

Personnel Complaints

809.1 PURPOSE AND SCOPE

Best Practice

This policy provides guidelines for the reporting, investigation, and disposition of complaints regarding the conduct of members of the Tulare County Probation 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.

809.2 POLICY

Best Practice

The Tulare County Probation 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 law, municipal and county rules, and the requirements of any collective bargaining agreements or memorandums of understanding.

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

809.3 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.

809.3.1 COMPLAINT CLASSIFICATIONS

Best Practice **MODIFIED**

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

Informal - A matter in which the Division Manager 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 referred to the Professional Standards Unit, or Human Resources and Development, depending on the nature, seriousness or 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 manager or the Professional Standards Unit, such matters may be further investigated depending on the seriousness of the complaint and the availability of sufficient information.

809.3.2 SOURCES OF COMPLAINTS

Best Practice

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 by telephone.
- (b) Any department member becoming aware of alleged misconduct shall immediately notify a supervisor.
- (c) Supervisors shall initiate a complaint based upon observed misconduct or receipt from any source alleging 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.

809.4 AVAILABILITY AND ACCEPTANCE OF COMPLAINTS

Best Practice

809.4.1 COMPLAINT FORMS

Best Practice **MODIFIED**

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

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

[See attachment: Personnel Complaint Form \(3.4.26\).pdf](#)

809.4.2 ACCEPTANCE

State

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.

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A complainant shall be provided with a copy of the statement at the time it is filed with the Department (Penal Code § 832.7).

809.4.3 AVAILABILITY OF WRITTEN PROCEDURES

State

The Department shall make available to the public a written description of the investigation procedures for complaints (Penal Code § 832.5).

809.4.4 HATE COMPLAINTS AGAINST PEACE OFFICERS

State

The Department shall accept and investigate internal complaints or complaints from the public that allege an officer has, in the previous seven years and since age 18, was a member of a hate group, participated in a hate group activity, or advocated any public expression of hate (Penal Code § 13682).

809.5 DOCUMENTATION

Best Practice

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

All complaints and inquiries should 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 Department should audit the log and send an audit report to the Chief Probation Officer or the authorized designee.

809.6 ADMINISTRATIVE INVESTIGATIONS

Best Practice **MODIFIED**

Allegations of misconduct will be administratively investigated by the Professional Standards Unit or Human Resources and Development.

809.6.1 ADMINISTRATIVE INVESTIGATION PROCEDURES

State

Whether conducted by a supervisor or a member of the Professional Standards Unit, the following applies to members covered by the Public Safety Officers Procedural Bill of Rights (POBR) (Government Code § 3303):

- (a) Interviews of an accused member shall be conducted during reasonable hours and preferably when the member is on-duty. If off-duty, the member shall be compensated.
- (b) Unless waived by the member, interviews of an accused member shall be at the Tulare County Probation Department or other reasonable and appropriate place.
- (c) No more than two interviewers should ask questions of an accused member.
- (d) Prior to any interview, a member should be informed of the nature of the investigation, the name, rank, and command of the officer in charge of the investigation, the interviewing officers, and all other persons to be present during the interview.

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- (e) All interviews shall be for a reasonable period, and the member's personal needs should be accommodated.
- (f) No member should be subjected to offensive or threatening language, nor shall any promises, rewards, or other inducements be used to obtain answers.
- (g) Any member 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. A member should be given an order to answer questions in an administrative investigation that might incriminate the member in a criminal matter only after the member has been given a *Lybarger* advisement. Administrative investigators should consider the impact that compelling a statement from the member 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 a member may be provided to anyone involved in conducting the criminal investigation or to any prosecutor.
- (h) The interviewer should record all interviews of members and witnesses. The member may also record the interview. If the member has been previously interviewed, a copy of that recorded interview shall be provided to the member prior to any subsequent interview.
- (i) All members subjected to interviews that could result in discipline have the right to have an uninvolved representative present during the interview. However, to maintain the integrity of each individual's statement, involved members shall not consult or meet with a representative or attorney collectively or in groups prior to being interviewed.
- (j) All members shall provide complete and truthful responses to questions posed during interviews.
- (k) No member may be compelled to submit to a polygraph examination, nor shall any refusal to submit to such examination be mentioned in any investigation (Government Code § 3307).

809.6.2 DISPOSITIONS

State

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 (Penal Code § 832.8).

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

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

Sustained - A final determination by an investigating agency, commission, board, hearing officer, or arbitrator, as applicable, following an investigation and opportunity for an administrative appeal pursuant to Government Code § 3304 and Government Code § 3304.5 that the actions of an officer were found to violate law or department policy (Penal Code § 832.8).

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.

809.6.3 COMPLETION OF INVESTIGATIONS

State

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.

809.6.4 LIMITATIONS ON INVESTIGATIONS

State

Investigations shall not be undertaken against any officer in the following limited circumstances:

- (a) 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* (Government Code § 3305.5).
 1. An investigation may be initiated 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*.
- (b) A court finding against an officer in a challenge brought under Penal Code § 745 (California Racial Justice Act of 2020) (Government Code § 3305.6).
 1. An investigation may be Initiated based on the underlying acts or omissions which formed the basis of the action brought pursuant to Penal Code § 745 (Government Code § 3305.6).

809.7 ADMINISTRATIVE SEARCHES

State 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 at any time by a supervisor for non-investigative purposes, such as obtaining a needed report, radio, or other document or equipment.

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Lockers and storage spaces may only be administratively searched in the member's presence; with the member's consent; with a valid search warrant; or where the member has been given reasonable notice that the search will take place (Government Code § 3309).

809.7.1 DISCLOSURE OF FINANCIAL INFORMATION

State

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

809.8 ADMINISTRATIVE LEAVE

Best Practice

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) 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.

809.9 CRIMINAL INVESTIGATION

State **MODIFIED**

Where a member is accused of potential criminal conduct, the criminal allegations will be investigated 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 a member is accused of criminal conduct. The Chief Probation Officer may request a criminal investigation by an outside law enforcement agency.

A member accused of criminal conduct shall be advised of the member's constitutional rights (Government Code § 3303(h)). The member should not be administratively ordered to provide any information in the criminal investigation.

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

809.10 POST-ADMINISTRATIVE INVESTIGATION PROCEDURES

Best Practice **MODIFIED**

Upon completion of a formal investigation, an investigation report should be presented to the Professional Standards Committee. The Chief Probation Officer may accept or modify any recommendation for disciplinary action.

809.10.1 PROFESSIONAL STANDARDS COMMITTEE

Best Practice **MODIFIED**

Upon receipt of any completed personnel investigation, the Professional Standards Committee shall review the entire investigative file, the member's personnel file, and any other relevant materials.

The Professional Standards Committee may make recommendations regarding the disposition of any allegations.

The Professional Standards Committee may return the entire investigation to the assigned investigator for further investigation or action.

The Professional Standards Committee will determine the level of discipline after reviewing the investigation.

809.10.2 NOTICE OF FINAL DISPOSITION TO THE COMPLAINANT

State

The Chief Probation Officer or the authorized designee shall ensure that the complainant is notified of the disposition (i.e., sustained, not sustained, exonerated, unfounded) of the complaint (Penal Code § 832.7(f)).

809.10.3 NOTICE REQUIREMENTS

State

The disposition of any civilian's complaint shall be released to the complaining party within 30 days of the final disposition. This release shall not include what discipline, if any, was imposed (Penal Code § 832.7(f)).

809.11 RESIGNATIONS/RETIREMENTS PRIOR TO DISCIPLINE

Best Practice

In the event that a member tenders a written resignation or notice of retirement before the discipline is imposed, 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.

809.12 POST-DISCIPLINE APPEAL RIGHTS

State **MODIFIED**

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Appeal rights shall be governed by Tulare County Personnel Rule 12, and /or current Memorandums of Understanding.

809.13 PROBATIONARY EMPLOYEES AND OTHER MEMBERS

State **MODIFIED**

At-will and probationary employees and those members other than non-probationary employees may be released from employment for non-disciplinary reasons (e.g., failure to meet standards) in accordance with Tulare County Personnel Rules.

809.14 RETENTION OF PERSONNEL INVESTIGATION FILES

Best Practice

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

Attachments

Personnel Complaint Form (3.4.26).pdf

