

PROCEDURE MANUAL

03-03



MICHIGAN STATE POLICE

Disciplinary Procedures and Proceedings

Purpose: This manual establishes department procedures for disciplinary actions and proceedings.

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Definitions:

Administrative investigation: A process to gather evidence related to an allegation of member misconduct, which is then used to inform disciplinary decisions.

Principal: A member against whom allegations of misconduct have been made.

Section 1: Disciplinary Procedures

1.1 Commander's Responsibility

- a. Commanders may resolve work performance problems involving work unit operation and general work supervision functions that do not involve citizen complaints regarding actions of a member after the consultation with Labor Relations. Such disposition shall only be made when there is no question that the violation by member did in fact take place. District or division commanders may dispose of incidents of misconduct involving complaints of a minor nature only after consultation with the Labor Relations Section. All serious violations of the department written directives shall be handled according to this manual and other pertinent department written directives.
- b. In proceeding with any administrative investigation, discipline, or counseling measures, commanders and investigators shall comply with the requirements of any applicable collective bargaining agreement. Commanders should consult with the Labor Relations Section to determine which labor agreement applies.
- c. All citizens' complaints and complaints by a member made to a commander or supervisor against another member for alleged violations of department written directives or law shall be documented on a BlueTeam Complaint Against Member. When a commander initiates corrective action against a member on their own volition, a BlueTeam Complaint Against Member is not required to be submitted if the proceedings do not go beyond written sanctions (formal counseling, written warnings, written reprimands).
- d. A member making a complaint against another member shall complete a BlueTeam Complaint Against Member within 90 calendar days from the date of the alleged misconduct, or from the date that the individual became aware or reasonably should have become aware of the alleged misconduct. Complaints received beyond 90 days shall not be accepted unless approved by the Director.
 - i. This requirement does not apply to matters of a criminal nature. See Section 1.7 below for complaints against members involving possible violations of criminal law.

1.2 Forms of Discipline

- a. Discipline of members may include written warnings and written reprimands for troopers and sergeants, and written reprimands for command officers and civilian members. Discipline also may include suspensions without pay, demotion, unsatisfactory performance ratings, interim service ratings, probationary extension, and termination.

1.3 Complaints Involving a Member by Outside Persons or Agencies

- a. All complaints against a member shall be accepted at any level to which they are reported and investigated in accordance with department written directives. Complaints made anonymously shall be accepted, reported, and investigated in the same manner as all other complaints.
- b. The complainant shall be notified in writing of the complaint.

1.4 Investigation and Reports Submitted on Allegations Against a Member

- a. A BlueTeam Complaint Against Member shall immediately be completed by the receiving member or the commander initiating the complaint against the member. Upon submission, the BlueTeam Complaint Against Member is automatically received by the Professional Standards Section (PSS).
- b. If the investigation is assigned to the district or division, the district or division commander shall cause a complete and thorough investigation to be conducted.
- c. When an investigation is assigned to a district or division, a field investigator shall be designated by the district or division commander. The field investigator shall arrange the interview of the complainant and all pertinent witnesses, gather all relevant information and exhibits, and complete a report for review by PSS. These investigations shall be completed in consultation with PSS. Members who are on leave because of illness or injury may still be interviewed with the authorization of the Human Resources Division and/or Office of Behavioral Science.

1.5 Member's Response to Complaint or Allegation

- a. The involved member shall be advised of complaints and allegations associated with the member by their commander. The member may be directed to relate, in writing, all facts and circumstances that have a bearing in the matter. If the offense involves a criminal matter, this special report shall not be required, requested, or submitted without prior approval of the Director. When required, the member's response to such allegations shall be submitted through channels to the Director with the final investigative report, unless otherwise ordered. The involved member shall be promptly notified of the disposition of the allegation.
- b. Any statement made in a required special report prepared under orders or a threat of discipline shall be for department administrative proceedings only, and derivative evidence cannot be used against the accused member in a related criminal prosecution. Exclusively represented members shall be afforded all the rights and contractual protections listed in their respective collective bargaining agreements.

1.6 Corrective Action

- a. Upon receipt of the completed investigative report, PSS will make the closing determination. A Final Disposition Report authored by PSS will then be forwarded to the Labor Relations Section and respective bureau to determine the proper corrective action. The recommendations of the offender's immediate supervisor may also be considered in determining what, if any, corrective action is appropriate.
- b. The Labor Relations Section shall be contacted whenever discipline of a member is anticipated. A review of the case facts, the work and disciplinary records of the member involved, and the discipline imposed for similar offenses shall be conducted.
- c. In those instances where a member has been convicted of or pled guilty or no contest to a criminal offense, the Human Resources Division Commander shall consult with the Director prior to proposing any administrative sanctions.
- d. Upon receipt of the Final Disposition Report, the Labor Relations Section shall prepare the Statement of Charges, or provide language for other documents that may be required by any contract or department written directive. A difference of opinion concerning the

appropriateness of the charges or penalty proposed by the Labor Relations Section shall be directed to the appropriate bureau commander for resolution. Should an agreement fail to be reached, the matter shall be reviewed by the Director for final resolution.

- e. Once the charges and the proposed penalty have been established, the Labor Relations Section may consider and accept a proposed offer of settlement from a member or their representative in lieu of a hearing.
- f. The Labor Relations Section is responsible for the development and presentation of cases before boards or arbitrators in any disciplinary matter appealed to the arbitration step.

1.7 Possible Violations of Law

- a. If a complaint against a member involved a possible violation of criminal law, in addition to submitting a BlueTeam Complaint Against Member, the member's commander or supervisor shall immediately notify the district or division commander. The district or division commander shall notify their bureau commander. Under the direction of the bureau commander, investigations into any such cases shall be made or assigned by PSS. The local prosecutor and/or the Attorney General's Office shall be contacted when criminal prosecution is indicated. OO 18-30 – Requests for Attorney General's Opinion provides additional information.
- b. Investigators shall coordinate their investigation with any related investigation that may have been done previously. During the investigation, a personal interview shall be conducted with the complainant. At the conclusion of the investigation, the investigator's report shall be reviewed by the respective bureau commander.

1.8 Complaints Regarding Department Policy or Procedure

- a. Complaints about department procedure or policy shall be reported on interoffice memorandum directed through channels to the appropriate deputy director who shall take whatever action the complaint warrants. Such action may consist of an explanation of policy to the complainant, or steps may be taken to change policy or procedures if justified complaints indicate that a revision is necessary.

1.9 Investigatory Interview Representation Rights of Primary Subject

- a. There are several types of interviews that may be conducted in conjunction with the investigatory process. During an interview that occurs as part of a criminal investigation, members are entitled to the same constitutional protection afforded any citizen. An investigatory interview is an administrative interview of a principal witness conducted in accordance with OO 03-60 – Administrative Investigations.
- b. Members who are covered by a collective bargaining agreement must consult their specific labor contract for the provisions governing their representation rights.
- c. Non-exclusively represented members of the department may request representation during an investigatory interview regarding allegations or charges of misconduct against the member which, if substantiated, could result in suspension, demotion, or dismissal. Subject to the department's policy entitled, NERE's-Representation Rights at Investigatory Interview, and consistent with Civil Service Rules and Regulations, the member will be permitted to obtain representation of their choosing, if such a request is made. However, Civil Service Commission

rules prohibit an exclusively represented employee from representing a non-exclusively represented member.

1.10 Expungement of Records

- a. Records of discipline shall be removed from a member's personnel file in accordance with applicable collective bargaining agreements or Civil Service Rules and Regulations. These provisions shall not prohibit the employer from maintaining records of corrective action arising out of violations of prohibited practices consistent with relevant state and federal law.

1.11 Relief from Duty

- a. After consultation with the commander of the Human Resources Division, work unit commanders or their authorized representative may relieve from duty, with pay, any subordinate member, either of their command or who is within their command jurisdiction, whenever it is necessary for the preservation of good order, efficiency, and discipline. This action is limited to violations that necessitate immediate action. In every instance, the commander or their representative shall immediately advise the Director, through channels, of such action stating the reason and the status of the involved member. The Director, upon receipt of such notification, may order the member suspended, if necessary, in accordance with Civil Service Rules and Regulations, as well as the appropriate collective bargaining agreement, or take such other action as is deemed appropriate. Such member shall not be restored to duty without authorization of the Human Resources Division Commander and the Director or the Director's designee.
- b. Whenever necessary to relieve a member from duty, the appointing authority shall notify the member in writing giving specific reasons for the action.
- c. When the discharge of a firearm by a member inflicts injury or death to another, the member shall be placed on administrative leave by their commander. This action is not considered discipline.
 - i. The member may be restored to limited or full duty on the recommendation of the member's worksite commander after consultation with the Office of Behavioral Science.
- d. A member charged with a criminal offense may be suspended without pay by the Director or the Director's designee in accordance with Civil Service Rules and Regulations and any other applicable labor agreements.
- e. The Director or the Director's designee may take any action deemed necessary in accordance with Civil Service Rules and Regulations, as well as the appropriate collective bargaining agreement.

1.12 Surrender of Department Property

- a. Except as otherwise directed by a higher authority, an enforcement member relieved from duty or suspended shall immediately surrender their badges, identification cards, and department firearms to the supervisor(s) relieving them. Following relief from duty, the member may be required to surrender to their commanders, or other designated persons, all state property that has been issued to them.

1.13 Conduct of Relieved or Suspended Member

- a. Enforcement members relieved or suspended from duty shall not have police authority. However, they are liable for any violation of department written directives, except those which specifically apply to police functions. When members are relieved or on suspension, they shall not wear the department uniform.
- b. A member relieved from duty shall comply with Civil Service outside employment rules and OO 02-51. Any member suspended without pay shall notify the Human Resources Division of interim employment. Suspended members who contemplate returning to the department shall not become engaged in types of employment that would be prohibited by the department under OO 02-51 – Conflicts of Interest and Disclosure of Interests.

Section 2: Disciplinary Proceedings

2.1 Disciplinary Conference

- a. In accordance with Civil Service Rules and Regulations or respective bargaining agreement, a bureau or office commander shall convene a disciplinary conference when a member is to be formally charged with a violation of Civil Service Rules and Regulations, department written directives, or job responsibilities. The conference shall be conducted by their commander of the bureau in the direct chain of command of the accused, or their designee, and a representative from the Labor Relations Section.
- b. The disciplinary conference shall serve as an informal department meeting to review discipline charges against the member. This conference is intended to fairly apprise members of the nature of the charges against them and provide an opportunity for members to respond to the charges. It shall be the final department review of disciplinary action before imposition of discipline.
- c. Any member whose case is being reviewed at a disciplinary conference shall appear and may have representation of their choosing in accordance with the applicable collective bargaining agreements and Civil Service Rules and Regulations. The member shall be notified in writing of the alleged charges at least three days in advance and be given a reasonable time to report to the disciplinary conference in compliance with appropriate Civil Service Rules and Regulations and/or respective bargaining agreements.
- d. The written notice of the disciplinary conference shall contain the specifications of the charges, date, time, and location of the conference, and any other information as specified by the Civil Service Rules and Regulations and/or respective bargaining agreements. Any proposed disciplinary penalty may be included in the notice of the disciplinary conference, or the Director or the Director's designee may withhold the penalty determination until after the disciplinary conference.
- e. During a disciplinary conference, members have the right to represent themselves, be represented by a limited recognition organization, a fellow member, or others of their choosing, including an attorney except as limited by respective labor contracts or Civil Services Rules and Regulations. A "fellow member" representative means another non-represented member within this department. Non-represented members may not be represented by members covered by a collective bargaining agreement, or by a member of an organization certified as an exclusive representative.

- f. The representative's role during a disciplinary conference is as a source of support for the member and to make certain the member understands the charges. The representative shall not interfere with, interrupt, or otherwise obstruct the proceedings. Member representatives shall not be allowed to answer questions on behalf of a member during a disciplinary conference. Members are required to give prompt, full, and accurate answers to questions put to them by the employer. Should the representative violate any of the above parameters, the representative may be ejected, and the disciplinary conference shall continue without the presence of a representative.
- g. As a result of the disciplinary conference, the presiding officer may settle upon or recommend an appropriate resolution in accordance with applicable bargaining agreements and Civil Service Rules and Regulations.
- h. Following the receipt of the charges, a member may request in writing to resign in lieu of participating in a disciplinary conference. The granting of such a resignation shall be at the sole discretion of the Director or the Director's designee. The resignation and the circumstances surrounding the resignation are not grievable.
- i. Failure of the member to attend the disciplinary conference waives the member's right to such conference. Where a member is not immediately available or is convicted in a court of law for the act(s) that precipitated department disciplinary action, the disciplinary conference may be held in absentia after proper notification to the member. Acquittal or any other outcome in a court of law shall not bar the department from holding a disciplinary conference and taking administrative action. When the member fails to attend the disciplinary conference, the Director or the Director's designee may immediately impose the recommended penalty.
- j. Nothing in this written directive shall be construed to restrict the department's authority to suspend a member without pay under the provisions of Civil Service Rules and Regulations and respective collective bargaining agreement before conducting a disciplinary conference. The department shall not be prohibited from imposing an emergency disciplinary suspension and/or removal of a member from the premises in cases where, in the judgement of the employer, such action is warranted.
- k. When appropriate, the Human Resources Division may prepare an official bulletin for issuance by the Director reporting the action taken.

2.2 Resignation Under Charges

- a. Any member who resigns after a statement of charges has been issued, and before their case is heard, shall not be considered for reemployment.

2.3 Statement of Termination

- a. When it is determined that termination is the appropriate form of discipline, the Human Resources Division shall provide the member with a written statement that addresses the following:
 - i. The reason for termination.
 - ii. The date termination is effective.
 - iii. Status of benefits following termination, if any.

2.4 Probationary Troopers

- a. Probationary troopers may be dismissed from the department by the Director for failure to render satisfactory service, or for any infraction of department written directives during their probation period, in accordance with the MSP/MSPTA collective bargaining agreement. Such dismissal shall take place only after review of the documentation by the Human Resources Division.
- b. Where probationary troopers are alleged to have committed misconduct, or where their work performance is unsatisfactory, or where necessary for other reasons, probation may be extended by the Appointing Authority in accordance with the MSP/MSPTA agreement and applicable Civil Service Rules and Regulations.

2.5 Labor Relations Representative's Responsibility

- a. The Labor Relations Representative is responsible for ensuring that formal disciplinary proceedings are processed in a proper and uniform manner. The Labor Relations Representative shall become involved at the time corrective action or discipline is contemplated and/or the Compliant Against Member is submitted to PSS. The Labor Relations Representative, with concurrence of the Human Resources Division Director, shall determine to what extent Labor Relations will become involved in incidents of a minor nature.
- b. The Labor Relations Representative shall attend disciplinary conferences and shall be responsible for ensuring that the proceedings are conducted and documented in accordance with Civil Service Rules and Regulations.
- c. The Labor Relations Representative shall prepare and present:
 - i. Cases to disciplinary hearing bodies and shall handle any other related disciplinary issues as deemed appropriate.
 - ii. Discipline/affirmative assistance matters, and other related grievances pursued to hearings under the MSP/MSPTA collective bargaining agreement.
 - iii. Department cases that are being appealed to the Department of Civil Service.
- d. All cases of appeal beyond Civil Service to the courts shall be handled by the Attorney General. If requested by the Attorney General, the Labor Relations Representative may assist in the preparation of department cases.

Section 3: Administrative Investigations

3.1 General Guidelines

- a. PSS, under general direction of the commander of the Transparency and Accountability Division (TAD), has overall responsibility for the conduct of administrative investigations. Administrative investigations shall be conducted in accordance with this manual and the Official Order governing administrative investigations.
- b. Members of PSS, and any other member assigned to conduct an administrative investigation, shall be supervised by the commander of PSS for the purposes of the investigation and shall follow all direction given by the commander of PSS.

- c. Administrative investigations of alleged misconduct shall be conducted to determine whether misconduct occurred, along with the circumstances surrounding any identified misconduct, so that accurate and just determinations can be made regarding discipline or other corrective action. All administrative investigations shall be conducted in a fair and unbiased manner.
- d. Administrative investigations are conducted under the authority of the Director and the rank or position of principals, investigators, complainants, or witnesses, shall have no bearing on investigations, including the authority of investigators, or closing dispositions.

3.2 Commander Responsibilities

- a. Worksite commanders shall notify members under their command of complaints filed against them, unless the commander of PSS determines that such notification will impede an investigation.
- b. Worksite commanders of principals shall assist members conducting administrative investigations as needed. Such assistance may include identifying and gathering evidence or records, identifying witnesses, providing work schedules for members under their command, and assisting with scheduling interviews.

3.2 Member Responsibilities

- a. All members shall cooperate fully in an administrative investigation as required by department written directives.
- b. To help ensure investigations are fair to all involved, members shall be forthcoming and provide investigators with evidence, records, or information related to an investigation and about which they are aware.

3.3 Member Rights

- a. Representation
 - i. Members have the right to be represented by legal counsel or a union representative when they are interviewed as a principal in an administrative investigation.
 - ii. Members are responsible for securing a representative according to the time limits and eligibility criteria stated in their collective bargaining agreement or the Civil Service Rules and Regulations. Members are entitled to only one representative.
- b. Member's Pay Status During Administrative Interviews
 - i. Members shall be considered "on duty" for the duration of an administrative interview. If the member is interviewed outside of their regular work shift, they are entitled to overtime for the duration of the interview.
 - ii. If the member is directed to report to a location other than their normal work location for the interview, the member shall be entitled to pay for the necessary travel time to the designated location. Use of a state vehicle shall be authorized.
 - iii. Members on administrative suspension are required to participate in any administrative interview.
- c. Union Representative

- i. If a member's representative is scheduled to work during their interview or their interview continues into their regularly scheduled shift, the representative is entitled to be released from work with pay. Similarly, if the interview begins during the representative's work shift and continues beyond the end of the work shift, the representative's duty status shall continue.
- ii. If the post or unit representative is not available, or a representative is sought from another location, travel time for the representative and use of a state vehicle is not generally authorized. However, in rare circumstances a supervisor may authorize travel time and/or use of a state vehicle in the interest of expediting the investigation.
- iii. If the representative is off duty, compensation shall not be provided.

3.4 Conduct of Interviews

a. Complainant/Victim Interview

- i. If the complainant/victim is a member, their interview shall be recorded. If the member complainant/victim is unwilling to be recorded, their objection will be noted in the report, but the interview will proceed and be recorded.
- ii. If the complainant/victim is a citizen, their interview shall be recorded unless they're unwilling to cooperate if they're recorded. In this instance, a non-recorded interview shall be conducted, and their objection noted in the report.

b. Witness Interview

- i. Members interviewed as witnesses are not entitled to union representation during the interview.

c. Administrative/Investigatory Interview

- i. The administrative interview (exclusive to MSPTA members) or investigatory interview (for all other members) occurs when allegations of misconduct are made against a member.
- ii. An administrative/investigatory interview shall only be conducted with a member after any criminal investigation has been adjudicated in a court of law or a denial of criminal charges by a prosecuting official is received.
- iii. If the principal is a member of the MSPTA, wherever practicable they shall receive a Notice of Administrative Interview at least 48-hours in advance of the interview. All other members shall receive a Notice of Investigatory Interview. Either notice may be served by a sergeant, if a 14-level supervisor is not available.
- iv. An investigator designated by the Director to investigate complaints against members has the authority of the Director to order members to answer all questions specifically directed and narrowly related to the allegation(s) or complaint(s).

3.5 Field Referrals

- a. When the commander of PSS determines that an allegation of misconduct or poor job performance may be true but will not result in a suspension or termination of employment, the investigation may be closed as a field referral.

- b. When an investigation is closed as a field referral, the commander of PSS or their designee shall notify the affected member's worksite commander and provide the worksite commander with pertinent records.
- c. A worksite commander receiving a field referral shall review the information provided by PSS and consult with the Labor Relations Section prior to taking any action.
- d. After consultation with the Labor Relations Section, the worksite commander shall take the action necessary to address the identified misconduct in order to prevent future occurrences.

3.6 Retention and Distribution of Records

- a. PSS has responsibility for maintaining all records of administrative investigations. With the exception of the Labor Relations Section, no other worksite shall retain administrative investigation reports.
- b. The commanders of TAD and PSS shall develop procedures for distributing reports to commanders who have a business need to have reports. Commanders who receive reports shall only retain them for as long as their business purpose for having them lasts.