

INTERNAL AFFAIRS INVESTIGATION GUIDELINES

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Article I. Internal Affairs Investigation Guidelines

Section 1.01 Introduction

For the protection of the District and its employees, the Legal Officer and/or the Fire Chief or the Fire Chief's designees, gather facts about allegations of employee misconduct received from the public or from other employees.

Employees must report incidents of employee misconduct that they observe or that are brought to their attention by others. Employees are to cooperate fully with investigators during internal affairs investigations. Failure to cooperate shall be grounds for disciplinary action including termination.

Supervisors are responsible for handling infractions of policies, procedures, rules, or regulations in their area of responsibility. Included in this responsibility is ensuring that complaints of criminal misconduct are submitted to the Board of Directors.

Complaints of administrative misconduct are handled by the immediate supervisor.

Section 1.02 Types of Employee Misconduct Defined

The two types of employee misconduct that may be investigated are criminal and administrative. The supervisor should contact the Fire Chief who may contact the Legal Officer for assistance in determining whether misconduct is criminal, administrative, or both.

Criminal misconduct may result in disciplinary action by the District in addition to criminal charges against the employee. Administrative misconduct may result in the District taking disciplinary action against the employee.

(a) Criminal Misconduct

The Legal Officer is the District liaison with federal, state, county, or local law enforcement agencies. If the investigation shows evidence of criminal misconduct, the District gives that evidence to the appropriate law enforcement officials. The District may take disciplinary action in addition to the law enforcement action. Failure to report criminal misconduct may result in criminal charges against the employee having knowledge of the criminal misconduct.

(i) Examples

The following are examples of criminal misconduct:

- fraud;
- theft of services;
- theft, misuse, or abuse of District property, supplies, and equipment;
- use of District property, supplies, and automated or non-automated equipment for other than District business;
- possession or use of illegal drugs or narcotics while on duty;
- bribery;
- acceptance of a bribe;
- physical or sexual abuse or assault (or attempted abuse or assault) of a client, an employee, or any other person; and
- any criminal activity committed except misdemeanor traffic violations.

(b) Administrative Misconduct

The Fire Chief with the assistance of his subordinates and the Legal Officer conducts investigations of administrative misconduct on his own initiative or if the Board of Directors requests an investigation.

(i) Examples

The following are examples of administrative misconduct:

- neglect of duty;
- insubordination or failure to follow valid, lawful orders;
- abuse of sick leave;
- abuse of District equipment;
- significant infractions of work hours;
- violation of personnel policies involving illegal drugs and alcoholic beverages; and
- verbal mistreatment of co-workers or non-employees.

Section 1.03 Authority To Investigate

The District has the authority to investigate allegations of misconduct by employees. Only the Board of Directors may authorize the Legal Officer to investigate alleged employee misconduct.

Section 1.04 Procedures for Submitting a Complaint

The complainant submits the complaint in writing. The complaint is signed and sent through supervisory channels to the Fire Chief or the Board of Directors.

If the complainant believes the complaint of criminal misconduct cannot be handled properly through supervisory channels, the complainant may send the complaint directly to the Board of Directors. The Board of Directors evaluates the complaint to determine if it should be forwarded to the Legal Officer or investigated by the Fire Chief.

For complaints received from outside the District, the employee receiving the complaint takes the information concerning the allegations and sends the information in writing through supervisory channels to the Fire Chief who in turn advises the Board of Directors. The employee does not comment about the merits of the complaint but assures the complainant that the information is given to the appropriate authorities.

Anonymous complaints are discouraged but should be submitted to the Fire Chief and the Board for evaluation as to whether or not an investigation is warranted.

Section 1.05 Internal Affairs Investigation Guidelines

Complaints of political or personal nature are only considered if criminal misconduct is alleged.

Procedures concerning sexual harassment complaints are outlined in the Personnel Policies Handbook.

Section 1.06 Responsibilities of the Legal Officer

The Legal Officer directs investigations of employee misconduct and is the final review authority of complaints about the direction of the investigations, unless the Board of Directors directs otherwise. The Legal Officer also ensures that the

- facts about the allegations of misconduct are gathered and reported.
- constitutional rights of the employee are protected by the investigator who conducts the investigation.
- employee is not intimidated or harassed during the investigation.
- employee is told of the allegations when it does not jeopardize the investigation.
- employee is not granted special treatment or privileges during an investigation, especially on the basis of status or rank in the District.
- investigator is courteous and professional in conducting the investigation.
- Board of Directors is kept informed of all serious or critical investigations.

Section 1.07 Employee Rights

In addition to constitutional rights, an investigated employee has the right to

- know the purpose of the investigation.
- have his representative present during interviews about alleged non-criminal misconduct.
- have an attorney present when being interviewed about alleged criminal misconduct.
- request or refuse a polygraph or any other test without prejudicing the investigation.

- file appeal for administrative misconduct to the Board of Directors, if an adverse action is recommended or taken.
- request involvement of the Legal Officer whenever the employee considers an accusation false and detrimental to his position with the District.
- know the results of the investigation.

Section 1.08 Employee obligations

(a) Obligations

District employees are required to fully cooperate in any and all investigations in which either the employee or someone else is the subject of said investigation. The employee must furnish all information or evidence in the employee's possession and to testify orally or in writing, as may be requested, fully, completely, freely and honestly concerning the employee's knowledge of any matter under investigation. Any refusal on the employee's part to testify, give a statement, answer questions, be evasive or uncooperative, or any concealment of a material fact, or any inaccurate testimony or statements knowingly and willingly given, may be grounds for disciplinary action against the employee personally, including termination from employment with the District. The employee must respond personally, in writing or orally as may be elected by the investigator, and not through any representative, legal or otherwise.

(b) Right not to testify

The employee is not required, under the Fifth Amendment to the U.S. Constitution to give testimony against the employee's self interest in any matter in which there is an indication the employee was involved personally in a violation of the criminal law and there is possibility the employee's testimony would be self-incriminating. However, refusal to testify or to give a statement may serve as grounds for termination of employment. Thus, as a District employee making statements to a District investigator under these guidelines, any statements made by the employee to the District's representatives during an investigation cannot be used to incriminate the employee in a later criminal proceeding if the employee chooses to cooperate in the investigation and make statements that may be incriminating. Thus, invocation of the employee's right not to testify may be deemed a refusal to cooperate or in the alternative, the employee's invocation of the employee's right not to testify may allow the District to take disciplinary action against the employee without the benefit of the employee's statement.

(c) Personal right only

The employee's right to refuse to answer a question on the grounds that the employee's response might tend to incriminate the employee is a personal right. The employee does not have the right to refuse to answer a question on the grounds that the employee's response might incriminate a person other than the employee.

(d) Right to counsel or representation

If at any time during a personal interview and questioning the employee feels that the employee's Constitutional or other legal rights as an employee are being violated, the employee may request that questioning be suspended to afford the employee an opportunity to seek advice. However, in the event that the employee has had at least seventy-two hours prior notice of the interview, the employee's counsel must be readily available and not cause an unreasonable delay in the interview. If the employee is a bargaining unit employee, the employee may consult with a union representative. If the employee is not a member of a bargaining unit, the employee may consult with any other representative of the employee's choice. However, in no instance may the employee be represented by anyone who is a subject of or a witness to the investigation.

Representatives may be present during the employee's interview for purposes of the employee's consultation; however, the employee will be required to respond to the interrogation personally and not through the employee's representative. No procedural or evidentiary objections may be raised to any investigatory matter other than as may be specifically provided by state statute or constitutional law. Any legal representative attempting to engage in adversarial objections during the investigatory interview shall be excluded from the interview room; however, if the employee deems a question to violate the employee's constitutional or legal rights, the employee will be allowed to leave the interview room to seek advice of the employee's counsel before answering the question. Furthermore, the employee may elect to terminate the interview at any time and shall be free to leave the interview room at will; however, if the employee does so prior to completion of the investigatory interview or questions, the employee may be subject to disciplinary action for failure to cooperate in the investigation.

(e) Reports of investigation

The individual under inquiry or investigation shall be entitled to examine or obtain copies of any and all summary reports of the results of the investigation.

(f) Copies of employees statements

The employee will be given the opportunity to read and sign the employee's statement, testimony or affidavit if and when it is transcribed and to make additions or corrections thereto before signing. The employee will also be given a copy of the employee's statement or affidavit.

Section 1.09 Prosecutorial Immunity

In the case of criminal misconduct, the Board of Directors may not grant immunity from prosecution. Only the prosecutor or the court may grant immunity from prosecution after evidence of a criminal act is established.

Section 1.10 Reports

At the conclusion of an internal investigation of alleged misconduct, the investigator or Legal Officer makes a summary report of the investigation. The Legal Officer gives a complete report if it is requested.

Upon completion of an investigation of sexual harassment, the Board of Directors shall be provided with a copy of the completed investigative report.

The Board of Directors receives the summary or complete report and decides the administrative action to be taken.

The prosecuting attorney is the only authority for releasing information concerning a criminal investigation.

Section 1.11 District Records, Files, and Reports

The Legal Officer has full access to any District records or files related to a particular investigation of misconduct. Supervisors and administrators should promptly honor requests for access to files and records when investigators give appropriate identification.

Internal investigations are confidential. Employees who are subjects of an investigation may request information about administrative investigations; however, they only have such rights as are outlined in this Article.

These requests are subject to the Sunshine Law.

The prosecuting attorney is the only authority for releasing information concerning a criminal investigation.