

**ARTICLE 5****DISCIPLINARY PROCEDURES****COMMANDER'S RESPONSIBILITY**

Section 5.1 Commanders may resolve work performance problems involving work unit operation and general work supervision functions that do not involve citizen complaints regarding personal actions of a department member after consultation with Labor Relations. Such disposition shall only be made when there is no question that the violation by a department member did in fact take place. District or division commanders may dispose of incidents of misconduct involving complaints of a minor nature only after consultation with the Labor Relations Section. All serious violations of department rules and regulations, Official Orders, the Code of Conduct and established policy directives shall be handled at the Headquarters level according to these articles.

Section 5.1a In proceeding with any administrative investigation, discipline, or counseling measures, commanders and investigators shall comply with the requirements of any applicable collective bargaining agreement. Commanders should consult with the Labor Relations Section to determine which labor agreement applies.

Section 5.1b All citizens' complaints and complaints by a member made to a commander or supervisor against another member for alleged violations of rules and regulations, Official Orders, Code of Conduct, or law shall be documented on a Complaint Against Member form, UD-93. When a commander initiates corrective action against a member on their own volition, a Complaint Against Member form, UD-93, is not required to be submitted if the proceedings do not go beyond written sanctions (counseling, written warnings, written reprimands).

Section 5.1c A member making a complaint against another member shall complete a Complaint Against Member form, UD-93, within 90 calendar days from the date of the alleged misconduct, or from the date that the individual became aware or reasonably should have become aware of the alleged misconduct. Complaints received beyond 90 days shall not be accepted unless approved by the Director.

This requirement does not apply to matters of a criminal nature. See Section 5.7 below for complaints against members involving possible violations of criminal law.

**FORMS OF DISCIPLINE**

Section 5.2 Discipline of department members may include written warnings and written reprimands for troopers and sergeants, and written reprimands for command officers and civilian members. Discipline also may include suspensions without pay, demotion, reduction in pay, unsatisfactory performance ratings, and discharge from employment. The appropriate corrective action against department members shall be in accordance with Sections 5.6 - 5.6d of this Order or the applicable contract.

**COMPLAINTS INVOLVING A DEPARTMENT MEMBER BY OUTSIDE PERSONS OR AGENCIES**

Section 5.3 All complaints against a department member shall be accepted at any level to which they are reported.

Section 5.3a The complainant shall be notified in writing of the complaint disposition. This correspondence shall be prepared by Internal Affairs after closing the complaint.

## INVESTIGATION AND REPORTS SUBMITTED ON ALLEGATIONS AGAINST A DEPARTMENT MEMBER

Section 5.4 A Complaint Against Member form shall immediately be completed by the receiving member or the commander initiating the complaint against the member. A copy of this form shall be forwarded to the district or division commander of the member involved and the original shall be immediately forwarded by e-mail to Internal Affairs. Refer to Official Order No. 1, Article 5, Enclosure (1) and the Complaint Against Member form, UD-93, instructions, for completion and distribution instructions.

Section 5.4a If the investigation is assigned to the district or division, the district or division commander shall cause a complete and thorough investigation to be conducted

Section 5.4b When an investigation is assigned to a district or division, a field investigator shall be designated by the district or division commander. The field investigator shall arrange the interview of the complainant and all pertinent witnesses, gather all relevant information and exhibits, and complete a report for review by Internal Affairs. Employees who are on leave as a result of illness or injury may still be interviewed with the authorization of the Human Resources Division and/or Office of Behavioral Science.

Section 5.4c See Official Order No. 1, Article 5, Enclosure (1) for a detailed guide to Internal Affairs investigations.

## MEMBER'S RESPONSE TO COMPLAINT OR ALLEGATION

Section 5.5 The involved member shall be advised of complaints and allegations associated with the member by their commander. The member may be directed to relate, in writing, all facts and circumstances that have a bearing in the matter. If the offense involves a criminal matter, this special report shall not be required, requested, or submitted without prior approval of the Director. When required, the member's response to such allegations shall be submitted through channels to the Director with the final investigative report, unless otherwise ordered. The involved member shall be promptly notified of the disposition of the allegation.

Section 5.5a Any statement made in a required special report prepared under orders or a threat of discipline shall be for department administrative proceedings only, and derivative evidence cannot be used against the accused member in a related criminal prosecution. Exclusively represented members shall be afforded all of the rights and contractual protections listed in their respective collective bargaining agreements.

## CORRECTIVE ACTION

Section 5.6 Upon receipt of the completed investigative report, Internal Affairs, in consultation with the district or division commander will make the closing determination. The report will then be forwarded to the Labor Relations Section and respective bureau to determine the proper corrective action. The recommendations of the offender's immediate supervisor may also be considered in determining what, if any, corrective action is appropriate.

Section 5.6a The Labor Relations Section shall be contacted whenever discipline of a department member is anticipated. A review of the case facts, the work and disciplinary records of the member involved, and the discipline imposed for similar offenses shall be conducted.

Section 5.6b In those instances where a department member has been convicted of or pled guilty or no contest to a criminal offense, the Human Resources Division Commander shall consult with the Director prior to proposing any administrative sanctions.

Section 5.6c Upon receipt of the completed investigation report, the Labor Relations Section shall prepare the Statement of Charges, or provide language for other documents that may be required by any contract or Official Order. A difference of opinion concerning the appropriateness of the charges or penalty proposed by the Labor Relations Section shall be directed to the appropriate bureau or office commander for resolution. Should an agreement fail to be reached, the matter shall be reviewed by the Director for final resolution.

Section 5.6d Once the charges and the proposed penalty have been established, the Labor Relations Section may consider and accept a proposed offer of settlement from a member or their representative in lieu of a hearing.

Section 5.6e The Labor Relations Section has complete responsibility for the development and presentation of cases before boards or arbitrators in any disciplinary matter appealed to the fourth step.

#### POSSIBLE VIOLATIONS OF LAW

Section 5.7 If a complaint against a member involves a possible violation of criminal law, in addition to submitting a Complaint Against Member form, the member's commander or supervisor shall immediately notify the district or division commander. The district or division commander shall notify their bureau or office commander. Under the direction of the bureau or office commander, investigations into any such cases shall be made or assigned by Internal Affairs. The local prosecutor and/or the Attorney General's Office shall be contacted when criminal prosecution is indicated.

See Official Order No. 1, Article 5, Enclosure (1) and Official Order No. 84 for additional information.

Section 5.7a Investigators shall coordinate their investigation with any related investigation that may have been done previously. During the course of the investigation, a personal interview shall be conducted with the complainant. At the conclusion of the investigation, the investigator's report shall be reviewed by the respective bureau or office commander.

#### COMPLAINTS REGARDING DEPARTMENT POLICY OR PROCEDURE

Section 5.8 Complaints about department procedure or policy shall be reported on interoffice memorandum directed through channels to the appropriate deputy director who shall take whatever action the complaint warrants. Such action may consist of an explanation of policy to the complainant, or steps may be taken to change policy or procedures if justified complaints indicate that a revision is necessary.

#### REPRESENTATION RIGHTS

Section 5.9 There are several types of interviews that may be conducted in conjunction with the investigatory process. During an interview that occurs as part of a criminal investigation, members are entitled to the same constitutional protection afforded any citizen. An investigatory interview is an administrative interview of a principal or witness conducted in accordance with, Official Order No. 1, Article 4, Sections 4.35 and 4.35a, of this Order.

Section 5.9a Members who are covered by a collective bargaining agreement must consult their specific labor contract for the provisions governing their representation rights.

Section 5.9b Non-exclusively represented members of the department may request representation during an investigatory interview regarding allegations or charges of misconduct against the member which, if substantiated, could result in suspension, demotion, reduction in pay, or dismissal. Subject to the department policy entitled, NERE's – Representation Rights at Investigatory Interview, and consistent with Civil Service rules and regulations, the member will be permitted to obtain representation of their own choosing, if such request is made. However, Civil Service Commission rules prohibit an exclusively represented employee from representing a non-exclusively represented member.

#### EXPUNGEMENT OF RECORDS

Section 5.10 Except where otherwise specified in any applicable labor agreement, the following time limits for the expungement of records shall be followed.

Section 5.10a Records of written warnings or reprimands shall be removed from a member's personnel file 24 months following the date the action was taken, provided that additional corrective action has not been imposed during that 24-month period. Counseling memoranda shall similarly be removed 12 months following the date of issuance, provided that additional corrective action has not been imposed during that 12-month period. Such records shall be removed following completion of the above-stated period upon the written request of the member. These provisions shall not prohibit the employer from maintaining records of corrective action arising out of violations of prohibited practices as defined in the Employee Relations Policy and Regulations.

Section 5.10b Exclusively represented members are subject to the specific terms of their negotiated contracts.

#### RELIEF FROM DUTY

Section 5.11 After consultation with the commander of the Human Resources Division, work unit commanders or their authorized representative may relieve from duty, with pay, any subordinate member, either of their command or who is within their command jurisdiction, whenever it is necessary for the preservation of good order, efficiency, and discipline. This action is limited to violations that necessitate immediate action. In every instance, the commander or their representative shall immediately advise the Director, through channels, of such action stating the reason and status of the involved member. The Director, upon receipt of such notification, may order the member suspended if necessary, in accordance with Civil Service rules and the appropriate collective bargaining agreement, or take such other action as is deemed appropriate. Such member shall not be restored to duty without authorization of the Human Resources Division Commander and the Director or the Director's designee.

Section 5.11a Whenever it is necessary to relieve a member from duty, the appointing authority shall notify the member in writing giving specific reasons for the action.

Section 5.11b When the discharge of a firearm by an officer inflicts injury or death to another, the officer shall be placed on administrative leave by his or her commander. This action is not considered discipline.

The officer may be restored to limited or full duty on the recommendation of the officer's work site commander after consultation with the Office of Behavioral Science.

Section 5.11c A member charged with a criminal offense may be suspended without pay by the Director or the Director's designee in accordance with the rules of the Civil Service Commission and any other applicable labor agreements.

Section 5.11d The Director or the Director's designee may take any action deemed necessary in accordance with Civil Service rules and the appropriate collective bargaining agreement.

## SURRENDER OF DEPARTMENT PROPERTY

Section 5.12 Except as otherwise directed by a higher authority, enforcement members relieved from duty or suspended shall immediately surrender their badges, identification cards, and department firearms to the supervisor(s) relieving them. Following relief from duty, the members may be required to surrender to their commanders, or other designated persons, all state property that has been issued to them.

## CONDUCT OF RELIEVED OR SUSPENDED MEMBER

Section 5.13 Enforcement members relieved or suspended from duty shall not have police authority. However, they are liable for any violation of these rules and regulations, Official Orders, established policy directives, and the Code of Conduct, except those which specifically apply to police functions. When members are relieved or on suspension, they shall not wear the department uniform.

Section 5.13a A member relieved from duty shall comply with Civil Service outside employment rules and Official Order No. 61. Any member suspended without pay shall notify the Human Resources Division of interim employment. Suspended members who contemplate returning to the department shall not become engaged in types of employment that would be prohibited by the department under Official Order No. 61.