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# Administrative Investigation and Personnel Complaints

## 1010.1 PURPOSE AND SCOPE

This policy provides guidelines for the reporting, investigation, and disposition of complaints regarding the conduct of employees of the Santa Ana Police Department and administrative investigations in connection with an allegation of misconduct. This policy shall not apply to any questioning, counseling, instruction, informal verbal admonishment or other routine or unplanned contact of an SAPD employee in the normal course of duty, by a supervisor or any other SAPD employee, nor shall this policy apply to a criminal investigation.

## 1010.2 POLICY

The Santa Ana Police Department takes seriously all complaints regarding the service provided by the Department and the conduct of its employees.

The Department will accept and address all complaints of misconduct in accordance with this policy, applicable federal, state and local law, municipal and county rules, and the requirements of any collective bargaining agreements.

It is also the policy of this department to ensure the community is provided with information and resources to report misconduct without concern for reprisal or retaliation.

The Department will timely complete all personnel investigations from the receipt of the complaint or recommendation to initiate an investigation. Inspectors will make every effort to complete assigned personnel investigations within 120 days. The Chief of Police or his/her designee may grant exceptions in cases involving multiple employees, criminal charges or otherwise extraordinary in nature. The Department shall comply in all cases with the time limits and exceptions defined in Government Code section 3304, subsections (c) through (g). The Internal Affairs Unit Commander shall monitor all internal investigations to ensure compliance with this policy and the Government Code.

The Santa Ana Police Department recognizes the importance of stable employer/employee relations, as well as the need to respect the rights provided to peace officers by the Public Safety Officers' Procedural Bill of Rights. Therefore, the Department's internal investigative procedures shall conform to Government Code Sections 3300-3313 in their entirety. **These investigative procedures shall apply to all full-time, regular employees, without regard for sworn status.**

## 1010.3 PERSONNEL COMPLAINTS

Personnel complaints include any allegation of misconduct or improper job performance, if true, would constitute a violation of department policy or of federal, state or local law, City or Department policy or rule. Personnel complaints may be generated internally or by members of the public.

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Inquiries about conduct or performance, if true, would not violate department policy or federal, state or local law, policy or rule may be handled informally by a supervisor and shall not be considered a personnel complaint. Such inquiries generally include clarification regarding policy, procedures or the response to specific incidents by employees of the Santa Ana Police Department.

### 1010.3.1 SOURCES OF COMPLAINTS

The following applies to the source of complaints:

- (a) Individuals from the public may make complaints in any form, including in writing, by email, in person or by telephone.
- (b) Any department employee who becomes aware of alleged misconduct shall immediately notify a supervisor.
- (c) Supervisors shall initiate a complaint based upon observed misconduct or receipt from any source alleging misconduct, if true, could result in disciplinary action.
- (d) Anonymous and third-party complaints should be accepted and investigated to the extent sufficient information is provided.
- (e) Tort claims and lawsuits may generate a personnel complaint.

## **1010.4 AVAILABILITY AND ACCEPTANCE OF COMPLAINTS**

### 1010.4.1 COMPLAINT FORMS

Personnel complaint forms will be maintained in a visible location in the public area of the police facility and be accessible through the department website. Forms may also be available at other City facilities.

Personnel complaint forms in languages other than English may be provided, as determined necessary or practicable.

### 1010.4.2 ACCEPTANCE

All complaints will be courteously accepted by any department employee and promptly given to the appropriate supervisor. Although written complaints are preferred, a complaint may also be filed orally, either in person, e-mail or by telephone. Such complaints will be directed to a supervisor. If a supervisor is not immediately available to take an oral complaint, the receiving employee shall obtain contact information sufficient for the supervisor to contact the complainant. The supervisor, upon contact with the complainant, shall complete and submit a complaint form as appropriate.

Although not required, complainants should be encouraged to file complaints in person so that proper identification, signatures, photographs or physical evidence may be obtained as necessary.

A complainant shall be provided with a copy of his/her statement at the time it is filed with the Department (Penal Code § 832.7).

Assignment of cases to Internal Affairs shall be at the sole discretion of the Chief of Police. Complaints alleging misconduct originating within the Department may, with the approval of the

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Bureau Commander, be handled at the Division level. The Internal Affairs Commander shall be notified of any internal investigation being handled at the Bureau level prior to the start of that investigation.

### 1010.4.3 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).

### 1010.5 DOCUMENTATION

Supervisors shall ensure that all complaints are documented. The supervisor shall ensure that the nature of the complaint is described in detail as much as possible.

All complaints and inquiries should also be documented in a Blue Team entry, which records and tracks complaints. The Blue Team entry shall include the nature of the complaint and the actions taken to address the complaint. On an annual basis, the Internal Affairs Unit Commander should audit all complaints and send an audit report to the Chief of Police or the authorized designee.

### 1010.6 ADMINISTRATIVE INVESTIGATIONS

No investigation shall be undertaken against an SAPD employee solely because the SAPD employee has been placed on a prosecutor's list or the name of the SAPD employee 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 SAPD employee has been placed on a list or is subject to disclosure pursuant to *Brady v. Maryland* (Government Code § 3305.5).

#### 1010.6.1 SUPERVISOR RESPONSIBILITIES

In general, the primary responsibility for the investigation of a personnel complaint shall rest with the SAPD employee's immediate supervisor, unless the supervisor is the complainant or the supervisor is the ultimate decision-maker regarding disciplinary action or has any personal involvement regarding the alleged misconduct. The Chief of Police or the authorized designee may direct another supervisor to investigate a complaint.

A supervisor who becomes aware of alleged misconduct shall take reasonable steps to prevent aggravation of the situation.

The responsibilities of supervisors include, but are not limited to:

- (a) Ensuring that upon receiving or initiating any formal complaint, a complaint form is completed.
  - (a) The original complaint form will be uploaded into a Blue Team entry, which will be directed to the Bureau Commander of the accused SAPD employee, via the chain of command, who will take appropriate action and/or determine who will be responsible for the investigation.
  - (b) In circumstances where the integrity of the investigation could be jeopardized by reducing the complaint to writing or where the confidentiality of a complainant

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is at issue, a supervisor shall orally report the matter to the SAPD Employee's Bureau Commander or the Chief of Police, who will initiate appropriate action.

- (b) Responding to all complainants in a courteous and professional manner.
- (c) Resolving those personnel complaints that can be resolved immediately.
  - (a) Follow-up contact with the complainant should be made within 24 hours of the Department's receipt of the complaint.
  - (b) If the matter is resolved and no further action is required, the supervisor will note the resolution in the corresponding Blue Team entry and forward it to the Division Commander.
- (d) Ensuring that upon receipt of a complaint involving allegations of a potentially serious nature, the Chief of Police is notified via the chain of command as soon as practicable.
- (e) Promptly contacting the Human Resources Division and the Division Commander for direction regarding their roles in addressing a complaint that relates to sexual, racial, ethnic or other forms of prohibited harassment or discrimination.
- (f) Forwarding unresolved personnel complaints to the Bureau Commander, who will determine whether to contact the complainant or assign the complaint for investigation.
- (g) Informing the complainant of the investigator's name and the complaint number within three days after assignment.
- (h) Investigating a complaint as follows:
  - 1. Making reasonable efforts to obtain names, addresses and telephone numbers of witnesses.
  - 2. When appropriate, ensuring immediate medical attention is provided and photographs of alleged injuries and accessible uninjured areas are taken.
- (i) Ensuring that the procedural rights of the accused SAPD employee are followed (Government Code § 3303 et seq.).
- (j) Ensuring interviews of the complainant are conducted during reasonable hours if possible.

### **1010.7 ADMINISTRATIVE SEARCHES**

No SAPD employee shall have his/her locker, or other space for storage that may be assigned to them searched except in his or her presence, or with his or her consent, or unless a valid search warrant has been obtained or where he or she has been notified a search will be conducted. This section shall apply only to lockers or other space for storage that are owned or leased by the employing agency (Government Code § 3309).

#### **1010.7.1 DISCLOSURE OF FINANCIAL INFORMATION**

An employee may be compelled to disclose personal financial information under the following circumstances (Government Code § 3308):

- (a) Pursuant to a state law or proper legal process
- (b) Information exists that tends to indicate a conflict of interest with official duties

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- (c) If the employee is assigned to or being considered for a special assignment with a potential for bribes or other improper inducements

### **1010.8 ADMINISTRATIVE LEAVE**

When a complaint of misconduct is of a serious nature, or when circumstances indicate that allowing the accused to continue to work would adversely affect the mission of the Department, the Chief of Police or the authorized designee may temporarily assign an accused employee to paid administrative leave. Any employee placed on paid administrative leave:

- (a) May be required to relinquish any department badge, identification, assigned weapons and any other department equipment.
- (b) Shall be required to continue to comply with all policies and lawful orders of a supervisor.
- (c) May be temporarily reassigned to a different shift, generally a normal business-hours shift, during the investigation. The employee may be required to remain available for contact at all times during such shift, and will report as ordered.

### **1010.9 CRIMINAL INVESTIGATION**

Where a member is accused of potential criminal conduct, a separate supervisor or investigator shall be assigned to investigate the criminal allegations apart from any administrative investigation. Any separate administrative investigation may parallel a criminal investigation.

The Department shall not be required to impose discipline within the one year period pursuant to the provisions set forth in Government Code section 3304 (Tolling). The Chief of Police shall be notified as soon as practicable when a member is accused of criminal conduct. The Chief of Police may request a criminal investigation by an outside law enforcement agency.

A member accused of criminal conduct shall be advised of his/her constitutional rights (Government Code § 3303(h)). The member should not be administratively ordered to provide any information in the criminal investigation.

The Santa Ana Police Department may release information concerning the arrest or detention of any SAPD employee, including an officer, that has not led to a conviction. No disciplinary action should be taken until an independent administrative investigation is conducted.

### **1010.10 PRE-DISCIPLINE EMPLOYEE PROCESS**

The pre-discipline process is intended to provide the employee with an opportunity to present a written or oral response to the Chief of Police after having had an opportunity to review the supporting materials and prior to imposition of any recommended discipline. The employee shall consider the following:

- (a) The process does not involve a formal hearing.
- (b) Although the employee may be represented by an uninvolved representative or legal counsel, the response is not designed to accommodate the presentation of testimony or witnesses.

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- (c) The employee may suggest that further investigation be conducted or may offer additional information or mitigating factors for the Chief of Police to consider.
- (d) In the event that the Chief of Police elects to cause further investigation to be conducted, the employee shall be provided with the results prior to the imposition of any discipline.
- (e) The employee may thereafter have the opportunity to further respond orally or in writing to the Chief of Police on the limited issues of information raised in any subsequent materials.

### **1010.11 RESIGNATIONS/RETIREMENTS PRIOR TO DISCIPLINE**

In the event that an SAPD employee tenders a written resignation or notice of retirement prior to the imposition of discipline, it shall be noted in the file. The tender of a resignation or retirement by itself shall not serve as grounds for the termination of any pending investigation or discipline.

### **1010.12 POST-DISCIPLINE APPEAL RIGHTS FOR SUSPENSION WITHOUT PAY, REDUCTION IN PAY OR STEP, DEMOTION, DISMISSAL, PUNITIVE TRANSFER OR TERMINATION**

Non-probationary employees have the right to appeal a suspension without pay, punitive transfer, demotion, reduction in pay or step, or termination from employment. An administrative appeal instituted by an SAPD employee shall be conducted in conformance with rules and procedures adopted by the City's Civil Service Rules and Regulations, the Memorandum of Understanding and as provided in Chapter 9, Section 9-118, of the Santa Ana Municipal Code. If an employee is successful in overturning or reducing the disciplinary action implemented by the Chief of Police, the Personnel Board's decision shall replace the Notice of Adverse Decision.

In the event of punitive action against an employee covered by the POBR, the appeal process shall be in compliance with Government Code § 3304 and Government Code § 3304.5.

During any administrative appeal, evidence that an SAPD employee has been placed on a *Brady* list or is otherwise subject to *Brady* restrictions may not be introduced unless the underlying allegations of misconduct have been independently established. Thereafter, such *Brady* evidence shall be limited to determining the appropriateness of the penalty (Government Code § 3305.5).

### **1010.13 POST-DISCIPLINE APPEAL RIGHTS FOR OTHER DISCIPLINARY FINDINGS IN ADMINISTRATIVE INVESTIGATION**

The Santa Ana Police Department has established the following process to conform to Government Code 3304.5 with respect to the rules and procedures for an administrative appeal where an administrative appeal is not presently provided in the Santa Ana Municipal Code (SAMC Section 9-118).

This process applies to all full-time sworn and non-sworn non-probationary employees of the Department. This process shall apply to supervisory counselings used as a disciplinary finding in an administrative investigation. This process shall not apply to supervisory counselings that are noted on a supervisor's log and retained by the supervisor as documentation for the employee's

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performance evaluation. This process shall not apply to non-punitive transfers out of a premium pay assignment, numerical scoring in performance evaluations and merit pay denial due to performance.

The issue to be determined in such appeal is whether good cause exists for the imposition of the punitive action and, if so, what punitive action is appropriate under the circumstances. The punitive action will take effect after the Chief of Police has made a decision and prior to any further appeal.

### 1010.13.1 APPEAL PROCESS

- (a) Within 10 calendar days of receipt of notification of discipline, the employee shall file a written request for appeal with his or her Bureau Commander. The request for appeal shall include a statement of the action being appealed and the remedy desired. Failure to file a request for appeal within the allowed time shall constitute a waiver of the right to this administrative appeal procedure.
- (b) Upon receipt of the request for appeal, the Bureau Commander shall schedule a meeting with the appealing employee and his or her representative, Monday through Friday between 0900 and 1700 hours. An attempt will be made to schedule this meeting during the appealing employee's regular work hours but if this is not possible the employee will appear without compensation at the scheduled meeting. If the appeal results in a rescission of the punishment, the appealing employee, who appeared outside of regular work hours, will be compensated for his or her time based on straight time used to appear at this meeting. Said meeting shall take place within 10 calendar days of receipt by the Bureau Commander of the request for appeal unless the parties agree to extend this time.
  1. Prior to the meeting, the Bureau Commander shall gather all documents relevant to the punitive action, including any documents submitted by the employee, and present a copy of them to the appealing employee. Within 5 business days of the meeting, the Bureau Commander shall notify the appealing employee of his or her decision. The Bureau Commander may sustain, rescind or modify the punitive action. An employee who is not satisfied with the decision of the Bureau Commander shall, within 10 calendar days, file a written request for appeal with the Chief of Police.
- (c) Within 10 calendar days of receipt by the Chief of Police of the request to appeal, the meeting shall take place unless the parties agree to extend this time. At the meeting, the Chief will consider all arguments that may be presented by the appealing employee or representative and the Bureau Commander regarding the existence of good cause for the discipline and the appropriateness of the action taken. The meeting with the Chief of Police will occur Monday through Friday between 0900 and 1700 hours. An attempt will be made to schedule this meeting during the appealing employee's regular work hours but if this is not possible the appealing employee will appear without compensation at the scheduled meeting. If the appeal results in a rescission of the punishment, the appealing employee, who appeared outside of regular work hours, will be compensated for his or her time based on straight time used to appear at this meeting.

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- (d) Within 5 business days of the meeting, the Chief of Police shall notify the appealing employee and the Bureau Commander of the decision to sustain, rescind or modify the disciplinary action. The Chief of Police shall notify the appealing employee of any personnel relied on in making this decision.
- (e) Within 10 calendar days, an employee who is not satisfied with the Chief's decision shall, file a written request for appeal with the City's Human Resources Director. The request for appeal shall include a statement of the action being appealed and the remedy desired. Failure to file a request for appeal within the allotted time shall constitute a waiver of the right to this administrative appeal procedure.
- (f) Upon receipt of the request for appeal, the City's Human Resources Director shall contact a hearing officer chosen by the parties and paid for by the City. A list of at least 3 hearing officers will be provided to both parties. If both sides cannot agree on one of the 3 hearing officers each side will strike one hearing officer and the remaining hearing officer will be the chosen hearing officer for that specific hearing. An evidentiary hearing shall be convened by the hearing officer as soon as all parties are available.
  - 1. The hearing before the hearing officer shall be audio recorded.
  - 2. The formal rules of evidence do not apply and all relevant evidence shall be admissible. Hearsay evidence is admissible with the understanding that such hearsay must be evidence upon which people may reasonably rely and that hearsay evidence alone may not support a finding by the hearing officer.
  - 3. Each party shall be responsible for obtaining the appearance of their respective witnesses.
- (g) The hearing officer shall accept documentary evidence and hear oral testimony under oath. The parties may present opening statements and oral argument on the issue of whether good cause exists for the punitive action and, if so, whether the punitive action is appropriate under the circumstances. There is no right to cross-examine witnesses by either party. At the close of the hearing the hearing officer shall issue written findings of fact and conclusions of law and make a decision to sustain, rescind or modify the punitive action within 14 business days.
- (h) The findings of fact, conclusions of law and decision shall be served by first class mail, postage pre-paid upon the City's Human Resources Director who shall serve the Findings and Conclusions upon the Chief, the involved employee and representative by personal service or first class mail. The Findings shall be accompanied by an affidavit or certificate of service/ mailing and shall advise the employee that the time within which judicial review of the decision may be sought is governed by C.C.P. Section 1094.6.
  - 1. The decision by the hearing officer will be binding on both parties.
  - 2. An employee who requests an appeal under this procedure shall bear his/her own costs in association with the appeal, including but not limited to witness and attorney fees.
- (i) Employees shall continue to be entitled to an appeal in accordance with existing procedures set forth in the Santa Ana Municipal Code Section 9-118, for suspensions,

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demotions, or dismissals. When such cases also involve a reassignment, the entire case will be heard pursuant to the Municipal Code, i.e., if, as a result of a misconduct case, an SAPD employee receives a suspension and a reassignment, then the case will not be bifurcated.

#### **1010.14 PROBATIONARY EMPLOYEES AND OTHER EMPLOYEES**

At-will and probationary employees and those SAPD employees other than non-probationary employees may be released from employment for non-disciplinary reasons (e.g., failure to meet standards) without adherence to the procedures set forth in this policy or any right to appeal. However, any probationary SAPD employee subjected to an investigation into allegations of misconduct shall be entitled to those procedural rights, as applicable, set forth in the POBR (Government Code § 3303; Government Code § 3304).

At-will, probationary employees and those other than non-probationary employees subjected to discipline or termination as a result of allegations of misconduct shall not be deemed to have acquired a property interest in their position, but shall be given the opportunity to appear before the Chief of Police or authorized designee for a non-evidentiary hearing for the sole purpose of attempting to clear their name or liberty interest. There shall be no further opportunity for appeal beyond the liberty interest hearing and the decision of the Chief of Police shall be final.

#### **1010.15 IMPOSITION OF DISCIPLINE**

If, after investigation and any pre-disciplinary response or procedure, the public agency decides to impose discipline, the public agency shall notify the SAPD employee in writing of its decision to impose discipline, including the date the discipline will be imposed, within 30 days of its decision, except if the SAPD employee is unavailable for discipline.

When the final decision of the Chief of Police is termination, the imposition of discipline will be immediate. Internal Affairs will meet with the SAPD employee and ensure that the discipline is served. In all other cases, the affected Bureau or Division Commander will meet with the employee to serve the discipline. This responsibility should not be relegated to a subordinate whose rank is less than management/commander.

When the discipline involves a suspension with options, the SAPD employee may elect to forfeit accumulated vacation, time off, holiday and/or compensatory time, which will then be processed by the Division Commander.

The forfeiture of vacation or compensatory time shall occur immediately or as soon as practical, after the serving of the Notice of Adverse Decision.

Should the SAPD employee elect to take a portion of the disciplinary time off without pay, or when the imposition of discipline is without options, the Bureau/Division Commander will determine when and how the suspension will be served based on organizational needs.

Suspensions with or without options will be served within 90 days from the service of a Notice of Adverse Decision. In extraordinary circumstances, the Chief of Police may extend this period for good cause.

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The SAPD employee's manager will be responsible for ensuring that the suspension is served and that the appropriate forms and reports are completed. The manager will submit a memorandum to Internal Affairs and SAPD's Fiscal Section, along with the appropriate non-regular time report, documenting the service of the suspension. The documentation will be included in the Internal Affairs file.

### **1010.16 RETENTION OF PERSONNEL INVESTIGATION FILES**

All personnel complaints shall be maintained in accordance with the established records retention schedule and as described in the City of Santa Ana's Records Retention Policy, City procedures, and pursuant to state law and applicable court order.