

**MARIN COUNTY SHERIFF'S OFFICE  
GENERAL ORDER**

**CHAPTER 2 - PERSONNEL**  
GO-02-14  
Page 1 of 7

**DATE**  
3/28/2018

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**CITIZEN'S COMPLAINT INVESTIGATION  
SPECIAL INVESTIGATION**

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**POLICY**

Section 832.5 of the Penal Code specifies that: "Each Sheriff's Department and each Police Department in this state shall establish a procedure to investigate citizens' complaints against the personnel of such departments, and shall make a written description of the procedure available to the public."

A proper relationship of trust and confidence between members of the Sheriff's Office and the community they serve are essential to effective law enforcement.

Sheriff's personnel must be free to exercise their best judgment and to initiate action in a reasonable, lawful, and impartial manner without fear of reprisal. Concomitantly, they must meticulously observe the rights of all persons.

The Sheriff's Office acknowledges its responsibility to provide a system of complaint and disciplinary procedures, which not only will subject Sheriff's Office personnel to corrective action when he/she conduct themselves improperly, but also will protect him/her from unwarranted criticism when they discharge their duties properly.

The Marin County Sheriff's Office shall openly accept, diligently investigate, and judiciously resolve community concerns of misconduct that achieve the following:

- a. Thorough and accurate investigations
- b. Fair and impartial investigations
- c. Just and expeditious disposition of all complaints of misconduct
- d. Strict and confidential control of complaints, investigations and dispositions
- e. Protection of all rights guaranteed to all parties to complaints of misconduct

Just and expeditious disposition of complaint(s) of misconduct require the most effective utilization of investigative resources. To that end, the Marin County Sheriff's Office shall commit the most appropriate and warranted resources in an effort to achieve and maintain the Sheriff's Office Mission and Values.

The Marin County Sheriff's Office shall complete Citizen Complaint Investigations within 30 days from the date of the complaint absent approval from a Bureau Commander for an extension. Citizen Complaint Investigations are a priority function of the Marin County Sheriff's Office.

Information of any form pertaining to any Citizen Complaint Investigation or Special Investigation, anticipated, in-progress or concluded, shall not be disclosed by any employee of the Marin County Sheriff's Office to any other person, except as permitted by statute, law, or in strict compliance with the official investigation.

However, an employee has an affirmative duty to contact his/her immediate supervisor with information that he/she believes is relevant to a Citizen's Complaint or Special Investigation. The Supervisor receiving the information shall immediately notify the Administrative Lieutenant, Professional Standards Unit who in turn, shall provide the investigator with the information and the name of the person(s) providing it.

## **DEFINITIONS**

**STANDARD OF CONDUCT** – The standard of conduct for all Sheriff's Office members is "The Law Enforcement Code of Ethics."

*As a Law Enforcement Officer, my fundamental duty is to serve mankind; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation and the peaceful against violence or disorder; and to respect the Constitutional Rights of all men to liberty, equality and justice.*

*I will keep my private life unsullied as an example to all; maintain courageous calm in the face of danger, scorn or ridicule; develop self-restraint and be constantly mindful of the welfare of others. Honest in thought and deed in both my personal and official life, I will be exemplary in obeying the laws of the land and the regulations of my Sheriff's Office. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty.*

*I will never act officiously or permit personal feelings, prejudices, animosities or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or violence and never accepting gratuities.*

*I recognize the badge of my office as a symbol of public faith and I accept it as a public trust to be held so long as I am true to the ethics of the police service. I will constantly strive to achieve these objectives and ideals, dedicating myself before God to my chosen profession...law enforcement.*

**COMPLAINT:** - An allegation of misconduct made against an employee of the Marin County Sheriff's Office.

**CITIZEN'S COMPLAINT:** - A complaint of misconduct made by any person who is not an employee of the Marin County Sheriff's Office.

**SPECIAL INVESTIGATION:** - A complaint of misconduct brought to the attention of the Sheriff by an employee.

**MISCONDUCT:** - An employee of the Marin County Sheriff's Office whose act or omission constitutes a violation of:

- Constitutional Rights
- Statute
- The Law Enforcement Code of Ethics
- Oath of Office
- MCSO General Orders, Policies, Procedures, Rules, Directives
- Marin County Personnel Rules and Regulations

**CITIZEN CONCERN:** - Citizens may make a complaint against Sheriff's Office personnel that are withdrawn by the complainant or resolved merely as an issue of concern.

CITIZEN COMPLAINT or SPECIAL INVESTIGATION: - An official inquiry into the facts and circumstances of allegations of employee misconduct to determine whether or not misconduct occurred.

REFERRED INVESTIGATION: - A complaint more appropriately investigated and resolved by other procedures and/or processes. (Example: Complaint is addressed through inmate grievance procedure.)

SUMMARY INVESTIGATION: - An inquiry and written record consisting solely of review of the complaint and interview of the accused employee when the complainant in the preceding five-year period has filed at least two (2) complaints that have been determined to be *unfounded, exonerated, or frivolous*.

INVESTIGATION REPORT: - A written record of the investigative facts and findings to include applicable topics contained in Appendix I when appropriate.

FINDING:

- Sustained – the investigation disclosed sufficient evidence to clearly prove the allegation of misconduct.
- Not sustained – the investigation failed to disclose sufficient evidence to clearly prove or disprove the allegation of misconduct.
- Unfounded – the investigation clearly established that the allegation is not true (832.5(c) (2) PC)
- Exonerated: - the investigation clearly established that the actions of the employee that formed the basis for the complaint are not violations of law or department policy.
- Frivolous – the complaint is totally and completely without merit and for the sole purpose of harassing Marin County Sheriff's Office personnel (128.6(b) (2) Code of Civil Procedure.
- Referred Disposition (R/D) – the complaint was appropriately investigated and resolved through other procedures and/or processes. (Example: Complaint addressed through inmate grievance procedure.)

DISPOSITION OF FINDINGS: - The action taken intended to correct and/or discipline misconduct.

CORRECTIVE ACTION: - The following action that can be taken to correct misconduct:

- Counseling (may be documented)
- Oral Reprimand (may be documented)
- Training (may be documented)

(In accordance with current case law, any documentation of counseling, oral reprimand or training that is provided as the result of a sustained Citizen Complaint or Special Investigation shall not state or infer said counseling, oral reprimand or training was imposed as a form of discipline, either implicit or implied.)

DISCIPLINARY ACTION: - The following action that can be taken to discipline and correct misconduct:

- Written Reprimand
- Transfer or reassignment
- Voluntary surrender of accrued vacation time in lieu of other action
- Voluntary surrender of accrued compensatory time in lieu of other action
- Suspension
- Reduction in pay grade

- Demotion
- Termination

## **PROCEDURE**

All Marin County Sheriff's Office personnel shall accept all citizen concerns and complaints made by any person against any employee of the Sheriff's Office. Complaints shall be accepted from any person, by any method, in person or anonymously. They shall be expeditiously routed to the Professional Standards Unit Administrative Lieutenant.

When an employee delivers, mails, or otherwise provides a citizens complaint form to a community member, the employee shall ensure the Citizen Complaint Procedure Brochure accompanies that form. If a Spanish version of the complaint form is provided, the Spanish version of the Citizen Complaint Procedure Brochure shall accompany the form as well.

### EMPLOYEE DUTIES:

INVESTIGATOR: Conducts a complete investigation in a fair and impartial manner in accordance with statute and in compliance with this General Order. He/she will maintain strict confidential control of all investigative information, evidence, and materials. He/she shall receive and review Citizen Complaints or Special Investigation materials that are assigned for investigation. He/she will familiarize him/herself with the details of the investigation and conduct the investigation and investigative interviews that accomplish the following:

- Protection of the rights of the accused employee pursuant to Government Code 3300-3310
- Protection of the rights of all parties to and of the complaint or special investigation
- Collect and preserve evidence
- Complete the investigation within 30 days or specified time authorized by competent authority
- Complete the investigation report and submit the written report in an approved format (Appendix II)
- Administer investigative admonishments utilizing the approved standardized admonishment (Appendix II)

INVESTIGATOR'S SUPERVISOR: The immediate ranking person above the investigator who is responsible for the supervision of the investigation. He/she will evaluate the charges, facts, and evidence and will prepare a written memorandum recommending the appropriate finding. The memorandum and the investigation report shall be routed to the Bureau Commander of the subject employee.

PROFESSIONAL STANDARDS UNIT ADMINISTRATIVE LIEUTENANT: Shall be responsible for receiving and reviewing all Citizen Complaint Investigations to determine the appropriate handling as a Citizen Concern versus Citizen Complaint. He/she shall record the complaint or citizen concern and issue a control number. He/she shall, either in person or by mail, provide the complainant with a copy of their original complaint form once the appropriate tracking number has been assigned. He/she shall brief the Bureau Commander of the subject employee about the complaint. The Bureau Commander will assign the investigation to the appropriate investigator with a specified due date in compliance with this order. The Professional Standards Unit Administrative Lieutenant will maintain the administrative investigation file(s) as needed in order to monitor and track the proper and timely completion of the investigations. He/she will provide administrative guidance and direction to the investigator as needed. He/she may recommend a Referred Investigation or Summary Investigation as appropriate and make the recommendation in written memorandum form to the Bureau Commander of the subject employee. For the purposes of Citizen Complaint Investigations and Special Investigations, he/she shall function as Custodian of Records.

BUREAU COMMANDER (OF SUBJECT EMPLOYEE): Shall be responsible for receiving and reviewing completed Citizen Complaint Investigations and Special Investigations affecting his/her subordinate personnel. He/she will evaluate the charges, facts, and evidence and will, when appropriate, prepare a written recommendation for appropriate corrective or disciplinary action. The memorandum and the investigation report shall be routed directly to the Undersheriff.

UNDERSHERIFF: The Undersheriff will thoroughly review the investigation report assuring that the content, format, procedures and corrective or disciplinary disposition recommendations are in compliance with this General Order. If approved, in the case of a "sustained finding," in which counseling, training, oral reprimand or written reprimand is approved as the appropriate sanction, the recommending Bureau Commander will be directed to carry out the imposition of corrective action. In the case of a "sustained finding" in which disciplinary action is other than counseling, training, oral reprimand or written reprimand is approved as the appropriate sanction, a "Notice of Intent to Discipline" will be issued by the Undersheriff. The "Notice of Intent to Discipline" shall include the charges alleged, the factual basis for sustaining the allegations and the specific discipline being recommended to the Sheriff. The "Notice of Intent to Discipline" shall also outline the employee's right to either brief in writing or meet with the Sheriff in order to present and discuss his/her assessment of the events that led to the recommended discipline.

Employees must request a meeting with the Sheriff or deliver their written brief within 10 (ten) business days after the receipt of the "Notice of Intent to Discipline" letter .

If the recommendation of the Bureau Commander is not approved, the Undersheriff will return the recommendation to the Bureau Commander for modification as appropriate.

#### DISPOSITION AND DISTRIBUTION OF CITIZEN COMPLAINT/SPECIAL INVESTIGATIONS AND CITIZEN CONCERNS

CITIZEN CONCERNS: Citizens may make a complaint against Sheriff's Office personnel that is withdrawn by the complainant. It is incumbent upon every employee receiving a citizen concern to exercise their best conflict resolution skills in handling public complaints. Public dissatisfaction with Sheriff's Office service or personnel conduct may not warrant a Citizen Complaint Investigation if the complaint is resolved to the satisfaction of the complainant and there is no evidence of misconduct by the subject employee. A citizen may withdraw their complaint at any time prior to or during a formal citizen complaint investigation. In all cases where an employee receives a Citizen Complaint that is withdrawn and reduced to a Citizen Concern he/she shall do one of the following:

- Receive the completed Citizen Complaint Form as usual and boldly indicate on the face that it is submitted as a CITIZEN CONCERN ONLY," or
- In the case of an identified act of misconduct by the subject employee, initiate a Special Investigation pursuant to this General Order.

CITIZEN COMPLAINTS, CITIZEN CONCERNS, and SPECIAL INVESTIGATION REPORTS: All official reports and documents arising from complaints shall be distributed and retained by the Professional Standards Unit Administrative Lieutenant. The management and control of documents shall be in compliance with Marin County Sheriff's Office General Orders, Policies and Procedures, California Government Code and Penal Code Section 832.5.

Citizen Concerns shall be maintained by the Professional Standards Unit Administrative Lieutenant, for a period of time not to exceed one (1) year. In all cases, the Citizen Concern shall not become a part of an employee's personnel file.

Citizen Complaints resulting in findings will result in the following actions:

- The complainant will receive a letter stating that there was a violation of policy, procedure, or statute and that corrective action was taken, or that there was not a violation of policy, procedure, or statute.
- In the case of a lawsuit or a personnel hearing, only the Sheriff, Undersheriff or Commander, Bureau of Administration and Support Services or the Court may direct copies of the file to the County Counsel or other pertinent party.

Special Investigations resulting in "sustained" findings will result in the following actions:

- The complainant will receive a letter stating that there was a violation of policy, procedure, or statute and that corrective action was taken or that there was not a violation of policy, procedure, or statute.
- In the case of a lawsuit or a personnel hearing, only the Sheriff, Undersheriff or Commander, Bureau of Administration and Support Services or the Court may direct copies of the file to the County Counsel or other pertinent party.

#### RELATED STANDARDS

P.C. 832.5

Government Code Section 3300-3310

Code of Civil Procedure 128.5

Code of Civil Procedure 128.6(b) (2)

Sheriff's Rules Manual, Chapter VI

"The Law Enforcement Code of Ethics"

"Retention Schedule" Board of Supervisors, 7/9/02

#### AFFECTED DIVISIONS

All

#### APPENDIXES

Appendix I

#### REVISIONS

8/8/2005

3/6/2006

8/29/2006

By order of:

ROBERT T. DOYLE  
SHERIFF-CORONER

## APPENDIX I

- A. "Notice of Administrative Investigation"
- B. "Summary Explanation of Peace Officers Rights"
- C. "Miranda / Lybarger Advisement"
- D. "Guidelines for Investigation Report"
- E. "Complaint Investigation" (Report Template)
- F. "Evidence Index"
- G. "Evidence Index Supplement"
- H. "Index of Witnesses"
- I. "Index of Witnesses Supplement"