

# NEW BERN POLICE DEPARTMENT POLICY AND PROCEDURE MANUAL

<b>Chapter: 52</b>	<b>Disciplinary Procedures</b>
<b>Effective: 03/01/2014</b>	<b>By the Order of:</b>  <b>Patrick L. Gallagher, Chief of Police</b>
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## Chapter 52 Internal Affairs

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#### 52.1.1 Complaint Investigation

It is the policy of the Department to conduct appropriate investigations of all complaints, including anonymous complaints against the Department or its [members](#). The goal of Internal Affairs is to ensure that the integrity of the New Bern Police Department is maintained through a system of internal discipline where objectivity, fairness and justice are assured by intensive, impartial investigations and review. The Department will investigate fully all verbal or written allegations of misconduct. Complaints may originate internally or from the public.

No one will conduct surreptitious audio and/or video recording in the police department or City of New Bern facilities, vehicles, or on police department time of police department personnel without the expressed authorization of the Chief of Police or Division level designee. Personnel actions such as Internal Affairs interviews, hearings, etc. may be recorded by the Division Captains or investigating officer but it will be done in the open. This regulation does not prohibit the use of approved recording equipment (interview rooms, Emergency Communication Center phone lines, police radio communications, in-car camera system, body worn cameras, etc.) documenting overt police activity or require specific notice of its use. All personnel shall presume that they are being recorded by these systems for the duration of an incident.

#### 52.1.2 Records, Maintenance and Security

All complaints, whether internal or citizen complaints, shall be entered into the [IA Repository](#) tracking system. All complaint records shall be considered confidential with any physical documentation maintained in the Office of the Chief of Police. The employee designated to manage the Internal Affairs function will be responsible to maintain the confidentiality of all Internal Affairs investigations and records.

### 52.1.3 CEO, Direct Accessibility

The Internal Affairs function will be the responsibility of a person at the rank of sergeant or greater assigned by the Chief of Police. On matters involving [internal investigations](#) the incumbent will report directly to the Chief of Police.

### 52.1.4 Complaint Registering Procedures

The New Bern Police Department will make available to the public, information on procedures regarding the registering of commendations and complaints. Information will be available in a handout in the lobby of the police department and on the [Department webpage](#).

### 52.1.5 Annual Summaries - Public Availability

The confidentiality of internal affairs investigations in no way precludes reporting to the public statistical information on the processing of all complaints and internal investigations that were received by the Internal Affairs function. Annually the Chief of Police will cause a review and have published a report of internal affairs investigations. Copies of this report will be made available to all members and the public upon request.

### 52.2.1 Complaint Types

The New Bern Police Department is dedicated to developing policies and implementing programs and services that will establish a positive relationship between the citizens of the community and police in order to enhance the quality of life and provide a safer environment.

It is the responsibility of every member in the Department to work toward improved community relations. When members learn of problems or concerns from the community impacting upon community relations, those problems and concerns not immediately corrected should be forwarded to the appropriate Division Captain through the Chain of Command.

#### A. The type of complaints to be investigated by line supervisors

Supervisors have the responsibility and authority to make inquiries concerning complaints of [less serious allegations](#) of employee misconduct. Supervisory or command personnel will document the facts of observed infractions or complaints received. Documentation for all complaints will be entered into the [IA Repository](#) tracking system. These may include:

1. General complaints concerning [less serious allegations](#) of infractions of regulations or the manner in which employee duties are performed;
2. Complaints relative to differences of opinion between an employee and a citizen arising from the performance of duty;
3. Complaints concerning the manner or method in which an employee investigated a crime, traffic collision or service incident;
4. Complaints concerning an officer's authority to arrest or the propriety of a particular charge.

#### B. The type of complaints that require investigation by the internal affairs function

Complaints alleging serious misconduct or criminal activity shall be [investigated](#) as assigned by the Chief of Police. Prior to instituting any internal investigation into criminal or potential criminal activity, consideration must be given to preserving the opportunity to proceed with a criminal prosecution. If a criminal prosecution is anticipated, then the criminal case shall take precedent.

### 52.2.2 CEO, Notification

Documentation for all complaints will be submitted to the Chief of Police through the Chain of Command by use of the [IA Repository](#) tracking system. If it is necessary to obtain an arrest warrant for an employee, the Chief of Police will be notified without delay.

### 52.2.3 Investigation Time Limits

[Internal investigations](#) should be completed within 45 days of receipt, unless circumstances develop which necessitate additional time to ensure a thorough investigation. To receive an extension, employees completing internal investigations must submit a memo to the Chief of Police requesting approval.

### 52.2.4 Informing Complainant

#### A. Verification of receipt that the complaint has been received for processing

Upon receiving a complaint of misconduct upon an employee of the New Bern Police Department, the assigned investigator shall prepare a memo for the chief notifying the complainant that the complaint has been received for investigation.

#### B. Periodic status reports

If after receiving a complaint it appears that the complainant will not be contacted by the investigative authority for a period of time exceeding 45 days, the Office of the Chief of Police shall notify the complainant, in writing or by a documented phone call, of the receipt of their complaint, the estimated delay in processing, and an estimated date for completion.

If the investigation extends beyond the 45-day limit to complete, the investigator shall periodically notify the complainant of the status of the investigation and document the date and time the complainant was notified.

#### C. Notification of the results of the investigation upon conclusion

The investigating authority will prepare a letter of “completion” for the signature of the Chief of Police. The Office of the Chief of Police will send written notification to the complainant that a resolution of the investigation has been reached.

### 52.2.5 Statement of Allegations/Rights

When employees are notified that they have become the subject of an internal investigation, the investigator will issue the employee a written statement of the allegations and the [employee’s rights and responsibilities](#) relative to the investigation. In criminal investigations, the employee is afforded all of the constitutional rights given to any person who may be a suspect of a criminal investigation. As such, there shall be no action taken against an employee who exercises their constitutional rights in criminal investigations.

In an internal investigation an employee will be advised of their rights according to [Garrity v. New Jersey, 385 US 493 \(1967\)](#). All questioning in an internal investigation shall be conducted at a reasonable time and manner; the investigator may take into consideration an employee’s schedule and other work related matters prior to setting up appointments, interviews, and conducting other investigative matters that require an employee to participate in an investigation. Those employees who are required to cooperate in an investigation, and are off duty, shall be compensated for their time.

An [employee](#) who is the subject of an internal investigation does not have the right to have an attorney present while being questioned. An [employee](#) involved in an internal investigation shall not discuss the investigation with others unless authorized by the investigative authority.

## 52.2.6 Submission to Tests, Procedures

If, during the course of an internal investigation, the [investigating authority](#) determines cause exists to justify an employee's submission to a medical, physical, psychiatric, laboratory, or truth verification examination, the employee shall submit to such test or exam. These tests may include:

### A. Medical or laboratory examinations are administered

Testing blood or urine specimens to determine whether employees have used drugs or alcohol shall be in accordance with the City of New Bern, [Personnel Ordinance 54-200: Employee Conduct](#).

### B. Photographs are taken of employees

The New Bern Police Department will maintain employee photographs that may be used in an internal investigation. If additional photographs are required for this purpose, the employee may be directed to submit for additional photographs. Refusal by the employee to comply with such direction may result in disciplinary action.

### C. An employee may be directed to participate in a line-up

In an internal investigation an [employee](#) may be asked to participate in a physical lineup for the purposes of eyewitness identification. If the employee refuses to comply with such direction, non-compliance may result in disciplinary action.

### D. An employee may be required to submit financial disclosure statements

Employees who are subject to an internal investigation may be directed to submit financial disclosure statements when such records are necessary for the investigation. Failure to comply may result in disciplinary action.

### E. Instruments for the detection of deception are used

In an internal investigation, an employee may be asked to submit to a truth verification examination. Additionally, the complainant may also be asked to submit to such examinations. The truth verification examination, if requested, shall be specifically directed and narrowly focused upon those aspects of the internal investigation that are pertinent to the employee's job performance. The employee involved in the internal investigation must comply with a request for a truth verification examination and if said employee refuses, such refusal may result in disciplinary action, up to and including dismissal.

## 52.2.7 Relieved from Duty

Relief from duty is a temporary administrative action to expedite a [member's](#) immediate removal from duty when it appears such action is essential to protect the interests of the Department.

### A. Relief from duty is warranted when a supervisor observes conduct and/or appearance of an employee not acceptable for the work environment. Relief from duty shall involve one of the following actions:

1. Suggest that the employee use sick leave or vacation leave and return home instead of continuing with the work period, or
2. Reassign the employee for the work period, if an appropriate task or location is available, or
3. Contact the Chief of Police for authorization to invoke an Emergency Suspension as defined in the City of New Bern, [Personnel Ordinance 54-347](#).

### B. When the relief from duty involves an [officer](#), the authority initiating the relief shall make a

determination, based on the totality of the facts, whether police authority should be suspended. The period of relief shall continue until an [administrative hearing](#) is held and reinstatement is authorized by the Chief of Police.

**C.** Reasons for relief from duty **may** include, but are not limited to:

1. Involvement in a use of lethal or less lethal force;
2. Alleged violation of department rules, regulations, policies and/or procedures;
3. Alleged violation of federal, state, and/or local laws/ordinances;
4. When physical condition or behavior indicates an actual or potential risk to the public, the department or the individual;
5. Unapproved absence from work; or
6. Alleged acts of insubordination.

**D.** Authority:

1. Any supervisor may immediately [relieve from duty](#) any [member](#) of subordinate rank, regardless of the organizational assignment of either party;
2. [Members](#) who have been relieved from duty may only enter the police facility when approved by a supervisor or to perform reassigned duties.
3. A member relieved from duty and denied access to the facilities will have access removed from the automated locking system and must be escorted while he/she is in a police facility.

**E.** Process of Relief:

1. Documentation of Action Taken: Within 24 hours of the relief of duty, the initiating supervisor shall forward a memorandum through the chain of command to the Chief of Police describing the nature of the alleged violation or event and the date and time of relief.
  - a. If relief of duty involves an [officer](#), a statement as to whether police powers were suspended and a list of equipment removed shall be included in the memorandum.
  - b. If police authority is suspended, the [officer](#) shall relinquish at a minimum, their:
    1. Badge
    2. Identification card
    3. Issued weapon(s) to include less lethal
    4. Radio and all equipment issued with the radio and
    5. Vehicle and all associated contents.
  - c. A copy of the memorandum shall be given to the relieved employee.
2. [Administrative Hearing](#): The employee's Division Captain shall hold an administrative hearing the next regular business day to determine appropriate actions.
  - a. The administrative hearing will facilitate a review of the facts surrounding the relief from duty and a recommendation to the Chief of Police as to reinstatement, and if applicable, restoration of police authority.

- b. A memorandum documenting the finding of the administrative hearing shall be forwarded to the Chief of Police by the Division Captain/Section Lieutenant within 24 hours for final disposition.
  - c. Employee relieved from duty shall be reassigned or use personal leave. Every effort should be made to assign the employee to a productive assignment while relieved from duty.
  - d. Determine if employee's action involved violation of policy and warrants further investigation.
3. Notification of Disposition: The Office of the Chief of Police will notify the relieved employee of the finding of the administrative hearing.

Emergency Suspensions: The City of New Bern, Personnel Ordinance 54-347: **Emergency suspension**: provides that, *“When it is determined by the department head that any employee has committed an extremely serious violation of ordinance, policy or procedure, or that the best interest of the city would be served given a certain circumstance, the department head may impose an emergency suspension on the employee. Such suspensions will originate as non-disciplinary suspensions with pay and will last no longer than one working day.”*

Should the department head impose an emergency suspension, the Human Resources Director and the City Manager are to be notified of the suspension and the reasons for the suspension as soon as feasible, but no later than 24 hours after the suspension took effect.

#### **52.2.8 Conclusion of Fact**

Upon completion of the review and hearing, if warranted, the Division Captain will recommend one of the following conclusions:

1. Unfounded - Allegation is false;
2. Exonerated - Incident or allegation occurred, but was lawful and proper;
3. Not Sustained - Insufficient evidence exists to either prove or disprove the allegation or violation;
4. Sustained - Allegation or violation is supported by sufficient evidence. Only findings in this category will be included in the employee's personnel file. Findings of a sustained violation will result in appropriate corrective measures.
5. Policy Failure: Allegation true but action taken was not inconsistent with policy and **there is an indication of a need for policy review.**