

<b>DOUGLAS COUNTY SHERIFF'S OFFICE</b>		<b>Policy and Procedure</b>
<b>Personnel Investigations</b>		<b>P&amp;P-I-101</b>
<b>Complaint Handling / Investigative Procedures</b>		
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**I. POLICY**

The Douglas County Sheriff's Office requires its employees and volunteers to obey the law, exhibit a high degree of professionalism, practice ethical behavior and adhere to the standards of conduct established within the agency.

The Sheriff's Office will accept all comments, inquiries and complaints, including anonymous complaints, regarding its employees or procedures. All complaints, including anonymous complaints, will be fully investigated, and those investigations will be conducted in a timely, impartial, and thorough manner. Fair and standardized procedures are required to ensure the proper disposition of citizen complaints and other allegations. <COM 2.2.4>The Professional Standards Chief Deputy has the authority to report directly to the Sheriff in matters related to internal affairs investigations. <52.1.1><52.1.3> <COM 1.4.2>

**II. INVESTIGATIVE ASSIGNMENT AND AUTHORITY**

A. Internal Affairs' authority is derived directly from the Sheriff. Therefore, Internal Affairs investigators are authorized to carry out any authorized investigation, regardless of the rank of the subject employee. The Professional Standards Chief Deputy is authorized to temporarily assign or appoint commissioned supervisors to assist with or conduct investigations after consultation with the supervisor's chief deputy. <COM 1.4.1>

B. Supervisors in all divisions can only investigate complaints received from the public or other office members if the complaint is considered minor and most likely will not result in severe discipline. Severe discipline is defined as discipline that exceeds the authority of the rank of sergeant or lieutenant, demotion, or termination. <COM 1.4.1>

C. In the event a complaint is filed against a member of Internal Affairs Unit, the recipient of the complaint will immediately forward it to the Sheriff, or, in his absence, his designee. The Sheriff or designee will assign the investigation to a member (not in the Internal Affairs Unit) having the rank of lieutenant or higher to complete the investigation.

D. If a chief deputy or the Undersheriff is the subject of an investigation the Sheriff will determine who will conduct the investigation, to include consideration of having an outside agency conduct the investigation. If a captain is a subject of an investigation, the chief deputy, Undersheriff or Sheriff will determine who will conduct the investigation. In the case of any other investigation not conducted by Internal Affairs

Unit personnel, the assigned investigator will be at least one rank higher than the member being investigated.

### **III. GENERAL DUTIES OF INTERNAL AFFAIRS PERSONNEL**

A. It shall be the duty of Internal Affairs personnel:

1. During authorized investigations, to establish the innocence of members who have committed no violation of law, rule, regulation, policy or procedure.
2. To notify the Sheriff immediately of all matters which indicate that a member may have committed a crime or may have incurred civil liability for the member or the Office. <52.2.2><COM 1.4.3>
3. To conduct fair, thorough and impartial investigations and to treat every member who may be involved in any investigation with courtesy and respect at all times.
4. To notify the accused member and/or the witnesses prior to the interview that it is being audio- and/or video-recorded.
5. Complete the investigation within 30 days unless an extension is approved by the Sheriff. <52.2.3><COM 1.4.4>

B. The Sheriff, Undersheriff, Chief Deputies, and all Captains have access to the Incident Management tab in Blueteam. The Incident Management tab includes open IAs, PCRs, office involved motor vehicle accidents, police pursuit reviews, and grievances. <52.2.2, COM 1.4.3>

### **IV. RECEIPT OF A COMPLAINT**

Upon receipt of a complaint or allegation of misconduct, whether from an Office member or a citizen, the supervisor will complete a PCR in Blueteam and forward it to the Internal Affairs Unit within one business day (this is done to guard against multiple complaints on one incident or situation). If the nature of the complaint is IA level, the on-call Internal Affairs investigator will be notified. If the complaint is made in person, the supervisor should attempt to have the complainant sign a written statement detailing the issues or circumstances. Non-supervisory personnel will refer all such complainants either to a supervisor or directly to the Internal Affairs Unit. A PCR will also be completed by Internal Affairs investigators receiving complaints directly or from the Comment Line. If a complaint is IA level, Internal Affairs Investigators need not create a PCR. The Professional Standards Chief Deputy or his designee will then classify the complaint and proceed with an IA or PCR investigation based on the nature and seriousness of the allegation or situation. Complaints may be forwarded to the member's captain or functional equivalent for investigation. <52.2.1a><52.2.1b><COM 1.4.1ab>

Once an Internal Affairs complaint or a PCR is received, the complainant/reporting party will be notified that their complaint has been received for processing and will be "thoroughly and impartially investigated" and they will be notified of the outcome. This notification will be documented in IAPro/Blueteam. This notification will be documented on the IA form or the PCR form. If the process is started by a member's supervisor, notification is not necessary. <COM 1.4.5>

(See P&P I-100 – *Definition of Terms* for the definitions of IA and PCR Investigations as well as Service Inquiry.)

**V. RECEIPT OF AN INQUIRY**

An inquiry may be received from any person but may only concern acts of a current member of the Office. Members receiving inquiries will refer the individual to the on-duty supervisor. The supervisor may then refer the person to a specific member's supervisor if appropriate. An inquiry dealing with a procedural issue / question or minor problem can be handled by any supervisor. This may include a supervisory discussion or be documented with supervisor / coaching notes if deemed appropriate by the members supervisor. If there is an allegation of misconduct by a member, it does not qualify as an inquiry and a PCR will be completed and forwarded to the Professional Standards Bureau for the assignment of a tracking number.

**VI. RIGHTS AND DUTIES OF INVESTIGATED MEMBERS AND WITNESSES**

- A. Office personnel shall cooperate with and assist Internal Affairs personnel and/or supervisors conducting authorized investigations. No member, regardless of rank or assignment, shall obstruct or interfere with such investigations.
- B. Office personnel with actual knowledge of misconduct by a member shall report that knowledge to the supervisor of the offending member or to the Internal Affairs Unit immediately.
- C. Members shall appear when scheduled for interviews and shall truthfully answer all questions concerning the matter under investigation. Willful disobedience to an order to appear and willful refusal to answer all questions truthfully shall be grounds for dismissal from employment.
- D. No member will report to the Internal Affairs Unit for an interview while armed.
- E. Members may not wear, carry, or use any recording device while being interviewed during the course of an internal investigation. No member is allowed to bring a recording device of any description into the Professional Standards Bureau office for any reason without the permission of the Professional Standards Chief Deputy.
- F. Members who are to be investigated will be informed of the investigation unless, in the opinion of Internal Affairs, such disclosure could jeopardize the investigation.
- G. Members who are the subject of an IA investigation have the right to be interviewed.
- H. Members under investigation for alleged criminal acts have the same rights as a private citizen, including Miranda admonitions, access to legal counsel, etc. However, the same rights do not attach to an administrative investigation. Members may not have legal counsel or personal representatives present during an interview conducted during an administrative investigation.
- I. During interviews, members will have reasonable times allowed for personal necessities, rest periods and meals. Interviews will be scheduled with reasonable notice, unless the seriousness of the allegation or incident under investigation requires immediate action. Members will be interviewed while on duty whenever possible.

After the investigation is completed, all Office members who are involved in the investigation on their off-duty hours will be entitled to compensation. Any member suspended without pay prior to an investigation, and found in violation as accused, will not be entitled to overtime compensation. Unlike the disciplinary process itself, appeals from discipline imposed are not a compulsory part of an employee's job functions. As such, time spent preparing an appeal is not compensable time.

- J. Members who are placed on Administrative Leave With Pay will be available to respond to the Sheriff's Office within one (1) hour if summoned / ordered to do so, Monday through Friday, 0800 to 1600 hours. Days and times are subject to change at the discretion of the captain, chief deputy or an Internal Affairs member. <1.3.8>
- K. Members who believe they are personally aggrieved by the application of this procedure may so notify the Sheriff in writing. (P&P-D-117 *Grievance Procedures*).
- L. An employee under an Internal Affairs investigation may be required to submit to the following:
  - 1. Medical, Psychological, or Laboratory examination. (An example would be drug testing) <52.2.6a><COM 1.4.7a>
  - 2. Polygraph examination <52.2.6e><COM 1.4.7d>
  - 3. Photographs or photo lineup <52.2.6b><52.2.6c><COM 1.4.7b>
  - 4. Submission of financial disclosure statements <52.2.6d><COM 1.4.7c>

An employee will be required to submit to the above procedures only when it is determined by the Professional Standards Chief Deputy or higher authority, the information sought is material to an ongoing Internal Affairs investigation and is narrowly related to that particular Internal Affairs investigation and may serve to demonstrate the members fitness for duty. <52.2.6a><52.2.6b><52.2.6c><52.2.6d><52.2.6e>

## VII. NOTIFICATION OF INVESTIGATION

The investigator will have the accused member sign a *Notice of Complaint* memorandum prior to a formal interview. The member will receive a copy of the memo after signing. This memorandum shall contain, but is not limited to, unless it is a confidential investigation, the following information:

- Name of complainant (a citizen or Office Administration). (May be redacted based on the circumstances.)
- The date of the alleged incident(s).
- The possible policy violation(s).
- Any related report numbers or summonses.
- A brief summary of the allegation.

<52.2.5>

## VIII. GENERAL GUIDELINES FOR THE CONDUCT OF INVESTIGATIONS

The assigned investigator will conduct a thorough and comprehensive investigation, interviewing relevant witnesses, asking appropriate questions related to the inquiry, and reviewing available documents or recordings. The ultimate goal of each investigation is to establish the facts and find the truth. No recommendation as to disciplinary or

corrective actions will be made, and the completed report will contain no personal opinions of the investigator, except where necessary to support a particular finding. The disposition of each allegation will be based solely on the facts documented in the report.

At any point during an investigation conducted by a member not assigned to the Professional Standards Bureau, the complaint may be returned to the Internal Affairs Unit for further investigation and/or review if the investigator is, for any reason, not able to complete the investigation, or if additional information is disclosed warranting such action.

Misconduct Not Based on Initial Complaint (MNBIC) – Misconduct not alleged in the original complaint but disclosed by the investigation and examined by an investigator. If during the investigation it is revealed there may be additional acts of misconduct on the part of the member that were not included in the original complaint, these acts will be included in the Notification of Findings. These additional acts of misconduct will be added to the Notification of Findings and if the member is interviewed after these additional policy violations are identified, they should be notified and an amended ‘Notice of Complaint’ should be issued to them. The additional policy violations which were not part of the original complaint will be noted as ‘MNBIC’ (Misconduct Not Based on Initial Complaint) on the Notification of Findings. This allows it to be clearly observed at the conclusion of the investigation that these additional acts of misconduct were discovered during the internal investigation. Example: P&P C-101 U., *On and Off Duty Conduct* (MNBIC) Sustained.

The investigator’s report will be completed in accordance with the Internal Affairs SOP, which will be available to any assigned investigator. After completing the investigation, the completed report will be forwarded to the Professional Standards Chief Deputy or his designee through IAPro / Blueteam. After his review (as detailed in section XIII below) the report will be forwarded to the accused member’s captain, functional equivalent, or designee, who will have six (6) business days to review the investigation and recommend disciplinary or corrective actions.

The investigation will be completed within 30 days unless an extension is approved by the Sheriff. All extensions shall be writing and approved by the chain of command of the involved member. <52.2.3> <COM 1.4.4>

#### **XIV. INTERVIEWS**

- A. All members involved in an investigation, either as an accused or witness, may be required to submit written statements and/or be interviewed. Prior to providing a written statement or submitting to an interview, the accused member may be given a Garrity Advisement. Failure to provide a statement and/or submit to an interview may result in termination. Failure to provide a truthful statement, intentional omission of information, or providing misleading information will be considered a false statement and may result in termination.
- B. If the member is given Garrity, he will read the advisement and, if necessary, have it explained prior to signing. In an interview with a member, the questions shall be

- narrowly and directly related to the matter under investigation or in reference to a performance-of-duty issue. <52.2.5>
- C. The investigator will audio and/or video record the interview of the accused member and/or any witnesses.
  - D. If criminal violations become apparent, the investigator will immediately suspend the interview and advise the Sheriff and/or Undersheriff, or their designee, as well as the Professional Standards Chief Deputy. A decision to initiate a criminal investigation shall be at the discretion of the Sheriff and/or Undersheriff, or their designee. <52.2.2>  
<COM 1.4.3>
  - E. Any member who is contacted by another law enforcement or fire agency to be interviewed as part of that agency's internal investigation, is not obligated to speak to that agency. Any member who is contacted to be interviewed as part of another agency's internal investigation shall advise their division captain through their chain of command. In certain circumstances a member may be compelled to participate in another agency's internal investigation but only in conjunction with an internal affairs investigation conducted by the Professional Standards Bureau as a condition of their employment with this agency.

## **X. POLYGRAPHS**

- A. Any member is required to submit to a polygraph examination when ordered by the Professional Standards Chief Deputy or their respective delegate.
- B. A polygraph exam may be ordered when a member has knowledge of an event under investigation and the member's veracity becomes suspect.
- C. When an investigation is based solely on information alleged by a complainant and there is no alleged crime and no corroborating evidence is known to investigators, members will not be compelled to submit to a polygraph examination unless the complaining citizen has submitted to a like examination administered by an entity approved by the Sheriff's Office, and the official report of that examination is that the citizen answered truthfully those questions related to alleged member misconduct, and that the questions asked during the examination were narrowly and exclusively related to the issue of the specifically alleged misconduct of the member.

## **XI. SEARCHES**

- A. A member may be ordered to submit to a blood test, urine test, lineup, breath test, voiceprint, handwriting examination, having photos taken, or collection of other non-testimonial evidence. Refusal to submit may result in discipline up to and including termination. If a criminal prosecution of the member is contemplated, the member is entitled to counsel or other representation as required by law. Non-testimonial evidence requires either consent from the member or a court order (Colorado Rule of Criminal Code 41.1) if the evidence is to be used for a criminal investigation. <7C-01>
- B. A member's personal property will not be subject to search or seizure without probable cause, a search warrant and under conditions permitted by law. Office

property, such as vehicles, work areas, stations or lockers, voicemail, computers, cell phones, pagers and PDA's as well as server logs of computer and Internet usage, may be searched administratively without consent, even if assigned to or used exclusively by a single member.

- C. Office fax machines, communications (to include agency mail & correspondence), or conversations may be monitored under conditions permitted by law.<COM 1.2.2>
- D. Searches will be conducted professionally and, whenever practical, in the member's presence. The Professional Standards Chief Deputy should also be present.

## **XII. DISPOSITIONS FOR IA INVESTIGATIONS AND PCRS<COM 1.4.9>**

The following are the possible dispositions for each allegation of misconduct:

- **Sustained** – The allegation is substantiated, the misconduct did occur, and disciplinary and/or corrective action will be taken.
- **Not Sustained** – The allegation is not substantiated. There is not sufficient evidence to prove or disprove the allegation.
- **Unfounded** – The specific allegation is false or not factual or the incident did not involve the accused Office member.
- **Exonerated** – The incident occurred but the accused member acted lawfully, properly and/or was justified.
- **Policy Failure** – The allegation(s) is/are true; however, the employee was acting in a manner consistent with Office policy or procedure. The finding must clearly detail how any particular policy or procedure is incorrect and may necessitate further review and/or revision of specific policy or procedure.

## **XIII. NOTIFICATION OF FINDINGS / DISPOSITION – IA and PCR INVESTIGATIONS**

A. When the investigation has been completed, the following will occur:

1. The assigned investigator will satisfy the allegations within IAPro detailing the specific policies alleged to have been violated and a disposition for each violation.
2. The captain or functional equivalent will review the investigative report and may then request any additional information or follow-up investigation. Once approved, the captain will forward the report through the chain of command. If approved, the Sheriff will forward the report and all documents to Professional Standards.
3. The Professional Standards Chief Deputy will review the report to ensure that the investigation was conducted in accordance with Office policy, that all necessary documents are present and in the correct format (as detailed in the Internal Affairs SOP), and that the findings comport with the investigation. The *Notification of Findings* form is issued to the employee after the conclusion of the investigation and prior to disciplinary decisions or proceedings. This is to ensure the member has a clear understanding of the final outcome of the investigation. The issuance of the *Notification of Findings* form to the employee is normally completed by the employee's division captain; however, it may be served by any supervisor that is higher in rank than the employee in the employee's chain of command. If there are no sustained allegations, the investigation will be closed. In the event that

there are one or more sustained allegations, all documents will be returned to the appropriate division captain or functional equivalent for the implementation of disciplinary actions in accordance with P&P-I-102 - *Disciplinary / Corrective Action*. <52.2.8>

4. If a challenge arises regarding the disposition / findings of an investigation the division captain will notify his chief. The Professional Standards Chief will review the case with the chief receiving the challenge. If the chiefs can't reach a mutual decision the matter will be determined by the Undersheriff.

B. In the event that there are one or more sustained allegations, the captain will make a determination as the appropriate discipline. He has one of the following two options:

- If the discipline to be imposed does not exceed that is allowed by P&P-I-102 VI., *Authority of Supervisor Below the Rank of Chief Deputy*, the captain will either administer the punishment himself or determine who in the member's chain of command will be responsible for issuing it, based on the rank-equivalent authority.
- If it is the captain's recommendation that discipline exceeding his authority should be imposed, he will make such recommendation to the appropriate chief deputy. If the chief deputy concurs with the recommendation that punishment exceeding the authority of a captain should be imposed, he will determine and impose the punishment he deems appropriate. If the chief deputy does not concur with the recommendation, he will refer the punishment back to the member's captain, who will then impose punishment not to exceed his authority. <26.1.4>

The captain's decision regarding the appropriate discipline to be administered will be documented in memo format and attached to the file in IAPro or Blue Team. In the event that the imposed discipline includes a 2 Year Letter of Reprimand or suspension without pay, the member must also be advised of the date that any appeal must be received by Professional Standards. This also requires a pre-disciplinary hearing as outlined in P&P-I-102 VI.C., *Authority of Supervisor Below the Rank of Chief Deputy*.

C. Once the discipline has been issued to the member, all documents will be attached to the report and forwarded to the Professional Standards Bureau for filing or further action in the event that an appeal is received from the member, which should also be attached to the report. (See P&P-I-102 - *Disciplinary / Corrective Action* for information regarding appeals of disciplinary action.)

#### **XIV. PROCEDURES FOR DOCUMENTATION OF PCR COMPLAINTS**

A. PCR complaints will be documented using IAPro / Blueteam, with any other pertinent information attached.

B. The accused member may respond to the allegations in memorandum form, e-mail, or through an interview, as determined by the assigned investigator.



- C. Each Notification of Findings attached to a PCR needs to include an explanation as to the finding of that disposition. <COM 1.4.9>
- D. Each supervisor in the member's chain of command will review the documentation.
- E. Upon final disposition, the PCR and all pertinent documents will be forwarded to Professional Standards.
- F. In PCR investigations, verbal notification to the complainant is acceptable, but must be documented by completing the auto generated task in Blue Team.

See P&P-I-102 – *Disciplinary / Corrective Action* for further information.

## **XV. CONFIDENTIALITY**

- A. Members will not discuss or attempt to solicit any details concerning a matter they know to be under investigation, regardless of level or investigating authority.
- B. Internal investigations will be held in strict confidence. Information will be disseminated and used on a need-to-know basis only, or in cases where dissemination would be in the best interest of the Sheriff's Office. This includes discussing the investigation with the member's immediate supervisor, the Sheriff, Undersheriff, chief deputy, captain or functional equivalent, if the investigator deems it necessary and appropriate. Documentation will only be released outside of this Office pursuant to a court order or at the direction of the Sheriff.
- C. A chief deputy or the Professional Standards Chief Deputy shall have the authority to discuss the internal investigation, once completed, with other members if it is in the best interest of the Office. However, caution will be exercised as to what information is disseminated as to insure the member's privacy.
- D. Whenever an investigation is forwarded through the chain of command for review, each reviewing member is responsible for maintaining the confidentiality and security of that investigation, to include storing the documentation and physical evidence in a secure location. <52.1.2>
- E. Members who are involved in an internal investigation may need support due to the stress involved and may therefore discuss the investigation and seek support and counseling through Peer Support advisors, the chaplain, or wellness coordinator. Members who do so should refrain from going into great detail about the specifics of the case involved.

## **XVI. FALSE REPORTING BY A COMPLAINANT**

- A. Complainants shall not be discouraged to file a complaint against office members. Complainants will not be warned about false reporting or other criminal charges unless during the course of the complainant interview, or subsequent investigation the investigator believes the complainant has knowingly made a false statement.

- B. If it is determined that a complainant has knowingly made a false report against a member, the investigator may pursue a criminal investigation, under the provisions of 18-8-111 C.R.S. - *False reporting to authorities* against the complainant. This will be determined on a case-by-case basis.
- C. A court will decide the guilt or innocence of the complainant, and the dismissal of a criminal charge in exchange for dropping internal complaints will not be done.
- D. If the investigation reveals there are additional acts of criminality on the part of the complainant, this information will be forwarded to the proper prosecutor within the District Attorney's Office.

**XVII. RECORDS** <COM 1.4.10>

- A. The Internal Affairs Unit shall maintain complete records and files of all formalized complaints in the Professional Standards Bureau. <26.1.8><52.1.2><82.3.5><COM 3.6.9>
  - 1. A notation about any disciplinary and/or corrective actions should be maintained in the member's division file. Originals will be archived in Internal Affairs.
  - 2. Letters of Counseling will be expunged from the member's division file upon their date of expiration.
  - 3. Un-sustained internal affairs records will be maintained for a period of two years plus the current year and then permanently purged. Sustained internal affairs records will be maintained for a period of four years plus the current year and then permanently purged.
  - 4. Any sustained internal investigations records related to SB15-218 or resulting in the issuance of a "Brady" letter shall be maintained indefinitely.
  - 5. Any case identified to be involved in litigation shall be maintained until final disposition.
  - 6. The Sheriff has the discretion to maintain any internal affairs document.
- B. Access to Internal Affairs records is granted on a need-to-know basis or pursuant to a valid court order. The need to know will be determined by a chief deputy, Undersheriff, or the Sheriff. <26.1.8>

Personnel and background investigators representing law enforcement agencies who are conducting pre-employment investigations of members' or former members' qualifications for employment are deemed to have a need to know. They are required to present a release and waiver form signed by the member / former member affected.

- C. The Professional Standards Chief Deputy will evaluate requests for access to internal investigations made under the Colorado Criminal Justice Records Act and/or the Colorado Open Records Act. He shall release records as required under the law. Otherwise he shall confer with the County Attorney's Office and determine the reasonable and lawful response to such requests.
- D. Active members may inquire as to their own internal investigation history. However, they will not be given the file to read, except that members who are preparing for a related court case may read a transcript of any interview they gave. Otherwise, they may be provided:

1. Date of the investigation;
  2. Case number;
  3. Notice of Complaint;
  4. Notification of Findings;
  5. Disciplinary action received, if any;
  6. Information deemed appropriate by the Sheriff or chief deputy as determined on a case-by-case basis.
- E. Members who have access to Internal Affairs documents will not copy or disseminate them without the prior expressed approval of the Professional Standards Chief Deputy. <26.1.8><COM 3.6.9>
- F. The Internal Affairs offices are maintained in a secured area and access is limited to designated personnel. Internal Affairs records are secured in locked file cabinets in a locked room inside the Internal Affairs office. Access to these files and room is by key and access is limited to designated personnel. <COM 1.4.10>

By Order of the Sheriff