

---

## 810. COMPLAINTS.

**810.01 COMPLAINT - DEFINED.** The definition of a complaint includes any public complaint, anonymous or third person, regarding Department service, policy or procedure, claims for damages, or employee misconduct, regardless of whether the complaint alleges misconduct as defined by Manual Section 3/805.25, and any complaint of misconduct initiated by a Department employee.

**810.05 COMPLAINTS - CONDITIONS OF ACCEPTANCE.** Complaints shall be accepted from any source: written, verbal, in person or telephonic (or TTY), mail, facsimile transmission, or electronic means, or anonymously; at the Police Administration Building; any bureau, Area station or substation; at the Office of the Board of Police Commissioners and the Office of the Inspector General; or any other police facility accessible to the public.

**Exception:** A complaint shall not be initiated when the **sole** reason consists of one or more of the following issues, unless the initial conversation with the complainant identifies attributable misconduct:

- Low-flying airship;
- Complaint by an inmate regarding accommodations, cell assignment, quantity/quality of food, etc.;
- Delay in service;

**Note:** The delayed response of a patrol unit or a detective failing to conduct a follow up interview due to workload, is not considered a complaint, but rather a delay in providing service and no Complaint Form, Form 01.28.00, is required. If the preliminary investigation discloses there was negligence rather than a delay in providing service due to workload (e.g., call lost when passed from one unit to another at change of watch), a Complaint Form shall be completed.

- Disputed citations for traffic, parking, Administrative Citation Enforcement (ACE) for LAMC violations;
- Disputed Release From Custody (RFC)/Notice To Appear (NTA); and,

**Note.** Supervisors shall conduct a preliminary investigation of the violator's complaint about the issuance of the traffic citation, RFC, or NTA. If no error was identified in the issuance of the citation, ACE, RFC, or NTA, the complainant should be directed to the appropriate court for resolution, and no Complaint Form is required. However, if misconduct was alleged or discovered during the interview, then a Complaint Form is required. (Refer to Department Manual Section 4/326.67 for procedures on citation cancellations relating to complaint investigations.)

- Vehicle Impound.

**Note.** Supervisors shall interview the complainant regarding the incident that resulted in the vehicle being impounded. If no other allegation(s) is made regarding the vehicle impound itself, no Complaint Form is required and the complainant may be referred to the Vehicle Impound Hearing process as delineated in Department Manual Section 4/266.05. If the interview discloses an allegation(s), a Complaint Form shall be initiated regarding the allegation(s) outside of the vehicle impound, and the referral of the Complainant to the Vehicle Impound Hearing process documented on the Complaint Form.

**811. ACCEPTING COMPLAINTS.** A supervisor receiving a complaint in person, by telephone or in any written form, shall:

- Conduct a preliminary investigation, as established in *Complaint Investigations: A Guide for*

*Supervisors* and as outlined in Manual Section 3/815.01;

**Exception:** Supervisors who find themselves the subject of alleged misconduct shall report the incident to an uninvolved supervisor who shall conduct the preliminary investigation.

- Complete a Complaint Form, summarizing the complaint and the complainant's statements under the Summary portion;
- Tape-record all interviews. If not practical, supervisors shall include a written justification under the Summary portion of the Complaint Form;

**Note:** If a non-employee complainant or witness refuses to be recorded, an attempt shall be made to record the refusal on tape or on a signed statement of refusal.

- Provide the complainant with the bottom copy of the Complaint Form, and advise the complainant that another copy will be mailed out with an assigned case number. If the complaint was made by telephone, leave the triplicate form intact and advise the complainant that a copy will be mailed out by IAG once a case number has been assigned;
- Attempt to resolve the matter to the satisfaction of the complainant and take appropriate action to prevent aggravation of the incident;
- Determine the complainant's willingness to participate in the Alternative Complaint Resolution (ACR) process, if appropriate; and,

**Note:** Regardless of whether a consensual resolution of the complaint is achieved by a supervisor through ACR or otherwise, **all** complaints shall still be recorded, investigated, and classified.

- Submit the Complaint Form and preliminary investigation to the watch commander, Section officer in charge (OIC), or civilian equivalent, for review.

**Note:** If, during the course of a complaint investigation, the investigating supervisor has reason to believe that additional misconduct may have occurred, other than that alleged by the complainant, the investigating supervisor shall either record the additional misconduct as a separate allegation on the original complaint or initiate a new complaint as appropriate.

**811.05 WATCH COMMANDER/ OFFICER IN CHARGE RESPONSIBILITY.** A watch commander, section officer in charge (OIC) or civilian equivalent who becomes aware of a complaint shall ensure that a Complaint Form is prepared without unnecessary delay. Upon receipt of a Complaint Form submitted by a supervisor, the watch commander, section OIC or civilian equivalent, shall:

- Review the form for completeness and accuracy, ensuring that a thorough preliminary investigation was conducted;
- Using the *Case Screening Factors* box on the Complaint Form, determine whether the complaint should be classified as Disciplinary or Non-Disciplinary (Refer to Manual Section 3/817 for classification guidelines);
- When appropriate, facilitate the Alternative Complaint Resolution process; and,
- Sign and date the Complaint Form and submit the complaint investigation and attachments as soon as practicable to the commanding officer for approval.

**811.15 COMMANDING OFFICER'S RESPONSIBILITY.** The primary responsibility for investigating complaint allegations rests with the employee's commanding officer. A commanding officer, upon becoming aware of a complaint, shall ensure that the original Complaint Form is forwarded to the Commanding Officer, Internal Affairs Group (IAG), within two business days of the complaint initiation (or in the event of a weekend, the following business day).

**Note:** Complaints received directly by IAG shall be handled in accordance with guidelines established in Manual Section 3/811.25. Upon receipt of a Complaint Form from IAG with a complaint form (CF)

number already issued, commanding officers shall ensure that a supervisor promptly investigates the complaint.

### **811.20 COMMUNITY REPORTING OF A COMPLAINT OR EMPLOYEE MISCONDUCT.**

When a member of the community wishes to report misconduct and/or make a complaint, the employee shall immediately notify a supervisor.

**Use of Employee Misconduct Form.** Any employee assigned to areas accessible to the public, such as the front desks of Area stations, Police Administration Building, or other police facilities, shall first refer the complainant to a supervisor. If the community member is unwilling or unable to meet with a supervisor, the employee shall provide the individual with a Complaint of Employee Misconduct form appropriate for the language spoken; a preaddressed business reply envelope marked "ATTN: Internal Affairs Group," and a Personnel Complaint Information pamphlet appropriate for the language spoken.

Any employee who receives a completed Complaint of Employee Misconduct form shall immediately notify a supervisor. Upon the return of a Complaint of Employee Misconduct form to an Area station, Police Administration Building, the Police Commission, or any other police facility, the employee receiving the form shall ask the complainant to wait until a supervisor has reviewed the form. If the complainant is unable to wait for a supervisor, the employee shall ensure that the complainant receives the bottom copy of the form, and that a supervisor receives the original.

**Note:** During normal business hours, an employee receiving a complaint form at the Police Administration Building shall notify Internal Affairs Group. When a complaint form is received at the Police Administration Building after normal business hours or on weekends, the employee receiving the form shall contact the Department Command Post. The employee shall not forward the form, nor refer the individual submitting the complaint, to the division of occurrence.

**Supervisor's Responsibility.** When possible, a supervisor shall review the Complaint of Employee Misconduct form with the complainant to ensure that all necessary information has been obtained. If a supervisor determines that immediate action is required after the review, such action shall be taken. The supervisor shall ensure the appropriate distribution of Complaint of Employee Misconduct forms.

**Commanding Officer's Responsibility.** Commanding officers shall ensure that a supply of Complaint of Employee Misconduct forms (Forms 01.81.06, 1.81.7, 01.81.08, 01.81.09, 01.81.13, 01.81.14 and 01.81.15) with postage-paid, preaddressed business reply envelopes marked "ATTN: Internal Affairs Group," and Personnel Complaint Information pamphlets, Forms 1.81.3, 01.81.10, 01.81.17, 01.81.18, and 01.81.19, are maintained at a location accessible to the public 24 hours per day at all Area Stations, Police Administration Building, and any other police facility accessible to the public. In addition, commanding officers shall ensure that:

- Forms required to file a complaint are available, upon request, to community groups, community centers, and public and private service centers; and,
- All complaint forms received are reviewed for possible employee misconduct, and shall indicate on the form what action(s) were taken to address the matter. The author of the Complaint of Employee Misconduct form shall be notified of such action.

**811.25 COMPLAINTS MADE OTHER THAN IN-PERSON.** Letters of complaint from the public against Department employees may be comprised of any written material, including formal letters, notes, facsimiles, electronic mail correspondence, or completed Complaint of Employee Misconduct forms.

**Employee's Responsibility.** An employee who receives a letter of complaint from the public shall, without delay, deliver the letter to his/her watch commander or supervisor.

**Supervisor's Responsibilities.** When a division or Area receives a complaint other than in-person (including, but not limited to written, telephonic, electronic, audio or video) a watch commander or

supervisor shall:

- Complete a Complaint Form (CF), Form 01.28.00, and attach the related correspondence, documents and statements; and,
- In cases involving an anonymous complaint, any investigating officer who believes that it is necessary to investigate the source of an anonymous complaint must submit a written request via Intradepartmental Correspondence, Form 15.02.00, with specific and compelling justification to the Commanding Officer, Professional Standards Bureau, for approval. Such requests should take into consideration whether the seriousness of the allegations (e.g. criminal misconduct, threats to public safety) outweighs the necessity of maintaining the anonymity of the complainant.

**Commanding Officer's Responsibilities.** Commanding officers shall:

- Ensure that the CF is forwarded to Internal Affairs Group (IAG) within two business days of complaint initiation. The original copy of the complainant's letter shall be included as an addendum in the complaint; and,
- If a letter of complaint involves an employee from another command, the commanding officer shall ensure that his own command completes and forwards a CF to IAG along with the *original* copy of the complaint letter. Commanding officers shall ensure that a *copy* of the complaint letter is forwarded to the commanding officer of the concerned command, along with transmittal correspondence confirming that a CF was already completed and forwarded to IAG along with the original complaint letter.

**Internal Affairs Group's Responsibility.** When IAG receives any complaint from the public, IAG shall:

- Complete a CF, documenting the preliminary information only and attach the related correspondence, documents, and statements;
- Issue a CF number;
- Assign and forward the CF to the appropriate division/Area for appropriate action; and,
- Mail an acknowledgment of the complaint to the complainant with the CF number referenced (second copy of CF).

**811.30 PERSONS COMPLAINING TO THE POLICE COMMISSION.** When a complaint is made to the Board of Police Commissioners or a member of the Commission staff, the Executive Director shall cause an evaluation of the complaint to be made.

The Executive Director shall bring the complaint to the attention of the Board when, in the Director's judgment, the Board should be informed, and in any of the following cases:

- There is reason to believe that established disciplinary procedures have not been followed;
- The nature or magnitude of the complaint, if true and made known, would be likely to cause great public concern; or,
- The complaint appears reasonable and there is evidence that repeated efforts by the complainant have not provided relief.

Normally, complaints made to the Commission staff shall be handled in the following manner:

- Complaints against a member of the Department or about Department policy or procedure, shall be referred to Internal Affairs Group and processed in accordance with Manual Section 3/822.05.

**Exception:** When a complaining person expresses a desire not to be interviewed by a sworn member of the Department, a non-sworn member of the Commission staff shall conduct the interview and complete any additional reports required by established procedures. Investigations shall be processed in

accordance with Manual Section 3/815.

**812. COMMUNITY COMPLAINT AND COMMENDATION POSTER.** The following entities have responsibility for ensuring that Community Complaint and Commendation Posters, Form 01.81.28, are on display to the public throughout the Department and City Council field offices:

- Area commanding officers shall ensure posters are displayed at their facilities where they are visible to the public and provide posters to all City Council field offices within their Areas.
- The Commanding Officer, Custody Services Division, shall ensure the poster is made available at the Police Administration Building front desk.
- The Office of the Secretary, Board of Police Commissioners, shall ensure the poster is available at the offices of the Board of Police Commissioners and the Office of the Inspector General.
- All bureau and group commanding officers whose commands are accessible to the public shall ensure that the posters are displayed.
- The Commanding Officer, Internal Affairs Group, shall provide posters to all City Hall offices of the City Council and to the Mayor's Office.

### **813. INITIAL ACTION – COMPLAINTS AND COMPLAINTS OF MISCONDUCT.**

**813.05 EMPLOYEE'S RESPONSIBILITY.** When an employee becomes aware of possible misconduct by another Department employee, the employee shall immediately report the incident to a supervisor and/or directly to Internal Affairs Group (IAG). This requirement applies to all employees, including supervisory personnel and managers (the rank of captain or above), who learn of possible misconduct through the review of an employee's work. Generally, the supervisor accepting the complaint shall initiate the Complaint Form. Only supervisors shall initiate Complaint Forms.

**813.10 EMPLOYEE FAILURE TO PROPERLY ACCEPT A COMPLAINT.** A Complaint Form, Form 01.28.00, shall be used to document all complaints when a Department employee allegedly:

- Fails to inform any member of the public who indicates a desire to file a complaint, of the means by which a complaint may be filed;
- Attempts to dissuade a member of the public from filing a complaint; or,
- Refuses to accept a complaint.

**813.20 NOTIFICATION REQUIREMENTS.** When immediate action is necessary or the complaint is such that it may subject the employee or the Department to severe criticism or liability, the concerned supervisor shall ensure that the following notifications are made without delay to:

- The employee's watch commander/officer in charge (OIC), or civilian equivalent, who shall notify the employee's commanding officer; and,
- Internal Affairs Group.

**Note:** When the employee's commanding officer is not available or when Internal Affairs Group is closed, the notification shall be made to the Department Command Post.

**Complaints Regarding Employees Assigned Outside the Area/Division.** A watch commander shall, when a complaint concerns an employee from another division or Area, complete a Complaint Form and notify the on-duty watch commander or OIC at the employee's Area/division of assignment. If immediate action by that employee's commanding officer is necessary, the on-duty watch commander or OIC at the employee's Area/division of assignment shall be responsible for making such notification (s).

**Exception:** When a public allegation of misconduct is made at a Department Jail and the accused employee is not assigned to Custody Services Division, the Custody Services Division Watch Commander shall telephonically contact a supervisor at the employee's division of assignment to

handle the complaint investigation.

**Note:** If the response of a supervisor from the accused employee's division of assignment would **severely** impact the operational needs of that command, a supervisor from Custody Services Division shall initiate a complaint investigation and complete all required reports. However, such a decision must be justified based on sound judgement and bona fide operational needs (e.g., major occurrence, etc.). A general shortage of supervisors or supervisory workload will not justify a refusal to respond.

If the complainant is not in the custody of Custody Services Division or is in the process of being released and indicates a desire not to wait for the responding supervisor, the concerned Custody Services Division supervisor shall accept the complaint. Also, if the entity the concerned employee is assigned to is unavailable (e.g., due to hours of operation, etc.), Custody Services Division shall also accept the complaint and conduct the preliminary investigation.

Upon receiving notification by the Custody Services Division Watch Commander of a complaint against an employee assigned to his/her Area, the watch commander of the accused employee shall ensure that a supervisor responds to Custody Services Division in a timely manner. The assigned supervisor shall initiate a complaint investigation and conduct a comprehensive preliminary investigation.

When the alleged complaint is of a nature that the integrity of the investigation might be jeopardized by reducing the allegations to writing, the supervisor shall verbally report to the employee's commanding officer, who shall verbally report to the Commanding Officer, Internal Affairs Group.

## **815. INVESTIGATING AND REPORTING COMPLAINTS – AREA/DIVISIONS.**

**815.01 GENERAL INVESTIGATION GUIDELINES.** In addition to existing procedures set forth in both the Department Manual and the Internal Affairs Group (IAG) functional manual, *Complaint Investigations: A Guide for Supervisors*, the following procedures shall apply to complaint investigations:

- Identifying all involved employees;
- Obtaining names, addresses, and telephone numbers of all witnesses, and a summary of their statements. (Indicate the times, locations, and business and residence phone numbers where witnesses will be available for re-interview.);
- The interviews of all complainants, involved Department employees, and witnesses shall be conducted individually (no group interviews) and shall be recorded. Should a non-employee complainant or witness refuse to be recorded, an attempt shall be made to record the refusal on tape or on a signed statement of refusal;

**Exception:** Recording interviews is not mandatory for Department-initiated complaints alleging minor misconduct, such as Failure to Qualify, Failure to Appear, preventable traffic collisions and minor neglect of duty complaints. However, depending on the circumstances of the case, the commanding officer may direct that all interviews be recorded.

Whenever practicable and appropriate, complainants and witnesses shall be interviewed at sites and times convenient to them, including private residences or places of business;

- Interview all involved supervisors regarding their conduct at the scene during the incident;
- The entity responsible for the preliminary complaint investigation shall notify, without delay, the involved Department employee and his or her respective supervisor of a pending investigation(s), excluding those investigations deemed confidential under the law (as determined by the Department);
- Inconsistencies between statements made by Department employees and witnesses shall be identified and documented;

- The entity responsible for the investigation shall coordinate the collection and preservation of all appropriate evidence, including canvassing the scene to locate possible witnesses if appropriate;

**Note:** The burden for locating and interviewing all potential witnesses rests with the Department.

- Visual examination for trauma, medical treatment for actual or alleged injury;
- Photographs (utilize color film when appropriate);
- Inspection of the object alleged to have caused injury (objects should be photographed and, when practicable, retained); and,
- Administer appropriate sobriety tests required for the preliminary investigation of the offense (3/836).

The withdrawal of a complaint, the unavailability of a complainant to make a statement, or the fact that the complaint was filed anonymously or by a third party, shall not be reasons to adjudicate a complaint without further attempts to investigate. Commanding officers shall ensure reasonable efforts are made to get to the truth of the matter.

## 816. REPORTING A COMPLAINT.

**816.01 SUPERVISOR'S RESPONSIBILITY.** When a supervisor becomes aware of a public complaint, or a complaint of misconduct initiated by Department personnel, the supervisor shall accept the complaint and:

- Conduct a preliminary investigation, as established in *Complaint Investigations: A Guide for Supervisors*.

**Exception:** Supervisors who find themselves the subject of alleged misconduct shall report the incident to an uninvolved supervisor who shall conduct a preliminary investigation and, if necessary, complete a Complaint Form, Form 01.28.00.

- Complete a Complaint Form, summarizing the complaint and the complainant's statements under the Summary portion;
- Tape-record all interviews. If not practical, supervisors shall include a written justification under the Summary portion of the Complaint Form;

**Note:** If a non-employee complainant or witness refuses to be recorded, an attempt shall be made to record the refusal on tape or on a signed statement of refusal.

- Provide the complainant with the bottom copy of the Complaint Form, and advise the complainant that another copy will be mailed out with an assigned case number. If the complaint was made by telephone, leave the triplicate form intact and advise the complainant that a copy will be mailed out by IAG once a case number has been assigned;
- Attempt to resolve the matter to the satisfaction of the complainant and take appropriate action to prevent aggravation of the incident;
- Determine the complainant's willingness to participate in the Alternative Complaint Resolution (ACR) process, if appropriate; and,

**Note:** Regardless of whether a consensual resolution of the complaint is achieved by a supervisor through ACR or otherwise, **all** complaints shall still be recorded, investigated, and classified.

- Submit the Complaint Form and preliminary investigation to the watch commander, Section officer in charge (OIC), or civilian equivalent, for review.

**Note:** If, during the course of a complaint investigation, the investigating supervisor has reason to

believe that additional misconduct may have occurred, other than that alleged by the complainant, the investigating supervisor shall either record the additional misconduct as a separate allegation on the original complaint or initiate a new complaint as appropriate.

**816.05 INTERNAL AFFAIRS GROUP'S RESPONSIBILITY.** Internal Affairs Group (IAG) will issue Complaint Form (CF) numbers for all Complaint Forms, Form 01.28.00, received and approved by a commanding officer. Upon the issuance of the CF number, IAG will enter the number on the Complaint Form and mail a copy to the address indicated by the complaint.

Internal Affairs Group shall promptly review every complaint, Form 01.28.00, determine whether the complaint will be investigated by IAG or by the employee's command, and promptly notify and forward the complaint to the affected entities for appropriate action. For tracking purposes, Internal Affairs Group shall maintain copies of all complaint forms received and forwarded to the command. Within one week of receiving the complaint, Internal Affairs Group shall provide the Office of the Inspector General with all complaint information including the entity assigned to investigate the complaint.

**Note:** The Office of the Inspector General will review the complaint information to ensure complaints are being received in a manner that complies with existing Department policy and procedure.

## **817. CLASSIFICATION OF COMPLAINTS.**

### **817.05 CLASSIFYING A COMPLAINT AS NON - DISCIPLINARY OR DISCIPLINARY.**

Complaints reported on a Complaint Form shall be classified as either **Disciplinary** (Manual Section 3/812) or **Non-Disciplinary**. The watch commander, Section OIC, or civilian equivalent is responsible for the initial complaint classification; however, the employee's commanding officer may reclassify the complaint at any time. A commanding officer's decision to classify a complaint as Non-Disciplinary shall be final unless a substantial justification for changing it can be articulated at the Bureau level.

**818. NON - DISCIPLINARY COMPLAINTS.** A complaint may be classified as Non-Disciplinary when the following criteria is met:

- The complaint, as stated, would not amount to the commission of a felony or misdemeanor crime;
- The complaint, as stated, may not result in discipline against the employee, or the complained of act or omission by the employee has no nexus to the employee's position with the Department;
- The complaint was not initiated as a result of a Department integrity audit conducted by Professional Standards Bureau, Special Operations Division;
- The complaint does not allege any of the following: unauthorized force; discrimination of any kind; unlawful search and/or unlawful seizure of person or property; dishonesty; domestic violence; improper/illicit use of alcohol, narcotics, or drugs; sexual misconduct; theft, or retaliation/retribution against another employee;

**Exception:** When it is clearly proven at the time of the preliminary complaint investigation that the alleged misconduct is Demonstrably False, as defined in this section, the allegation may be classified as Non-disciplinary.

- The complaint was not as a result of concerns arising out of a criminal prosecution, or, dismissal of California Penal Code Section 148 charges, or otherwise initiated by a judge or prosecutor acting in their official capacity;
- The accused employee has no apparent pattern of similar behavior (should generally be limited to the past five years) for which he/she is accused; and,
- The complaint was not initiated in response to civil suits or claims for damages involving on-duty conduct and civil lawsuits regarding off-duty conduct required to be self-reported by employees.

**Commanding Officer's Responsibilities.** A commanding officer who recommends a Non-Disciplinary classification shall check the appropriate box on the Complaint Form, Form 01.28.00, and



select the appropriate disposition/rationale as follows:

- **Policy/Procedure.** The facts of the case revealed that the complaint relates to Department policy/procedure and not to a specific employee's actions.

**Note:** Complaints against Department policy and procedure not specifically addressing an employee's actions shall still be initiated on a Complaint Form. In such cases, the Department shall be named as the accused employee, and the complaint will be adjudicated as Non-Disciplinary. Individuals making complaints against Department policy and procedure shall also be referred to the Department entity having functional oversight of the policy or procedure. If the complainant cannot be satisfied, he/she shall be referred to the Board of Police Commissioners.

- **Employee's Actions Did Not Rise to the Level of Misconduct.** A preliminary investigation revealed that the allegations did not rise to the level of misconduct and/or the named employee's actions were protected by law or found to be consistent with Department policy or procedure.
- **Employee's Actions Could Have Been Different.** The facts in the complaint revealed the employee's actions could have been different. However, the employee's act or omission is best addressed through corrective action by the employee's commanding officer. The corrective action (s) taken was:
  - Counseling;
  - Training;
  - Employee Comment Sheet (Comment Card), Form 01.77.00;
  - Notice to Correct Deficiencies, (City) Form General 78; or,
  - Referral.
- **Demonstrably False.** When it is clearly proven that an allegation did not occur.

**Note:** An allegation is considered to be "clearly proven" as Demonstrably False under the following circumstances:

- The complainant is determined to be vexatious, i.e., the complainant demonstrates an irrational thought process and/or has established a pattern of making chronic or crank complaints; or,
- Body Worn Video (BMW) or Digital In-Car Video System (DICV) footage, or other audio or video evidence captured the entire incident or citizen contact, and conclusively shows that the employee(s) did not commit the alleged misconduct or did not violate Department policy or procedures.

Consistent with Department policy, all allegations of misconduct initiated by a member of the public, including those determined to be Demonstrably False, must be recorded on a Complaint Form, Form 01.28.00. However, when an audio or video recording clearly proves that an allegation of misconduct is Demonstrably False, the accused and witness officers need not be interviewed regarding the Demonstrably False allegation.

- **Department Employee(s) Not Involved.** The preliminary investigation revealed that the complaint did not involve a Department employee(s).
- **Resolved Through Alternative Complaint Resolution.** The complainant and the accused employee(s) resolved the complaint through the Alternative Complaint Resolution (ACR) mediation process.

**818.05 ADJUDICATION OF A NON - DISCIPLINARY COMPLAINT.** After approving a complaint's final classification as Non-Disciplinary, the employee's commanding officer shall:

- Complete and sign the Complaint Form (CF);
- Meet with and discuss the complaint with the employee, and provide the employee with a copy of the investigation; and,
- Sign the complainant's reply letter, and forward it with the complaint to the next level of review.

**Role of Bureau Commanding Officer.** Bureau commanding officers reviewing a complaint that has been classified as Non-Disciplinary, shall:

- Sign the CF if they concur; and,
- Ensure that all closed Non-Disciplinary complaints are forwarded to Internal Affairs Group (IAG), along with the original completed investigation and a Personnel Complaint Statistical Form, Form 01.19.00, and reply letter.

**Note:** The commanding officer's decision on a Non-Disciplinary complaint shall be final unless a substantial justification for changing it can be articulated at the bureau level. If this occurs the Non-Disciplinary complaint shall be returned to the employee's commanding officer with a written rationale and direction for how to proceed.

**Role of Internal Affairs Group.** Internal Affairs Group shall have review authority and responsibility for all Non-Disciplinary complaints.

Upon review of a Non-Disciplinary complaint IAG shall:

- Close out the CF and file them by CF number in IAG's Miscellaneous files; and,
- Date and send the reply letters to the complainants.

**Note:** The division and bureau commanding officer's decision on a Non-Disciplinary complaint shall be final unless a substantial justification for changing it can be articulated by IAG. If this occurs, the Non-Disciplinary complaint shall be returned to the bureau commanding officer with a written rationale and direction for how to proceed.

**819. ALTERNATIVE COMPLAINT RESOLUTION PROCESS.** A Non-Disciplinary or Disciplinary complaint may be designated for the Alternative Complaint Resolution (ACR) mediation process when **all** of the following criteria are met:

- The complaint of the alleged misconduct is Non-Disciplinary or Disciplinary, but minor in nature (e.g., discourtesy, disrespect, or a minor Neglect of Duty, etc.) as alleged by the public;
- The employee has no apparent pattern of similar behavior (should generally be limited to the past five years) for which he/she is accused; and,
- The complainant and the employee have agreed to participate in good faith.

Generally, the watch commander, section OIC, or civilian equivalent, shall appoint a supervisor to serve as ACR facilitator. However, nothing precludes a **supervisor** who is responding to a complaint in the field from utilizing ACR at the time the complaint is made, with concurrence from the watch commander, section OIC, or civilian equivalent. An assigned facilitator may attempt to resolve the issue through ACR without the employee being present.

**Note:** Prior to conducting ACR, assigned facilitators shall review training material prepared by Internal Affairs Group.

**General Guidelines for ACR.** When a complainant and/or accused employee indicates a desire for ACR, the process should be expedited. In the event ACR is delayed more than 30 calendar days, absent exigent circumstances, the complaint shall be returned to the commanding officer for classification and adjudication.

Prior to ACR, the complainant shall sign an Alternative Complaint Resolution Acknowledgement, Form 01.28.06. A single ACR session should be sufficient, and all ACR discussions shall be considered confidential.

The presence of outside parties is discouraged; however, the assigned facilitator may exercise discretion in establishing parameters for the ACR session. Accused employees may not have an employee representative present, nor may a complainant have legal counsel. Sessions shall not be audio/video recorded. The assigned facilitator shall have the final authority over the ACR session.

**Note:** When the accused employee insists on the presence of an employee representative during ACR, or the complainant requests legal counsel, complaints shall be returned to the commanding officer for classification and adjudication.

**Role of Facilitator.** The process of resolving conflict requires all parties to be forthright and willing to accept responsibility. In fact, a full and complete discussion of events may include an admission to the complained of behavior. It is understood that this is part of the resolution process and confidentiality will be maintained. However, should a **significant** act of misconduct come to light, the ACR session shall be stopped and the complaint referred for classification and adjudication.

**Withdrawal from ACR.** If, prior to completing the ACR session, either the complainant or the accused employee chooses to withdraw, the complaint shall be referred to the accused employee's commanding officer for appropriate disposition. Likewise, an assigned facilitator may stop the ACR process and refer the case to the commanding officer for appropriate disposition if one or both parties involved are not participating in good faith.

In any of these cases, the complainant and employee shall be advised of the investigation's outcome via established complaint procedures. No prejudice shall be inferred upon either party for withdrawing from ACR.

If at any time after the ACR session is adjourned, the complainant wants to renew the complaint, no new complaint shall be initiated; and, absent new and significant evidence of serious misconduct, no investigation shall be undertaken. The resolution by ACR shall stand, and no further action relative to the incident may be initiated after the completion of ACR.

**Challenge to ACR.** If, based on compelling circumstances, a commanding officer determines ACR is not appropriate (due to either the nature of the complaint or the employee's work history), that commanding officer may override a watch commander's decision, even if ACR has already occurred. If this occurs, the commanding officer shall provide the employee with a written rationale, providing substantial justification.

## **820. DISCIPLINARY COMPLAINTS.**

**820.01 COMPLAINT INVESTIGATION REPORT.** Using an Intradepartmental Correspondence, Form 15.02.00, the following headings shall be used when completing the Complaint Investigation Report that alleges misconduct:

- Complaint;
- Summary (including Allegations);
- Investigation;
- Investigator's Notes (including author's name and signature and approval block);
- Witness List;
- Addenda; and,
- Allegation List (not as a page of the report, but as a helpful tool for the reader).

Depending upon the complexity of the investigation, the final report can be as brief or as detailed as

necessary, so long as it enables the reviewer to properly adjudicate the complaint.

**820.05 CHRONOLOGICAL RECORD FOR COMPLAINTS.** City and state laws establish the limitations periods during which an employee may be discharged, suspended, demoted in rank, or suspended and demoted in rank. Since the limitations period is based on the date the misconduct was discovered by an uninvolved supervisor, documentation of the date on which specific information is obtained is essential. Generally, this will be the same as the "Date/Time Reported" on the Complaint Form, Form 01.28.00. On occasion, the initial information may be too vague to constitute misconduct and/or additional misconduct may come to the Department's attention during the subsequent investigation.

Commanding officers shall ensure that a Chronological Record, Form 03.11.06, is completed by the supervisor assigned to complete a complaint investigation. The Chronological Record shall be used to document an in-depth chronological record of the investigation, recording the dates and times of initial notification and all investigative contacts and processes. It shall include the person to whom information was given as well as the supervisor completing each entry. If the same supervisor completes all entries, a statement to that effect may be made at the end of the Chronological Record and signed by the supervisor. The Complaint Form (CF) number of the concerned complaint shall be placed in the box titled "DR" at the top of each page of the Chronological Record.

**Exception:** It is not necessary to complete a Chronological Record in conjunction with the following disciplinary matters:

- Failure to Qualify;
- Failure to Appear in Court;
- Preventable Traffic Collision, when there is no other misconduct;
- Use of Force Internal Process Report; and,
- Non-Disciplinary Complaints.

**Note:** Following Skelly procedures, the original Chronological Record is to be forwarded with the completed Complaint Form through channels to Internal Affairs Group. Generally, the Chronological Record should **NOT** be used by the commanding officer in adjudicating the complaint and, thus, should not be included in the materials given to the accused employee.

Supervisors completing a Chronological Record in conjunction with a complaint investigation should be aware that the Chronological Record may be subject to discovery. Any Chronological Record completed in conjunction with such complaints shall **only** be released after confidential information, if any, is redacted and with the approval of the Commanding Officer, Internal Affairs Group.

When the investigation is completed by Internal Affairs Group, the Chronological Record shall be retained by Internal Affairs Group pending the adjudication of the complaint.

**820.15 ADMINISTRATIVE INTERROGATION ADMONITIONS.** When an administrative interrogation focuses on or involves possible criminal misconduct by an employee, the employee shall be advised of his/her Miranda rights before questioning begins, or at the point at which the interrogation begins to focus on possible criminal misconduct.

If the employee waives his/her Miranda rights, no further admonition is necessary. If the employee declines to waive his/her Miranda rights and the administrative interview is to continue, the interrogating officer shall read the Administrative Admonition of Rights from the Employee Rights Card verbatim as follows:

- Your silence could be deemed as insubordination and lead to administrative discipline, which could result in your discharge or removal from office; and,
- Any statements made under the compulsion of the threat of such discipline cannot be used against you in any subsequent criminal proceeding.

After reading the Administrative Admonition of Rights to an employee during a complaint investigation the interrogating officer shall:

- Request that the employee being interviewed sign and date the Employee Advisement Form, Form 01.81.05, in the appropriate space;
- Sign the Form 01.81.05 as the witnessing supervisor; and,
- Attach the Form 01.81.05 to the Complaint Form, Form 01.28.00, as an addendum.

After the completion of the Form 01.81.05, the employee shall be ordered to give a statement for administrative purposes only following the format outlined on the form. The interrogating officer shall sign and date the Form 01.81.05 affirming that the administrative order was given in the prescribed manner.

The employee's commanding officer shall ensure that the Form 01.81.05 is attached to the Complaint Form, Form 01.28.00, as an addendum and forwarded to the bureau commanding officer for review.

**Administrative Admonitions During Non-Criminal Personnel Investigations.** When an employee refuses to answer a question during an administrative interview regarding a non-criminal matter, the employee shall be ordered to provide a statement. The employee shall be informed that failure to answer questions directly related to the investigation or interrogation may result in disciplinary action.

In cases where it is necessary to order an employee to provide a statement during the investigation of a non-criminal matter, the investigating officer shall:

- Read aloud the advisement for non-criminal misconduct from the Employee Advisement Form, Form 01.81.05, to the employee;
- Initial the box next to “Non-criminal Misconduct;”
- Order the employee to answer administrative questions and provide a statement in the non-criminal matter per the admonishment at the bottom of the form;
- Request that the employee sign the Employee Advisement Form, Form 01.81.05;
- If the employee refuses to sign the Employee Advisement Form, the investigator shall write “Refused” on the appropriate line and document the refusal aloud during the taped interview;
- Include the Employee Advisement Form, Form 01.81.05, as an addenda item; and,
- Ensure that a copy of the Employee Advisement Form is given to the employee who has been ordered to provide the statement.

**820.20 PERSONNEL COMPLAINT ENVELOPE.** The Personnel Complaint Envelope, Form 01.81.11, shall contain copies of addenda items and rough notes (Rough notes are considered information that forms a basis for a finalized report, not a draft of that document).

**Note:** No copies of the Complaint Form, Form 01.28.00, or the related investigation shall be included in the Personnel Complaint Envelope. Tapes shall not be included in the Personnel Complaint Envelope. Both Forensic Science Division (FSD) tapes and non-FSD tapes shall be submitted to FSD for storage.

**Maintenance of Personnel Complaint Envelope.** When a completed complaint investigation has been submitted for review and findings to the concerned commanding officer, the Personnel Complaint Envelope shall be filed and stored in a secured location, i.e., a locked file cabinet. The division commanding officer shall be responsible for the security and maintenance of those files. Only the Department Advocate or designee may release or allow access to Personnel Complaint Envelopes, or its contents, to any individual or entity, either within or outside the Department.

**Exception:** The investigating officer handling the investigation may access the Personnel Complaint Envelope with the permission of the concerned commanding officer.

**Note:** The Personnel Complaint Envelope shall remain in division files for two years and then be transferred to City Records Center, where it shall be retained for eight more years before it is destroyed.

**820.25 CLASSIFICATION OF A DISCIPLINARY COMPLAINT.** Disciplinary allegations shall be dispositioned using **only** the following classifications, or one of the Alternate Dispositions described below:

- **Unfounded:** When the investigation indicates the act complained of did not occur;
- **Exonerated:** When the investigation indicates the act occurred but that the act was justified, lawful, and proper;
- **Not Resolved:** When the investigation discloses insufficient evidence to prove or disprove clearly the allegations made;
- **Sustained:** When the investigation discloses that the act complained of did occur and constitutes misconduct; or,
- **Sustained-No Penalty:** The investigation supports sustaining the allegation; however, “No Penalty” is the appropriate disposition. In all cases, appropriate corrective action shall be taken which may involve, but is not limited to, counseling, training or action other than formal discipline.
- **Insufficient Evidence to Adjudicate** – The investigation could not be thoroughly or properly investigated. This may be caused by a lack of cooperation by the complainant and/or witnesses, or the absence of a critical interview which was necessary to proceed with the investigation, and/or the available physical evidence or witnesses’ statements are insufficient to adjudicate the complaint.
- **Withdrawn by the Chief of Police (IAG use only)** – The Chief of Police may withdraw the allegation(s) (generally sustained) or charge(s) in the best interest of the Department when:
  - On the advice of the City Attorney, imposing discipline is legally prohibited, or would subject the Department to civil liability; or,
  - In the interest of justice and/or fairness, the allegation would be better adjudicated outside the Department, e.g., by a court of competent jurisdiction, or the alleged act is minor misconduct and/or significant time has passed; or,
  - Evidence used to sustain a charge is unavailable or has been lost, stolen or destroyed; and,
  - Other articulable reasons.

The rationale for withdrawal of an allegation shall be articulated in writing and included in the “Recommendation” portion of the letter of transmittal for Category I and II investigations or included in the “Adjudication Rationale” for Category III investigations. Such requests will be evaluated by the Review and Evaluation Section, IAG. If the Chief of Police concurs, the allegation should be withdrawn, the allegation shall be re-classified and administratively closed as “Withdrawn by the Chief of Police.”

- **Duplicate** – When a preliminary investigation of a complaint reveals the incident is the same as another complaint already under investigation (Complaint Form [CF] number assigned), the complaint shall be cross referenced with the master CF number of the investigation which is related to the duplicate. Any additional or new information shall be noted as part of the supervisor’s preliminary investigation and forwarded to IAG which will close the duplicate complaint, cross reference the CF number to the master complaint CF number, and forward the additional information to the appropriate investigators.

**Note:** When the complainant of a duplicated complaint is different from the initial complainant, an undated reply letter to the duplicate complainant advising him/her of the duplicate status and the fact that the duplicate investigation would be closed in favor of the master investigation, shall be submitted with the request. Additionally, upon completion of the master CF, a reply letter should be prepared to the complainant on the duplicate CF advising him/her of the adjudication.

- **Other Judicial Review** (For Internal Affairs Use only) – This classification was implemented to address two types of complaints.

- **CIVIL MATTERS INVESTIGATION/ADJUDICATION.** Other Judicial Review may be used to adjudicate personnel complaints only if the accused employee's position does not play a role in the alleged actions. Matters involving these issues include:
  - Violations of restraining orders;
  - Child custody/support disputes; and,
  - Other non-duty related civil disputes.
  
- **POST-CONVICTION COMPLAINTS-CRIMINAL MATTERS INVESTIGATION/ADJUDICATION.** The use of OJR as complaint adjudication is no longer appropriate in matters raised by complainants who have been convicted of a crime or crimes, when those matters have been previously addressed in a judicial proceeding unless:
  - The complainant alleges employee misconduct in the scope of his or her duties that was previously addressed in a civil court proceeding.

**Exception:** The Other Judicial Review (OJR) shall **not** be used to investigate a Claim for Damage.

A form has been developed for complaints that may be classified as *Other Judicial Review*. The form addresses civil matters (Other Judicial Review – Civil Matters Investigation/Adjudication, Form 01.28.03). Such investigations would include a Form 01.28.00, containing an allegation in which the complainant claimed a conviction in court was the result of a false arrest, falsified evidence, reports, testimony, etc., or an allegation that an employee may have violated a civil court order. If an OJR form can be completed for required criteria, including listing all pertinent information on the back side of the OJR form, the OJR form can be attached to the respective Form 01.28.00, and the adjudication completed using the adjudication sections provided on the Form 01.28.00. Tape numbers of persons interviewed, such as the prosecutor, shall be recorded on the OJR forms.

If, while completing the OJR form, the investigating officer is directed to “...**not use this form,**” the investigation shall be completed on the Complaint Form, Form 01.28.00.

**820.30 NOTICE OF PROPOSED DISCIPLINARY ACTION.** In cases that allege serious misconduct by a permanent employee (i.e., one who has completed entry-level employment probation), the employee's commanding officer shall use the Complaint Adjudication Form, Form 01.28.05, to notify the employee of the proposed charges.

**Note:** Misconduct is deemed to be "serious" when the commanding officer recommends:

- For Sworn Personnel: That the matter be adjudicated by a Board of Rights or that the employee be suspended.
- For Civilian Personnel: That the employee be discharged or suspended.

**Procedure.** A commanding officer shall, in cases of serious misconduct:

- Advise the employee of the right to representation prior to discussing the matter;
- Advise the employee of the specific penalty recommended by the commanding officer;
- Give the employee a copy of all investigative material upon which the proposed disciplinary action is based, unless the employee waives the right to receive the material;
- Give the employee a copy of the commanding officer's letter of transmittal;

**Note:** Nothing shall be added to the narrative portion of the transmittal that does not appear on the copy given to the employee.

- Provide civilian employees with any documents reflecting prior disciplinary action or substandard

- performance if the prior action or performance will affect the severity of the punishment;
- Ensure the employee initials the appropriate boxes on the Complaint Adjudication Form, Form 01.28.05, which indicates the employee acknowledges receipt of pertinent materials; and,
- Notify the employee that any response, either oral or in writing, to the proposed disciplinary action must be made within a reasonable time. Any written response from the employee shall be attached to the completed investigative report.

**Exception:** The above procedures need not be followed in emergency situations. An emergency situation is one in which the continued presence of the accused employees on active-duty status may be potentially harmful to themselves, their fellow employees, or the public, **or** a situation in which the failure of accused employees to participate in the procedure is beyond their commanding officer's control. In these circumstances, the Commanding Officer, Internal Affairs Group, shall be notified without delay.

**822. EMPLOYEE REVIEW OF INVESTIGATION.** When a complaint investigation results in a recommended classification that will be recorded on an employee's TEAMS II report, the employee against whom the complaint was made shall be afforded the opportunity to review and respond to the completed investigation. Currently, those classifications are: Sustained (with a penalty of reprimand or less), Sustained-no penalty, Not Resolved, Exonerated, or Unfounded.

**Commanding Officer's Responsibility.** The commanding officer of the employee against whom the allegation was made shall:

- Ensure that a Complaint Adjudication Form, Form 01.28.05, is completed for each employee who was the subject of a complaint investigation, wherein the disposition of the allegation(s) falls within one of the above categories;
- Notify the employee of the recommended disposition of the allegations contained in the complaint;
- Advise the employee that he or she has the right to review and to respond in writing to the completed complaint including the commanding officer's letter of transmittal;

**Note:** This review procedure provides for employees' responses to **completed** investigations. Commanding officers are not relieved of the responsibility to further investigate relevant issues raised by employees during the investigation or when they are advising an employee of the disposition, when the resolution of such issues would materially affect the disposition of a complaint.

- Provide the employee with a copy of the complaint;
- Advise the employee that complaint investigation documents are confidential;
- Advise the employee that he or she has 30 calendar days to submit a written response which will be forwarded through the review process and filed with the complaint investigation at Internal Affairs Group (IAG) for other than sustained cases, and in his or her Department personnel package for sustained cases;
- Have the employee initial the appropriate boxes on the Complaint Adjudication Form;
- If the employee has initialed that he or she does not intend to submit a written response, immediately forward the Complaint Adjudication Form with the complaint through the chain of command. It is not necessary to complete the "CO's Response to Employee" section;
- If the employee has initialed that a written response will be submitted, complete the employee acknowledgement and signature section on the reverse side of the Complaint Adjudication Form and retain it along with the complaint investigation pending receipt of the employee's response or expiration of the 30 day response period; and,

**Exception:** If a complaint has a statute of limitations that will expire within six weeks, the employee acknowledgement and signature section of the Complaint Adjudication Form shall be completed and a copy immediately forwarded with the complaint through the chain of command. The original Complaint Adjudication Form shall be forwarded with the employee's response to Internal Affairs Group to be



filed with the associated complaint investigation.

- Upon receipt of the employee's response, and in no case later than the end of the 30 day response period, complete the "CO's Response to Employee" and the "Adjudication Summary" sections of the Complaint Adjudication Form and forward the original with the complaint investigation and the employee's response, if any, through the chain of command.

**Employee's Responsibility.** Employees who desire to respond to the findings of a completed complaint investigation shall document their response on an Employee's Report, Form 15.07.00, and submit it to their commanding officer within 30 calendar days of service of the Complaint Adjudication Form.

**Reserve Officer Discipline.** An accused reserve officer shall be presented with a copy of a completed complaint investigation and allowed to respond to the commanding officer verbally or in writing. For complaints other than sustained, the reserve officer shall have 30 days to respond. In cases of sustained complaints, a reserve officer shall have 3-5 days to respond, at which time the complaint investigation shall be sent to the Chief of Police for final endorsement with the reserve officer's response attached.

**Note:** This provision should in no way be construed to imply a property right for reserve officers.

Once a final determination has been made by the Chief of Police, commanding officers shall follow disciplinary procedures for reserve officers as outlined in Manual Section 3/870.50.

**822.05 NEED FOR ADDITIONAL INVESTIGATION.** If the commanding officer determines that additional investigation is necessary as a result of an employee's response, such investigation shall normally be conducted by the investigative unit that conducted the original investigation. Upon completion of an additional investigation, the employee's commanding officer shall:

- Re-interview the accused employee and advise the employee of the results of the additional investigation;
- Allow the employee to review any new investigative material; and,
- Allow the employee to respond orally or in writing to the findings of the additional investigation.

**824. COMPLETION OF COMPLAINT INVESTIGATION.** It is the goal of the Department to complete most complaint investigations within five months of the Complaint Form being received by Internal Affairs Group (IAG). Notwithstanding that goal, all efforts should be undertaken to ensure the entire complaint process is completed within the limitations established by state law and the City Charter.

For Internal Affairs' cases, the investigation completion date shall be the date on the IAG, Administrative Records Section-Communication Slip, which is the date the investigation was completed as documented on the Internal Affairs In-Flight Tracking Log. For chain-of-command cases, the completion date shall be the date the investigating officer submits the completed investigation for commanding officer adjudication and shall be documented at the top of the first page of the investigation. If the investigation is returned to the investigating officer for additional work/investigation, then the completion date will be the date on the subsequent IAG Communication Slip or on the supplemental investigation for chain of command investigations. The complaint completion dates shall be documented in the box at the top of the Complaint Adjudication Form, Form 01.28.05.

**825. ADJUDICATING THE COMPLAINT AND SKELLY RESPONSIBILITY.** As a general rule, the commanding officer who managed the employee at the time of the occurrence shall adjudicate the complaint.

**Exception:** When an unusual length of time has passed between the date of occurrence and the date reported, Internal Affairs Group (IAG) may assign investigative and adjudicative responsibility to the accused officer's current commanding officer.

Where several employees from different commands were involved, the commanding officer of the primary employee, or where no primary employee could be identified, the commanding officer where the incident occurred, shall be responsible for the adjudication, preparation of the Letter of Transmittal, and Skelly process. If the incident occurred outside the City jurisdiction or the officer was transferred, adjudication responsibility shall be assigned to the appropriate commanding officer by IAG. It is the intent of this section to provide consistent adjudication and Skelly processes to all involved personnel. Therefore, whenever possible, the adjudication and Skelly of all accused personnel should be done by one commanding officer.

**Note:** Assistance with multiple Skellys may be accomplished at the request of the adjudicating commanding officer, with the concurrence of the employee's current commanding officer, as long as the employee's current commanding officer can comfortably address the Letter of Transmittal issues. The adjudicating commanding officer shall maintain responsibility for responding to the employee's Skelly response (if any) and forwarding the entire investigation, Letter of Transmittal, Skelly(s), and Skelly response(s) to IAG via his/her bureau.

The report shall be forwarded through channels to the Commanding Officer, Internal Affairs Group, immediately upon expiration of the Skelly response period or upon acknowledgement by the accused officer that no Skelly response will be made.

The involved employee's commanding officer shall notify the employee every 30 days of the status of the investigation.

**825.05 COMPLAINT – ADDITIONAL DOCUMENTS REQUIRED.** For all complaints in which a specific employee is accused of misconduct, the employee's complete TEAMS II report and Personal and Work History Summary, Form 1.06.0, shall be forwarded with the completed investigation for the purpose of the commanding officer's review during the adjudication process. Additionally, the Personal and Work History Summary, Form 1.06.0, and/or the Personal and Work History Continuation, Form 1.06.03, shall be forwarded with any FTA, FTQ, or PTC investigation when the histories show any prior FTA, FTQ, or PTC. Neither the TEAMS II nor the Personal and Work History Summary shall be included or listed as addenda to the investigations.

**825.10 PENALTIES FOR SUSTAINED COMPLAINTS.** When a Disciplinary complaint is sustained, the employee's commanding officer may recommend any of the following penalties:

**For sworn personnel:**

- No Penalty;
- Admonishment;
- Official reprimand (to be used for acts of misconduct for which no other penalty is appropriate);
- Suspension;
- Board of Rights;
- Demotion;
- Suspension and Demotion; or,
- Termination on probation.

**For civilian personnel:**

- Admonishment;
- Official reprimand (to be used for acts of misconduct for which no other penalty is appropriate);
- Suspension;
- Discharge; or,
- Termination on probation.

**Admonishment.** When it is determined that a penalty of an admonishment is appropriate, the

employee's commanding officer will administer discipline. Sustained complaints for which discipline may be administered by commanding officers include, but are not limited to, the following:

- Failure to qualify;
- Failure to appear in court at time subpoenaed;
- Failure to appear for scheduled medical examination;
- Tardiness;
- Uniform Defects;
- Minor mishandling of equipment;
- Violation of divisional orders of an internal nature;
- Violation of standard operating procedures of an internal nature; and,
- Minor misconduct from sources outside the Department.

When a commanding officer determines that it is appropriate for an employee of his/her command to receive a penalty not to exceed an admonishment, he/she shall cause any recommended corrective action to be taken.

**Note:** A commanding officer may cause other appropriate action, such as medical examination, professional counseling, or assistance to be taken. Such action may also be initiated on other than sustained complaints.

When an employee does not accept the recommendation of the commanding officer, the commanding officer shall include, in the disposition portion of the Form 01.28.00, the fact that the employee refused the recommended penalty and the reason(s) the employee gave for such refusal.

**825.20 EVALUATING WITNESS CREDIBILITY.** In adjudicating a complaint, Department managers (the rank of captain or above) are responsible for assessing the believability and credibility of witnesses in accordance with the standards established in the IAG functional manual, *Management Guide to Discipline*; specifically, principles adopted from the "California Jury Instruction Code." Managers may consider anything that has a tendency, within reason, to prove or disprove the truthfulness of a witness. In making those determinations, the Department shall employ the following standards:

- Consideration of the history of complaint investigations and disciplinary records of both an accused employee and an employee witness, where relevant and appropriate;
- Consideration of the criminal histories of civilian complainants and witnesses, where relevant and appropriate;
- No automatic preference shall be given to a Department employee's statement over the statement of any other witness, including the complainant;
- There shall be no automatic judgment that insufficient information exists to make a credibility determination when the primary evidence amounts to conflicting statements of the accused employee and the complainant; and,
- A familial or social relationship with a victim or the employee shall not automatically render a witness statement as biased or untruthful. However, the fact that such a relationship exists may be noted.

**825.30 NOTIFICATION OF INVESTIGATION RESULTS TO COMPLAINANT-COMMANDING OFFICER'S RESPONSIBILITY.** Commanding officers adjudicating complaints shall prepare an undated reply letter on Department letterhead addressed to the complainant.

**Reply Letter to Complainant.** The reply letter shall, at a minimum, include:

- The Complaint Form (CF) number, placed in the right quadrant of the letterhead under the Department's return address;
- The date of occurrence, or the date the complaint was reported to the Department;

- The general nature of the complaint and/or allegations(s);
- The resolution and disposition of the complaint and/or allegations;
- The general acknowledgement that appropriate discipline was imposed, without indicating the specific penalty, when an allegation was sustained;
- Reference to the Office of the Inspector General's role, address, telephone and fax numbers, and website address; and,
- The name and phone number of the commanding officer who adjudicated the complaint.

The Department reply letter should not be dated. Administrative Investigation Division (AID), Internal Affairs Group, will add the date when the letter is mailed, following final adjudication of the complaint.

Generally, the Department reply letter should not include the names of the accused employees. Provisions of State law preclude the unnecessary release of employee information regarding personnel matters.

**Note:** Inquiries regarding the appropriate content of a reply letter should be directed to AID, IAG.

The specific requirements for the reply letter should not be construed to restrict commanding officers from customizing the reply to address specific issues.

**Status Update Correspondence.** When the investigation phase of a complaint has not been completed, the status update correspondence shall be mailed to the complainant within one week of the five-month anniversary of reporting the complaint to the Department. One copy of the status update correspondence shall be forwarded to the Administrative Records Unit, IAG, and another maintained in the case folder and forwarded with the case folder at the conclusion of the investigation.

Status update correspondence shall include the following information:

- The date of correspondence;
- The CF number;
- The date of occurrence or the date the complaint was reported to the Department;
- A brief explanation of the status of the investigation; and,
- The name of the investigation officer(s) and his/her office telephone number.

**826. OFFICIAL REPRIMAND - EXECUTION OF ORDER.** When commanding officers receive a written order of reprimand for an employee of their command from the Chief of Police, they shall:

- Read the reprimand to the employee;
- Give the original copy of the order to the employee; and,
- Require the employee to sign the copy of the order.

**828. FALSE AND MISLEADING STATEMENTS.** It is a violation of Department Policy for any employee to make a false statement or a misleading statement as defined in this section. Any violation of this standard constitutes misconduct, which may lead to disciplinary action up to and including termination.

**False Statement – Defined.** A false statement is **any** manner of communication, including, but not limited to oral, written and electronic, which a Department employee makes when he or she knew or should have known the statement was false at the time it was made or the employee fails to correct the statement upon learning of its falsity.

**Misleading Statement – Defined.** A misleading statement is **any** manner of communication, including but not limited to oral, written and electronic, which a Department employee makes when he or she:

- Provides information in an inaccurate context;

- Provides information designed to lead the investigator or another astray or misdirect others;
- Intentionally withholds information which is known or reasonably believed to be relevant; or,
- Intentionally fails to provide a complete or accurate account of matters which are known to the employee.

Providing partial truth about an incident does not satisfy an employee's obligation for truthfulness when relevant information has been deliberately left out. Further, an employee who becomes aware that a statement has been misunderstood or misrepresented has an obligation to correct the misunderstanding or misrepresentation. Failure to do so may create an inference that the employee made the statement with the intention to mislead.

A "false statement" or a "misleading statement" constitutes misconduct when:

- It is made while carrying out an employee's duties;
- It results from actions incidental to an employee's duties;
- It is made while conducting a criminal or administrative investigation, even if the investigation is preliminary in nature; or,
- It is made by an off-duty employee arising from a circumstance in which the employee's occupation as a Department employee is a factor.

**Exception:** False and misleading statements allowed by law, including those made for investigative purposes such as those required to conduct an undercover investigation, are **not** considered to be misconduct and therefore do not fall within these categories.

**829. MISCONDUCT NOT BASED ON ORIGINAL COMPLAINT.** When a complaint neither based on nor directly related to the original complaint, is "sustained" and the classification of the original complaint is other than "sustained," a new Complaint Form, Form 01.28.00, shall be prepared recording the new allegations and investigative results. When the original complaint is "sustained," the new allegations shall be recorded as separate charges on the original complaint.

### **830. COMPLAINTS INVOLVING A USE OF FORCE.**

**830.05 COMPLAINT UNRELATED TO A NON - CATEGORICAL USE OF FORCE.** When a complaint is unrelated to a Non-Categorical use of force, a Complaint Form, Form 01.28.00, shall be initiated immediately (e.g., an arrestee who alleges improper comments by officers transporting him/her to the station from the scene of use of force).

**830.10 COMPLAINT RELATED TO A NON - CATEGORICAL USE OF FORCE.** When a complaint is related to a Non-Categorical Use of Force (NCUOF), the investigating supervisor shall notify his or her watch commander or officer in charge (OIC) immediately. The watch commander or OIC shall assess the incident and determine if immediate notification to Internal Affairs Group (IAG) is required.

Consistent with policy, a public complaint shall be accepted from any source, including the subject of the use of force. If IAG does not respond and assume responsibility for investigating the incident as a personnel complaint, the supervisor shall complete a (public) Complaint Form, Form 01.28.00, in addition to the use of force investigation report. However, where a subject of force does not request to make a public complaint (i.e., unauthorized or excessive force) and there is no independent evidence of misconduct related to the force, any statements that materially differ, shall be addressed within the NCUOF investigation as a Level I investigation. Any separate allegations of misconduct unrelated to the NCUOF (e.g., biased policing discourtesy, unlawful search) shall be documented in a personnel complaint consistent with current policy. A complaint unrelated to unauthorized or excessive force does not require a reclassification of a Level II use of force investigation to a Level I.

**Note:** Versions of events that differ from one another do not necessarily amount to an

allegation of misconduct for purposes of determining preliminary investigative responsibility. In such cases, the supervisor should conduct a thorough use of force investigation and document the conflicting statements in accordance with NCUOF reporting guidelines.

Neither out-of-policy recommendations nor out-of-policy findings for the use of force automatically require a personnel complaint. Supervisors shall ensure the findings outcome is consistent with Department Manual Section 3/793, Adjudicating a Non-Categorical Use of Force Incident.

**830.15 RECLASSIFICATION OF A LEVEL II USE OF FORCE INVESTIGATION TO A LEVEL I.** When a public personnel complaint is generated (i.e., unauthorized or excessive force) prior to the final adjudication of a Level II Use of Force (UOF) incident by Critical Incident Review Division (CIRD), including complaints related to civil litigation, regardless of the source of the complaint, the Level II UOF investigation shall be redirected to the original investigating entity and reclassified as a Level I, consistent with Department Manual Section 4/245.11, Non-Categorical Use of Force Reporting Levels. Reclassification should be completed as soon as possible and can be directed by the commanding officer of the respective Area or bureau. In such cases, the investigating entity shall make every effort to complete a Level I investigation in accordance with Department Manual Section 4/245.11.

**Note:** When possible, all allegations of misconduct related to the same Non-Categorical Use of Force incident should be added to the original public personnel complaint. The investigating entity shall ensure the completed investigation is routed to the concerned Area/division commanding officer for adjudication.

### **831. DISPOSITION OF COMPLAINTS.**

**831.05 ADMINISTERING DISCIPLINARY ACTION.** Disciplinary action shall be administered by the Chief of Police, or the designee of the Chief of Police, in cases other than those in which discipline is administered by the concerned employee's commanding officer. The commanding officer may administer discipline when the penalty of admonishment is appropriate, and the case does not involve the discharge of a firearm by a Department employee. In cases involving the discharge of firearms, where the approved penalty is divisional admonishment, the employee's commanding officer will administer discipline.

**831.10 LETTER OF TRANSMITTAL.** The Letter of Transmittal (LOT) shall be written using either the Short Form or the standard LOT formats, with the appropriate classification(s) used for misconduct allegations. Commanding officers shall familiarize themselves with the criteria for each classification and ensure LOTs are written to sufficiently address all allegations of misconduct raised by the complainant(s) and support the recommended classifications and penalty.

**Note:** Non-Disciplinary complaints **do not** require an LOT. In order to comply with California Penal Code (CPC) Section 832.5, which prohibits inclusion into an officer's personnel record for any portion of a **public** complaint determined to be "frivolous, unfounded, or exonerated," LOTs shall be prepared in the following manner:

- When an LOT contains sustained allegations, the LOT shall be organized as follows: (1) Sustained, and any (2) Not Resolved, followed by a page break, then (3) all other classifications, followed by a page break, followed by the Administrative Insight, etc. In this manner, only a copy of those sections of the LOT discussing **Sustained (or Sustained and Not Resolved)** allegations will be placed into the concerned employee's personnel record; and,
- The original LOT and supporting complaint investigation will be retained at Internal Affairs Group (IAG).

The LOT shall contain the following headings:

- Adjudication;
- Allegation;
- Classification;
- Rationale;
- Digital In-Car Video, Body Worn Video, and Other Video or Audio Recordings;
- Employee Development Plan (This is particularly important for complaints with sustained allegations, and may be used for Not Resolved or Insufficient Evidence to Adjudicate, if warranted.);

**Note:** The Employee Development Plan and the sections that follow shall be completed separately for each accused employee and separated from other accused employees to ensure confidentiality of an employee's employment records upon Skelly service.

- Penalty;

**Note:** Penalty rationales shall reference the Penalty Guide and provide an explanation for any deviations.

- Work History Analysis (Not intended to recapitulate the TEAMS II, which is attached for each accused employee. This section is necessary only in cases of Not-Resolved and/or Sustained allegations in order to analyze a pattern of conduct.);
- Work Permit Review;
- Relief from Duty Consideration;
- Actions Taken; and,
- Signature Page (separate page with a signature block for the commanding officer approving the LOT).

**Note:** Refer to the Office of the Chief of Police Notice, Personnel Complaint Letter of Transmittal – Revised, dated September 8, 2016, for heading explanations.

**Note:** As a reminder, any Downgrade/Deselection related to the allegations in the LOT is to be requested separately from the LOT in accordance with Manual Section 3/763.55. An LOT shall not include a recommendation for, or any additional information related to, a Downgrade/Deselection.

The LOT for Short Form complaints shall follow immediately after the investigation, using the following headings:

- Allegation;
- Classification;
- Rationale;
- Digital In-Car Video, Body Worn Video, and Other Video or Audio Recordings;
- Employee Development Plan;
- Penalty;
- Work History Analysis; and,
- Action Taken.

In adjudicating a complaint of misconduct, the commanding officer may consider evidence of prior acts, irrespective of whether they were associated with a complaint investigation against the accused and irrespective of the resolution of such complaint, *if relevant to the charges, such as, if tending to prove that the conduct charged is consistent with a pattern of conduct.* Consideration of evidence of prior acts must be clearly articulated in the LOT and copies of evidence of such acts shall be provided to the employee at the time of service of the Complaint Adjudication Form (CAF), Form 01.28.05. If the

evidence of such acts is in a document other than a CAF, it shall be included as part of the addenda. If the evidence of such acts is in a CAF, a copy of the report(s) shall be forwarded with the Complaint Investigation to IAG.

**Note:** Evidence of prior acts may be noted in an Employee Comment Sheet, Form 01.77.00, Notice to Correct Deficiencies, Form Gen 78, Performance Evaluation Report or other documents.

**Disposition of Duplicate Complaint.** An LOT does not need to be completed in order to close a Complaint Investigation when the complaint is a duplicate of one referenced under a different CF number and no new issues of misconduct were raised.

**Exception:** When the complaint is a duplicate of one referenced under a different CF number and the new allegation(s) raised do not appear to require a separate investigation, this fact shall be discussed with the Commanding Officer, IAG, who shall determine whether “*Duplicate*” is an appropriate disposition or if a separate investigation should be conducted.

**Requirement for Approval of Bureau Commanding Officer or Other Reviewing Officer.**

Commanding officers are not required to obtain concurrence of the bureau commanding officer or other reviewing officer for the disposition of a complaint and/or penalty. However, when administering a penalty of an admonishment or less, the concerned commanding officer shall cause the employee to review and sign the CAF. This does not preclude the Chief of Police from making a determination that a more serious penalty is warranted.

**Responsibilities of Bureau Commanding Officer or other Reviewing Officer. Commanding officers or an authorized designee form the accused employee's bureau and/or group,** and the Chief of Staff shall review the investigation, classification, rationale and administrative insight of all complaints completed under their command. The Commanding Officer or authorized designee shall ensure that all allegations raised by the complainant have been identified and addressed and that actions taken, recommendations made, and a response to the complainant were noted and copies of correspondence, other pertinent documents and/or addenda are attached. The reviewer shall endorse by signing the CAF, for each accused employee.

Any comments or recommendations either for approval or disapproval shall be placed under “Military Endorsement Rationale” on the reverse side of the CAF or documented within an Intradepartmental Correspondence, Form 15.02.00 and forwarded to the next level of review.

**832. RECORDATION OF COMPLAINTS.** The record and disposition of all complaints including Unfounded, Exonerated, and Non-Disciplinary complaints shall be maintained and accessible as part of the Department’s Training, Evaluation and Management System II (TEAMS II), Complaint Index, Form 01.80.00, or any similar system subsequently developed. The records for all complaints shall be retrievable based on current record retention policy from the date reported, and access to such records shall be through Internal Affairs Group on a case-by-case basis. Access to such complaint records shall be on a right-to-know/need-to-know basis.

**Note:** The office of the Inspector General has full and direct access to Disciplinary and Non-Disciplinary complaint records.

Only Disciplinary complaints in which allegations are Sustained, Not Resolved, or result in a guilty determination at a Board of Rights shall be attributed to the employee’s personnel record. All other complaint classifications (including those handled through the Alternative Complaint Resolution process) shall be filtered from view when the employee’s record is being reviewed for pending disciplinary adjudication. Not Resolved allegations shall also be filtered from view when the employee’s record is being reviewed for the following:

- Promotions;



- Pay grade increases;
- Transfers; or,
- Performance reviews.

Complaints classified and adjudicated as Non-Disciplinary shall not be attributed to the accused employee's personnel record. These files shall be available for periodic inspection by the Department and the Board of Police Commissioners. Other complaint classifications (including those handled through the Alternative Complaint Resolution process) shall be filtered from view when the employee's record is being reviewed for pending disciplinary adjudication.

**833. RETENTION OF COMPLAINT INVESTIGATIONS.** Only sustained **Department** complaints (one or more allegations are classified as "Sustained", or public complaints where there is a combination of Sustained and Not Resolved allegations) will be filed in an employee's personnel file. All complaints disposed of as other-than Sustained will be maintained in Internal Affairs Group files.

**834. INTERNAL AFFAIRS GROUP DUTY ROOM REFERRALS.** Upon receipt of a telephonic or electronic complaint, Internal Affairs Group duty room investigators shall:

- Complete a Complaint Form, Form 01.28.00, documenting the preliminary information and attach any related correspondence, documents, and statements;
- Telephonically notify the employee's commanding officer;
- Forward the Complaint Form and attachments to the Complaint Classifications Unit, Internal Affairs Group, which will assign the Complaint Form to the appropriate division/Area for appropriate action; and,
- Mail a copy of the Complaint Form (with assigned CF #) to the complainant.

**834.10 NOTIFICATION TO THE CHIEF OF POLICE.** Internal Affairs Group shall, as soon as practicable after becoming aware of serious misconduct, verbally notify the Chief of Police.

**835. INTERNAL AFFAIRS GROUP-SCOPE OF AUTHORITY.** The Commanding Officer, Internal Affairs Group, has authority to take charge of an investigation of any act of censurable conduct when, in his/her opinion, it is advisable. The Commanding Officer, Internal Affairs Group, may act in a staff capacity and advise or assist in the investigation or assume the responsibility thereof when:

- Sufficient supervisory personnel to conduct the investigation are not available to the concerned commanding officer.
- Adequate investigation facilities are not readily available to the concerned commanding officer.
- Personnel of more than one division/Area are involved.
- The complaint or the investigation is of a nature that it would be impracticable for the investigation to be conducted by the concerned commanding officer.
- Investigation is being improperly conducted.
- Complaints involve staff and command officers, except as directed by the Chief of Police.

At the conclusion of the investigation, the Commanding Officer, Internal Affairs Group, shall obtain a recommendation for the disposition of the case from the concerned commanding officer.