

# Boulder Police Department

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## Rules

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### **1. Compliance with Values, Rules, and General Orders**

Except as otherwise approved by the Chief of Police, members of the department perform their duties in accordance with city and department rules, policies, and procedures, and conduct themselves within the framework of the department's values.

### **2. Conformance with Laws**

Members obey the laws of the United States of America and of any state or local jurisdiction. Employees have a duty to report any custodial arrest, criminal summons or receipt of a restraining/protection order they are served to an on-duty supervisor. A conviction for violation of law is prima facie evidence of a violation of this rule.

### **3. Truthfulness**

Members are truthful in matters associated with or related to department business or responsibilities, except as recognized for legitimate investigative purposes.

### **4. Respect for Others**

Members treat others with fairness and respect.

### **5. Police Authority and Public Trust**

Members are entrusted to effectively, helpfully, and non-abusively use the authority and public trust vested in them. Members do not take any police action which they know, or reasonably should know, is not in accordance with the law, and always use their position and credentials appropriately. Members appropriately utilize city equipment, resources, and public monies.

### **6. Use of Force**

Members only use a level of force that is lawful and reasonable under given circumstances.

### **7. Adherence to Orders**

Members obey lawful orders and directives.

### **8. Conduct**

Members use reasonable judgment and refrain from conduct which reflects unfavorably on the department. This type of conduct includes that which:

- a) causes embarrassment to the department or its members, or compromises the department's reputation;
- b) reflects discredit upon the individual as a member of the department; or
- c) tends to impair the operation, effectiveness, credibility, or efficiency of the department or its members.

### **9. Cooperation in Investigations**

Members assist and cooperate with any department-authorized investigation.

### **10. Security of Police Information**

Members treat the official business of the department as confidential. Members do not:

- a) access, disseminate, or remove any official report or record for other than authorized purposes;
- b) communicate any information which may jeopardize an investigation, arrest, police action, or prosecution, or which may aid a person to escape, destroy, or remove evidence; or
- c) communicate any information which may endanger the safety or well being of others or jeopardize the operation of the department.

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**Boulder Police Department**  
**General Order 120**

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**Professional Standards Investigations**

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Effective: April 12, 2019  
Replaces: General Order 120, January 9, 2017  
Reviewed: April 9, 2019

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**POLICY**

The intent of this policy is to maintain the integrity of the department by conducting thorough and impartial investigations of complaints of member misconduct, to protect the community from member misconduct and to protect members from false or malicious allegations. The Professional Standards Unit is responsible for coordinating and recording complaints and investigations of employee misconduct.

**PROCEDURES**

**120-1 Definitions**

Investigations of employee misconduct and complaints from community members are classified and defined as follows.

- A. Class 1 Professional Standards Investigation: the allegation is serious in nature and/or serious discipline may result if the allegation is sustained. It may also include allegations of great concern to the community. Normally the Professional Standards Unit conducts the investigation.
- B. Class 2 Professional Standards Investigation: the allegation is non-serious in nature and any resulting discipline may not exceed a permanent letter of reprimand. Normally the investigation is conducted by the affected member's immediate supervisor (see General Order 121, Supervisory Reviews).
- C. Referral: the allegation is not based on a member's intentional misconduct, but rather a complaint of a minor performance or protocol issue. A formal investigation is not conducted; however, the affected member's

immediate supervisor is notified and makes the appropriate disposition decision.

- D. Inquiry: questions as to the propriety of policy and procedures or issues with regulations or actions of other agencies that are resolved by appropriate referral and not subject to a Professional Standards investigation, supervisory review or referral.

### 120-2 Member Responsibilities

Members are responsible for ensuring that complaints are processed in accordance with the value-based management system.

### 120-3 Member Rights

- A. Without express authorization from the Chief of Police, members, except for subject members, may not share or discuss any information relevant to a Professional Standards investigation with any person except the Professional Standards investigator, legal counsel or other designated representative. Members involved in a Professional Standards investigation may not contact the complainant(s) or any witness(es) regarding the allegation(s) except through the subject member's legal counsel or designated union representative.
- B. Members who are either subjects or witnesses in a Professional Standards investigation may seek legal and/or other representation. Such members may have their representative present at all interviews. However, the attorney or other representative is not allowed to turn the interview into an adversarial proceeding.
- C. Each member has the option to stipulate to the facts of a complaint and may request a waiver of a complete Class 1 Professional Standards investigation after being advised of the complaint and that some form of serious discipline may result if the allegation is sustained. However, the Chief of Police

makes the final determination of whether an investigation continues.

1. When all parties agree, the investigator and the subject member sign the Professional Standards investigative report.
2. The investigation then proceeds, with the possible below exception, through the normal Class 1 Professional Standards investigation review process.
3. When an investigation waiver has been granted, the Chief of Police may choose to forego the Professional Standards Review Panel process.

- D. Any member who becomes the subject of a Professional Standards investigation is entitled to the following administrative due process.
1. The member is entitled to a presumption of innocence and a fair, impartial investigation.
  2. The member is informed in writing of the complaint or charge which initiated the Professional Standards investigation.
  3. The member is given an opportunity to reply to all allegations.
  4. The administration considers a member's reply.
  5. When serious disciplinary actions are recommended or likely, the member is given the opportunity for an administrative hearing before the Chief of Police or designee. The member may be represented and may discuss evidence and provide any mitigating information.

6. The member is entitled to notification of a decision within a reasonable amount of time.
  7. The member has the right to appeal a decision.
- E. The subject member can review all evidence obtained during a Professional Standards investigation (excluding confidential informant identity) upon reasonable notice and as such information becomes available.
1. This review may be made with counsel or other representatives present.
  2. The review must be made by appointment with the Professional Standards investigator and must be completed within seven business days after receipt of the notice.
  3. The subject member may request additional investigative work and has the right to attach any comment or assessment he/she believes should be included in the case file prior to disposition review. Polygraph or other lie detection examination results will only be added to the case file if they were completed in compliance with 120-3 (I) (2). An exact copy of all reports and/or graphs from a polygraph or other lie detection examination must be submitted, partial or incomplete results will not be accepted.
- F. Members being interviewed are treated with fairness and respect.
1. When investigative interviews are conducted, questions are specifically directed and narrowly related to the performance of a member's official duties, fitness for duty or alleged violations of rules and general orders.
2. Members honestly, completely and to the best of their knowledge and ability, answer all questions that relate to the conduct under investigation.
  3. The subject member is entitled to copies of all recorded statements prior to subsequent interviews.
- G. Members who are the subject of, or a witness in, a Professional Standards investigation are required to answer all questions related to the conduct under investigation. Should a member refuse to obey a lawful order to answer, the member may be subject to disciplinary action for insubordinate conduct.
1. Involuntary statements given in response to a direct order during an investigation into alleged procedural misconduct are prefaced with language that the statement is not voluntary.
  2. The order given to obtain such involuntary statements says:
    - a. That the statements may be the basis for subsequent discipline, up to and including termination; and
    - b. That neither the member's statement nor any information directly gained from his/her statements will be used against the member in any subsequent criminal proceedings.
- H. The Professional Standards interview may be halted and appropriate authorities advised if, during the interview, misconduct is discovered which creates a fair probability that criminal charges will be filed.
- I. A member may not be compelled to take a polygraph or other lie detection examination.

1. A member's refusal to submit to such examination may not be grounds for disciplinary action.
2. Should a member request or agree to the department's request for such an examination, the location and firm conducting the examination is mutually agreed upon. Determination of truth verification questions is at the sole discretion of the department.
3. In the event the complainant(s) has taken such examination, the subject member(s) will use a different firm.
4. Upon request, the member is provided an exact copy of all reports or graphs compiled.

#### **120-4 Classifications and Basis for Professional Standards Investigations**

Any time the department determines that it is necessary to investigate events or circumstances that may lead to disciplinary action, a Professional Standards investigation is initiated. Member misconduct may be either minor or serious depending on the specific alleged act(s) and the likelihood of a consequence of non-serious or serious discipline.

A. Serious misconduct includes allegations which charge criminal misconduct, serious deviations from rules or general orders, or repeated less serious deviations and which involve the likely consequence of serious discipline if sustained.

1. Some examples of serious misconduct are:
  - a. Any violation of law which would impair a member's ability to fulfill his/her duties or would jeopardize

public safety. Such criminal misconduct includes, but is not limited to:

- (1) Felony: The commission of any felony is considered criminal misconduct.
  - (2) Controlled Substance Violation: Any violation of laws governing controlled substances or any use of controlled substances without medical supervision is considered misconduct.
  - (3) Negative Impact Offense: The commission of a crime with negative consequence to persons or property or the commission of which reflects unfavorably on the department because of the individual's status as a member, is considered criminal misconduct.
- b. Intoxication while on duty.
  - c. Acceptance of a bribe or gratuity.
  - d. Misuse of police powers.
  - e. Unauthorized release of confidential information.
  - f. Use of excessive force.
2. Serious misconduct complaints are handled as Class 1 investigations by the Professional Standards Unit.
  3. If it is deemed to be in the best interest of the community, department or employee the Chief of Police may place the employee on administrative leave or reassign the employee during the investi-

gation. No employee is placed on administrative leave without pay, without due process.

B. Minor misconduct includes allegations which are determined to be appropriate for review, but which appear to involve the likely consequence of non-serious discipline if sustained.

1. Examples include, but are not limited to, discourtesy or other lesser violations of rules or general orders.
2. Minor misconduct may be investigated by the Professional Standards Unit or referred to the member's supervisor for investigation as a Class 2 Professional Standards investigation (supervisory review; see General Order 121). Traffic accidents involving members driving city-owned vehicles are normally investigated as a Class 2 Professional Standards investigation, and are conducted by a designated traffic supervisor (see General Order 309-6).

C. Minor complaints in reference to job performance rather than intentional misconduct may be classified as a referral to a member's supervisor for disposition. Unless otherwise instructed, supervisors provide follow-up or disposition information to Professional Standards for the referral record. The Professional Standards Unit maintains a record of a referral for a period of three years.

D. Inquiries from the public as to the propriety of policies or procedures or general questions about department activities are not the subject of a Professional Standards investigation or supervisory review and need not be referred to the Professional Standards Unit. Supervisors are encouraged to answer questions from the public concerning department operations. The Professional Standards Unit maintains records on inquiries.

1. If the basis for a community member's complaint appears to be an objection to a policy or procedure rather than any problem with an identified member, the supervisor of the identified member may be notified.
2. Either the Professional Standards investigator or the supervisor informs the complainant of the propriety of the member's actions.

E. Complaints against another agency's members or policies made mistakenly to this department are referred to the appropriate agency, if it can be identified.

#### **120-5 Basis for Professional Standards Investigations**

Any investigation initiated to determine the possibility of or to establish the basis for serious disciplinary action, whether such investigation is initiated by an internal, external, formal, or informal complaint, requires investigation by the Professional Standards Unit or Police Chief designate. The Professional Standards Unit investigates allegations in accordance with the guidelines herein provided.

- A. The Professional Standards Unit is an extension of the Office of the Chief of Police and a Professional Standards investigator acts as the direct representative of the Chief of Police with authority commensurate to that responsibility regardless of rank.
- B. All members respond to requests or orders from Professional Standards personnel just as they would respond to requests or orders from the Chief of Police.
- C. The Professional Standards Unit conducts administrative investigations of allegations of serious misconduct.

1. When the alleged misconduct is criminal, the Professional Standards Unit monitors the progress and outcome of the authorities' investigations into the criminal charge. Depending on circumstances, a Professional Standards investigation may proceed either concurrently or upon completion of a criminal investigation.
  2. Lack of evidence substantiating a criminal charge does not preclude disciplinary actions arising out of a Professional Standards investigation into a possible violation of written rules or general orders.
  3. If the investigation concerns misconduct that might also result in criminal charges, or the investigation discovers criminal conduct, the investigator advises the appropriate authority and notifies the Chief of Police.
  4. If appropriate, the Chief of Police may halt an administrative investigation.
- D. The Chief of Police may direct any supervisor or manager to conduct or review a special internal investigation as needed.
- E. The Professional Standards Unit may also be involved in reviews which are usually not directly generated by an outside source, but rather are initiated within the department as a quality control measure or in defense of a civil proceeding.
1. The Professional Standards Unit may conduct a civil investigation with the assistance of the City Attorney's Office and/or the department's legal advisor to prepare a defense to any suit filed against the city as a result of acts of omission or commission by a member. Copies of such investigations are available to any member named as a defendant in the suit.
  2. The Professional Standards Unit may conduct an administrative investigation into any case of a member discharging a firearm, whether on- or off-duty.
  3. The Professional Standards Unit may, pursuant to General Order 225, investigate use of force cases.
- F. When an investigator discovers evidence of additional misconduct during an investigation, he/she causes such discoveries to be enumerated, investigated and submitted for review and disposition with the original case.
- G. Upon receipt of complaints of minor misconduct, the Professional Standards Unit may refer those complaints to the subject member's supervisor for investigation and disposition as a Class 2 Professional Standards investigation. Refer to General Order 121, Supervisory Reviews.

#### **120-6 Acceptance and Initial Processing of Complaints**

The Professional Standards Unit investigator documents all allegations of member misconduct on the Professional Standards complaint form for the initiation of an investigation or referral as appropriate. All such reports, logs, and investigative reports are considered personnel files as that term is defined in C.R.S. 24-72-202-(4.5).

- A. A member who receives a serious complaint against him/herself or another department member directs the complainant immediately to the Professional Standards Unit.
- B. Should the Professional Standards investigator not be available or on-duty, the complainant is directed to an on-duty supervisor.
  1. The supervisor documents receipt of the complaint and subsequently relays it to the Professional Standards Unit.

2. Should the alleged misconduct be such that immediate attention is required, the supervisor immediately attempts to notify the Professional Standards investigator and the involved member's commander/man-ager.
    - a. Contact with the Professional Standards investigator is attempted prior to severing contact with the complainant.
    - b. Examples of serious misconduct that require immediate notification are:
      - (1) Member's alleged commission of a felony.
      - (2) Member's alleged violation of the alcohol and controlled substances sections of General Order 125.
  3. When immediate on-scene attention is not necessary, the supervisor ensures that written documentation is received by the Professional Standards investigator at the start of the next standard business day.
- C. Complaints are taken from all sources including, anonymously, and can be made in person, by telephone, written or electronically.
1. The person registering the complaint is afforded the opportunity to review the complaint report and to receive a copy, if requested.
  2. To this end, a brochure is published outlining the Professional Standards process.
  3. These brochures are printed in both Spanish and English and are available at

the Public Safety Building, Community Police Centers and the Municipal Building. Electronic versions of the brochures are available online.

- D. Complaints alleging non-serious misconduct which occurred more than six months prior to receiving the complaint are handled as supervisory referrals.
- E. Complaints alleging serious misconduct are investigated regardless of time elapsed, unless the amount of time makes investigation of the allegation impractical.

### **120-7 General Investigative Procedures**

The Professional Standards Unit investigates impartially and maintains careful documentation of all proceedings. Anonymous complaints will be investigated to the extent possible, given the information available.

- A. The Professional Standards Unit maintains the Professional Standards review logs to note incoming complaints which will be investigated, referred to supervisors or cleared by explanation of policy or procedures.
- B. If the initial complaint is not substantiated, the investigation goes no further and no statement is required of the member against whom the complaint was made. The fact that the complaint was not substantiated is noted on the Professional Standards log.
- C. All Professional Standards investigations are initiated within 14 calendar days of knowledge of an event with the exercise of reasonable diligence.
  1. Professional Standards investigations are conducted in a timely fashion within the limits specified below.
  2. Class 1 Professional Standards investigations, generally, are completed within

- 30 calendar days after initial receipt of the complaint.
3. One due date extension of up to 10 calendar days may be allowed by the Professional Standards supervisor.
  - a. Requests for additional extensions must be submitted in writing to the Chief of Police at least 48 hours before the due date.
  - b. Subject members are notified in writing of any due date extensions.
- D. Upon receiving a complaint and after completing a complaint report, the Professional Standards investigator forwards a copy of the complaint report to the subject member as notification of the complaint and pending investigation.
- E. When possible, a member who is the subject of or a witness in a Class 1 Professional Standards investigation is given at least 72 hours advance notice of the scheduled interview.
  1. At their option, members may waive the 72-hour notice requirement.
  2. A synopsis of the complaint is attached to the interview notice.
- F. Advance notice is not given for cases of extreme sensitivity when evidence could be removed, destroyed, or altered or potential witnesses intimidated or influenced.
  1. If the complainant is to be treated as a confidential informant, their identity is not divulged, subject to administrative review by the City Manager or his/her designee, either in the notification or during any subsequent interview.
2. If the complaint was filed anonymously, the subject member is advised of the exact circumstances of its receipt.
- G. When the Professional Standards investigator determines that a written statement from the subject or witness member would be acceptable in lieu of a personal interview, he/she informs the member of this option in the interview notice.
- H. In addition to the complaint report, a statement is taken from a complainant who alleges a member's serious misconduct unless the complainant was anonymous.
  1. The statement includes the complainant's full name, date of birth and business and home addresses and telephone numbers.
  2. Everyone present is also identified for the record.
  3. Complainant interviews are recorded electronically in all cases alleging serious misconduct.
  4. The Professional Standards investigator completes a synopsis of the complainant's statement, identifying specifics of the allegation.
  5. In cases of alleged serious misconduct, the complainant's statement is transcribed only with the approval of the Chief of Police or designee.
- I. Interviews of witnesses and subject members are conducted in the same general manner as for the complainant.
  1. In cases of alleged serious misconduct, witness and subject member statements are transcribed only with the approval of the Chief of Police or designee.

2. All members who are interviewed for any Professional Standards investigation are advised prior to making any statement whether they are witnesses or subjects of the investigation.
  - a. The interview takes place within the police department or in an area where privacy is assured.
  - b. Interviews are conducted at a reasonable hour, preferably at a time when the member is normally on duty, unless the seriousness of the allegation requires immediate action.
  - c. Interviews are conducted for a reasonable length of time allowing for personal necessities.
  - d. In cases alleging serious misconduct all witness and subject member interviews are recorded electronically, and there are no unrecorded or off-the-record questions. Everyone present for the interview is identified for the record.
- D. Each disposition and discipline recommendation is supported by written justifications.
- E. Prior to recommending discipline, the supervisors in the chain of command consider past performance and disciplinary actions for the purpose of determining appropriate disciplinary remedies.
- F. Mitigating or aggravating circumstances which may affect determination of appropriate disciplinary action are presented in detail.
- G. Any recommendation for changes in rules, general orders, or directives which relate to the case being considered is presented in detail, with thorough justification.
- H. When the subject member has been transferred prior to disposition of the case, the member's supervisors at the time that the alleged incident occurred prepare the response.
- I. A Deputy Chief has 14 calendar days from date of receipt of the Professional Standards investigative report in which to ensure that the disposition review is completed and returned to the Professional Standards Unit. Extensions may be granted by the Chief of Police for good cause.

### **120-8 Supervisory Disposition Review**

The Professional Standards investigator routes the completed Class 1 Professional Standards investigative file, the review and recommendations for disposition form to the reviewing Deputy Chief or designee.

- A. In turn, each supervisor in the member's chain of command recommends a disposition for each alleged violation.
- B. Supervisors may also identify other violations that were not initially charged.
- C. Each supervisor who recommends a sustained disposition also includes a recommendation for discipline.

### **120-9 Professional Standards Review Panel**

A Professional Standards Review Panel (PSRP) is maintained to assist in the function of reviewing Class 1 investigative complaints against employees and making subsequent recommendations to the Chief of Police. The Chief of Police may also request review of other administrative investigations as needed. The panel is comprised of department and community members.

- A. The PSRP consists of 12 members.

1. Six of the members are Boulder community members selected by the City Manager, or his/her designee, from a pool of qualified applicants.
    - a. Qualified applicants are those community members who have completed and passed the application and selection process.
    - b. In order to serve on the PSRP, community members must lawfully reside in the United States and have been a resident of the City of Boulder for the past three years, be 21 years of age or older and agree to a background check.
    - c. Community member panelists must be willing to serve for a minimum of two years and sign a non-disclosure agreement.
    - d. Community member applicants who wish to serve on the PSRP must obtain an application form and submit it prior to the announced closing date.
      - (1) The applications are reviewed to ensure that applicants meet the established criteria.
      - (2) Applicants who meet the criteria in 120-9 (A) (1) are then allowed to proceed with the following process:
        - (a) A criminal history is used to determine past arrests, traffic violations and any other incidents involving law enforcement.
        - (b) Other information submitted on the application form may be confirmed at the reviewer's discretion.
        - (c) Commission of any felony, misdemeanor conviction in the last five years, excessive traffic violations, or any apparent conflict of interest are grounds for denying service on the panel.
        - (d) Past arrests and traffic convictions may be considered in determining suitability to serve on the panel.
        - (e) Any false information supplied by an applicant is grounds for denial.
  - e. Qualified applicants are interviewed by a panel managed by the City Manager or his/her designee. A police department Management Staff member, BPOA member and BMEA member are represented in the interview process.
  - f. The City Manager or his/her designee(s) select the applicants who will serve on the PSRP.
2. Six of the members are department representatives selected by the Chief of Police with input from BPOA and BMEA.
  - a. Representatives consist of three commissioned officers, one commissioned sergeant, and two BMEA employees.
  - b. If an insufficient number of applications are received to fill a representative vacancy, the Chief of Police may choose to allow applications from non-union management employees after discussion with affected bargaining units.

3. All panel members must attend training designated by the Chief of Police prior to serving on the panel.
4. The Chief of Police selects a Management Staff member to serve as the facilitator for the PSRP.
  - a. It is the facilitator's responsibility to schedule meetings, make notifications to panel members, and facilitate panel meetings to insure adherence to policy and procedure.
  - b. The facilitator is not a voting member of the panel and does not offer recommendations to the panel or Chief of Police.
- B. When the supervisory disposition review has been completed and returned to the Professional Standards Unit, the Professional Standards investigator presents the investigative file with supervisory recommendations to the Professional Standards Review Panel.
- C. Except for disciplinary recommendations, all information and evidence in the current Professional Standards case file is made available to the PSRP members prior to and during the meeting.
  1. Panel members do not have access to previous Professional Standards files.
  2. Panel members are not allowed to make unauthorized copies of Professional Standards materials nor remove any Professional Standard materials.
- D. The panel is advisory only and does not have any investigative or decision-making authority, but reviews the case file and makes written comments and recommendations per the Professional Standards Unit procedure on the following issues:
  1. Whether the investigation was conducted fairly, completely and reported accurately.
  2. Based on the material contained in the case file, a recommendation on disposition; recommendations must include written justification.
- E. Individual members or small groups of the PSRP may submit dissenting opinions along with the majority opinion.
- F. PSRP meetings are scheduled on an as needed basis to review current cases in a timely manner. Panel recommendations are completed prior to adjournment of the meeting. A quorum of seven panel members is required and will consist of at least three community members and at least three department members which includes, at a minimum, one BMEA member when subject member is BMEA and two BPOA members when subject member is BPOA.
- G. While not for the purpose of receiving formal disciplinary recommendations, the Police Chief may confer with the PSRP regarding any case the panel has reviewed for additional input.
- H. The City Manager, or designee, may remove any community panel member for a conflict of interest concern, violation of any applicable law, regulation, policy, non-disclosure agreement or non-attendance to duty.
- I. In the event that a panel member is also a subject member, complainant, witness or otherwise involved in a Professional Standards investigation, that member may not participate in the review of that case. Panel members notify the facilitator of any conflict of interest so that if needed, an alternative panel member may be arranged.
- J. The Review Panel is part of the administrative review process and meetings are not

open to complainants, subject members, witnesses or the public. In order to encourage discussion and deliberation, Review Panel deliberations are considered confidential, and are not made available to complainants, subject members, witnesses, or the public.

- K. After the final disposition has been made, the Chief of Police notifies the PSRP of the disposition and discipline, if any.

### **120-10 Police Chief's Review**

After the PSRP has made its recommendations, the Professional Standards investigator forwards the case file and all input received during the disposition review process to the Chief of Police. The Chief reviews the Professional Standards investigative report and the review and recommendations for disposition and discipline, and considers information provided in any administrative hearing. The Chief of Police is then responsible for deciding on the final disposition and discipline.

### **120-11 Disposition Classifications**

- A. Exonerated: The incident occurred, but member actions were lawful and proper, and/or a justified departure from policy.
- B. Exonerated with Commendation: The incident occurred, but member actions were justified, lawful and proper under cases of exceptional circumstances.
- C. Unfounded: The complainant admits to false allegation; the charges were found to be false; the member was not involved in the incident; or the complainant has voluntarily withdrawn the complaint prior to the conclusion of an investigation and a decision is made not to continue the investigation.
- D. Not Sustained: An allegation is not supported by a preponderance of the evidence.

- E. Sustained: An allegation is supported by a preponderance of the evidence.
- F. No Finding: Cases that are, with the approval of the Chief of Police, handled in an alternative manner or cases in which a subject member resigns and the department elects not to continue the investigation.

### **120-12 Administrative Hearings and Final Dispositions**

In all cases in which any recommendation of discipline is more serious than a letter of reprimand, the Chief of Police holds an administrative hearing. In all other cases, hearings are held at the discretion of the Chief of Police, however, the member may request one. The Chief of Police has five working days to consider all recommendations and to set a date for an administrative hearing.

- A. The opportunity for an administrative hearing is provided to the member prior to imposition of serious discipline so that he/she may offer any information in mitigation or explanation of the behavior for which disciplinary action may be imposed.
- B. When the Chief of Police schedules an administrative hearing the subject member is provided a minimum notice of 72 hours.
  - 1. The member may request in writing to waive an administrative hearing. Approval of this request rests with the Chief of Police.
  - 2. The member may be represented by counsel and/or other representation of his/her choice, if representation is limited to three persons.
  - 3. The department may be represented by a staff member from the City Attorney's Office should the Chief of Police request such representation.

4. After the administrative hearing, the Chief of Police has up to three working days to render a decision on disposition and discipline.
- C. In cases that involve non-serious discipline and in which an administrative hearing is not held, the Chief of Police has five working days to reach a decision on disposition and discipline.

### 120-13 Discipline

Discipline may be administered when an allegation is sustained at the conclusion of a Professional Standards investigation.

- A. Disciplinary action is intended to be corrective and, as such, is normally intended to progress from less to more severe.
1. This is not to be interpreted as limiting the authority of the Chief of Police to impose whatever discipline seems appropriate as warranted by the circumstances under consideration.
  2. The Chief of Police may increase, decrease, or set aside any recommended disciplinary action.
- B. The severity of disciplinary action against a member is relative to the gravity of the consequences generated by the member's misconduct. For these reasons, graduated forms of disciplinary action are available to correct member transgressions. These include:
1. Non-serious discipline:
    - a. Any verbal warning;
    - b. Twelve-month letter of reprimand;
    - c. Long-term (five year minimum) letter of reprimand;

2. Serious discipline:
    - a. Involuntary transfer;
    - b. Suspension;
    - c. Demotion; and
    - d. Termination.
  3. Any other discipline agreeable to the employee and to the Chief of Police.
- C. If appropriate, professional counseling and/or remedial training may be required.
- D. The Chief of Police renders the decision as to appropriate discipline when a complaint has been sustained after a Professional Standards investigation.
- E. The Office of the Chief of Police provides the member with a notice of disciplinary action.
1. The notice includes a reference to the behavior for which discipline is being administered, what discipline is being administered, and when it is effective.
  2. If admonitions against further misconduct are warranted, they are made.
- F. Copies of the disciplinary notice are submitted to the member, the member's supervisors and to the Professional Standards Unit case file. If appropriate, a copy is filed in the member's personnel file, after processing as appropriate by the Support and Staff Services Division.
- G. The terms of the imposed disciplinary action are carried out within ten working days of final determination by the Chief of Police unless, as determined or approved by the Chief of Police, the case is extended for the benefit of the department or at the request of

the member, or the member is not available. In such a case, the disciplinary action follows as soon as practical.

- H. Professional Standards investigative files are maintained as confidential personnel records. However, in order to maintain organizational integrity and accountability and to minimize organizational rumors, the Chief of Police may notify members of dispositions and imposed discipline. The Chief of Police may also share pertinent case facts if deemed to be in the best interests of the department. In matters of high-profile, public-interest cases involving the public trust, the Chief of Police may publicly disclose pertinent case facts, disposition and discipline.

#### **120-14 Record-keeping**

The Professional Standards Unit securely maintains all records and documents related to the Professional Standards function.

- A. A file is maintained indicating complainant name, date of birth, address and the Professional Standards Unit case number.
- B. Each member against whom a complaint has been made which required a Professional Standards investigation (Class 1 or 2) or referral has a file maintained in the Professional Standards Unit.
1. The file includes case number, name, nature of complaint, disposition, discipline, if applicable, and completion date.
  2. Only the Chief of Police and personnel assigned to the Professional Standards Unit have access to the files. Supervisors may review specific employee files with authorization from the Chief of Police.

3. Subject members may review their respective files.

- C. The complainant will be notified of the disposition and discipline imposed, if any, after the final resolution.

#### **120-15 Purging of the Professional Standards Unit Records**

Time frames for purging documents related to Professional Standards investigations are set by the city's records retention ordinance.

- A. Records and evidence of sustained violations resulting in disciplinary action are purged 10 years after the subject member's retirement or separation from the department.
- B. Except as described in 120-15C, records and evidence from allegations resulting in dispositions of not sustained, exonerated or unfounded, and records generated from referrals not resulting in discipline, are purged after five years.
- C. All Class 1 Investigations into allegations of excessive force or criminal misconduct, not resulting in discipline, are maintained throughout an employee's career.
- D. In no instance are records or evidence related to pending civil or criminal cases (including appeal or statute of limitation periods) purged, regardless of allegation or disposition. Risk Management and or the City Attorney are consulted before records pertaining to civil matters are purged.
- E. Statistical records of referrals, supervisory reviews, or Professional Standards investigations may be kept for an indefinite period, if the records do not identify subject members.
- F. The method of destruction is in accordance with Records procedure.

**120-16 Disclaimer**

- A. Any provisions contained in this general order adjudged to be illegal, incorrect or inapplicable do not affect the validity of the remaining provisions.
  
- B. Time constraints described in this order have been established to expedite investigation and disposition of complaints against members and to minimize the strain and frustration of members and the public while awaiting investigation results. Occasionally, more time will be needed to properly investigate and reach disposition of a complaint. The failure to meet an established deadline will not be the sole cause for dismissing a case or reversing or amending disciplinary action.

# Boulder Police Department

## General Order 121

### Class 2 Professional Standards Investigations (Supervisory Reviews)

Effective: September 20, 2016

Replaces: General Order 121, February 14, 2014

Reviewed: September 13, 2016

#### 121-1 Definition

#### 121-2 Member Rights and Responsibilities

#### 121-3 Supervisor Responsibility

#### 121-4 Acceptance and Initial Processing of Complaints

#### 121-5 Timely Action and Discipline by Supervisor

#### 121-6 General Investigative Procedures

#### 121-7 Final Disposition

#### 121-8 Discipline

#### 121-9 Record-keeping

#### 121-10 Disclaimer

#### 121-11 Purging of Records

### POLICY

The intent of the policy is to maintain the integrity of the department by conducting thorough and impartial investigations of complaints of member misconduct, to protect citizens from member misconduct, to protect department members from false or malicious allegations and to provide an alternative process for investigating complaints of minor misconduct.

### PROCEDURES

#### 121-1 Definition

Class 2 Professional Standards Investigation (Supervisory Review): the allegation is non-serious in nature and any resulting discipline may not exceed a permanent letter of reprimand. Normally the investigation is conducted by the affected member's immediate supervisor.

#### 121-2 Member Rights and Responsibilities

Members cooperate fully with supervisory review investigations in accordance with rules, policies and procedures. Members' rights generally include those defined in General Order 120, Professional Standards Investigations.

#### 121-3 Supervisor Responsibility

In cases in which minor allegations, if sustained, would result in non-serious discipline, immediate supervisors may conduct Class 2 Professional Standards investigations and administer discipline in accordance with this order and existing contracts.

#### 121-4 Acceptance and Initial Processing of Complaints

All allegations of member misconduct are documented and forwarded to the Professional Standards Unit in accordance with the procedures in General Order 120, Professional Standards Investigations. All such reports, logs, and investigative reports are considered

personnel files as that term is defined in C.R.S. 24-72-202(4.5).

A. Professional Standards Unit responsibility

The Professional Standards investigator documents the receipt of all allegations of minor misconduct and assigns a case number to the complaint. Non-serious complaints may be forwarded to the immediate supervisor for investigation and disposition. A copy of the preliminary complaint report is given to the subject member and the member's commander/manager and deputy chief.

B. Exception for referrals

Complaints classified by the Professional Standards Unit as referrals are handled in accordance with GO120-4.C. and are not the subject of a supervisory review.

C. Complaint sources

1. The department takes complaints from all sources including, but not limited to, in person, by telephone and written. The person registering the complaint is afforded the opportunity to review and sign the preliminary complaint report and to receive a copy, if requested. To this end, the department publishes a brochure outlining the supervisory review process. These brochures are printed in both Spanish and English and are available at the Public Safety Building, Community Police Centers and City Hall.
2. While the department takes initial complaints from all sources, the original involved party of an allegation must be willing to be interviewed by the supervisory review investigator as part of the investigation.

D. Traffic Accidents

Traffic accidents involving members driving city-owned vehicles, where the member may be at-fault or contributed to the accident are normally considered Class 2 Professional Standards investigations, and a designated traffic supervisor is responsible for ensuring the investigation is complete (see General Order 309-6). Accidents involving serious violations of department policy are normally handled as Class 1 investigations (see GO120).

**121-5 Timely Action and Discipline by Supervisor**

A. The department recognizes that some minor misconduct issues are better handled at the supervisory level in a timely fashion. Therefore, supervisors are authorized to provide disciplinary counseling or issue letters of reprimand for minor misconduct without completing a formal supervisory review in any of the following situations.

1. The supervisor personally witnessed the misconduct.
2. The member admits to the conduct.
3. The facts of the allegation are not in dispute.

B. Prior to making a decision on disciplinary action, the supervisor provides the member with an opportunity to explain his/her actions.

C. In any case involving discipline, the member has the right to a full supervisory review process and may request a full supervisory review prior to receiving any disciplinary action. If so requested, the allegation is documented and forwarded to the Professional Standards investigator for assignment.

- D. Whenever disciplinary action is taken by a supervisor under 121-5, the supervisor documents the circumstances and action taken on an internal affairs complaint form, attaches any other documentation, and forwards the information to the Professional Standards investigator for record-keeping.

### 121-6 General Investigative Procedures

The investigating supervisor investigates impartially and documents all information obtained during the investigation. Supervisors interview subject members and, if necessary, any witnesses, on issues of non-serious misconduct.

#### A. Investigative report

Upon completion of an investigation, the supervisor completes an investigative report which includes the allegation, a list of witnesses, summaries of statements, any physical evidence, a finding of fact and a recommendation for disposition.

#### B. Serious misconduct

If any supervisor in the member's chain of command determines that the allegation would likely result in serious discipline if sustained, then the investigation is given back to the Professional Standards Unit for investigation per General Order 120, Professional Standards Investigations.

#### C. Recommendations

Supervisors recommend a disposition for each alleged violation. Supervisors may also identify other violations that are not initially charged. Any supervisor recommending a sustained disposition also includes a recommendation for discipline. Each disposition and discipline recommendation is supported by written justification. Prior to recommending discipline, the supervisors in the chain of command consider past per-

formance and disciplinary actions for the purpose of determining appropriate disciplinary remedies.

#### D. Review of investigation and recommendations

The commander/manager reviews the supervisor's investigation and recommendations prior to the case going to the deputy chief for final disposition. The commander/manager may comment on the recommendations or request more investigation prior to forwarding the case to the deputy chief. After final disposition, the deputy chief forwards the completed file to the Professional Standards Unit.

#### E. Time limitation

1. All supervisory review investigations are initiated within 14 days of knowledge of an event with the exercise of reasonable diligence.
2. Once a complaint is referred for supervisory review, the supervisor and commander/manager have 14 days to complete the investigation and submit recommendations to the Professional Standards Unit.
3. Commanders/managers are responsible for insuring that the reviews are completed in 14 days or less.
4. If longer than 14 days is needed for the investigation, an extension may be granted by the deputy chief for good cause. In the event that an extension is granted, the commander/manager requesting the extension must notify the subject member of the extension as soon as practical.

## 121-7 Final Disposition

After the investigation and recommendations have been completed, the commander/manager forwards the case file and all recommendations to the member's deputy chief for final disposition. The deputy chief has five working days to consider all input and make the final determination as to the disposition of the supervisory review. The Chief of Police reserves the right to review or alter any action taken as the result of a supervisory review.

### A. Disposition classifications

1. Exonerated: The incident occurred, but member actions were justified, lawful and proper.
2. Exonerated with Commendation: The incident occurred, but member actions were justified, lawful and proper under cases of exceptional circumstances.
3. Unfounded: The complainant admits to false allegation; the charges were found to be false; the member was not involved in the incident; or the complainant has voluntarily withdrawn the complaint prior to the conclusion of an investigation and the department elects not to continue the investigation.
4. Not Sustained: An allegation is not supported by a preponderance of the evidence.
5. Sustained: An allegation is supported by a preponderance of the evidence.
6. No Finding: Cases that are, with the approval of the Chief of Police, handled in an alternative manner or cases in which a subject member resigns and the department elects not to continue the investigation.

### B. Notification

After the final disposition, the deputy chief ensures that notice is provided to both the subject member and the complainant within three working days.

### C. Professional Standards Review Panel

Supervisory reviews are not subject to review by the Professional Standards Review Panel (PSRP). However, the Professional Standards Unit advises the panel of all complaints handled as supervisory reviews, including the disposition of those complaints and makes adjudicated investigations available for informational purposes. The PSRP may provide feedback on the process to the Chief of Police.

## 121-8 Discipline

When an allegation of non-serious misconduct has been sustained, non-serious discipline may be administered. Non-serious discipline includes any verbal warning, 12 month letter of reprimand or permanent letter of reprimand. If appropriate, the department may also require remedial training or professional counseling. In absence of the need for additional investigation, the deputy chief renders his/her decision as to any discipline to be imposed within 48 hours.

### A. Notice

The Professional Standards Unit provides the member with written notice of disciplinary action.

### B. Imposition of discipline

The terms of the imposed disciplinary action are carried out within 10 days of final determination by the deputy chief unless, as determined or approved by the deputy chief, the case is extended for the benefit of the department or at the request of the

member, or the member is not available. In such a case, the disciplinary action follows as soon as practical.

C. Verbal warning

Supervisors may issue verbal warnings through counseling only after the investigation is completed. Verbal warnings are documented in the member's working file.

D. Letter of reprimand

Supervisors may issue letters of reprimand to subject members only after the investigation is completed and the letter of reprimand has been reviewed and approved by the deputy chief, via the chain of command.

1. Letters of reprimand are filed in a member's working file.
2. Long-term letters of reprimand are filed in a member's personnel file.

**121-9 Record-keeping**

The Professional Standards Unit securely maintains all records and documents related to Class 2 Professional Standards investigations (supervisory reviews).

- A. A file is maintained indicating complainant name, date of birth, address and supervisory review case number.
- B. Each member against whom a complaint has been made which required a supervisory review investigation has a file maintained in the Professional Standards Unit.
  1. The file includes case number, name, nature of complaint, discipline, if applicable, and completion date.

2. Only the Chief of Police and personnel assigned to the Professional Standards Unit have access to the files. Supervisors may review specific employee files with authorization from the Chief of Police.

3. Subject members may review their respective files.

**121-10 Disclaimer**

A. Validity

Any provision contained in this general order adjudged to be illegal, incorrect or inapplicable does not affect the validity of the remaining provisions.

B. Time limitations

Time constraints described in this order have been established to expedite investigation and disposition of complaints against members and to minimize the strain and frustration of members and the public while awaiting investigation results. Occasionally, more time will be needed to properly investigate and reach disposition of a complaint. The failure to meet an established deadline will not be the sole cause for dismissing a case or reversing or amending disciplinary action.

**121-11 Purging of Records**

See GO120-15, Professional Standards Investigations, Purging of the Professional Standards Unit Records.