

ALBANY COUNTY SHERIFF'S OFFICE			
General Order	Date Issued March 01, 1993	Effective Date March 01, 1993	Order Number 35-S0-93
Subject: Internal Affairs / Personnel Complaints		Distribution: All Personnel	
Reviewed: November 2023			

PURPOSE: To establish procedures for the processing of complaints made against members and / or employees of the Albany County Sheriff's Office.

POLICY: It is the policy of the Albany County Sheriff's Office to promptly, competently, professionally, and impartially investigate all complaints and allegations of misconduct by the agency or its employees. Every such allegation or complaint shall be addressed by the agency and, if need be, thoroughly investigated by the Office of Professional Standards in order to protect the accused employee, the agency, and the public and all such investigations shall be handled in accordance with current written agency instructions outlining the procedure for reporting and investigating complaints against personnel. Any subsequent necessary corrective action, including any appropriate or requisite formal disciplinary action, shall be conducted by the agency in accordance with agency policy and collective bargaining agreements. (Rev. 01/2022)

I. Initial Inquiries and Concerned Citizens

- A. It is understood that members of the public often contact this agency with concerns relative to officer or agency actions, procedures, or protocols; conditions at the correctional facility; questions relative to a person in the custody of this agency; and other general inquiries. While these concerns do not always lead to formal complaints, they are to be addressed or forwarded to the appropriate party to the best of the receiving employee's ability to most effectively assist the concerned party. (Rev. 01/2022)
- B. Initial inquiries, requests for information, and general concerns are to be received and addressed in a professional manner. Receiving employees should provide their name if requested by the individual initiating the contact and address their concern if possible. If unable to satisfactorily address the individual's question or if the matter involves allegations relative to an employee's actions, receiving employees should forward the individual's name, phone number, and the reason for their contact to the appropriate supervisor. Concerns about specific employees should be forwarded to that employee's direct supervisor while those concerning units or details should be forwarded to unit or detail supervisor. (Rev. 01/2022)

- C. **Supervisors** shall contact the individual as soon as possible and attempt to thoroughly address their inquiry or concern in accordance with agency policies.
1. If able to address the individual's concern to their satisfaction at the supervisory level, the matter will be considered concluded.
 2. Supervisors should forward it along with the individual's contact information to their unit/facility commander if:
 - a. The supervisor is unable to address the individuals' reason for contacting this agency to their satisfaction,
 - b. The individual requests to file a formal personnel complaint, or
 - c. The reason for contacting this agency includes allegations of misconduct by an employee of this agency, including violations of agency policy or state laws.

(Rev. 01/2022)

- D. **Unit/Facility Commanders** shall then contact the individual as soon as possible and attempt to address the matter at the command level. Discretion shall be exercised by the commander, in accordance with agency policy, as to which concerns shall be handled at the unit/facility commander's level and which shall be forwarded to the Office of Professional Standards. For the sake of this order, Facility Commander shall also mean the Superintendent, Major, or Corrections Commander designated by him to address the matter.
1. Matters which may be handled by commanders include but are not limited to the following:
 - a. Concerns relative to internal administrative matters or minor violations of agency policy such as failure to properly wear uniform items, unprofessional or rude conduct, tardiness, accrued time usage, or insubordination;
 - b. Misunderstandings of law;
 - c. Concerns relative to unit, detail, or agency actions or procedures;
 - d. Concerns which are not related to violations of agency policy or law; or
 - e. Matters where the individual initiating the contact with this agency no longer wishes to pursue the matter or does not wish to file a formal personnel complaint.

2. Matters which should be forwarded by commanders to the Office of Professional Standards include but are not limited to the following:
 - a. Concerns or allegations relative to violations of law or significant violations of agency policy which may lead to formal discipline such as misuse of force, corruption or abuse of authority, criminal misconduct, or civil rights violations;
 - b. Instances where the individual initiating the contact with this agency refuses to discuss the matter with the commander; or
 - c. Instances where the individual wishes to file a formal personnel complaint.
3. In certain circumstances formal discipline or further review by the Office of Professional Standards may be appropriate for violations of internal administrative matters or minor policy violations, such as gross insubordination or repeated minor violations.
 - a. In such instances, commanders should document the matter on an agency INTERNAL PERSONNEL COMPLAINT form which should be forwarded to the Office of Professional Standards. A memorandum noting the reasons for seeking the same should be forwarded along with the complaint form and the findings of any initial investigation at the command level.
4. This order does not replace any of the other reporting requirements for the correctional facility as set forth in agency policy, protocols, or Commission of Corrections regulations. Copies of all necessary reports, including any matters or complaints not satisfactorily addressed by facility administration or as otherwise stipulated in agency policy, shall be forwarded to the Office of Professional Standards.
(Rev. 01/2022)

E. **The Office of Professional Standards** shall contact the individuals relative to their concerns or allegations.

1. If the individual initiating the contact with this agency is satisfied with the response of the Office of Professional Standards, the matter may be concluded informally.
 - a. Concerns or allegations relative to violations of law or significant violations of agency policy which may lead to formal discipline such as misuse of force, corruption or abuse of authority, criminal misconduct, or civil rights violations shall be formally investigated by this agency, in accordance with agency policy, regardless of if a personnel complaint is filed

2. If the individual wishes to file a formal personnel complaint with this agency, the formal complaint process should be explained to them and initiated as set forth in this order.

(Rev. 01/2022)

II. Formal Complaints against personnel

- A. A Formal Personnel Complaint is any allegation or complaint received by an employee that accuses a member or employee in writing with misconduct or illegal conduct occurring either on-duty or off-duty, EXCEPT THAT:

(Rev. 01/2022)

1. An instance of injury to a prisoner WILL NOT be handled as personnel complaint UNLESS:
 - a. An allegation is made or a complaint is received against a member or employee; or
 - b. In the judgment of the Sheriff, Undersheriff or Superintendent there is a clear indication that an employee has conducted himself improperly. or
 - c. The injuries sustained by such prisoner are serious in nature. In such circumstances the Office of Professional Standards Commander shall be notified pursuant 35A-50-93
2. A matter concerning Agency Policy or any officially approved Albany County Sheriff's Office procedure that relates solely to matters of internal management and control of the Albany County Sheriff's Office WILL NOT be handled as a personnel complaint UNLESS:
 - a. An allegation is made or a complaint is received against an employee that in the judgment of the Sheriff, Undersheriff or Superintendent indicates a possible violation of Agency Rule, Regulation, Instruction or Order.

- B. All formal personnel complaints, including all associated allegations, shall be documented in writing and signed by the complainant. (Rev. 01/2022)

- C. Complaints at the Albany County Correctional Facility relating to Inmate Grievance Procedures shall be handled as prescribed in Correctional Facility Order 40-CF-90, Inmate Grievance Procedure. Such complaints related to inmate grievances or facility conditions and procedures from family members or associates of inmates or members of the public shall be forwarded to the

Superintendent.

1. The Superintendent or his designee will address these matters or forward to the Office of Professional Standards, any concerns or allegations relative to violations of law or significant violations of agency policy which may lead to formal discipline such as misuse of force, corruption or abuse of authority, criminal misconduct, or civil rights violations; (Rev. 01/2022)
- D. Even though no allegation or complaint is received, Agency employees must also report to their Immediate Supervisor any incident that in their judgment indicates that an official personnel complaint is necessary.
- E. The Sheriff requires that any employee involved as a witness or principal submit a written statement or affidavit setting out the facts bearing directly on the allegation made whenever requested by an investigating officer. If allegations are specific, the statement must likewise be specific as to each allegation made. If allegations are general, a statement in kind will suffice.
- F. Upon order of the Sheriff, employee shall submit to any medical, ballistics, chemical or other tests, photographs or line-ups. All procedures carried out under this subsection shall be specifically directed and narrowly related to a particular internal investigation being conducted by the Agency. (Rev 10/04)
- G. All information obtained in the course of a personnel complaint investigation shall be treated as confidential except as otherwise required by state law. Therefore, it is imperative that all documents pertaining to personnel complaints be properly secured in order to protect all parties involved. All employees exercising control over documents and files pertaining to a personnel complaint must ensure that the documents are kept secure. (Rev. 01/2022)

III. Procedure on Receipt of a Personnel Complaint

- A. Contact the complainant and schedule an interview to discuss their complaint and document the incident along with any accompanying allegations in writing.
1. In cases where a person other than an Agency employee is the complainant, utilize the personnel complaint form titled "CITIZEN COMPLAINT FORM."

2. In cases where the complainant is an Agency employee, utilize the personnel complaint form titled "INTERNAL PERSONNEL COMPLAINT FORM."
 3. All complaint forms, regardless of type, should note any known witnesses to the incident, document all of the allegations being made, and be signed by the complainant. Additional pages may be used as necessary to document the complainant's account of the incident.
 4. If the complainant is out of the area or incapable of appearing for an interview, a copy of the Agency Citizen's Complaint Form should be made available to them so that they may submit their complaint formally.
 5. Complainants should be encouraged to submit any corroborating documentation or evidence in support of their allegations to accompany their complaint.
- B. Make a CAD or Log Entry or contact Communications and request that the Tele-communicator open a CAD ticket. Said entry should only include the following comments:
1. That a personnel complaint was received;
 2. The time and date it was received;
 3. The name(s) of the Agency Employees who were NOTIFIED; and
 4. The time such notifications were made.
 5. To avoid jeopardizing any subsequent investigation of the matter, DO NOT include in the CAD or Log Entry the name of the complainant, the nature of the allegation or complaint received, any facts concerning the complaint or allegation received, or the names of the employee(s) involved in such complaint or allegation. (Rev. 01/2022)
- C. When received during regular business hours, notify the Sheriff, Executive Undersheriff, or Undersheriff that a formal personnel complaint was received. Advise them of the nature and details of the complaint and forward them a copy of the complaint form unless they direct otherwise. The Executive Undersheriff or Undersheriff shall keep the Sheriff apprised of all personnel complaints and their

status. (Rev. 01/2022)

1. During non-business hours, weekends and holidays, if in your judgment the matter does not require immediate action; notify the Undersheriff or Sheriff on the next business day.
- D. Initiate or Direct Personnel Complaint Investigations by assigning members to investigate the complaint. Reference General Order 35A-SO-01 *Office of Professional Standards*.
- E. Review submitted reports, any initial findings, or other pertinent information or documentation.

IV. Action by Investigating Member

- A. Conduct a prompt, thorough investigation of personnel complaints in accordance with these instructions, agency policy, the rules and the collective bargaining agreements(s) currently in effect.
 1. Verify the following:
 - a. The time the allegation or complaint was first received;
 - b. The names of the officials notified;
 - c. The time the officials were notified and;
 - d. The time the CAD or Log Entry was made by the receiving employee.
- B. Complete the Investigation Report and/or any supplemental reports in narrative form.
 1. Statements and/or documentation pertinent to the case will be made part of the case and submitted as such.
 2. The CHARACTER of the case shall be "Personnel Complaint" followed by the nature if such can be identified (e.g. Personnel Complaint – Unprofessional Conduct, - Improper UOF, - Insubordination, etc.). The case shall be identified in this manner on both the Professional Standards case file and in the Office of Professional Standards casebook. (Rev. 01/2022)

- C. The investigative report should include the following:
1. Indicate whether, in your judgment, the allegation or complaint is founded or unfounded and give your reasons and;
 2. If in your judgment the allegation or complaint is founded, indicate the rule, regulation, instruction, or order which was violated.
 3. If the complaint cannot be closed as founded or unfounded due to lack of substantial evidence to prove or refute such, the matter should be closed as unsubstantiated.
 4. In the investigative report, DO NOT make specific recommendations about possible penalties.
- D. When investigating a complaint against personnel resulting from a preventable motor vehicle accident submit in separate reports BOTH:
1. A personnel complaint Form and;
 2. An Investigation Report for the motor vehicle accident.
- E. Unrelated Violations
1. When conducting a personnel complaint investigation and a minor administrative violation which is not related to the original complaint is discovered, DO NOT include information concerning the minor Administrative Violation in the Personnel Complaint Report. Submit a separate memorandum in conjunction with Personnel Complaint Report and set forth the following:
 - a. Nature of the Violation;
 - b. Circumstances surrounding the violation and;
 - c. Appropriate enclosures, if any.
- F. Report Deadlines
1. Personnel Complaint investigations and reports by the Office of Professional Standards shall be completed in accordance with agency policy. Reference General Order 35A-SO-01 *Office of Professional Standards*.

V. Final Review and Adjudication

- A. The Executive Undersheriff shall review the reports and investigative findings as submitted by the Office of Professional Standards and submit a recommendation to the Sheriff for final adjudication. In the absence of the Executive Undersheriff, the Undersheriff shall complete the review and submit a recommendation to the Sheriff as noted herein.
- B. Any formal disciplinary or non-disciplinary corrective action determined necessary and appropriate by the Sheriff will be administered in accordance with agency policy and any pertinent collective bargaining agreements.
(Rev. 01/2022)

VI. Notification of Disposition

Complainants who file a formal complaint, when known, will be notified in writing on agency letterhead of the fact that their complaint has been received and is being handled. (Rev. 12/2020)

VII. Liaison with Prosecutor's Office

At the direction of the Sheriff, the District Attorney's Office will be immediately contacted concerning founded personnel complaints of a criminal nature. The District Attorney will make the decisions regarding the filing of appropriate criminal charges and shall be kept informed regarding the status of such investigations. Such Liaison shall be the Commander of the Office of Professional Standards.

VIII. Special Reporting Requirements

- A. Section 75 of the New York State (NYS) Executive Law establishes special requirements for reporting certain misconduct and complaints as defined therein to the Law Enforcement Misconduct Investigative Office (LEMIO) within the Office of the NYS Attorney General.
- B. Pursuant to NYS Executive Law Section 75(5)(a), every agency member or employee must promptly report to LEMIO any information concerning corruption, fraud, use of excessive force, criminal activity, conflicts of interest or abuse by another member or employee relating to their office or employment, or by a person having business dealings with this agency relating to those dealings.
 - 1. Members and employees may report information concerning misconduct by using LEMIO's online portal at <https://ny.ag.gov/bureaus/LEMIO>

2. LEMIO will inform the heads of covered agencies of such reports unless there are special circumstances that require confidentiality, pursuant to NYS Executive Law Section 75(3)(a).
- C. Pursuant to NYS Executive Law Section 75(5)(b), instances in which at least five complaints from five or more individuals relating to at least five separate incidents involving a certain member or employee within two years must be reported to LEMIO.
1. For the purposes of this section, complaint shall mean either:
 - a. an allegation received from a non-employee that a member or employee of this agency has violated law or agency policy or otherwise misused their authority; or
 - b. an allegation received from a member or employee of this agency that another member or employee of this agency has violated law or agency policy or misused their authority in connection with law enforcement activities;
 - c. Lawsuits and notices of claims involving alleged misconduct by members or employees of this agency
 2. The threshold for Section 75(5)(b) includes all personnel complaints received by this agency, regardless of any resolution or determination of the complaints. This includes not just complaints that have been deemed founded, substantiated or sustained, but also all complaints under investigation as well as those determined to be unresolved, unsubstantiated, unfounded, or exonerated.
 3. Internal complaints involving routine employer-employee matters are not considered complaints pursuant to NYS Executive Law Section 75(5)(b).
 4. The Office of Professional Standards is tasked with making any necessary reports to LEMIO under this section and in accordance with agency policy and state law.
 - a. Any agency member or employee who has met the five-complaint threshold within any two year period beginning back on April 1, 2019 is subject to referral under Section 75(5)(b).
 - b. When a member or employee of this agency has been found to

have met this threshold, prompt notification is to be made to LEMIO by filling out the Section 75(5)(b) Referral Template provided by New York State and emailing it to LEMIO@ag.ny.gov. Relevant investigative files including the agency complaint form documenting the complaint and any investigative report documenting any resolution should be accompany the completed state Referral Template.

- c. If files are too large to be sent electronically, contact LEMIO for further guidance.
- d. If a member or employee of this agency is the subject of a subsequent complaint after being referred to LEMIO under Section 75(5)(b), an additional state Referral Template should be completed noting the subsequent complaint and be sent to LEMIO, along with related investigative files as previously described herein.

(Rev. 01/2022)

General Order

35-SO- 93

SO ORDERED:

Craig D. Apple, Sr.

Sheriff