



Officer Misconduct Allegation and Investigation Procedure

Purpose: To establish a procedure for the uniform receipt and investigation of allegations of misconduct by Montana public safety officers, to protect citizens from misconduct by public safety officers, and to protect public safety officers who conduct themselves appropriately.

Classification: All allegations of misconduct are subject to Montana and Federal Right to Know and Right to Privacy laws. Information regarding allegations of misconduct will be released under the direction of legal counsel. No information regarding pending allegations is to be released to Council members, except those members who participate in the Case Status Committee, until such release is allowed by the Montana Administrative Procedures Act (MAPA).

If an officer who is accused of misconduct retains an attorney at any time during this procedure, communications regarding the allegations will be directed to the officer's attorney unless a release signed by both the officer and the officer's attorney is received.

Making an Allegation:

1. An employing agency may make an allegation directly to the executive director or designee. All other allegations must be made to the employing agency first either by the complainant or POST, unless the executive director determines that it would be inappropriate to do so.
2. Allegations which are not made by the employing agency will initially be communicated to the employing agency unless the executive director determines that it would be inappropriate to do so. The executive director or designee will request a written response to the allegation from the employing agency.

If an allegation is received from an employing agency, the executive director may, at his discretion, proceed to sending Letter 1 to the officer prior to consultation with the Case Status Committee. If the officer is not certified and is not working as a public safety officer, the director may send a letter closing the matter and informing the officer that an investigation will be open if the officer becomes employed as a public safety officer again.

3. Upon receipt of the employing agency's allegation or response to the allegation, the allegation will be placed on the agenda to be presented to the Case Status Committee at the next committee meeting. The Case Status Committee members will be provided copies of the allegation and agency response, if any. The Case Status Committee will make a recommendation to the executive director regarding how to proceed with the allegation. They may recommend the executive director request more information, close the file, or move forward to Letter 1, or other recommendations as each case may warrant. If the executive director sends a Letter 1 or a closure letter to an officer prior to consultation with the Case Status Committee, the allegation and Letter 1 or the closure letter will be presented to the Case Status Committee at the next committee meeting.
4. If more information is requested, the executive director or designee will request and obtain available information and provide it to the committee at its next meeting. If a case is closed, the executive director will contact the complainant in writing and in a timely manner and inform the complainant of that decision. If the complainant is not an employing authority, the executive director will copy the employing authority and the officer with the information sent to the complainant.
5. If Letter 1 is to be sent, the allegation will be assigned a case number by POST staff and Letter 1 will be sent by the executive director in a timely manner. Letter 1 will include a description of the allegations against the officer, citation to the specific ARMs that the officer may have violated, a request for a release of personnel information and form, a voluntary surrender form and instructions regarding surrender, and will give the officer thirty-five days from the date of the letter in which to respond. The officer may request an extension of time in writing, which will be granted or denied at the executive director's discretion. All letters to the officer (1 through 3 and Notice of Agency Action) will be copied to the employing agency and/or former employing agency if the officer no longer works there.
6. If the officer does not respond to Letter 1, the executive director will send a letter with a Notice of Agency Action to the officer. The officer's certificate(s) will be revoked. The officer will be provided thirty days from the date of the Notice to request a hearing.
7. If the officer does respond to Letter 1, POST staff will begin investigating the allegations. The officer's response and results of the investigation will

be disseminated to the Case Status Committee for review prior to the next committee meeting. The Case Status Committee will make a recommendation to close the case, make an offer of a stipulated sanction, or further investigate officer. If the case will be closed, a letter advising the officer of that will be sent, and the executive director will call or write a separate letter to the employing agency reflecting the decision. If further investigation is recommended, the director will continue to keep the committee apprised of the investigation during committee meetings until the investigation is complete. Once an investigation is complete, the committee will make a recommendation regarding what an offered stipulated sanction should be. The executive director will then send Letter 2 to the officer containing an offer. The officer will be given thirty-five days to respond by either accepting the offer, rejecting it and making a counteroffer, or rejecting it with no counteroffer.

8. If the officer responds to Letter 2, that response will be provided to the Case Status Committee for review prior to the next committee meeting. If the officer accepts the offer, the committee will be informed. If the officer makes a counteroffer, the committee will make a recommendation about whether to accept the counteroffer or not. If the officer simply rejects the offer, the committee will make a recommendation as to what sanction should be applied with Letter 3. If a counteroffer is accepted, a stipulation will be sent to the officer. If it is not, the committee will make a recommendation as to what sanction should be applied with Letter 3.
9. If a Letter 3 is to be sent, the executive director will hire a hearing examiner and prepare Letter 3 and a Notice of Agency Action with the assistance of staff and legal counsel. Letter 3 and the Notice of Agency Action will inform the officer that he or she has thirty days to request a hearing. The original Notice of Agency Action will be sent to the hearing examiner for filing, along with a copy of Letter 3. A copy of Letter 3 and the Notice of Agency Action will be sent to the employing agency. The original letter and a copy of the Notice of Agency Action will be sent to the officer. The thirty days will run from the date upon which the Notice of Agency Action is signed by the executive director. Any sanction applied in the Notice of Agency Action will begin upon the executive director's signature.

The executive director or designee may present any allegation to the Case Status Committee at any time during the complaint procedure.

Upon receipt of the officer's request for hearing, MAPA and the ARMs will govern further procedure.