

EXHIBIT 9

INVESTIGATION OF
EMPLOYEE MISCONDUCT

Model Policy

Effective Date July, 2001		Number	
Subject Investigation of Employee Misconduct			
Reference		Special Instructions	
Distribution	Reevaluation Date July, 2002		No. Pages 4

I. PURPOSE

The purpose of this policy is to inform all employees and the public of procedures for accepting, processing and investigating complaints concerning allegations of employee misconduct. This policy defines provisions applicable only to investigation and disposition of allegations of administrative misconduct.

II. POLICY

Establishment of procedures for investigating complaints and allegations of employee misconduct is crucial to demonstrate and protect this agency's integrity. This agency shall accept and investigate fairly and impartially all complaints of employee conduct to determine the validity of allegations and to impose any disciplinary actions that may be justified in a timely and consistent manner.

III. DEFINITIONS

Office of Professional Standards (OPS): The designated employee(s)/unit with primary responsibility for conducting investigations of employee misconduct allegations.

Public Complaint Package: Information packages containing complaint forms, information on the complaint procedures used by this agency and actions the public can expect from this agency in response to their complaint.

Summary Action: Disciplinary action taken by an employee's supervisor or commander for lesser violations of agency rules, policies or procedures as defined by this agency. Summary actions are the lowest level of disciplinary action generally handled by first line supervisors.

IV. PROCEDURES

A. Basis for Discipline

1. Employees are subject to discipline for violations of law or agency policy, rules or regulations.
2. All disciplinary actions taken under this policy are subject to, and shall be consistent with, applicable state law, local ordinances, administrative rulings and collective bargaining agreements.
3. Employees who withhold information from, or fail to cooperate with, internal investigations or who fail to report misconduct of employees are subject to disciplinary action in addition to any other disciplinary action that may result from the investigation.

B. Acceptance/Filing of Complaints

1. Public complaint packages shall be made available to the public through police personnel and at designated public facilities.
2. Complaints may be received by supervisory members of this agency either in person, over the telephone or in writing, and may be lodged anonymously or by any other means.
3. Employees shall provide assistance to those who express the desire to lodge complaints against any employee(s) of this agency. This includes but is not limited to:
 - a. calling a supervisor to the scene to document the complaint,
 - b. explaining the agency's complaint procedures,
 - c. providing referrals to individuals and/or locations where such complaints can be made in person, or
 - d. explaining alternative means for lodging complaints, such as by phone or mail.

C. Summary Action

1. Summary action may be taken by supervisory personnel for lesser violations of rules, policies, or procedures, as defined by this agency, upon approval of such action by the unit commander.

2. All summary actions shall be documented and copies of the charges and disposition provided to the subject employee, retained by and forwarded to subsequent units of assignment, forwarded to OPS and incorporated in the employee's central personnel record.

D. Investigation of Public Complaints—Supervisor's Role/Responsibility

1. Supervisory personnel shall cause a preliminary inquiry to be conducted to determine if grounds exist to conduct an administrative investigation.
 - a. If the inquiry finds that acceptable agency policy and procedures have been followed, the supervisor will explain to the complainant the investigative steps that were taken by the agency together with the findings and conclusions of the investigation. If appropriate, the supervisor may explain agency procedures, a misunderstanding of which may have precipitated the complaint.
 - b. The complainant shall receive a copy of the complaint as lodged with the agency and shall be asked to verify by signature if it is a complete and accurate account. If the complainant elects not to sign, this fact shall be documented and the investigation will proceed.
 - c. The allegation shall be documented and copies forwarded to OPS and the agency chief executive officer (CEO).
2. If the supervisor's preliminary investigation identifies grounds that may support disciplinary action, the supervisor shall cause further investigation of the complaint and shall notify OPS of this action.
 - a. OPS may assume concurrent or sole authority for the investigation at any point in the investigation upon notification of the subject employee's supervisor and/or commander.
 - b. Should an investigation at any time reveal evidence of criminal conduct, all available information shall be forwarded to the agency CEO and to OPS as soon as possible.

E. Investigation of Public Complaints—OPS Role/Responsibility

1. OPS has primary responsibility for review and investigation of all complaints against employees, whether initiated by the public or by a member of the department.
2. OPS may assume primary responsibility for a supervisor's complaint investigation at any stage in the investigative process upon notification of the supervisor involved. OPS may also initiate an investigation of alleged employee misconduct, with or without a formal complaint, with prior

knowledge and approval of the agency CEO or his/her designee.

3. OPS shall have the following additional responsibilities:

- a. Maintain a complaint log;
- b. Maintain a central file for complaints in a secured area and in conformity with records retention requirements of state law;
- c. Conduct a regular audit of complaints to ascertain the need for changes in training or policy;
- d. Maintain statistical and related information to identify trends involving all complaints of excessive force and abuse of authority;
- e. Track complaints against individual employees to assist in employee risk analysis; and
- f. Provide the CEO with an annual summary of complaints against employees and final dispositions that may be made available to the public or otherwise used at the discretion of the CEO.

F. Investigative Interviews and Procedures

1. Prior to being interviewed, the subject employee shall be advised of the nature of the complaint.
2. All interviews will be conducted while the employee is on duty, unless the seriousness of the investigation is such that an immediate interview is required.
3. During interviews conducted by OPS, there will be one employee designated as the primary interviewer.
4. The complete interview shall be recorded. The recording will note the time at which breaks are taken in the interview process, who requested the break and the time at which the interview resumed.
5. The employee shall be provided with the name, rank and command of all persons present during the questioning. The employee shall also be given the following admonitions:
 - a. *You are advised that this is an internal administrative investigation only.*
 - b. *You will be asked and are required to answer all questions specifically related to the performance of your duties and your fitness for office.*
 - c. *If you refuse to answer these questions, you can be subject to discipline that can be as much as discharge or removal from office. You may also be subject to discipline for knowingly giving false statements.*
 - d. *I want to reassure you that any answers given are to be used solely for internal administrative purposes and may not be used in any subsequent criminal prosecution should such occur.*
6. Counsel at Interview
 - a. Employees may have an attorney, union representative, supervisor, or personal representative

with them during any internal investigative interview so long as the individual is not involved in any manner with the incident under investigation.

- b. The employee representative's role is primarily that of observer. He/she should be advised not to intervene in the interview unless requested to do so by the subject employee or unless the interview leads to issues of potential criminal activity.

7. Examinations and Searches

- a. The agency may direct that the employee undergo an intoximeter, blood, urine, psychological, polygraph, medical examination or any other exam not prohibited by law if it is believed that such an examination pertinent to the investigation.
- b. An on-duty supervisor may direct an employee to submit to a breath, blood or urine test when there is a reasonable suspicion that alcohol and/or drug usage is suspected as the factor directly related to allegations of misconduct.
- c. An employee can be required to participate in a lineup if it is used solely for administrative purposes.
- d. Property belonging to the law enforcement agency is subject to inspection for investigative purposes unless the employee has been granted a reasonable expectation of privacy in vehicles, desks, files, storage lockers, computers or similar items or places.

G. Disposition

1. The primary investigative authority for the investigation (i.e., subject employee's supervisor and commander or OPS) shall review the complaint report and investigative findings once deemed complete. This authority will compile a report of findings and provide a disposition recommendation for each charge as follows:
 - a. *Sustained*: Evidence sufficient to prove allegations.
 - b. *Not sustained*: Insufficient evidence to either prove or disprove allegations.
 - c. *Exonerated*: Incident occurred but was lawful.
 - d. *Unfounded*: Allegation is false or not factual or the employee was not involved.
2. A copy of the findings and recommendations shall be submitted for review by OPS prior to submission to the agency CEO if OPS is not the primary investigative authority. OPS may make any additional inquiries or investigative measures deemed necessary to verify, authenticate or clarify findings and recommendations of the investigative report and may include such findings and

disposition recommendations with the report submitted to the CEO.

3. All disciplinary investigation findings and recommendations shall be forwarded to the agency CEO through the chain of command for information, review and comment.
4. The CEO will review the investigative report and supporting documents and may accept the findings and recommendations or remand the case for additional investigation in all or in part.
5. If the complaint is sustained, and the CEO determines that formal charges will be brought, the CEO, or his/her designee, will direct that a charging document be prepared by the subject employee's commander, supervisor or OPS as appropriate, signed and thereafter served upon the subject employee. The charging document will provide:
 - a. nature of the charges,
 - b. a copy of the investigative file, and
 - c. a reasonable time frame in which the employee can respond to the charges either in written or oral form.
6. Employees who desire an opportunity to be heard on these proposed charges may make a request for a hearing to the agency CEO or his/her designee within the time period permitted for this action.
7. Following a hearing or written response of the subject employee to the charges, the chief executive shall determine an appropriate disposition of the charges or may remand the case for further investigation or related actions.
8. The employee may appeal the proposed charges as provided by law, ordinance, collective bargaining agreement, or departmental or governing jurisdiction procedure.
9. The disposition shall be returned from the CEO to the commander who shall direct the employee's supervisor to take such disciplinary action as required.
10. The supervisor shall verify to the commander, OPS and the agency's central personnel authority when authorized disciplinary action has been taken. A written copy of the disposition will be provided to the employee.
11. Where the findings do not support the charges, the commander shall forward the complaint with supporting documentation to OPS for reporting and accounting purposes. A copy will also be provided to the subject employee.
12. Following final disposition of the complaint, a letter shall be sent to the complainant from the CEO or his/her designee explaining the final disposition.
13. Whenever reasonably possible, the investigation of complaints should be completed within 45 days

from receipt of the complaint to its disposition unless a waiver is granted by the CEO or his/her designee or another time frame is required by departmental policy, law or labor agreement.

H. OPS Records and Confidentiality

1. OPS shall be informed of all final disciplinary decisions.
2. OPS shall forward a copy of all final disciplinary decisions to the agency's central personnel authority.
3. OPS case files and information shall be maintained separately from personnel records.
4. OPS information is considered confidential and will be retained under secure conditions within OPS.
 - a. OPS case files and personnel dispositions may not be released to any source without prior approval of the agency CEO unless otherwise provided by law.
 - b. Case investigation files shall be retained for a period of time as defined by state law or the agency CEO.

I. Prevention of Employee Misconduct

1. Every employee of this agency has a personal responsibility for, and will be held strictly accountable for, adherence to the agency standards of conduct, rules, policies and procedures.
2. This agency has the responsibility for, and will provide to each employee, sufficient and proper training, supervision and policy guidance to ensure that all employees are apprised of the demands and requirements of this agency with regard to employee conduct, duties and responsibilities.
3. This agency shall take all reasonable measures to ensure that employees are assigned only to duties and responsibilities in which they have all the requisite knowledge, skills, abilities and training.
4. The primary responsibility for maintaining and reinforcing employee conformance with the standards of conduct of this department shall be with employees and first line supervisors.
5. Supervisors shall familiarize themselves with the employees in their unit and closely observe their general conduct and appearance on a daily basis.
6. Supervisors should remain alert to indications of behavioral problems or changes that may affect an employee's normal job performance and document such information where deemed relevant.
7. Where a supervisor perceives that an employee may be having or causing problems, the supervisor should assess the situation and determine the most appropriate action. Supervisors should refer to and use this agency's *Employee Mental Health Policy* for guidance in cases involving emergency removal

of employees from the line of duty and for issues dealing with employee mental health assistance.

8. A supervisor may recommend additional training to refresh and reinforce an employee's skills, abilities or understanding of agency policy, rules and regulations.
9. Counseling may be used by the supervisor to determine the extent of any personal or job problems that may be affecting performance, and to offer assistance and guidance.
10. The supervisor shall document all instances of counseling or additional training used to modify and employee's behavior.

This project was supported by Grant No. 2000-DD-VX-0020 awarded by the Bureau of Justice, Office of Justice Programs, U.S. Department of Justice. The Assistant Attorney General, Office of Justice Programs, coordinates the activities of the following program offices and bureaus: the Bureau of Justice Assistance, the Bureau of Justice Statistics, National Institute of Justice, Office of Juvenile Justice and Delinquency Prevention, and the Office of Victims of Crime. Points to view or opinions in this document are those of the author and do not represent the official position or policies of the U.S. Department of Justice or the International Association of Chiefs of Police.

Every Effort has been made by the IACP National Law Enforcement Policy Center staff and advisory board to ensure that this model policy incorporates the most current information and contemporary professional judgment on this issue. However, law enforcement administrators should be cautioned that no "model" policy can meet all the needs of any given law enforcement agency. Each law enforcement agency operates in a unique environment of federal court rulings, state laws, local ordinances, regulations, judicial and administrative decisions and collective bargaining agreements that must be considered. In addition, the formulation of specific agency policies must take into account local political and community perspectives and customs, prerogatives and demands; often divergent law enforcement strategies and philosophies; and the impact of varied agency resource capabilities, among other factors.