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# Personnel Complaints

## 1010.1 PURPOSE AND SCOPE

### State

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

## 1010.2 POLICY

### Best Practice

The Atlantic Beach Police Department takes seriously all complaints regarding the service provided by the Department and the conduct of its members.

The Department will accept and address all complaints of misconduct in accordance with this policy and applicable federal, state, and local laws and municipal and county rules.

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

## 1010.3 PERSONNEL COMPLAINTS

### Best Practice

Personnel complaints include any allegation of misconduct or improper job performance that, if true, would constitute a violation of department policy or 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.

### 1010.3.1 COMPLAINT CLASSIFICATIONS

#### Best Practice MODIFIED

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

**Informal** - A matter in which the Watch Commander or Chief of Police is satisfied that appropriate action has been taken by a supervisor of rank greater than the accused member.

**Formal** - A matter in which a supervisor determines that further action is warranted. Such complaints may be investigated by a supervisor of rank greater than the accused member or referred to the Professional Standards Section, depending on the seriousness and complexity of the investigation.

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**Incomplete** - A matter in which the complaining party either refuses to cooperate or becomes unavailable after diligent follow-up investigation. At the discretion of the assigned supervisor or the Professional Standards Section, such matters may be further investigated depending on the seriousness of the complaint and the availability of sufficient information.

#### 1010.3.2 SOURCES OF COMPLAINTS

Best Practice **MODIFIED**

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, by telephone, or other electronic media.
- (b) Any department member becoming aware of alleged misconduct shall immediately notify a supervisor.
- (c) Supervisors shall initiate a complaint based upon observed misconduct or receipt from any source alleging 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.
- (f) Members of the public should be provided with a reasonable avenue for any redress of grievances they may have with the service received by department employees or the conduct of the agency.
- (g) It is the policy of this department to accept and document all complaints alleging employee or department misconduct, as the integrity of the agency depends on the personal integrity and discipline of each employee.

A complaint can originate from any of the following sources:

1. Individual aggrieved person
2. Third party
3. Anonymous
4. Department employee
5. News media
6. Governmental department
7. Notice of civil claim

#### 1010.4 AVAILABILITY AND ACCEPTANCE OF COMPLAINTS

Best Practice

##### 1010.4.1 COMPLAINT FORMS

Best Practice

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

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

#### 1010.4.2 ACCEPTANCE

**Best Practice**

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

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

#### 1010.5 DOCUMENTATION

**Best Practice** **MODIFIED**

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

All complaints and inquiries shall 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. On an annual basis, the Crime Analyst shall audit the log and send an audit report to the Chief of Police or the authorized designee.

#### 1010.6 ADMINISTRATIVE INVESTIGATIONS

**Best Practice**

Allegations of misconduct will be administratively investigated as follows.

##### 1010.6.1 SUPERVISOR RESPONSIBILITIES

**Best Practice** **MODIFIED**

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

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- (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 Watch Commander of the accused member, 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 member's Watch Commander or the Chief of Police, who will initiate appropriate action.
- (b) Responding to all complaints in a courteous and professional manner and provide receipt of complaint.
- (c) Resolving those personnel complaints that can be resolved immediately.
  - 1. Follow-up contact with the complainant should be made within 24 hours of the Department receiving the complaint.
  - 2. If the matter is resolved and no further action is required, the supervisor will note the resolution on a complaint form and forward the form to the Watch Commander.
- (d) Ensuring that upon receipt of a complaint involving allegations of a potentially serious nature, the Watch Commander and Chief of Police are notified via the chain of command as soon as practicable.
- (e) Promptly contacting the Personnel Department and the Watch Commander for direction regarding the supervisor's role 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 Watch Commander, who will determine whether to contact the complainant or assign the complaint for investigation.
- (g) Informing the complainant of the investigator's name and the complaint number within three days after assignment.
- (h) Investigating a complaint as follows:
  - 1. Making reasonable efforts to obtain names, addresses, and telephone numbers of witnesses.
  - 2. When appropriate, ensuring immediate medical attention is provided and photographs of alleged injuries and accessible uninjured areas are taken.
- (i) Ensuring that the procedural rights of the accused member are followed.
- (j) Ensuring interviews of the complainant are generally conducted during reasonable hours.

#### 1010.6.2 ADMINISTRATIVE INVESTIGATION PROCEDURES

**Best Practice** **MODIFIED**

Whether conducted by a supervisor or a member of the Professional Standards Section, the following applies to employees:

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- (a) Interviews of an accused employee shall be conducted during reasonable hours and preferably when the employee is on-duty. If the employee is off-duty, he/she shall be compensated.
- (b) Unless waived by the employee, interviews of an accused employee shall be at the Atlantic Beach Police Department or other reasonable and appropriate place.
- (c) No more than two interviewers should ask questions of an accused employee.
- (d) Prior to any interview, an employee should be informed of the nature of the investigation.
- (e) All interviews should be for a reasonable period and the employee's personal needs should be accommodated.
- (f) No employee should be subjected to offensive or threatening language, nor shall any promises, rewards, or other inducements be used to obtain answers.
- (g) Any employee refusing to answer questions directly related to the investigation may be ordered to answer questions administratively and may be subject to discipline for failing to do so.
  - 1. An employee should be given an order to answer questions in an administrative investigation that might incriminate the employee in a criminal matter only after the employee has been given a *Garrity* advisement. Administrative investigators should consider the impact that compelling a statement from the employee may have on any related criminal investigation and should take reasonable steps to avoid creating any foreseeable conflicts between the two related investigations. This may include conferring with the person in charge of the criminal investigation (e.g., discussion of processes, timing, implications).
  - 2. No information or evidence administratively coerced from an employee may be provided to anyone involved in conducting the criminal investigation or to any prosecutor.
- (h) The interviewer shall record all interviews of employees and witnesses. The employee may also record the interview. If the employee has been previously interviewed, a copy of that recorded interview should be provided to the employee prior to any subsequent interview.
- (i) All employees subjected to interviews that could result in discipline have the right to have an uninvolved representative present during the interview. However, in order to maintain the integrity of each individual's statement, involved employees shall not consult or meet with a representative or attorney collectively or in groups prior to being interviewed.
- (j) All employees shall provide complete and truthful responses to questions posed during interviews.
- (k)

#### 1010.6.3 ADMINISTRATIVE INVESTIGATION FORMAT

**Best Practice**

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Formal investigations of personnel complaints shall be thorough, complete, and essentially follow this format:

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

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

**Summary** - List the allegations separately, including applicable policy sections, with a brief summary of the evidence relevant to each allegation. A separate recommended finding should be provided for each allegation.

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

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

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

#### 1010.6.4 DISPOSITIONS

##### Best Practice

Each personnel complaint shall be classified with one of the following dispositions:

**Unfounded** - When the investigation discloses that the alleged acts did not occur or did not involve department members. 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 member.

**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.

#### 1010.6.5 COMPLETION OF INVESTIGATIONS

##### Best Practice MODIFIED

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 45 days from the date of discovery by an individual authorized to initiate an investigation.

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#### 1010.6.6 NOTICE TO COMPLAINANT OF INVESTIGATION STATUS

**Best Practice**

The member conducting the investigation should provide the complainant with periodic updates on the status of the investigation, as appropriate.

#### 1010.7 ADMINISTRATIVE SEARCHES

**Best Practice** **MODIFIED**

Assigned lockers, storage spaces, and other areas, including desks, offices, and vehicles, may be searched as part of an administrative investigation upon a reasonable suspicion of misconduct.

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.

The agency head may require an employee to submit to any of the following test or disclosure.

1. Medical or laboratory examination of the employee, to include chemical tests such as blood, breath, and urine
2. Photographs of the employee
3. Audio or video recording
4. Participation in a line-up
5. Financial disclosure statements
6. Polygraph examination, in accordance with the Garrity decision of the U.S. Supreme Court

#### 1010.8 ADMINISTRATIVE LEAVE

**Best Practice** **MODIFIED**

When a complaint of misconduct is of a serious nature, or when circumstances indicate that allowing the accused to continue to work would adversely affect the mission of the Department, the Chief of Police or the Town Manager 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) May be temporarily reassigned to a different shift, generally a normal business-hours shift, during the investigation. The employee may be required to remain available for contact at all times during such shift and will report as ordered.

#### 1010.9 CRIMINAL INVESTIGATION

**Best Practice** **MODIFIED**

The Chief of Police shall be notified as soon as practicable when a member is accused of criminal conduct. In such cases, the Chief of Police will request a criminal investigation by the

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South Carolina Law Enforcement Division (SLED). The assigned investigator from SLED will investigate the criminal allegations apart from any administrative investigation conducted by the Atlantic Beach Police Department. Any separate administrative investigation may parallel a criminal investigation.

A member accused of criminal conduct shall be provided with all rights afforded to a civilian. The member should not be administratively ordered to provide any information in the criminal investigation.

The release of information concerning the arrest or detention of any member, including an officer, that has not led to a conviction shall be coordinated through and approved by the Chief of Police and SLED. No disciplinary action should be taken until an independent administrative investigation is conducted.

#### **1010.10 POST-ADMINISTRATIVE INVESTIGATION PROCEDURES**

**Best Practice** **MODIFIED**

Upon completion of a formal investigation, an investigation report shall be forwarded to the Chief of Police through the chain of command. Each level of command shall review the report and include his/her comments in writing before forwarding the report. The Chief of Police may accept or modify any classification or recommendation for disciplinary action.

##### **1010.10.1 WATCH COMMANDER RESPONSIBILITIES**

**Best Practice** **MODIFIED**

Upon receipt of any completed personnel investigation, the Watch Commander of the involved member shall review the entire investigative file, the member's personnel file, and any other relevant materials.

The Watch Commander 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 of Police, the Watch Commander may return the entire investigation to the assigned investigator or supervisor, as applicable, for further investigation or action.

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

##### **1010.10.2 CHIEF OF POLICE RESPONSIBILITIES**

**Best Practice** **MODIFIED**

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



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Once the Chief of Police is satisfied that no further investigation or action is required by staff, the Chief of Police shall determine the amount of discipline, if any, that should be imposed. In the event disciplinary action is proposed, the Chief of Police shall provide the member with a written notice and the following:

- (a) Access to all of the materials considered by the Chief of Police in recommending the proposed discipline.
- (b) An opportunity to respond orally or in writing to the Chief of Police within five days of receiving the notice.
  1. Upon a showing of good cause by the member, the Chief of Police may grant a reasonable extension of time for the member to respond.
  2. If the member elects to respond orally, the presentation shall be recorded by the Department. Upon request, the member shall be provided with a copy of the recording.

Once the member has completed his/her response, or if the member has elected to waive any such response, the Chief of Police shall consider all information received in regard to the recommended discipline. The Chief of Police shall render a timely written decision to the member and specify the grounds and reasons for discipline and the effective date of the discipline. Once the Chief of Police has issued a written decision, the discipline shall become effective.

#### 1010.10.3 NOTICE OF FINAL DISPOSITION TO THE COMPLAINANT

##### **Best Practice**

The Chief of Police or the authorized designee should ensure that the complainant is notified of the disposition (i.e., sustained, not sustained, exonerated, unfounded) of the complaint.

#### 1010.11 PRE-DISCIPLINE EMPLOYEE RESPONSE

##### **Best Practice**

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

- (a) The response is not intended to be an adversarial or formal hearing.
- (b) Although the employee may be represented by an uninvolved representative or legal counsel, the response is not designed to accommodate the presentation of testimony or witnesses.
- (c) The employee may suggest that further investigation could be conducted or the employee may offer any additional information or mitigating factors for the Chief of Police to consider.
- (d) In the event that the Chief of Police elects to conduct further investigation, the employee shall be provided with the results prior to the imposition of any discipline.

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- (e) The employee may thereafter have the opportunity to further respond orally or in writing to the Chief of Police on the limited issues of information raised in any subsequent materials.

### 1010.12 RESIGNATIONS/RETIREMENTS PRIOR TO DISCIPLINE

**Best Practice** **MODIFIED**

In the event that a member 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.

If employee misconduct results in dismissal, the following information shall be provided to the employee:

- (a) a statement citing the reason for the dismissal;
- (b) effective date of the dismissal;
- (c) a statement of the status of fringe benefits and retirement benefits after dismissal; and
- (d) a statement as to the content of the employee's employment record relating to the dismissal

### 1010.13 POST-DISCIPLINE APPEAL RIGHTS

**State**

Non-probationary employees have the right to appeal a disciplinary action pursuant to any grievance procedures established by the Department pursuant to S.C. Code § 8-17-110 et seq. and/or personnel rules.

### 1010.14 PROBATIONARY EMPLOYEES AND OTHER MEMBERS

**Best Practice**

At-will and probationary employees and members other than non-probationary employees may be disciplined and/or released from employment without adherence to any of the procedures set out in this policy, and without notice or cause at any time. These individuals are not entitled to any rights under this policy. However, any of these individuals released for misconduct should be afforded an opportunity solely to clear their names through a liberty interest hearing, which shall be limited to a single appearance before the Chief of Police or the authorized designee.

In cases where an individual has been absent for more than a week or when additional time to review the individual is considered to be appropriate, the probationary period may be extended at the discretion of the Chief of Police.

### 1010.15 RETENTION OF PERSONNEL INVESTIGATION FILES

**State** **MODIFIED**

The Atlantic Beach Police Department is required to maintain a record of all complaints against the agency or employees and confidentiality of these records shall be maintained in a secure area

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All personnel complaints and completed personnel investigations shall be forwarded to the Crime Analyst for retention and maintained in accordance with the established records retention schedule and as described in the Personnel Records Policy by maintaining them in a secure area.

### **1010.16 NOTIFICATION TO THE SOUTH CAROLINA CRIMINAL JUSTICE ACADEMY**

State **MODIFIED**

The Chief of Police shall notify the South Carolina Criminal Justice Academy (SCCJA) of any substantiated by an officer reasonably believed to be misconduct. Notification shall be on a form prescribed by the South Carolina Law Enforcement Training Council and shall be made within 15 days of the final action resulting from the internal investigation. Further, any finding as to the use of excessive force shall be reported to the SCCJA within 30 days of the finding (S.C. Code § 23-23-150; S.C. Code Regs. 37-023 & S.C. Code Regs. 37-025).

The Chief of Police shall also notify the SCCJA within 15 days when an officer leaves the employment of the Department, regardless of the reason for the separation. Notification shall be on the prescribed form and contain the facts and circumstances leading to the separation (S.C. Code Regs. 37-022).

If employee misconduct results in dismissal, the following information shall be provided to the employee:

- (a) a statement citing the reason for the dismissal
- (b) effective date of the dismissal;
- (c) a statement of the status of fringe benefits and retirement benefits after dismissal; and
- (d) a statement as to the content of the employee's employment record relating to the dismissal.