

DEPARTMENT MANUAL

SOUTH LAKE MINNETONKA POLICE DEPARTMENT GENERAL ORDER	ISSUE DATE	EFFECTIVE DATE	NUMBER
	12/22/2012	12/22/2014	1004
ALLEGATIONS OF MISCONDUCT	DISTRIBUTION	RESCINDS	
	ALL PERSONNEL	103 – Dated 05/01/1984	

PURPOSE

The purpose of this policy is to ensure the integrity of the South Lake Minnetonka Police Department by establishing procedures for prompt and just disposition of all complaints and disciplinary actions made against the South Lake Minnetonka Police Department and its personnel.

POLICY

It is the policy of the South Lake Minnetonka Police Department to receive and investigate complaints against the South Lake Minnetonka Police Department or its personnel in a manner that will assure the community of prompt corrective action when police department personnel conduct themselves improperly while simultaneously working to protect police department personnel from unwarranted criticism pursuant to the discharge of official duties. This policy will conform to Minnesota State Statutes 626.89, Peace Officer Discipline Procedures Act.

- (1) A relationship of trust and confidence between department members and the community they serve is essential for effective law enforcement. Law enforcement officers must be free to exercise their best judgement as they initiate enforcement action in a lawful and impartial manner without fear of reprisal. While at the same time, they must respect individual rights.
- (2) This complaint procedure is intended to provide corrective action when a department member conducts himself or herself improperly. This procedure will protect the department member from unwarranted criticism when discharging his or her duties in the proper manner.
- (3) Any person who believes that a South Lake Minnetonka Police Department officer acted improperly is encouraged to bring the complaint to the department's attention.
- (4) The South Lake Minnetonka Police 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.

- (5) Complaints shall be handled in a prompt, just, open, and expeditious manner in accordance with these procedures. Summaries of the complaint process and copies of these procedures shall be made available to the public upon request.

DEFINITION OF TERMS

Complainant:

The person or group of persons filing a complaint with the South Lake Minnetonka Police Department alleging misconduct by a member of members or the department. An officer who accepts believable facts relating to alleged misconduct by a member from an anonymous person.

Exonerated:

A fair preponderance of the evidence establishing that

1. The act or acts complained of did not occur;
2. The member(s) named in the complaint were not involved in the alleged misconduct;
3. The act or acts which provided the basis for the complaint occurred; however, the investigation revealed that such act or acts were justified, lawful or proper;
or
4. Such act or acts do not adversely reflect upon the South Lake Minnetonka Police Department or the member's ability to perform his or her duties within the department.

Major Violations:

1. Any criminal offense;
2. The use of unnecessary or excessive force;
3. Abuse of authority;
4. Conduct which violates a person's civil rights;
5. Abusive language or conduct which is derogatory or person's race, religion, sex, national origin or sexual preference;
6. Intimidation of or recrimination towards a complainant or witness involved in any complaint proceeding;
7. Sexual harassment as defined under Minnesota law;
8. A violation of any agency policy and procedure governing conduct of agency members.

Member:

A peace officer and civilian department employees whether full-time, part-time or temporary.

Misconduct:

Any conduct or major violation committed by a member which adversely reflects upon the department or the member's ability to perform his or her duties within the department.

Not Sustained:

Failure of the investigation to disclose sufficient evidence to prove or disprove the allegations made in the complaint.

Policies and Procedures:

The administration acts promulgated by the Chief of Police regulating conduct of members.

Sustained:

A preponderance of the evidence obtained in the investigation established that the accused member's actions constituted misconduct.

Unfounded:

Conduct or action that is baseless, deceptive, fabricated, false, groundless, illogical, misleading, spurious, uncalled-for, unjustified, unproved, unreal, untrue, unwarranted, without basis.

PROCEDURE FOR INITIATING A COMPLAINT

1. Anyone who has personal knowledge of the facts giving rise to the complaint or has reliable hearsay information may file a complaint.
2. Any South Lake Minnetonka Police Department member who has personal knowledge of misconduct shall file a complaint according to these procedures.
3. The Chief of Police, Deputy Chief of Police or Sergeants shall be available at all times for taking complaints. If an administrative or supervisory officer is not on duty the senior officer shall take any complaints.
4. If the person filing the complaint sets forth specific facts relating to the alleged misconduct and the person wishes to remain anonymous, the officer receiving the information may then become the complainant. If the Chief of Police has reason to believe that the complaint is unfounded, the chief shall have the authority to require the person to identify him or herself. If the person refuses to do so, the chief may refuse to initiate a complaint and advise the anonymous person of that fact.
5. After a complaint is filed, the receiving member shall sign the document, give or mail a copy to the complainant and furnish a copy to the Chief of Police. The Chief of Police will forward a copy of the document to the accused member only after it is determined that the complaint does not allege a criminal violation and the notification will not impede a criminal investigation.
6. A complainant may be accompanied by an attorney or other appropriate representative at the time a complaint is filed or any other stage of the process.

7. Any complaint made against the Chief of Police shall be initially made to the South Lake Minnetonka Police Department Coordinating Committee Chair or designee. Upon receiving a complaint, the receiving authority will advise the complainant about procedures responding to officer complaints.
8. The complainant may fill in a Citizen Complaint Form. (Attached)
9. The South Lake Minnetonka Police Department Coordinating Committee Chair or designee shall determine appropriate protocol in handling complaints against the Chief of Police and comply with Minnesota Statutes, Section 626.89 when it applies.

PROCEDURE FOR INVESTIGATION OF THE COMPLAINT

1. Upon receipt of the Initial Complaint Report, the Chief of Police may make an initial determination whether or not the facts alleged warrant a formal investigation. In making this determination, the chief may meet with the complainant, accused member or any potential witness. If the chief decides that an investigation is not warranted, the disposition of the complaint shall be either not sustained or exonerated. The complainant will be notified of this decision and the basis for determination. The accused member will also be notified. If the complainant supplies additional information within thirty (30) days of the determination, the chief may reverse this decision.
2. If the Chief of Police determines that a formal investigation should be conducted, he or she shall assign the appropriate person(s) to investigate the complaint. The investigation may be assigned to an external agency where there is potential for criminal charges or conflict of interests resulting from the investigation of in any other situation where the Chief of Police believes that an external investigation is appropriate.
3. The person investigating the complaint shall, as soon as possible, inform the complainant of his or her name, office phone number and status of the complaint.
4. The person investigating the complaint shall thoroughly investigate all allegations contained in the complaint and any other potential misconduct discovered in the course of the investigation. If the investigation uncovers potential misconduct by another member, the investigator shall initiate a complaint against that member.
5. All members, including the accused member, shall cooperate with the investigation. Failure to do so may be the basis for disciplinary action.
6. The investigator shall do a report which shall contain all relevant information, organized into the following three categories:
 - **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 statutes or constitutional provisions that would be violated if the allegations are taken as true.

- **Investigation:** This section shall consist of a chronological summary of the investigation, including all pertinent facts obtained through interview with the complainant, accused member and all available witnesses. Written, oral and electronically recorded statements, descriptions and analysis of any physical evidence and all other relevant information shall be included.
- **Conclusions:** This section shall include the investigator's findings, conclusions concerning whether or not any misconduct occurred and the underlying reasons for the findings and conclusions. These conclusions shall not be binding on the Chief of Police of the investigation if conducted by someone other than the chief.

FORMAL STATEMENTS

1. If a formal statement is taken from a member, the formal statement must be taken at the South Lake Minnetonka Police Department, at the facility of the investigating agency or at a place agreed to by the investigating individual and the investigated officer.
2. The officer's formal statement may not be taken unless there is filed with the South Lake Minnetonka Police Department of the investigating agency a written complaint signed by the complainant stating the complainant's knowledge and the officer has been given a summary of the allegations. Complaints stating the signer's knowledge also may be filed by member of the South Lake Minnetonka Police Department.
3. Sessions at which formal statements are taken must be of reasonable duration and must give the officer reasonable periods for rest and personal necessities. When practicable, sessions must be held during the officer's regularly scheduled work shift. If the session is not held during the officer's regularly scheduled work shift, the officer must be paid by the South Lake Minnetonka Police Department at the current officer's compensation rate for time spent attending the session.
4. A complete record of the session at which a formal statement is taken must be made by electronic recording. Upon written request of the officer whose statement is taken, a complete copy or transcript must be made available to the officer without charge of undue delay. The session may be tape recorded by the investigation officer and by the officer under investigation.
5. An officer whose formal statement is being taken has the right to have an attorney or union representative of the officer's choosing present during the session. When a request under this subdivision is made, no formal statement will be taken until a

reasonable opportunity is provided for the officer to obtain the presence of the attorney or union representative.

6. Before an officer's formal statement is taken, the officer shall be advised in writing or on the record that admissions made in the course of the formal statement may be used as evidence of misconduct or as a basis for the discipline.

INVESTIGATION REVIEW AND DISPOSITION

1. Upon completion of the investigation, the Chief of Police or his designate shall submit his or her report, the case file and all investigative notes to the Chief of Police. If the Chief of Police determines the investigation was not adequate, he or she will reorder the investigation. If the Chief of Police determines the investigation was adequate, the chief shall make one of the following dispositions: Exonerated, Not Sustained, Sustained or Unfounded.
2. The Chief of Police may withhold issuing a disposition until any related criminal charges are resolved. The complainant shall be informed of this decision and the accused shall also be informed, if he or she was informed pursuant to this policy.
3. If the complaint is either exonerated or not sustained, the Chief of Police shall immediately notify the complainant and the accused member of the disposition.
4. If the complaint is sustained, the Chief of Police shall determine appropriate disciplinary action. The disciplinary action may include an oral reprimand, a written reprimand, suspension with or without pay, and/or demotion or termination.
5. After selecting the appropriate disciplinary action, the Chief of Police will issue a finding of fact which shall minimally contain the following information:
 - A summary of the act or acts constituting misconduct and the specific statutes, policies, regulations and procedures violated;
 - A description of the disciplinary or remedial action taken to prevent recurrence of the misconduct; and
 - Any additional information as the Chief of Police may find applicable to accurately document the disposition.
6. Prior to the implementation of remedial and/or disciplinary actions, the accused member shall be provided with a copy of the finding of fact. The Chief of Police or his/her designate shall review it with the accused member and explain the reasons for the action.
7. The complainant, if he or she requests it, shall also be given a copy of the finding of fact.

8. Notwithstanding the foregoing, the investigation may be reopened by the Chief of Police at any time if substantial new evidence is discovered which is relevant to the complaint.
9. When a disposition is final, the accused member may appeal the disposition according to the member's collective bargaining agreement or if applicable, through the Veteran's Preference Act.
10. The Chief of Police may suspend an accused member with pay at any time during the investigation of a complaint.
11. This procedure shall not preclude other disciplinary procedures for misconduct not initiated by citizen complaint.

MAINTENANCE AND DISCLOSURE OF DATA

Disclosure to the complainant, accused member or the public of data collected, created, received or maintained in connection with this policy and procedures shall be governed by the Minnesota Government Data Privacy/Practices Act.

All data collected, created or received by the South Lake Minnetonka Police Department in connection with this policy and procedures shall be maintained in accordance with South Lake Minnetonka Police Department Retention Schedule.

The placement of the disposition report or other data in an employee's personnel file shall be governed by applicable collective bargaining agreements and/or personnel policy.

EMERGENCY SITUATIONS

The Chief of Police has the authority to impose emergency suspension until the next business day upon a member of the South Lake Minnetonka Police Department when it appears that such action is in the best interest of the department. Any person suspended shall be instructed to report to the chief's office the next business day unless circumstances require special action. Discretion will be exercised in the application of this authority. Care must be taken to ensure that critical assignments are not left uncovered as a result of this action. The Chief of Police also has the prerogative of correcting, admonishing or reprimanding an employee whenever suspension is not warranted due to the circumstances of the incident.

ORAL REPRIMAND

An oral reprimand is a verbal order to a member to correct a violation of a rule, regulation or procedure which is then placed in writing in the member's personnel file.

WRITTEN REPRIMAND

The written reprimand is the sustained findings of a complaint or actions of an officer where more than oral reprimand but less than a suspension is determined to be the necessary action. A written reprimand is submitted in duplicate. One copy is directed to the officer, and the second copy is placed in the officer's personnel file.

APPLICATION OF ORAL REPRIMAND AND WRITTEN REPRIMAND

This procedure provides for immediate disciplinary action against officer(s) who fail to conform to department standards of conduct and appearance. Incidents to be covered by this provision include but are not limited to the following:

1. Failure to comply with both oral and written Rules and Regulations.
2. Failure to report back-in-service immediately upon completion of an assignment.
3. Failure to properly care for or use department equipment.
4. Failure to observe break times.
5. Failure to provide prompt courteous service.
6. Failure to perform assigned tasks.
7. Failure, **while on duty**, to give full attention to the prevention of crime, by:
 - Lounging on post.
 - Excessive visiting with other officers other than for the exchange of information related to their assignments.
 - Parking in locations and in such manner as to serve no useful purpose in preventing crime.
 - Talking in public or privately degrading other officers or making derogatory comments about the South Lake Minnetonka Police Department.
 - Misuse of department equipment or supplies.

When a greater penalty is justified, either because of the circumstances or because of the offender's past record, the procedures outlined in this policy for complaint investigations will be followed.

Action under this section will not eliminate recommendation for a more severe penalty when such punishment is being used to cover conduct warranting a more severe penalty or dismissal.

EMPLOYEES MAY BE RELIEVED OF DUTY

1. An officer charged or indicted for a criminal offense may be relieved of duty pending the outcome of the criminal proceedings.
2. An officer found to be lacking the physical or psychological fitness for duty may be relieved of duty until such time as the employee is fit to resume his or her duties.
3. If due to the sensitive nature of the allegation or incident being investigated, it is in the best interest of the employee and/or the department, the employee may be relieved of duty.
4. If an employee is relieved of duty under this section, the employee will be relieved of duty based on personnel rules and the collective bargaining agreement.

SEE ATTACHED FORMS

