. The original complaint form will then be directed to the Internal Affairs Bureau, which will take appropriate action or forward the complaint to the Commanding Officer of the accused employee.

1. During the preliminary investigation of any complaint, the supervisor should make every reasonable effort to obtain names, addresses and telephone numbers of additional witnesses.

2. Once immediate medical attention has been provided, photographs of alleged injuries, as well as accessible areas of non-injury, should be taken.

3. In circumstances where the integrity of the investigation could be jeopardized by reducing the complaint to writing or where the confidentiality of a complainant is at issue, a supervisor shall orally report the matter to the employee's Division Commander or the Chief of Police, who will initiate appropriate action.

(c) A supervisor dealing with an accused employee shall ensure that the procedural rights of the employee are followed pursuant to Government Code § 3303, et seq., and any applicable MOU.

(d) When the nature of a personnel complaint relates to sexual, racial, ethnic, or other forms of prohibited harassment or discrimination, the supervisor receiving the complaint shall promptly contact the Personnel Bureau and the Chief of Police for direction regarding their role in investigation and/or addressing the complaint.

(e) Supervisors and managers are expected to mediate conflicts between the employees they supervise. When a supervisor determines that a personnel complaint filed by one employee against another is the result of a personal disagreement or a dispute regarding the interpretation of a department rule, rather than a violation of law or policy, the supervisor shall notify the Division Commander and attempt to resolve the conflict outside the complaint process.

1009.4 ASSIGNMENT TO ADMINISTRATIVE LEAVE

When a complaint of misconduct is of a serious nature or when circumstances practically dictate that it would impose an unreasonable risk to the Department, the employee, other employees or the public, a supervisor may assign the accused employee to inactive duty, pending completion of the investigation or the filing of administrative charges.

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1009.4.1 ADMINISTRATIVE LEAVE

An employee placed on administrative leave may be subject to the following guidelines:

(a) An employee placed on administrative leave shall continue to receive regular pay and benefits, pending the imposition of any discipline.

(b) An employee placed on administrative leave may be required to relinquish any badge, departmental identification, assigned weapon(s) and any other departmental equipment.

(c) An employee placed on administrative leave may be ordered to refrain from taking any action as a departmental employee or in an official capacity. The employee shall be required to continue to comply with all policies and lawful orders of a supervisor.

(d) An employee placed on administrative leave may be temporarily reassigned to a different shift (generally normal business hours) during the pendency of the investigation and the employee may be required to remain available for contact at all times during such shift and report as ordered.

(e) It shall be the responsibility of the assigning supervisor to promptly notify the employee's Division Commander and the Chief of Police

(f) At such time as any employee placed on administrative leave is returned to full and regular duty, the employee shall be returned to his or her regularly assigned shift with all badges, identification card and other equipment returned.

1009.5 ALLEGATIONS OF CRIMINAL CONDUCT

When an employee of this department is accused of potential criminal conduct, a separate supervisor or assigned detective shall be assigned to investigate the criminal allegations apart from any administrative investigation. Any separate administrative investigation may parallel a criminal investigation.

The Chief of Police shall be notified as soon as practical when an employee is formally accused of criminal conduct. In the event of serious criminal allegations, the Chief of Police may request a criminal investigation by an outside law enforcement agency.

An employee accused of criminal conduct shall be provided with all rights and privileges afforded to a civilian, and the employee may not be administratively ordered to provide any information to a criminal detective.

No information or evidence administratively coerced from an employee may be provided to a criminal detective.

Any law enforcement agency is authorized to release information concerning the arrest or detention of a peace officer which has not led to a conviction; however, no disciplinary action, other than paid administrative leave, shall be taken against the accused employee based solely on an arrest or crime report (Labor Code § 432.7(b)). An independent administrative investigation shall be conducted based upon the allegations in the report, in accordance with department policy.

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1009.6 ADMINISTRATIVE INVESTIGATION OF COMPLAINT

Whether the investigation is conducted by a supervisor or by an assigned member of the Internal Affairs Bureau, the following procedures shall be followed with regard to the accused employee(s):

(a) Interviews of accused employees shall be conducted during reasonable hours, and if the employee is off duty, the employee shall be compensated (Government Code § 3303(a)).

(b) No more than two interviewers may ask questions of an accused employee (Government Code § 3303(b)).

(c) Prior to any interview, an employee shall be informed of the nature of the investigation (Government Code § 3303(c)).

(d) All interviews shall be for a reasonable period, and the employee's personal needs shall be accommodated (Government Code § 3303(d)).

(e) No employee shall be subjected to offensive or threatening language, nor shall any promises, rewards or other inducements be used to obtain answers. Any employee refusing to answer questions directly related to the investigation may be ordered to answer questions administratively or be subject to discipline for insubordination. Nothing administratively ordered may be provided to a criminal investigator (Government Code § 3303(e)).

(f) Absent circumstances preventing it, the interviewer shall record all interviews of employees and witnesses. The employee may also record the interview. If the employee has been previously interviewed, a copy of that recorded interview shall be provided to the employee prior to any subsequent interview (Government Code § 3303(g)).

(g) If the allegations involve potential criminal conduct, the employee shall be advised of his/her Constitutional rights pursuant to *Lybarger*. This admonishment shall be given administratively, whether or not the employee was advised of these rights during any separate criminal investigation. (Government Code § 3303(h)).

(h) All employees subjected to interviews that could result in punitive action shall have the right to have an uninvolved representative present during the interview. However, in order to maintain the integrity of each individual employee's statement, involved employees shall not consult or meet with a representative or attorney collectively or in groups prior to being interviewed (Government Code § 3303(i)).

(i) All employees shall provide complete and truthful responses to questions posed during interviews.

(j) No employee may be compelled to submit to a polygraph examination, nor shall any refusal to submit to such examination be mentioned in any investigation (Government Code § 3307).

(k) No investigation shall be undertaken against any officer solely because the officer has been placed on a prosecutor’s *Brady* list or the name of the officer may otherwise be subject to disclosure pursuant to *Brady v. Maryland*. However, an investigation may be based on the underlying acts or omissions for which the officer has been placed on a *Brady* list or

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may otherwise be subject to disclosure pursuant to *Brady v. Maryland* (Government Code § 3305.5).

1009.6.1 ADMINISTRATIVE SEARCHES

Any employee may be compelled to disclose personal financial information pursuant to proper legal process if such information tends to indicate a conflict of interest with official duties or if the employee is assigned to or being considered for a special assignment with a potential for bribes (Government Code § 3308).

Employees shall have no expectation of privacy when using telephones, computers, radios or other communications provided by the Department.

Assigned lockers and storage spaces may be administratively searched only in the employee's presence, with the employee's consent, with a valid search warrant, or when the employee has been given reasonable notice that the search will take place (Government Code § 3309).

All other departmentally assigned areas may be administratively searched by a supervisor, in the presence of an uninvolved witness, for non-investigative purposes. An investigative search of such areas shall only be conducted upon a reasonable suspicion that official misconduct is involved.

1009.6.2 ADMINISTRATIVE INVESTIGATION FORMAT

Investigations of personnel complaints shall be detailed and complete, and shall essentially follow this format:

Introduction - The initial portion of the complaint should include the following headings: Date of Complaint; Date of Incident; Location of Incident; Complainant; Subject Officer(s); Witness Officer(s); Civilian Witnesses; Police File Number; Related File Number(s).

Summary - Under this heading, provide a very brief summary of the facts giving rise to the investigation.

Allegations - List the allegations separately (including applicable policy sections) with a very brief summary of the evidence relevant to each allegation.

Investigation - Provide a brief description of the steps taken during the investigation.

Interviews - Under separate headings, list a summary of the interviews of the Complainant(s), Witnesses, and Subject Officer(s).

Exhibits - A separate list of exhibits (recordings, photos, documents, etc.) should be attached to the report.

A separate Memorandum of Finding shall be prepared and will include the following headings: Summary; Allegation(s); Finding; Rationale; and, when applicable, Misconduct Noted. When there is a sustained finding, the following sections shall be included: Administrative Insight, and Recommended Discipline and/or Training.

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1009.7 DISPOSITION OF PERSONNEL COMPLAINTS

Each allegation shall be classified with one of the following dispositions:

Unfounded - When the investigation discloses that the alleged act(s) did not occur or did not involve department personnel. Complaints which are determined to be frivolous will fall within the classification of unfounded (Penal Code § 832.5(c)).

Exonerated - When the investigation discloses that the alleged act occurred, but that the act was justified, lawful and/or proper.

Not Sustained - When the investigation discloses that there is insufficient evidence to sustain the complaint or fully exonerate the employee.

Sustained - When the investigation discloses sufficient evidence to establish that the act occurred and that it constituted misconduct.

M isconduct Noted - The Department member violated a policy or procedure not originally alleged in the complaint.

1009.8 COMPLETION OF INVESTIGATIONS

Every investigator or supervisor assigned to investigate a personnel complaint or other alleged misconduct shall proceed with due diligence in an effort to complete the investigation within one year from the date of discovery by an individual authorized to initiate an investigation. In the event that an investigation cannot be completed within one year of discovery, the assigned investigator or supervisor shall ensure that an extension or delay is warranted within the exceptions set forth in Government Code § 3304(d) or Government Code § 3508.1. If the nature of the allegations dictates that confidentiality is necessary to maintain the integrity of the investigation, the involved employee(s) need not be notified of the pending investigation unless and until the employee is interviewed or formally charged within one year of discovery.

Upon completion, the report should be forwarded through the chain of command to the commanding officer of the involved employee(s).

The Chief of Police may accept or modify the classification and recommendation for disciplinary action contained in the report.

Within 30 days after the findings are issued, written notice of those findings shall be sent to the complaining party. This notice shall indicate the findings; however, it will not disclose the amount of discipline imposed, if any. The complaining party should also be provided with a copy of his/her own original complaint (Penal Code § 832.7).

Any complaining party who is not satisfied with the findings of the Department concerning his or her complaint may contact the Chief of Police to discuss the matter further.

1009.8.1 CONFIDENTIALITY OF PERSONNEL FILES

All investigations of personnel complaints, whether originating from a citizen or internally, shall be considered confidential peace officer personnel files. The contents of such files shall not be

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revealed to anyone other than the involved employee or authorized personnel, except pursuant to lawful process.

In the event that an accused employee (or the representative of such employee) knowingly makes false representations regarding any internal investigation and such false representations are communicated to any media source, the Department may disclose sufficient information from the employee's personnel file to refute such false representations (Penal Code § 832.5).

All sustained citizen's complaints shall be maintained for a period of at least five years (Penal Code § 832.5). All internally initiated complaints shall be maintained at least two years (Government Code § 34090 et seq.).

Any and all complaints, regardless of findings, shall be kept on file in the Internal Affairs Bureau.

1009.9 PITCHESS MOTION

A Pitchess Motion is a motion for discovery of peace officer personnel records where the defense counsel is attempting to establish a custom, habit or practice of excessive force, untruthfulness or false arrest against an arresting officer. Pitchess Motions generally are filed in cases where the defendant is charged with violating Penal Code sections 148, 241, 243, 245, or similar statutes.

(a) Internal Affairs will handle all Pitchess Motions.

(b) Upon the filing of a Pitchess Motion, Internal Affairs will promptly notify, in writing, the employee whose personnel records are being sought for discovery. Internal Affairs will also notify the employee what information, if any, was ordered released. The employee whose personnel records were the subject of a Pitchess Motion that resulted in information being released will be given the opportunity to review the information that was released, prior to testifying in the related criminal case.

(c) If the affidavit filed by the defense attorney is found by the judge to fulfill certain legal requirements, the judge will review the records requested “in camera” (judge’s chambers).

(d) In those cases where the judge feels that one or more of the complaints are relevant to the case in question, the judge may order the release of the names, addresses and telephone numbers of the complainants and any witnesses identified in those investigations, as well as the disposition of the complaint.

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