

Personnel Complaints

1016.1 PURPOSE AND SCOPE

Best Practice MODIFIED

This policy provides guidelines for reporting, investigation and disposition of complaints regarding the conduct of members of this department and the service provided by this department. This policy shall not apply to any questioning, counseling, instruction, informal verbal admonishment or other routine or unplanned contact of a member in the normal course of duty, by a supervisor or any other member, nor shall this policy apply to a criminal investigation.

1016.2 POLICY

Best Practice

This department takes seriously all complaints regarding service provided by the Department and the conduct of its members.

The Department will accept and address all complaints of member misconduct in accordance with this policy and 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 that the community can report misconduct without concern for reprisal or retaliation.

1016.3 PERSONNEL COMPLAINTS

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

Inquiries about employee conduct or performance that, if true, would not violate department policy or rule or federal, state or local law, 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 the Department.

1016.3.1 CLASSIFYING COMPLAINTS

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Personnel complaints shall be classified in one of the following categories:

Informal - A matter in which the member's Fire Chief is satisfied that appropriate action has been taken by a supervisor of rank greater than the accused member.

Formal - A matter in which a supervisor determines that further action is warranted. Such complaints may be investigated by a Chief and /or Administrator of rank greater than the accused member or referred to the designated department representative, depending on the seriousness and complexity of the investigation.

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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 Chief and/or Administrator or the designated department representative, such matters need not be documented as personnel complaints but may be further investigated or resolved as a complaint, depending on the seriousness of the complaint and the availability of sufficient information.

1016.4 AVAILABILITY AND ACCEPTANCE OF COMPLAINTS

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1016.4.1 AVAILABILITY OF COMPLAINT FORMS

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Personnel complaint forms will be available and clearly visible in public access locations within department facilities. Forms will also be available on the District website or GoFormz. Forms may also be available at other District offices and facilities. Personnel complaint forms in languages other than English may also be provided as determined necessary or practicable.

Every supervisor is responsible for monitoring public satisfaction or inquiries regarding the personnel complaint process and forwarding to the Fire Chief and/or Administrator any suggestions for improvement or changes.

1016.4.2 SOURCES OF COMPLAINTS

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- (a) Members of the public may make complaints in any form, including in writing, by email, in person or by telephone.
- (b) Any department member becoming 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 the misconduct of a member that, if true, could result in disciplinary action.
- (d) Anonymous complaints and third-party citizen complaints should be accepted and investigated to the extent that sufficient information is provided.

1016.4.3 ACCEPTANCE OF COMPLAINTS

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All complaints will be courteously accepted by any member and promptly given to the appropriate supervisor. Although written complaints are preferred, a complaint may also be filed verbally, either in person or by telephoning the Department, and will be accepted by any supervisor. If a supervisor is not immediately available to take a verbal complaint, the receiving member 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.

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1016.5 COMPLAINT DOCUMENTATION AND TRACKING

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Supervisors shall ensure that all formal and informal complaints are documented on a complaint form. The supervisor shall ensure that the nature of the complaint is defined as clearly as possible.

All complaints and inquiries should be documented in a log that records and tracks complaints. The log shall include the nature of the complaint and the actions taken to address the complaint. On an annual basis, the Department should audit the log and send an audit report to the Administrator or Board designee or the authorized designee.

1016.6 DISCIPLINARY INVESTIGATIONS

Best Practice

All allegations of misconduct will be investigated as follows:

1016.6.1 SUPERVISOR RESPONSIBILITIES

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In general, the primary responsibility for the investigation of a complaint rests with the member's immediate supervisor, unless the supervisor is the complainant, is the ultimate decision-maker regarding disciplinary action or has any personal involvement regarding the alleged misconduct. The Administrator or Board designee or the authorized designee may direct that another supervisor investigate any complaint.

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

Supervisors shall be responsible for the following:

- (a) Department supervisors should respond to all complaints in a courteous and professional manner.
- (b) A supervisor receiving a formal complaint involving allegations of a potentially serious nature shall ensure that the Fire Chief, and Administrator or Board designee are notified as soon as practicable.
- (c) 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 Fire Chief of the accused member, via the chain of command. The Fire Chief will forward a copy of the complaint to the to take any appropriate action and/or assign the complaint for investigation. 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 may orally report the matter to the Fire Chief, or Administrator or Board designee.
- (d) A supervisor investigating any complaint should:
 1. Make reasonable efforts to obtain names, addresses and telephone numbers of additional witnesses.
 2. When appropriate, provide immediate medical attention and take photographs of alleged injuries as well as accessible areas of non-injury.

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- (e) 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 Administration and the Fire Chief for direction regarding his/her role in addressing the complaint.
- (f) Supervisors who receive a citizen complaint that can be resolved immediately should do so. Follow-up contact with the person who made the complaint should be made within 24 hours of the Department receiving the complaint. If the matter is resolved and no further action is required, the supervisor will note the resolution on a complaint form and forward the form to the Fire Chief and Administrator.
- (g) Unresolved citizen complaints shall be forwarded to the Fire Chief to determine whether to contact the person who made the complaint or assign the complaint for investigation.
- (h) The supervisor shall ensure that the procedural rights of the accused member are followed.
- (i) Within three days after assignment, the complainant should be informed of the investigator's name and the complaint number.
- (j) Interviews of the complainant should be conducted during reasonable hours.

1016.6.2 INVESTIGATION PROCEDURES

Best Practice

The following procedures should be followed with regard to any accused member subject to investigation by the Department:

- (a) Prior to any interview, the member should be informed of the nature of the investigation.
- (b) Interviews of accused members should be conducted during reasonable work hours of the member and, if the member is off-duty, the member shall be compensated if required.
- (c) No more than two interviewers should ask questions of an accused member to prevent confusion or misunderstanding.
- (d) All interviews shall be for a reasonable period or duration and the member's personal needs shall be accommodated.
- (e) 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 and subject to discipline for failing to do so. Nothing administratively ordered may be provided to a criminal investigator.
- (f) 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 should be provided to the member prior to any subsequent interview.
- (g) A member subjected to interviews that could result in punitive action shall have the right to have a representative of his/her choosing during any interrogation. However,

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in order to maintain the integrity of each individual member's statement, involved members shall not consult or meet with representatives or attorneys collectively or in groups prior to being interviewed.

- (h) All members shall provide complete and truthful responses to questions posed during interviews.
- (i) No member should be compelled to submit to a polygraph examination, nor shall any refusal to submit to such examination be mentioned in any investigation (N.J.S.A. 2C:40A-1).

1016.6.3 INVESTIGATION FORMAT

Best Practice

Investigations of complaints should be timely, detailed, complete and follow this format:

Introduction - Include the identity of the member, the identity of the assigned investigators, the initial date and source of the complaint.

Synopsis - Provide a very brief summary of the facts giving rise to the investigation.

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

Evidence as to each allegation - Each allegation should be set forth with the details of the evidence applicable to each allegation and include comprehensive summaries of member and witness statements. Other evidence related to each allegation should also be detailed in this section.

Conclusion - A recommendation regarding further action or disposition should be provided.

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

1016.6.4 ADMINISTRATIVE LEAVE

Best Practice

When a complaint of misconduct is of a serious nature, or when circumstances dictate that allowing the accused to continue to work would adversely affect the mission of the Department, the Administrator or Board designee or the authorized designee may temporarily assign an accused employee to administrative leave. The Administrator or Board designee or the authorized designee shall notify the Administration in writing of the employee's administrative leave and the cause for the leave.

1016.6.5 ADMINISTRATIVE LEAVE WITHOUT PAY

State

If a firefighter is placed on administrative leave without pay and the Department seeks to terminate the firefighter, a final determination of the leave and termination shall be rendered within 180 calendar days from the date of the suspension (N.J.S.A. 40A:14-201; N.J.S.A. 40A:14-209).

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1016.7 POST-INVESTIGATION PROCEDURES

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Upon completion, the report should be forwarded to the Administrator or Board designee through the chain of command of the involved member. Each level of command should review and include their comments in writing before forwarding the report. The Administrator or Board designee may accept or modify the classification and recommendation for disciplinary action contained in the report.

1016.7.1 CHIEFS RESPONSIBILITIES

Best Practice **MODIFIED**

Upon receipt of any completed personnel investigation, the Chief and/or Administrator of the involved member shall review the entire investigative file, the member's personnel file and any other relevant materials.

The Chief and/or Administrator may make recommendations regarding the disposition of any allegations and the amount of discipline, if any, to be imposed.

Prior to forwarding recommendations to the Administrator or Board designee, the Chief and/or Administrator may return the entire investigation to the assigned investigator or supervisor for further investigation or action.

When forwarding any written recommendation to the Administrator or Board designee, the Chief and/or Administrator shall include all relevant materials supporting the recommendation. Actual copies of a member's existing personnel file need not be provided and may be incorporated by reference.

1016.7.2 RESPONSIBILITIES OF THE ADMINISTRATOR OR BOARD DESIGNEE

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Upon receipt of any written recommendation for disciplinary action, the Administrator or Board designee shall review the recommendation and all accompanying materials. The Administrator or Board designee may modify any recommendation and/or may return the file to the Chief and/or Administrator for further investigation or action.

Once the Administrator or Board designee is satisfied that no further investigation or action is required by staff, the Administrator or Board designee shall determine the amount of discipline, if any, to be imposed. In the event that disciplinary action is proposed, the Administrator or Board designee shall provide the member with written notice of the charges and the following information:

- (a) Access to all of the materials considered by the Administrator or Board designee in recommending the proposed discipline.
- (b) An opportunity to respond orally or in writing to the Administrator or Board designee within five days of receiving the notice.
 1. Upon a showing of good cause by the member, the Administrator or Board designee may grant a reasonable extension of time for the member to respond.

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2. If the member elects to respond orally, the presentation shall be recorded by the Department. Upon request, the member shall be provided with a copy of the recording.
- (c) Once the member has completed his/her response, or if the member has elected to waive any such response, the Administrator or Board designee shall consider all information received in regard to the recommended discipline. The Administrator or Board designee shall thereafter render a timely written decision to the member and specify the grounds and reasons for discipline and the effective date of the discipline. Once the Administrator or Board designee has issued a written decision, the discipline shall become effective.

1016.8 PRE-DISCIPLINE MEMBER RESPONSE

Best Practice **MODIFIED**

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

- (a) This response is not intended to be an adversarial or formal hearing.
- (b) Although the member may be represented by an uninvolved representative or legal counsel, the response is not designed to accommodate the presentation of testimony or witnesses.
- (c) The member may suggest that further investigation could be conducted or the member may offer any additional information or mitigating factors for the Administrator or Board designee to consider.
- (d) In the event that the Administrator or Board designee elects to cause further investigation to be conducted, the member shall be provided with the results of such subsequent investigation prior to the imposition of any discipline.
- (e) The member may thereafter have the opportunity to further respond orally or in writing to the Administrator or Board designee on the limited issues of information raised in any subsequent materials.

1016.9 PRE-DISCIPLINE HEARING

State

If the proposed discipline is for removal, suspension or demotion, an opportunity for a hearing before the Administrator or Board designee or the authorized designee shall be provided. The hearing shall be held within 30 days of the notice of disciplinary action unless waived by the member or both parties agree to a later date (N.J.S.A. 11A:2-13; N.J.S.A. 40A:14-202; N.J.A.C. 4A:2-2.13).

Within 20 days of completion of the hearing the Administrator or Board designee or the authorized designee shall issue a Final Notice of Disciplinary Action and serve the member by personal service or certified mail (N.J.S.A. 11A:2-14; N.J.S.A. 40A:14-202; N.J.A.C. 4A:2-2.13).

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1016.10 RESIGNATIONS/RETIREMENTS PRIOR TO DISCIPLINE

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

1016.11 POST-DISCIPLINE APPEAL RIGHTS

State

Employees may appeal a suspension, demotion and termination from employment. The employee may appeal using the procedures established in any operative collective bargaining agreement and/or personnel rules (N.J.S.A. 40A:14-209; N.J.S.A. 40A:14-210).

In the event of punitive action against an employee covered by civil service, the appeal process shall be in compliance with N.J.S.A. 11A:2-14; N.J.S.A. 11A:2-15; N.J.S.A. 40A:14-202 and N.J.A.C. 4A:2-2.13.

If the employee receives a fine or suspension of five days or less, the employee may request review under the procedures established by personnel rules or appeal pursuant to a collective bargaining agreement (N.J.S.A. 11A:2-16).

1016.12 OTHER EMPLOYEES AND MEMBERS

Best Practice

Employees and members other than career service employees or those serving a probationary period may be disciplined and/or released from employment without adherence to any of the procedures set out in this policy and without notice or any cause at any time. These members are not entitled to any rights under this policy.

Any probationary period may be extended at the discretion of the Administrator or Board designee in cases where the member has been absent for more than a week or when additional time to review the member is considered to be appropriate.