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## Personnel Complaints

### 914.1 PURPOSE AND SCOPE

This policy provides guidelines for the reporting, investigation and disposition of complaints regarding the conduct of employees of the San Diego County Probation Department. This policy shall not apply to any questioning, counseling, instruction, informal verbal admonishment or other routine or unplanned contact of a employee in the normal course of duty, by a supervisor or any other employee, nor shall this policy apply to a criminal investigation.

### 914.2 POLICY

The San Diego County Probation Department takes seriously all complaints regarding the service provided by the Department and the conduct of its employees.

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

It is also the policy of this department to ensure that the community can report misconduct without concern for reprisal or retaliation.

### 914.3 PERSONNEL COMPLAINTS

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

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

#### 914.3.1 SOURCES OF COMPLAINTS

The following applies to the source of complaints:

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

### 914.4 AVAILABILITY AND ACCEPTANCE OF COMPLAINTS

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#### 914.4.1 COMPLAINT FORMS

Complaint forms will be accessible through the department website. Forms may also be available at Probation Department facilities. Form 3055 (complaint Form) will be used for citizen complaints.

#### 914.4.2 ACCEPTANCE

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

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

#### 914.5 DOCUMENTATION

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

All complaints and inquiries should also be documented in a log that records and tracks complaints. The log shall include the nature of the complaint and the actions taken to address the complaint.

#### 914.6 ADMINISTRATIVE INVESTIGATIONS

Allegations of misconduct will be administratively investigated as follows:

##### 914.6.1 SUPERVISOR RESPONSIBILITIES

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

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

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

- (a) Ensuring that upon receiving or initiating any formal complaint, a complaint form is completed.
  1. The original complaint form will be directed to the Supervisor of the accused employee, via the chain of command, who will take appropriate action and/or determine who will have responsibility for the investigation.
  2. In circumstances where the integrity of the investigation could be jeopardized by reducing the complaint to writing or where the confidentiality of a complainant is at issue, a supervisor shall orally report the matter to the employee's Division Chief, Deputy Chief Probation Officer, Assistant Chief Probation Officer or the Chief Probation Officer, who will initiate appropriate action.

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

#### 914.6.2 ADMINISTRATIVE INVESTIGATION

No investigation shall be undertaken against any officer solely because the officer has been placed on a prosecutor's Brady list or the name of the officer may otherwise be subject to disclosure pursuant to Brady v. Maryland. However, an investigation may be based on the underlying acts or omissions for which the officer has been placed on a Brady list or may otherwise be subject to disclosure pursuant to Brady v. Maryland (Government Code § 3305.5).

Formal investigations of personnel complaints shall be thorough, complete and will generally be conducted by the Internal Affairs Unit. A report will be prepared at the conclusion of the investigation and will include a summary of the allegations, evidence to each allegation, and recommended findings.

#### 914.6.3 FINDINGS

One of the following findings will be provided for each allegation:

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**Unfounded** - When the investigation discloses that the alleged acts did not occur or did not involve department employees. Complaints that are determined to be frivolous will fall within the classification of unfounded.

**Exonerated** - When the investigation discloses that the alleged act occurred but that the act was justified, lawful and/or proper.

**Not sustained** - When the investigation discloses that there is insufficient evidence to sustain the complaint or fully exonerate the employee.

**Sustained** - When the investigation discloses sufficient evidence to establish that the act occurred and that it constituted misconduct.

If an investigation discloses misconduct or improper job performance that was not alleged in the original complaint, the investigator shall take appropriate action with regard to any additional allegations.

#### 914.6.4 COMPLETION OF INVESTIGATIONS

Every investigator or supervisor assigned to investigate a personnel complaint or other alleged misconduct shall proceed with due diligence in an effort to complete the investigation within one year from the date of discovery by an individual authorized to initiate an investigation (Government Code § 3304).

In the event that an investigation cannot be completed within one year of discovery, the assigned investigator or supervisor shall ensure that an extension or delay is warranted within the exceptions set forth in Government Code § 3304(d) or Government Code § 3508.1.

The assigned investigator or supervisor shall ensure that within 30 days of the final disposition of the complaint, the complainant is provided written notification of the disposition (Penal Code § 832.7(e)).

#### 914.7 ADMINISTRATIVE SEARCHES

Assigned lockers and storage spaces may only be searched in the employee's presence or with the employee's consent, or with a valid search warrant or where the employee has been notified that the search will take place (Government Code § 3309). Such areas may also be searched any time by a supervisor for non-investigative purposes, such as obtaining a needed report, radio or other document or equipment. Assigned lockers, storage spaces and other areas, including desks, offices and county owned vehicles may also be searched as part of an investigation for evidence of suspected non-criminal, work related employee misfeasance if the search meets a reasonable standard.

##### 914.7.1 DISCLOSURE OF FINANCIAL INFORMATION

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

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

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

### **914.8 ADMINISTRATIVE LEAVE**

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

- (a) May be required to relinquish any department badge, identification, assigned weapons and any other department equipment.
- (b) Shall be required to continue to comply with all policies and lawful orders of a supervisor.
- (c) The employee will be required to remain available for contact during regular hours, and will report as ordered.

### **914.9 CRIMINAL INVESTIGATION**

Where an employee is accused of potential criminal conduct, a separate criminal investigation may be conducted by appropriate agencies apart from any administrative investigation. Any separate administrative investigation may parallel a criminal investigation.

The Chief Probation Officer shall be notified as soon as practicable when an employee is accused of criminal conduct. The Chief Probation Officer may request a criminal investigation by an outside law enforcement agency.

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

No information or evidence administratively coerced from a employee may be provided to anyone involved in conducting the criminal investigation or to any prosecutor.

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

### **914.10 POST-ADMINISTRATIVE INVESTIGATION PROCEDURES**

Upon completion of a formal investigation, an investigation report should be forwarded to the Chief Probation Officer through the chain of command. Each level of command should review and provide their input as to disposition. The Chief Probation Officer may accept or modify any classification or recommendation for disciplinary action.

#### **914.10.1 DIVISION CHIEF RESPONSIBILITIES**

Upon receipt of any completed personnel investigation, the Division Chief of the involved employee shall review the entire investigative file, the employee's personnel file and any other relevant materials.

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

Prior to forwarding recommendations to the Chief Probation Officer, through the Deputy Chief Probation Officer, the Division Chief may return the entire investigation to the assigned investigator or supervisor for further investigation or action. The recommendation will be made through the Assistant Chief to the Chief Probation Officer.

#### **914.10.2 CHIEF PROBATION OFFICER RESPONSIBILITIES**

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

Once the Chief Probation Officer is satisfied that no further investigation or action is required by staff, the Chief Probation Officer shall determine the level of discipline, if any, that should be imposed. In the event disciplinary action is proposed, the Chief Probation Officer shall direct the Senior Department Human Resources Officer to coordinate preparation and delivery of the discipline, including providing for a Skelly Conference when required.

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

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

#### **914.12 RETENTION OF PERSONNEL INVESTIGATION FILES**

All personnel complaints shall be maintained in accordance with the established records retention schedule and as described in the Personnel Files Policy.