

# Personnel Complaints

## **1006.1 PURPOSE AND SCOPE**

This policy provides guidelines for the reporting, investigation and disposition of complaints regarding the conduct of members of the Benton County Sheriff's Office (Minn. R. 6700.2200). 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.

## **1006.2 POLICY**

The Benton County Sheriff's Office takes seriously all complaints regarding the service provided by the Office and the conduct of its members.

The Office 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 memorandum of understanding.

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

## **1006.3 PERSONNEL COMPLAINTS**

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

### **1006.3.1 COMPLAINT CLASSIFICATIONS**

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

**Informal** - A matter in which the Division Commander 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 Internal Affairs Unit, depending on the seriousness and complexity of the investigation.

**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 Internal Affairs Unit, such matters may be further investigated depending on the seriousness of the complaint and the availability of sufficient information.

# Benton County Sheriff's Office

## Benton Cnty SO Policy Manual

### *Personnel Complaints*

---

#### 1006.3.2 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 by telephone.
- (b) Any office 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) The Minnesota Board of Peace Officer Standards and Training (POST) may refer complaints alleging a violation of a statute or rule that the board is empowered to enforce (Minn. Stat. § 214.10, Subd. 10).
- (g) Any person making a complaint may be accompanied by an attorney or other representative, including at the time the complaint is made.
- (h) Any person wishing to file a complaint against the Sheriff should be referred to the County Administrator for investigation by an outside agency.

#### 1006.4 AVAILABILITY AND ACCEPTANCE OF COMPLAINTS

##### 1006.4.1 COMPLAINT FORMS

Personnel complaint forms will be maintained by all supervisors and will be made available to individuals upon request.

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

##### 1006.4.2 ACCEPTANCE

All complaints will be courteously accepted by any office 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.

A person wishing to file a complaint may be accompanied by an advocate of their choosing during the process.

# Benton County Sheriff's Office

## Benton Cnty SO Policy Manual

### *Personnel Complaints*

---

#### 1006.4.3 COMPLAINT COPIES

After a complaint is filed, the accepting member should sign the document, keep a copy for the office and provide a copy to the complainant.

#### **1006.5 DOCUMENTATION**

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.

#### **1006.6 ADMINISTRATIVE INVESTIGATIONS**

Allegations of misconduct will be administratively investigated as follows (Minn. R. 6700.2200).

##### 1006.6.1 SUPERVISOR RESPONSIBILITIES

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 Sheriff 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 Division 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 Division Commander or the Sheriff, who will initiate appropriate action.
- (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 in a timely manner.
  - 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 Division Commander.
- (d) Ensuring that upon receipt of a complaint involving allegations of a potentially serious nature, the Sheriff are notified via the chain of command as soon as practicable.
- (e) Promptly contacting the Department of Human Resources and the Division Commander for direction regarding their roles in addressing a complaint that relates to sexual, racial, ethnic or other forms of prohibited harassment or discrimination.

# Benton County Sheriff's Office

## Benton Cnty SO Policy Manual

### *Personnel Complaints*

---

- (f) Forwarding unresolved personnel complaints to the Division Commander, who will determine whether to contact the complainant or assign the complaint for investigation.
- (g) 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.
- (h) Ensuring that the procedural rights of the accused member are followed.
- (i) Ensuring interviews of the complainant are generally conducted during reasonable hours.

#### 1006.6.2 ADMINISTRATIVE INVESTIGATION PROCEDURES

Whether conducted by a supervisor or an assigned member of the Internal Affairs Unit, the following shall apply to members covered by the Peace Officer Discipline Procedures Act (Minn. Stat. § 626.89):

- (a) Interviews of an accused member shall be conducted during reasonable hours and preferably when the member is on-duty (Minn. Stat. § 626.89, Subd. 7). If the member is off-duty, he/she shall be compensated.
- (b) Unless waived by the member, interviews of an accused member shall be at the Benton County Sheriff's Office or at a place agreed upon by the accused member (Minn. Stat. § 626.89, Subd. 4).
- (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.
  1. The member shall be given a copy of any written complaint signed by the complainant (Minn. Stat. § 626.89, Subd. 5).
- (e) All interviews should be for a reasonable period and the member's personal needs should be accommodated (Minn. Stat. § 626.89, Subd. 7).
- (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 *Garrity* 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).

# Benton County Sheriff's Office

## Benton Cnty SO Policy Manual

### *Personnel Complaints*

---

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 shall record all interviews of members and witnesses. The member may also record the interview. A complete copy or transcript of the interview must be made available to the member upon written request without charge or undue delay. If the member has been previously interviewed, a copy of that recorded interview shall be provided to the member prior to any subsequent interview (Minn. Stat. § 626.89, Subd. 8).

(i) All members subjected to interviews that could result in discipline have the right to have an uninvolved representative or attorney present before or during the interview (Minn. Stat. § 626.89, Subd. 9). When a member requests a representative or attorney, no interview may be taken until a reasonable opportunity is provided for the member to obtain that person's presence. However, in order 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.

(l) Before a formal statement is taken, the member shall be advised in writing or on the record that admissions made may be used as evidence of misconduct or a basis for discipline (Minn. Stat. § 626.89, Subd. 10).

(m) A member may not be required to produce financial records (Minn. Stat. § 626.89, Subd. 11).

(n) A member's photograph will not be released unless allowed by law (Minn. Stat. § 626.89, Subd. 12).

#### 1006.6.3 ADMINISTRATIVE INVESTIGATION FORMAT

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.

**Investigative narrative** - A narrative account of the investigation conducted by the assigned investigator.

**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.

# Benton County Sheriff's Office

## Benton Cnty SO Policy Manual

### *Personnel Complaints*

---

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

#### 1006.6.4 DISPOSITIONS

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 office 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.

The Sheriff may authorize that any investigation be re-opened any time substantial new evidence is discovered concerning the complaint.

#### 1006.6.5 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.

#### 1006.6.6 EXTERNAL INVESTIGATIONS

The Sheriff may request that an outside agency conduct an investigation anytime the Sheriff determines an external investigation is appropriate.

This office should not conduct an investigation when the Sheriff is the subject of the complaint. An external investigation should be requested through the County Administrator.

#### 1006.6.7 NOTICE TO COMPLAINANT OF INVESTIGATION STATUS

The member conducting the investigation shall provide the complainant with periodic updates on the status of the investigation, as appropriate and consistent with the provisions of the Minnesota Government Data Practices Act (MGDP) (Minn. Stat. § 13.43, Subd. 2; Minn. R. 6700.2200).

### **1006.7 ADMINISTRATIVE SEARCHES**

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.

# Benton County Sheriff's Office

## Benton Cnty SO Policy Manual

### *Personnel Complaints*

---

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.

#### **1006.8 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 Office, the Sheriff 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 office badge, identification, assigned weapons and any other office 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.

#### **1006.9 CRIMINAL INVESTIGATION**

Where a member is accused of potential criminal conduct, a separate supervisor or investigator shall be assigned to investigate the criminal allegations apart from any administrative investigation. Any separate administrative investigation may parallel a criminal investigation.

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

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 Benton County Sheriff's Office may release information concerning the arrest or detention of any member, including a deputy, that has not led to a conviction. No disciplinary action should be taken until an independent administrative investigation is conducted.

The Sheriff may postpone making a decision on an administrative investigation until any related criminal charges are resolved. The complainant and involved member should be informed of this decision.

#### **1006.10 POST-ADMINISTRATIVE INVESTIGATION PROCEDURES**

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

# Benton County Sheriff's Office

## Benton Cnty SO Policy Manual

### *Personnel Complaints*

---

#### 1006.10.1 DIVISION COMMANDER RESPONSIBILITIES

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

The Chief Deputy 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 Sheriff, the Chief Deputy may return the entire investigation to the assigned investigator or supervisor for further investigation or action.

When forwarding any written recommendation to the Sheriff, the Chief Deputy 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.

#### 1006.10.2 SHERIFF RESPONSIBILITIES

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

Once the Sheriff is satisfied that no further investigation or action is required by staff, the Sheriff shall determine the amount of discipline, if any, that should be imposed. The Sheriff shall consider all information received in regard to the recommended discipline. The Sheriff 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 Sheriff has issued a written decision, the discipline shall become effective. The employee shall be afforded all remedies given to them by contract or law in disputing discipline.

#### 1006.10.3 MINNESOTA POST INVESTIGATIONS

The Minnesota POST Board may require an administrative investigation based upon a complaint alleging a violation of a statute or rule that the board is empowered to enforce.

Any such misconduct allegation or complaint assigned to this office shall be completed and a written summary submitted to the POST executive director within 30 days of the order for inquiry (Minn. Stat. § 214.10, Subd. 10).

The Office shall cooperate with POST's investigation and provide requested information unless (Minn. Stat. § 626.8457):

- (a) There is an active criminal investigation or active criminal proceeding regarding the same incident or misconduct that is being investigated by POST.
- (b) An active internal investigation exists regarding the same incident or misconduct that is being investigated by POST during 45 days from the time the request was made by POST. The Sheriff or the authorized designee shall comply with the request upon completion of the internal investigation or once 45 days has passed, whichever occurs first.

# Benton County Sheriff's Office

Benton Cnty SO Policy Manual

## *Personnel Complaints*

---

### **1006.10.4 DISCIPLINE**

Disciplinary action may include, but is not limited to (Minn. R. 6700.2200):

- (a) Oral reprimand.
- (b) Written reprimand.
- (c) Suspension.
- (d) Demotion.
- (e) Discharge.

### **1006.10.5 APPEALS**

When a complaint is found to be sustained, the member may appeal the disposition pursuant to the rules and law governing the accused member's employment.

### **1006.10.6 NOTICE OF FINAL DISPOSITION TO THE COMPLAINANT**

The Sheriff or the authorized designee shall ensure that the complainant is notified of the disposition (i.e., sustained, not sustained, exonerated, unfounded) of the complaint. Notice must be consistent with the provisions of the MGDP (Minn. Stat. § 13.43, Subd. 2; Minn. R. 6700.2200).

### **1006.11 RESIGNATIONS/RETIREMENTS PRIOR TO DISCIPLINE**

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.

### **1006.12 PROBATIONARY EMPLOYEES AND OTHER MEMBERS**

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 except for employees covered by the Veterans Preference Act (Minn. Stat. § 197.46).

Any probationary period may be extended at the discretion of the Sheriff in cases where the individual has been absent for more than a week or when additional time to review the individual is considered to be appropriate.

### **1006.13 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 Records Policy.

#### **1006.13.1 CONFIDENTIALITY OF PERSONNEL FILES**

All active investigations of alleged misconduct and personnel complaints shall be considered confidential and maintained separately from peace officer personnel files. The contents of such files shall not be revealed to other than the involved member or authorized personnel, except

# Benton County Sheriff's Office

## Benton Cnty SO Policy Manual

### *Personnel Complaints*

---

pursuant to lawful process, such as Minn. R. 6700.2500. Data in closed files shall be treated as private or public data depending on whether discipline was imposed upon the member.

#### 1006.13.2 LETTERS OF DISCIPLINE AND REPRIMANDS

Letters of discipline and reprimands may only be placed in a member's personnel file after they are received by the member (see generally Minn. Stat. § 626.89, Subd. 13).

#### **1006.14 REQUIRED REPORTING TO POST**

The Sheriff or the authorized designee shall notify POST of certain deputy personnel events, including but not limited to:

- (a) A termination or resignation of a deputy who is the subject of an internal or criminal investigation due to alleged misconduct regardless of whether the investigation has been initiated or completed, or whether the deputy was criminally charged (Minn. Stat. § 626.8457, Subd. 4).
- (b) The violation of a required POST model policy identified in Minn. R. 6700.1615 (Minn. R. 6700.1615, Subd. 2).