



## **The Complaint Alleging Police Employee Misconduct Starts the Process and is the Essential Element for any System of Accountability**

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“The complaint process should not discourage, dishearten, or intimidate complainants, or give them cause for fear” (*Internal Affairs Guidelines*, 2008, 10)

A complaint is an expression of displeasure with the actions or services of an agency and/ or its employer, or an allegation of wrongdoing. Receipt of a complaint will initiate the Internal Affairs process, so a procedure for complaints must be established.

“It is imperative to not only have procedures in place for fairly and impartially accepting, processing, and investigating complaints concerning allegations of employee misconduct but also to inform all police employees and the public of that process (*Investigation of Employee Misconduct*, 2007). “An accessible, fair, and transparent complaint process is the hallmark of police responsiveness to the community” (*Protecting Civil Rights*, 2006, 81). It is incumbent on the police department to make its citizens aware that a complaint process exists, how to file a complaint, and how the agency processes and investigates complaints.”<sup>1</sup>

What is disheartening is that this complaint acceptance procedure has been a continuous area of contention in law enforcement for over 50 years. Following the 1965 Watts Riots in Los Angeles a ‘blue ribbon committee’ was formed to investigate the causes for that disastrous urban riot. One significant element that was identified by the McCone Commission was the problem of filing a complaint alleging police misconduct. This same area was also highlighted in the national study,

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<sup>1</sup> “Building Trust Between the Police and the Citizens They Serve...An Internal Affairs Promising Practice Guide for Local Law Enforcement,” IACP/COPS publication, 2009, p.26

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referred to as the Kerner Commission, after the series of other urban riots throughout the country in the late 1960s. After the Rodney King incident in 1991, other 'blue ribbon commissions' found similar problems with the citizen complaint system (Christopher 1991, Los Angeles Police; Sinclair 1992, Boston; and Koltz 1992, L.A. County Sheriff).

Why is this seemingly simple critical task so difficult for law enforcement? The major issue really is that most cops and police agencies don't consider themselves to be a 'public service organization.' It's the attitude exhibited by that police employee who is confronted with a citizen requesting to file a complaint alleging misconduct against another police employee. Rather than see this one encounter with a usually disgruntled community member, too many police employees look at it as some form of attack on the agency or a fellow cop.

What makes it even more disturbing is that it's not a frequent occurrence. During training seminars I've conducted throughout the last 30 years, I have used a class participation exercise that continuously discloses that complaints of employee misconduct occur in less than one-tenth of one percent of an agency's total encounters with the public. This includes calls for service, citations, arrests, and field interviews. It's not a daunting task for any agency.

The principle element of any reasonable complaint acceptance process is to define what constitutes a complaint? Rarely do any of the national studies or model policies give any specific guidance in defining what constitutes a complaint.

I've used throughout my 56 years in law enforcement a relatively simple definition. "A complaint is an allegation from any source of an act or omission by an employee that, if it was proven to be true, would constitute misconduct." Misconduct is any act or omission that is "a criminal act, neglect of duty, violation of policy, procedure, rule, regulation, core value or training standard, or conduct unbecoming."

Pretty simple, huh? There is no evaluation of credibility. There is no analysis at this stage as to the complainant's motives. There is no call for the person accepting the complaint to determine whether it occurred or didn't. The complainant could be mentally ill or stoned out of his/her mind. It can be made in person, on the phone, through the Internet, by a third party, or anonymously. At this stage, you just determine *does the complaint as stated meet your agency's definition of what constitutes a complaint*. If it does, the only action is to record the complaint and secure a control number. That starts the investigative process so the complaint doesn't get lost or slip through a crack in the system.

Is it acceptable to have a supervisor talk with the complainant? Of course, and that's a great way to

begin to build a good client relationship with the complainant. The complaint process can give you valuable performance information that you may never get otherwise. You have an opportunity to win over someone who might have initially been hostile or a critic. This supervisory interaction can be very productive. Nevertheless, it too, must be documented. If the supervisor successfully resolves the issue; the complainant may be completely satisfied. But that doesn't stop the process.

There are two significant potential problems with this supervisory contact. Your agency may get a memo or entry into your computer system, such as the 'Blue Team' aspect of IAPro. The supervisor says the complaint has been resolved to the satisfaction of the complainant. Wonderful, but this also could be a way for the supervisor to have simply kissed off the complaint. Your agency needs to conduct random 'quality control' callbacks to the complainant to validate that s/he was satisfied and the issue is resolved. Another pitfall is when the supervisor pulls up a video or audio that refutes the allegation and trashes the complaint without any further investigation. Yes, this would be unfounded or exonerated after a reasonable investigation. But that doesn't help the accused employee or agency. A numbered complaint investigation does! Of course, in a case like this you can use an abbreviated investigation. The completed investigation supports the employee and your agency. One that never is investigated and given a final disposition does not!

What about false or frivolous complaints? That's probably true with maybe 10 or 15 percent of citizen complaints. Law enforcement can handle frivolous complaints or those from the chronic complainer. False complaints can be handled with a good investigation and report disposition. Your employee and agency are protected by a completed investigative report. Nearly every state allows for prosecution when someone files a false police report. In most states, the complaint alleging employee misconduct would be considered a false police report. California is the exception by its State Supreme Court. Yet few agencies ever attempt to prosecute false complaints.

There are two main reasons for not prosecuting for false complaints. First, this might discourage other citizens from filing legitimate complaints. That's why it should be done only when the Chief or Sheriff approves it and discretion should be a principle concept. It should be restricted for the egregious false complaint alleging sexual misconduct, theft or excessive force. A second reason prosecution is not sought is the belief that the prosecuting attorney won't file it. Many that have been filed and are supported by video or disinterested witnesses are usually resolved by a guilty plea.

In the end, you protect all stakeholders by accepting complaints that meet your definition of what constitutes a complaint alleging police employee misconduct. A tight, effective complaint process safeguards citizens, employees, your agency and your community.

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