

# Personnel Complaint Procedure

## 1020.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for the Department to professionally and thoroughly give the appropriate supervisory attention to public feedback received regarding Departmental service or individual performance. This policy explains the required actions for the collection, processing and preservation of complaints to ensure the proper attention is given to the incident.

### 1020.1.1 PERSONNEL COMPLAINTS

Public complaints shall be used to help shape programs, priorities, training, and discipline in order to provide the best law enforcement service to the community.

Complaints shall be classified into one of the following categories:

**Service complaint:** Any allegation of dissatisfaction with Department service, procedure or practice, not involving a personnel complaint, i.e. response time, vehicle operation while responding code-3, waiting too long to visit an inmate.

**Personnel complaint:** Any allegation of misconduct or improper job performance against any Department Member that, if true, would constitute a violation of Department policy, federal, state, or local law, i.e. rudeness, profanity, excessive force, criminal act. All investigations of personnel complaints shall be considered confidential.

## 1020.2 DOCUMENTING COMPLAINTS

All Members not holding a managerial or supervisory title/rank or not currently assigned to the Internal Affairs Bureau shall refer all complaints to a manager/supervisor even though it may appear to be minor in nature or easily and informally handled without involving a supervisor for proper documentation.

Managers and/or supervisors shall document all complaints, with the exception of inmate grievances, in the Commendation/Complaint Reporting System (CCRS) and submit the completed report to their Commander via the chain of command for appropriate action.

Sergeants assigned to the Internal Affairs Bureau may document all complaints, with the exception of inmate grievances, in the Commendation/Complaint Reporting System (CCRS) or forward the complaint to the relevant division, or consult with the appropriate Commander or Assistant Sheriff for necessary action.

### 1020.2.1 AVAILABILITY OF WRITTEN PROCEDURES

The Department shall make available to the public a written description of the investigation procedures for complaints (Penal Code § 832.5).

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#### 1020.2.2 AVAILABILITY OF PERSONNEL COMPLAINT FORMS AND PUBLIC COMMENT NOTICE FORMS

The Personnel Complaint Form and Public Comment Notice Form are available on the Sheriff's website to document complaints or commendations of Department Members if members of the public choose not to convey their complaint or commendation in person.

#### 1020.2.3 ACCEPTANCE OF COMPLAINTS

1. Any Member receiving a citizen complaint regarding an allegation of misconduct or improper job performance against any Department Member shall:
  - (a) Immediately notify a supervisor or refer the complainant to a supervisor.
  - (b) Refer the complainant directly to the Internal Affairs Bureau if:
    1. The complainant refuses to speak with any other Department representative.
    2. The complainant wants to speak directly to Internal Affairs Bureau.
    3. The allegations appear criminal or serious in nature.
    4. All attempts have failed to resolve the complaint.
  - (c) Any written report documenting complaints of misconduct shall be in the form of an intra-Department memo and shall include steps taken to resolve the complaint.
2. All Department managers, supervisors, and sergeants assigned to the S.A.F.E. Division, Internal Affairs Bureau shall accept complaints in person, by mail, online or by telephone. When a complaint is received, it shall be forwarded to the involved Member's Commander for appropriate action unless the Internal Affairs Bureau determines it would be more appropriate to retain the complaint or forward it to Criminal Investigations via the Executive Command. In these instances, the involved Member's Commander shall be notified and consulted.

#### **Exception:**

When an uninvolved supervisor or the Department 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.

#### 1020.2.4 COMPLAINT DOCUMENTATION

Complaints of alleged misconduct shall be documented by a manager and/or supervisor by creating a new "Initial Report" on the Sheriff's Intranet. The supervisor shall ensure that the nature of the complaint is defined as clearly as possible.

The complainant should be provided with a copy of the complaint per Penal Code § 832.7(b). Once an Initial Report has been created by a supervisor, the system will generate an email which contains an auto-populated "Complainant Notification" form. This form should be printed and mailed to the complainant. The form may be emailed to the complainant in lieu of regular mail.

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After the Initial Report has been reviewed by the Commander, the system will generate an email to the Member's supervisor which contains an "Employee Notification" form. This shall be printed and reviewed by the Member. After review, the form will be signed by both the Member and his or her supervisor. Once signed, the form will be scanned and attached to the Initial Report case. The system will automatically transfer the Initial Report to the Commendation/Complaint Reporting System (CCRS). The original signed form shall be placed in the Member's division performance file.

For assistance with form documentation, contact the S.A.F.E. Division (714) 834-3429.

#### **1020.3 ADMINISTRATIVE INVESTIGATION OF COMPLAINT**

Whether conducted by a supervisor or an assigned Member of the Internal Affairs Unit, the following procedures shall be followed with regard to the accused Member(s):

1. Interviews of accused Members shall be conducted during reasonable hours and, if the Member is off duty, the Member shall be compensated (Government Code § 3303(a)).
2. No more than two interviewers may ask questions of an accused Member (Government Code § 3303(b)).
3. Prior to any interview, a Member shall be informed of the nature of the investigation (Government Code § 3303(c)).
4. All interviews shall be for a reasonable period and the Member's personal needs shall be accommodated (Government Code § 3303(d)).
5. No Member shall be subjected to offensive or threatening language, nor shall any promises, rewards or other inducements be used to obtain answers. Any Member 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)).
6. Absent circumstances preventing it, the interviewer should record all interviews of Members and witnesses. The Member may also record the interview. If the Member has been previously interviewed, a copy of that recorded interview shall be provided to the Member prior to any subsequent interview (Government Code § 3303(g)).
7. If the allegations involve potential criminal conduct, the Member shall be advised of his/her Constitutional rights pursuant to Lybarger. This admonishment shall be given administratively whether or not the Member was advised of these rights during any separate criminal investigation. (Government Code § 3303(h)).
8. All Members 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 Member's statement, involved Members shall not consult or meet with a representative or attorney collectively or in groups prior to being interviewed (Government Code § 3303(i)).
9. Department Members will not be subject to discipline solely for actions determined to be a lawful exercise of their constitutional rights. Department Members will not be

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subject to questioning, a personnel investigation or discipline for invocation of their Fifth Amendment right.

### **1020.3 COMPLAINT OF MEMBERSHIP IN HATE GROUP, PARTICIPATION IN HATE ACTIVITY, OR PUBLIC EXPRESSION OF HATE**

Internal complaints or complaints from the public shall be accepted and investigated in accordance with this policy where it is alleged, with sufficient particularity to investigate the matter, that a sworn Member has in the previous seven years, and since 18 years of age, engaged in membership in a hate group, participated in a hate group activity, or advocated any public expression of hate (Penal Code § 13682).

#### **1020.3.1 DEFINITIONS (PENAL CODE § 13680)**

1. "Hate group" means an organization that supports, advocates for, threatens, or practices genocide or the commission of hate crimes.
2. "Membership in a hate group" means being, or holding oneself out as, a member of a hate group with the intent to further the unlawful aims of the group.
3. "Participation in any hate group activity" means active and direct involvement in, or coordination or facilitation of, any hate crime by hate group members.
4. "Public expression of hate" means any statement or expression to another person, including any statement or expression made in an online forum that is accessible to another person, that explicitly advocates for, explicitly supports, or explicitly threatens to commit genocide or any hate crime or that explicitly advocates for or explicitly supports any hate group.

### **1020.5 RETENTION OF COMPLAINT REPORTS**

The Professional Services Command shall maintain the Complaint Report Forms and all supporting documentation for five (5) years from the date of the complaint.

#### **1020.5.1 CONTENTS OF PERSONNEL FILE**

Contents of a Member's personnel file shall be retained in accordance to the Member's respective Memorandum of Understanding or applicable laws.

### **1020.6 REQUIRED REPORTING TO POST**

The Sheriff, or authorized designee, shall notify POST on the appropriate POST form within 10 days of certain deputy personnel events, including but not limited to (Penal Code § 13510.9):

- (a) Termination or separation from employment or appointment. Separation from employment or appointment includes any involuntary termination, resignation, or retirement.
  - (a) A POST affidavit-of-separation form shall be executed and maintained by the Department and submitted to POST as required by Penal Code § 13510.9 and 11 CCR 1003.
- (b) Events that could affect a sworn Member's POST certification, such as:

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- (a) Complaints, charges, or allegations of serious misconduct (as defined by Penal Code § 13510.8).
- (b) Findings of civilian review boards.
- (c) Final dispositions of any investigations.
- (d) Civil judgments or court findings based on conduct, or settlement of a civil claim against a sworn Member or the Orange County Sheriff-Coroner Department based on allegations of conduct by a deputy.

The Sheriff, or authorized designee, shall be responsible for providing POST access to or duplication of investigation documentation (e.g., physical or documentary evidence, witness statements, analysis, conclusions) within the applicable timeframe provided in Penal Code § 13510.9.

Upon completion of the investigation, the Sheriff, or authorized designee, shall submit to POST the final disposition of the investigation as well as investigation materials and the sworn Member's service record as provided by 11 CCR 1207. The submission shall include:

- 1. The complete investigative file with all attachments.
  - (a) Video and audio evidence should only be submitted when requested by POST.
- 2. Recommended and/or imposed disciplinary action, if applicable.
- 3. Skelly hearing report, if applicable.
- 4. Records of any administrative appeal, if applicable.

#### 1020.6.1 ADDITIONAL NOTIFICATIONS TO POST FOR SERIOUS MISCONDUCT

Additional notification shall be made to POST (11 CCR 1207):

- 1. If the imposed disciplinary action is pending appeal or other review through an administrative or judicial proceeding:
  - (a) The Department shall provide the name of the body conducting the proceeding.
  - (b) The status of the proceeding, if known.
- 2. If criminal charges are pending:
  - (a) The name of the court having jurisdiction over the criminal charges against the deputy.
  - (b) The status of the criminal case, if known.