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Alpha Index: Reporting Misconduct

*“Department Training Bulletins shall be used to advise members of current police techniques and procedures and shall constitute official policy.”*

## REPORTING MISCONDUCT

### *Reporting misconduct is not an act of betrayal, it is an act of integrity.*

Department personnel have a responsibility to adhere to agency standards of conduct, policies, rules, and procedures. Failure to do so threatens the integrity and ethics of our profession. We all must be held accountable for tolerating and participating in the so-called “code of silence” (principle of placing loyalty to fellow members/employees above reporting misconduct). Personnel are required to take action when they witness or learn of behavior that violates the Department’s standards of conduct. This does not mean that every misstep, mistake, or instance of poor judgment must be reported to a supervisor. Such zealotry could cause more harm than good. However, it does mean that personnel must draw the line when an act or pattern of behavior by other personnel threatens the rights of citizens and/or the well being and reputation of Department personnel and the Department.

Each member and employee of the Department is a stakeholder in the effort to preserve and enhance the reputation of the Department and their personal pride as members and employees of the law enforcement profession. Personnel cannot subscribe to the notion that silence and secrecy will serve their individual or collective interests. Experience has clearly demonstrated that these attitudes only serve to build barriers within the Department and alienate members, employees, supervisors, and managers from one another and the public. Unfortunately, the mistakes and misdeeds of a few often have serious repercussions for everyone.

A high regard for integrity and personal accountability must be emphasized to ensure the development and maintenance of a professional organizational image. We must all be ever vigilant to demonstrate that our behavior reflects the professional standards of conduct in the Law Enforcement Code of Ethics.

### **MOR 314.48 – Reporting Violations of Laws, Ordinances, Rules or Orders**

Members and employees who become aware that other members or employees violated laws, ordinances, rules of the Department, or disobeyed orders, which rise to the level of a Class I violation **or** a Class II violation which indicate a pattern of misconduct **or** a single Class II violation which threatens the rights of private persons and/or the well-being and reputation of Department personnel and/or the Department, shall within 24 hours or sooner if practical, report the offense, orally or in writing, to his/her supervisor.

Members and employees who know of actions or behavior of other members or employees, which are considered Class II violations and do not indicate a pattern of misconduct and do not threaten the rights of private persons and/or the well-being and reputation of Department personnel and/or the Department, may address the misconduct through non-disciplinary corrective action.

If the witness member or employee believes the incident is so grave and serious that it must be reported immediately to the Chief of Police, the chain of command may be bypassed. Severe discipline shall be imposed, up to and including termination, for failure to comply with these reporting requirements.



### Reporting Misconduct

When a member/employee observes misconduct, he/she shall take action. In most cases, observed misconduct shall be reported to the member's/employee's supervisor or directly to IAD. However, for certain Class II offenses, members/employees may use discretion, and if appropriate, address the misconduct directly with the member/employee committing the MOR violation, rather than reporting it to a superior or the Internal Affairs Division.

***NOTE: If a member/employee becomes aware that a private person (e.g. suspect, witness, etc.) wishes to make a complaint, then the officer shall notify his/her supervisor or commander.***

Types of misconduct that shall be reported when observed by Department Personnel (MOR 314.48):

- All Class I offenses; and
- Class II offenses that indicate a **pattern of misconduct** OR a **single** Class II offense which threatens the **rights of private persons and/or the well being and reputation** of Departmental personnel and/or the Department.

Types of Class II misconduct that may be addressed in a non-disciplinary manner by the observing member/employee and/or the member's/employee's supervisor, when he/she becomes aware of the misconduct (MOR 314.48):

- Class II offenses that DO NOT indicate a pattern of misconduct; and
- DO NOT threaten the rights of private persons; and/or
- the well-being and reputation of Departmental personnel; and/or
- the Department.

Supervisors may use discretion about initiating an administrative investigation when they are notified by another member/employee of a Class II offense(s) committed by a subordinate if there is no pattern of misconduct. The supervisor may choose to take non-disciplinary corrective action for infractions reported by members/employees where there is no pattern of misconduct and he/she believes this to be the best method for correcting the behavior.

If the supervisor believes the Class II offense(s) to be a pattern of misconduct he/she shall initiate an investigation.

Supervisors should always take immediate action to correct behavior even if they DO initiate an administrative investigation, unless such action would compromise an investigation.



## **Class I Offenses**

Class I offenses are the most serious allegations of misconduct and, if sustained, shall result in serious disciplinary action up to and including dismissal and may serve as the basis for criminal prosecution.

### **Examples**

- a. Use of excessive force, unnecessary and/or unlawful force;
- b. Fabrication or destruction of evidence, including the planting of inculpatory evidence;
- c. Untruthfulness, including perjury;
- d. Knowingly and intentionally filing a false police report;
- e. Insubordination;
- f. Commission of a felony or serious misdemeanor (Examples of serious misdemeanors include those crimes that involve violence, intimidation, threats, sexual offenses, theft, dishonesty, possession of drugs, violations of California Penal Code Section 12021(c) (1), and those crimes where bias is a motivating factor);
- g. Bias or harassment, actions of a retaliatory nature, or failure to take reasonable steps to prevent retaliation;
- h. Solicitation or acceptance of gifts or gratuities specified in the Manual or Rules;
  - i. Use of position for personal gain;
  - j. Knowingly or should have reasonably known that he/she made a false arrest or illegal detention;
- k. Failure to report others who commit any Class I offense or a single Class II offense that indicates a pattern of misconduct or threatens the rights of private persons and/or the well-being and reputation of Department personnel and/or the Department;
  - l. Failure to detect a pattern of misconduct;
- m. Failure of a supervisor/manager to properly supervise, and/or take corrective action for misconduct that he/she knew or reasonably should have known about;
- n. Failure to properly identify self, including refusing to provide name, deliberate concealment of a badge or name plate; and
- o. Obstructing the Internal Affairs investigation process.

**REQUIRED ACTION** – Observing member/employee shall report the misconduct to their supervisor within 24 hours or sooner, if practical, and can be reported directly to the IAD or the Chief of Police if the member/employee believes it to be necessary or appropriate.

### **Scenario**

While interacting with a private person, a member makes a comment of a discriminatory nature, such as derogatory comments regarding age, race, gender, sexual orientation, or religion directed at the person. The observing member/employee must report the misconduct to their supervisor and/or directly to IAD.



**Class II Offenses:** Class II offenses shall include all minor misconduct offenses.

**Class II Offenses – Mandatory Reporting to a Supervisor Requirement**

**Examples**

- a. Pattern of rude conduct;
- b. Pattern of failing to stop at a red light while driving; and
- c. Intentional disregard for Departmental policies (e.g. an officer purposefully fails to fill out a stop data form.)

**REQUIRED ACTION** – Observing member/employee shall report the misconduct to their supervisor.

**Scenario demonstrating a mandatory reporting requirement to a supervisor**

Officer 1 observes officer 2 shout a profanity at a private person. Officer 1 shall report the misconduct to a supervisor.

The supervisor can either initiate an investigation or if there is no pattern of misconduct, choose to handle the conduct via non-disciplinary corrective measures. If the supervisor uses non-disciplinary corrective measures and the behavior continues, the supervisor shall initiate an investigation. All non-disciplinary corrective measures **must be documented**. Appropriate forms of documentation include a Letter of Discussion, Performance Deficiency Notice (PDN) and Performance Appraisal Form.

**Class II Offenses – Reporting Discretion allowed**

**Examples**

- a. One instance of using profanity not directed at a private person; and
- b. One instance of conducting personal business while on-duty.

**REQUIRED ACTION** – Observing member/employee shall either speak with the member/employee committing the misconduct or report the misconduct to their supervisor.

**Scenarios demonstrating optional reporting to a supervisor**

1. An officer uses profanity in the presence of other persons, but does not direct it towards anyone, and it is not a pattern of misconduct, the witness officer is not obligated to report it. However, the witness officer shall speak with the subject officer (peer correction) and advise him or her that such conduct is unprofessional and future misconduct may establish a pattern of misconduct which would trigger a mandatory reporting requirement.
2. Officer 1 observes officer 2 conducting personal business on-duty. Specifically, officer 2 has spent 30 minutes of on-duty time on his personal cellular phone to facilitate a loan application process. Officer 1 has not observed officer 2 behave this way in the past. This type of misconduct is not directed at a person and does not threaten the rights of private persons and/or the well-being and reputation of the Department. The witness officer shall speak with the subject officer (peer correction) as in scenario “1” above.



### **Formal Investigations vs. Non-Disciplinary Corrective Measures**

There are different ways in which misconduct by members/employees may be discovered and the action taken is dependent upon the severity of the allegation and the way in which it was discovered.

An internal investigation shall be initiated in the following situations:

- All allegations of misconduct reported by any private person;
- All allegations of Class I misconduct reported by OPD personnel;
- All allegations of Class II misconduct reported by OPD personnel, which indicate a pattern of misconduct.

### Informal Complaint Resolutions

The Informal Complaint Resolution process may be used to resolve allegations of Class II offenses from any source that DO NOT indicate a pattern of misconduct. (See DGO M-3.1 Informal Complaint Resolutions)

Non-disciplinary corrective action imposed by a supervisor may be used in the following situations:

- Class II offenses reported by OPD personnel that DO NOT indicate a pattern of misconduct.

When deciding the proper response to misconduct, remember that *some* action is *always* required. Misconduct in any form shall not be ignored. The purpose of this Training Bulletin is to simplify the discussion regarding what is the required response. Members and employees should reference this policy and related General Orders (M-3 series) to help determine the appropriate response.