

## Personnel Complaints

### 1008.1 PURPOSE AND SCOPE

This policy provides guidelines for the reporting, investigation and disposition of complaints regarding the conduct of members of the Rhinebeck Village 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.

### 1008.2 POLICY

The Rhinebeck Village 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, 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.

### 1008.3 PERSONNEL COMPLAINTS

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

#### 1008.3.1 COMPLAINT CLASSIFICATIONS

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

**Informal** - A matter in which the Officer in Charge is satisfied that appropriate action has been taken.

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

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#### 1008.3.2 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 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.

#### **1008.4 AVAILABILITY AND ACCEPTANCE OF COMPLAINTS**

##### 1008.4.1 COMPLAINT FORMS

Personnel complaint forms will be accessible through the department website. Forms may also be available at other Village facilities.

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

##### 1008.4.2 ACCEPTANCE

All complaints will be courteously accepted by any department member and promptly given to the Officer in Charge. 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 Officer in Charge. If the Officer in Charge is not immediately available to take an oral complaint, the receiving member shall obtain contact information sufficient for the Officer in Charge to contact the complainant. The Officer in Charge, 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.

#### **1008.5 DOCUMENTATION**

The Officer in Charge 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.

#### **1008.6 ADMINISTRATIVE INVESTIGATIONS**

Allegations of misconduct will be administratively investigated as follows.

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#### 1008.6.1 SUPERVISOR RESPONSIBILITIES

In general, the primary responsibility for the investigation of a personnel complaint shall rest with the Officer in Charge, unless the Officer in Charge is the complainant or has any personal involvement regarding the alleged misconduct.

An Officer in Charge who becomes aware of alleged misconduct shall take reasonable steps to prevent aggravation of the situation.

The responsibilities of the Officer in Charge include but are not limited to:

- (a) Ensuring that upon receiving or initiating any formal complaint, a complaint form is completed.
- (b) Responding to all complainants 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 within 24 hours of the Department receiving the complaint.
  - 2. If the matter is resolved and no further action is required, the Officer in Charge will note the resolution on a complaint form.
- (d) Promptly contacting the Village Clerk's Office for direction regarding the Officer in Charge's role in addressing a complaint that relates to sexual, racial, ethnic, or other forms of prohibited harassment or discrimination.
- (e) 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.
- (f) Ensuring that the procedural rights of the accused member are followed.
- (g) Ensuring interviews of the complainant are generally conducted during reasonable hours.

#### 1008.6.2 ADMINISTRATIVE INVESTIGATION PROCEDURES UNDER CIVIL SERVICE LAW

Whether conducted by the Officer in Charge or a member of the Administration, the following applies to employees covered by Civil Service Law (Civil Service Law § 75):

- (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 Rhinebeck Village 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.

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- (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 should 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.
  - 1. All employees subjected to interviews that could result in discipline have the right to have a certified or recognized union representative present during the interview. The employee shall be informed in advance and in writing of the right to representation.
  - 2. If the employee is unable to find representation within a reasonable time, the interviewer may proceed with the interview.
- (i) 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) No employee may be compelled to submit to a psychological stress evaluator examination, nor shall any refusal to submit to such examination be mentioned in any investigation (Labor Law § 735).

#### 1008.6.3 ADMINISTRATIVE INVESTIGATION PROCEDURES OTHER EMPLOYEES

Whether conducted by the Officer Charge or a member of the Administration, 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 Rhinebeck Village 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 should 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, 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) No employee may be compelled to submit to a psychological stress evaluator examination, nor shall any refusal to submit to such examination be mentioned in any investigation (Labor Law § 735).

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#### 1008.6.4 NOTICE OF CHARGES

Any charges brought against an employee shall be in writing and within the time frame prescribed by law (Civil Service Law § 75; Second Class Cities Law § 137; Town Law § 155; Village Law § 8-804).

#### 1008.6.5 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.

**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.

#### 1008.6.6 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 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.

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#### 1008.6.7 COMPLETION OF INVESTIGATIONS

The Officer in Charge 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.

#### 1008.6.8 NOTICE TO COMPLAINANT OF INVESTIGATION STATUS

The Officer in Charge should provide the complainant with periodic updates on the status of the investigation, as appropriate.

#### **1008.7 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.

Such areas may also be searched any time by the Officer in Charge for non-investigative purposes, such as obtaining a needed report, radio or other document or equipment.

#### **1008.8 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 Officer in Charge 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.
- (d) May be on leave without pay for no more than 30 days (Civil Service Law § 75; Village Law § 8-804).

#### **1008.9 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 Officer in Charge shall be notified as soon as practicable when a member is accused of criminal conduct. The Officer in Charge 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.

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The Rhinebeck Village Police 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.

#### **1008.10 POST-ADMINISTRATIVE INVESTIGATION PROCEDURES**

Upon completion of a formal investigation, an investigation report should be filed with a recommendation for disciplinary action.

##### **1008.10.1 OFFICER IN CHARGE RESPONSIBILITIES**

Once the Officer in Charge is satisfied that no further investigation or action is required by staff, the Officer in Charge shall determine the amount of discipline, if any, that should be imposed. In the event disciplinary action is proposed, the Officer in Charge shall provide the employee with a written notice that includes the reasons for the proposed disciplinary action and a copy of the charges (Civil Service Law § 75).

The employee shall be given an opportunity to respond in writing to the Officer in Charge within eight days of receiving the notice. Upon a showing of good cause by the employee, the Officer in Charge may grant a reasonable extension of time for the employee to respond.

Once the employee has completed his/her response, or if the employee has elected to waive any such response, the Officer in Charge shall consider all information received in regard to the recommended discipline. The Officer in Charge shall designate a hearing officer, in writing, when there is a recommendation for disciplinary action or termination of an employee. Upon completion of the hearing, the Officer in Charge shall review the record of the hearing and recommendations of the hearing officer and shall render a timely written decision to the employee and specify the grounds and reasons for discipline and the effective date of the discipline. Once the Officer in Charge has issued a written decision, the discipline shall become effective.

##### **1008.10.2 HEARING BY BOARD OF TRUSTEES OR MUNICIPAL BOARD**

A hearing shall be conducted as prescribed by the rules and regulations of the Board of Trustees or Municipal Board as provided in Village Law § 8-804.

The employee shall be entitled to five days' notice of the hearing and have an opportunity to be heard in his/her defense. The employee has the right to a public hearing and to be represented by counsel (Village Law § 8-804).

##### **1008.10.3 NOTICE OF FINAL DISPOSITION TO THE COMPLAINANT**

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



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#### **1008.11 PRE-DISCIPLINE EMPLOYEE RESPONSE**

The pre-discipline process is intended to provide the accused employee with an opportunity to present a written or oral response to the Officer in Charge 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 Officer in Charge to consider.
- (d) In the event that the Officer in Charge elects to conduct further investigation, the employee shall be provided with the results prior to the imposition of any discipline.
- (e) The employee may thereafter have the opportunity to further respond orally or in writing to the Officer in Charge on the limited issues of information raised in any subsequent materials.

#### **1008.12 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.

#### **1008.13 POST-DISCIPLINE APPEAL RIGHTS**

Non-probationary employees have the right to appeal a suspension without pay, punitive transfer, demotion, reduction in pay or step, or termination from employment. The employee has the right to appeal using the procedures established by Civil Service Law § 76, any collective bargaining agreement and/or personnel rules.

#### **1008.14 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. 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 Officer in Charge 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 Officer in Charge.

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### **1008.15 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.

### **1008.16 LAW ENFORCEMENT MISCONDUCT INVESTIGATIVE OFFICE**

Members who become aware of misconduct concerning corruption, fraud, use of excessive force, criminal activity, conflicts of interest, or abuse by another member relating to their work with the department, or by a person having business dealings with the department relating to those dealings shall, in addition to any requirements in this policy, promptly report it to the Law Enforcement Misconduct Investigative Office (LEMIO) (Executive Law § 75).

#### **1008.16.1 ADDITIONAL OFFICER IN CHARGE RESPONSIBILITIES**

The Officer in Charge shall advise the governor, appropriate members of the legislature, and the Division of Criminal Justice Services within the required period of any remedial action taken against a member in response to the LEMIO's recommendation. The Officer in Charge shall also refer complaints that meet the requirements of Executive Law § 75 to the LEMIO (Executive Law § 75).