

WINONA POLICE DEPARTMENT

NUMBER: 109-12 PAGES: 7

EFFECTIVE DATE: October 6, 2008

SUBJECT: COMPLAINT AGAINST AN OFFICER

1.0 PURPOSE:

The purpose of this General Order is to establish departmental procedures for the initiation, investigation and resolution of complaints concerning violations of Department policy or allegations of misconduct against members of the Winona Police Department.

2.0 POLICY:

It shall be the policy of the Winona Police Department to investigate all allegations of misconduct which cannot be resolved upon receipt. Allegations of misconduct may be reported from any source, internal or external.

3.0 INTRODUCTION:

3.1 A relationship of trust and confidence between Department members and the community they serve is essential for effective law enforcement. Those in law enforcement must be free to exercise their best judgment and to initiate enforcement action in a lawful and impartial manner without fear of reprisal. At the same time, they must scrupulously respect individual rights.

3.2 The complaint procedure outlined in this General Order is intended to provide corrective action when a member acts improperly and to protect the member from unwarranted criticism in discharging duties properly.

3.3 Any person who believes that a law enforcement act is improper is encouraged to bring the complaint to the Department's attention.

3.4 The Department will make every effort to ensure that no adverse consequences occur to any person or witness who brings a complaint or provides information in any investigation of a complaint.

3.5 Complaints shall be handled in a prompt, just and expeditious manner in accordance with these procedures. Copies of this General Order shall be made available to the public upon request.

4.0 COMPLAINT INITIATION PROCEDURE:

4.1 Any person who wishes to make a complaint of misconduct against a member of the Department shall go to, or be referred to, an on-duty Supervisor in the

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member's bureau. If no Supervisor is available, the member in contact with the complainant shall take all pertinent information, document the information, have the complainant sign the document, and pass it on to an available Supervisor. If the complaint is against a member in a command position, it may be brought directly to the Deputy Chief or Chief. The complainant shall be dealt with in a prompt manner. Unnecessary delays and referrals shall be avoided. The complaint shall be processed by all members involved as expeditiously as possible.

4.2 Upon receipt of a complaint, the member's Supervisor shall make every effort to promptly resolve the issue. If the complaint is resolved, the Supervisor shall inform the Deputy Chief in writing of the complaint and its resolution. If it is determined that misconduct occurred, and a formal investigation is not warranted, the Supervisor shall inform the Deputy Chief in writing what disciplinary or remedial action was taken, or the procedure set forth in Section 6.0, paragraphs 6.3 through 6.9, may be applied.

4.3 If a formal investigation is warranted, the Supervisor will, as soon as practical, forward to the Deputy Chief a report with full information concerning the complainant, witnesses and details of the complaint. The Deputy Chief will assign a control number and investigating officer to the complaint.

4.4 The Deputy Chief shall inform the accused member that an investigation has been initiated and the name of the investigating officer, unless such notification would impede or adversely affect the investigation.

4.5 The Deputy Chief shall promptly notify the complainant that an investigation has been initiated.

4.6 The Deputy Chief may suspend the investigation when the facts or circumstances make it apparent that it is appropriate.

5.0 COMPLAINT INVESTIGATION PROCEDURE:

5.1 The primary responsibility for the completion of the investigation of the complaint lies with the assigned investigating officer.

5.2 The investigator should thoroughly and impartially investigate the complaint and any other potential misconduct discovered in the course of the investigation. If the investigation uncovers potential non-criminal misconduct or violations of department General Orders, the investigator shall initiate a complaint against that

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member. If a formal recorded statement will be taken and/or a disciplinary hearing will occur, a signed complaint stating the knowledge of potential misconduct will be filed with the Deputy Chief.

5.3 If the complaint is to be handled as a criminal matter, the investigation will be conducted in a manner consistent with normal criminal investigation procedures. A member questioned about committing a crime in a criminal investigation shall not be disciplined or discharged for refusal to answer questions or to give a formal statement and shall be informed of this in writing. (See Appendix A.)

5.4 In non-criminal internal investigation interviews, members are required to answer questions and give statements. Members who refuse to supply information during an internal investigation may be subject to discipline for such refusal.

5.5 When a member is required to give a formal recorded statement that may be used as evidence in a disciplinary proceeding against the member, the following procedure will be followed:

5.5.1 A signed, written complaint must be on file with the Deputy Chief as provided for in Section 4.1 before a formal statement can be taken.

5.5.2 The member will be given a written summary of the allegations before a formal statement is taken.

5.5.3 The member will be given the disciplinary warning before a formal statement is taken. (See Appendix C.)

5.5.4 The member will be given the "Tennessen Warning" before being asked to supply private or confidential information. (See Appendix B.)

5.5.5 Sessions in which a formal statement is taken will be of reasonable duration and will give the member reasonable periods for rest and personal necessities. When practical, sessions will be held during the member's regularly scheduled work shift. If the session is not held during the member's regularly scheduled work shift, the member will be paid at the member's current compensation rate for time spent during the session.

5.5.6 A complete electronic recording will be made of the session in which the formal statement is taken.

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5.5.7 A session in which a formal recorded statement is taken may be tape recorded by the member under investigation.

5.5.8 Upon written request of the member whose formal recorded statement is taken, a complete copy or transcript will be made available to the member without charge or undue delay.

5.5.9 The member whose formal statement is taken has the right to have an attorney and union representative of the member's choosing present during the session. The member may request the presence of an attorney and/or union representative at any time before or during the session. When a request under this sub-paragraph is made, no formal statement will be taken until a reasonable opportunity is provided for the member to obtain the presence of the attorney and/or union representative.

5.5.10 The formal statement will be taken at the Winona Police Department or at a place agreed to by the investigator and the member under investigation.

5.6 No member will be required to produce or disclose the member's personal financial records, except pursuant to a valid search warrant or subpoena.

5.7 There may be no public release of photographs of members without the written permission of the member, except that a photograph of a member may be displayed to a prospective witness as part of the investigation.

5.8 Information concerning the investigation shall not be discussed with anyone except staff assigned to the investigation or persons who have information concerning the case. Members interviewed are directed not to discuss the case with anyone except the assigned investigator, the union representative, or the attorney.

5.9 Upon completion of the investigation, the assigned investigator shall submit to the Deputy Chief a report and supportive material containing the following information organized in the following manner:

5.9.1 Allegations: This section shall consist of an itemized summary of the acts of misconduct alleged in the complaint. Reference shall be made to those rules, procedures, orders or statutes that would be violated if the allegations are taken as true.

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5.9.2 Investigation: This section shall consist of a chronological summary of the investigation and interviews with the complainant, accused member and all available witnesses. Written statements, description and analysis of the physical evidence and all other relevant information shall be included.

5.9.3 Conclusions: This section shall include the investigator's findings, conclusions as to whether any misconduct occurred, and the underlying reasons for the findings and conclusions.

5.9.4 Classification: Based upon the facts and conclusions, each allegation in the complaint shall be classified in one of the following ways:

5.9.4.1 Sustained: The allegation is supported by sufficient evidence.

5.9.4.2 Not Sustained: Insufficient evidence to prove or disprove the allegation.

5.9.4.3 Exonerated: The incident occurred but it was lawful and proper.

5.9.4.4 Unfounded: The allegation is false or not factual.

5.10 The assigned investigator shall complete the investigation and submit the required report and documents to the Deputy Chief as soon as possible within 30 days of the complaint. Extensions may be granted by the Deputy Chief.

6.0 COMPLAINT AND REVIEW DISPOSITION:

6.1 The Deputy Chief and/or Supervisor shall review the investigator's report and supportive materials, determine if the classifications of the allegations in the complaint are appropriate, and alter them if necessary.

6.2 If the allegations in the complaint are found to be Unfounded, Exonerated, or Not Sustained, a notification signed by the Deputy Chief will be sent to the persons involved.

6.3 The Deputy Chief may hold a hearing before a complaint is declared Sustained or before a determination is made on what disciplinary or remedial action to take.

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The Deputy Chief may require the complainant, investigating officer, accused member, witnesses or other persons to appear.

6.4 Before a formal hearing is begun, the member must be given a copy of the signed complaint on file with the Deputy Chief.

6.5 Upon request, the Department shall provide the member with a list of witnesses that the Department expects to testify at the administrative hearing and the substance of the testimony. The member is entitled to copies of any witness statements in the possession of the Department and is entitled to a copy of the Department's investigative report, provided that any references in a witness statement or investigative report that would reveal the identity of confidential informants may not be disclosed, except upon order of the Deputy Chief or other person presiding over the administrative hearing for good cause shown.

6.6 If the complaint is Sustained, the Deputy Chief shall take appropriate disciplinary action.

6.7 After selecting appropriate disciplinary action, the Deputy Chief will issue an Employee Disciplinary Notice which will include a Findings of Fact which shall contain the following information:

6.7.1 A summary of the act(s) constituting misconduct and the specific rules, procedures, orders or statutes violated.

6.7.2 A description of the disciplinary or remedial action taken to prevent recurrence of the conduct.

6.7.3 Any additional information the Deputy Chief finds applicable to accurately document the disposition.

6.8 Prior to the implementation of remedial and/or disciplinary actions, the accused member shall be provided with a copy of the Employee Disciplinary Notice. The Deputy Chief and/or appropriate Supervisor shall review it with the member and explain the reasons for the action. A copy of the Employee Disciplinary Notice shall be put in the member's personnel file.

6.9 The person making the complaint shall be notified of the conclusion of the investigation and the fact that appropriate administrative action was taken.

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7.0 APPEAL PROCEDURE:

Department members may appeal the disciplinary action taken according to the choice of remedies that are applicable to the Department member.