



## **GUIDELINES FOR CONDUCTING INTERNAL AFFAIRS INVESTIGATIONS**

This Enclosure provides policy and guidelines for conducting Internal Affairs (IA) investigations involving both enlisted and civilian department members. It is also intended to serve as a general source of information for the IA field investigator.

### **1. INITIAL STEPS FOR INTERNAL AFFAIRS INVESTIGATIONS**

- A. Once knowledge of the complaint has been received by a supervisor or department administrator, a 90-day time frame begins within which any potential discipline must be proposed (MSPTA only). Therefore, investigators shall make note of the precise date (and time, if known) that management becomes aware of the complaint.

Note that the 90-day time frame starts from the time management first becomes aware of the misconduct, not when the Complaint Against Member form, UD-93 is submitted.

- B. The supervisor or department administrator shall immediately complete either a web-based *IAPro* Complaint Against Member form (a web link is available from IA) online or a Complaint Against Member form, UD-93 which shall immediately be emailed to the IA e-mail account (MSPIA@Michigan.gov).

If a Complaint Against Member form, UD-93 is e-mailed it shall also be sent (i.e., CC'd) to the affected district/division commander.

- C. The *IAPro* software system shall be used for all internal investigations.
- D. IA shall assign a case number and security level to the complaint and then assign an IA lieutenant to serve as case supervisor.
- (1) If IA chooses to investigate the complaint, they shall notify the affected district/division commander.
  - (2) If the IA complaint is assigned to the district/division, an assignment letter is sent to the district/division commander requesting that they assign the complaint to a field investigator.
- D. The assigned field investigator shall contact IA to obtain a password allowing them user access to the IA AICS system.
- (1) A unique password shall be issued to each field investigator so that they can access their report(s).
  - (2) Each password shall be deleted at the completion of each investigation.
- E. Criminal Investigations
- (1) Criminal allegations against members, both enforcement and non-enforcement members, shall be reported on a Complaint Against Member form, UD-93.
  - (2) Generally, all criminal allegations against members, including LEIN and Secretary of State violations shall be fully investigated before any part of an administrative investigation is begun.
  - (3) Criminal allegations shall be reviewed by the state Attorney General's Office for on-duty incidents and by a local prosecutor for off-duty incidents.

IA shall be contacted in order to act as a liaison between the department and the Attorney General's Office (refer to Official Order No. 84).

(4) If an investigation involves a department member who is on extended leave for any reason, it is the responsibility of the person assigned to the investigation to immediately contact the IA case supervisor for direction.

(5) Warrants/Charges

a. The issuance or denial of a warrant for a member does not establish the presence or absence of misconduct on their part. There are instances of misconduct where discipline could be imposed without an internal investigation being conducted. However, an investigation shall be conducted if the alleged misconduct could result in a suspension.

b. IA shall be immediately notified once the decision on an arrest warrant request against a member is learned.

It is critical that the investigator notify IA immediately upon notification that criminal charges shall not be brought, as this shall activate the "90-day clock" and the administrative portion of the investigation.

c. If no criminal charges are authorized, a letter from the Attorney General or the prosecutor's office shall be requested to properly document the fact that no warrant was authorized.

## 2. INTERVIEWS

A. There are two types of IA interviews:

(1) The criminal interview.

a. The criminal interview occurs during a criminal investigation conducted by an enforcement member.

b. Non-custodial criminal interviews of members do not require Miranda warnings.

Note that there are occasions where reading Miranda would be appropriate. The investigator shall consult with their assigned IA case supervisor for any necessary guidance.

c. A member of the MSPTA must be provided the "48-Hour Notice of Criminal Interview" at least 48 hours prior to the interview, and before any questioning can be conducted on the criminal complaint.

A "48-Hour Notice of Criminal Interview" is not required for the criminal interview of a non-MSPTA member.

d. Members shall be informed that they are not obligated to submit to an interview, and that doing so is purely voluntary. The member shall further be informed that if they choose not to submit to an interview, their refusal shall not subject them to any type of discipline resulting from that decision. If the member refuses to be interviewed, he or she shall be allowed to return to work and finish their shift.

(2) The administrative/investigatory interview.

a. The administrative interview (exclusive to MSPTA members) or investigatory interview (for all other members) occurs when allegations of misconduct are made against a member.

- b. The misconduct may be a violation of the Official Orders or of a criminal nature that, after review by the Attorney General or local prosecutor, will not result in prosecution of the member.

The issuance of a personal protection order (PPO) against a member is not grounds for an internal investigation when no allegations of misconduct accompany the PPO. If the PPO prevents the member from carrying a firearm, the Human Resources Division shall be notified immediately.

- c. An administrative/investigatory interview shall also be conducted after a member is sentenced following a criminal conviction in a court of law.

- B. The department has a right to inquire into the job-related conduct of a member, and the member has a duty to cooperate with such inquiry by responding to questions fully and truthfully. In this context, a member who lies or evades the truth is subject to a separate disciplinary charge. If the interviewer forms a belief that the member is not telling the truth, or is evading answering the questions, the member shall be told this and reminded that they have an affirmative duty to tell the full truth, and face discipline for this alone if they refuse.

- (1) Official Order No. 1, Article 4, Sections 4.35 and 4.35a shall be read in their entirety to any member being interviewed as a principal, prior to the start of questioning in an administrative or investigatory interview. Utilizing the "Outline for Conducting an Administrative Interview" shall ensure that all rights are covered with the member.

- (2) The outline also concludes with the following direct order, which must be given to all members who are principals:

"I hereby order you to answer my questions fully and truthfully. Your failure to do so constitutes an act of insubordination for which discipline shall result, up to and including discharge."

- C. Union Representation

- (1) It is important that the investigator determine any contractual rights the member may have prior to conducting the interview. For troopers and sergeants, these rights are described in Article 7, Section 5, of the MSP/MSPTA Collective Bargaining Agreement.

For members of other collective bargaining agreements, their specific labor contract shall be consulted to determine their representation rights. NERE's (non-exclusively represented members) should consult Official Order No. 1, NERE's Representation Rights at Investigatory Interview.

- (2) The member shall be responsible for securing a representative according to the time limits and eligibility criteria stated in their contract or the Civil Service rules.

The member is entitled to only one representative.

- (3) It is not proper for the member's representative to answer for the member in any way. If, during the course of the interview, the member's union representative interrupts, interferes, or otherwise obstructs the investigator's questioning or the member's answers, the investigator shall tell the representative that such behavior shall not be tolerated.
  - a. If the investigator sees the representative nod at the member, they shall note this in the report and warn the representative to cease the behavior.
  - b. If the investigator sees the representative point to writing on a piece of paper in response to a question, the investigator shall note this in the report and tell the representative to cease this behavior. They shall also demand to see what was pointed at and describe it for the record.
- (4) If the representative continues to interrupt, interfere, or otherwise obstruct the interviewer's right to an uninterrupted answer, the field investigator shall warn the representative that if this happens again, the representative shall be told to leave.
- (5) If the representative is told to leave the interview, the interview shall proceed without the member being represented. If necessary, the investigator shall order the member to remain present so that the interview can continue.

D. Complainant/Victim Interview

- (1) Complainant/victim interview shall be conducted as soon as possible, and shall be conducted before witness or other interviews.
- (2) Complainant/victim interviews shall be tape recorded. If the complainant/victim is unwilling to be tape recorded, a non-tape recorded interview shall be conducted and their objection noted in the report.
  - a. Always use new, standard size audio cassette tapes not microcassettes, and do not re-use tapes.
  - b. Do not put two interviews on the same cassette tape, use a separate tape for each interview conducted.
- (3) Any extended contact (i.e., conversation) that the investigator or the member in receipt of the initial information has with the complainant/victim shall be documented.
- (4) The complainant/victim interview may be conducted outside of the work site.

E. The interviewer is not required to explain what Code of Conduct Article, criminal statute, or Official Order has been violated. If such an inquiry is made, the investigator shall simply note this for the record and continue the questioning.

F. Witness Interviews

- (1) Witness interviews shall be tape recorded. If the witnesses are unwilling to be interviewed on tape, a non-tape recorded interview shall be conducted and their objection noted in the report.
  - a. Always use new, standard size audio cassette tapes not microcassettes, and do not re-use tapes.
  - b. Do not put two interviews on the same cassette tape, use a separate tape for each interview conducted.

- (2) Members interviewed as witnesses are not entitled to union representation during the interview.
  - (3) Witnesses do not have to be read Official Order No. 1, Article 4, Sections 4.35 and 4.35a. However, if you know or suspect at any point that the witness (if either an enlisted or civilian member of the department) is not being truthful and forthcoming, the investigator may opt to read them Official Order No. 1, Article 4, Sections 4.35 and 4.35a and order them to tell the truth. If the witness member is still not being truthful, a separate Complaint Against Member form, UD-93 for insubordination with the witness named as the principal shall be completed.
- (4) It may also be useful to have witnesses provide written statements describing the incident.
- (5) Witness interviews can be conducted outside of the work site.

#### G. Interview of the Principal

- (1) The member against whom allegations of misconduct have been made is referred to as the principal.
- (2) As with most other types of investigations, the principal should be interviewed last. Doing so allows the investigator to confront the principal with all the facts.
- (3) The principal shall receive a "48-Hour Notice of Administrative Interview" if they are a member of the MSPTA. All other members shall receive a "Notice of Investigatory Interview". Either notice may be served by a sergeant.

Refer to Article 7 of the MSPTA contract for additional information regarding the issuance of 48 Hour Notices.

- (4) Principal interviews shall be tape recorded. If the principal is unwilling to be tape recorded, their objection shall be noted in the report, and the interview shall continue on tape.
  - a. Always use new, standard size audio cassette tapes not microcassettes, and do not re-use tapes.
  - b. Do not put two interviews on the same cassette tape, use a separate tape for each interview conducted.
- (5) Read the principal Official Order No. 1, Article 4, Sections 4.35 and 4.35a, utilizing the "Outline for Conducting an Administrative Interview", and order the member to be completely truthful and forthcoming.
- (6) If a member refuses to answer a question, the investigator shall remind the member that they are under an order to do so, and that refusing to answer the question truthfully constitutes insubordination. The investigator shall ask the question again. If the member refuses to answer the question a second time, the investigator shall note their refusal on record, and continue the interview. At the conclusion of the interview, the investigator shall proceed with a separate Complaint Against Member form, UD-93 against the principal for insubordination.
- (7) The investigator shall not provide a copy of the Complaint Against Member form, UD-93 to the member or their representative. The "48-Hour Notice of Administrative Interview" states the allegations.

- (8) At the conclusion of the questioning, the investigator shall ask the member if they have any other comments or information they wish to offer. The investigator shall also ask the principal's union representative (if present) if they have anything they wish to offer for clarification.
  - (9) The investigator shall note on the record the ending time of the interview and shut off the tape recorder.
  - (10) If there is a need to re-interview the principal at a later date the investigator shall read Official Order No. 1, Article 4, Sections 4.35 and 4.35a to the member again. The member shall also receive another 48-Hour Notice of Administrative Interview prior to the second interview.
- H. IA shall be immediately notified if any of the following are discovered in the course of the initial investigation:
- (1) An ongoing criminal investigation by any law enforcement agency.  
  
No administrative interview of the member shall be conducted prior to disposition of the pending criminal matter either by the investigating agency or the prosecutor involved on the other case.
  - (2) A civil rights violation or complaint.
  - (3) A civil lawsuit against the member.
  - (4) Any other investigations involving possible misconduct.
- I. Member's Pay Status During Internal Affairs Interviews.
- (1) The member shall be considered "on duty" for the duration of the interview. If the member is interviewed outside of his or her regular work shift, they are entitled to overtime for the duration of the interview.
  - (2) If the member is directed to report to a location other than his or her 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.
  - (3) Union Representative
    - a. 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.
    - b. 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.
    - c. If the representative is off duty, he or she shall not be compensated.

J. IA shall be immediately notified if the principal elects to take any type of leave of absence.

### 3. REPORT

A. All reports shall contain pertinent information from the interviews in a synopsis format. IA reports with transcriptions of taped interviews shall not be accepted.

B. The field investigator shall add their name to the AICS report along with that of the IA case manager.

C. Required Headings in IA Investigation Reports

(1) Summary

This section shall be completed by the field investigator. It shall be listed in the report first and provide an unbiased synopsis of the investigation. The summary should not normally exceed one page.

(2) Date Management Aware of Complaint

a. This section shall list the date (and time, if known) that management first became aware of the allegation(s) of misconduct.

b. This is the date that the "90-day clock" starts.

(3) Interview Complainant and/or Interview Victim

(4) Interview of Witnesses

(5) Interview Principal

(6) External Documents

All related and supporting materials and documents shall be collected as soon as possible. These items include, but are not limited to:

- a. 48-Hour Notice(s)
- b. Audio cassettes
- c. Booking sheets
- d. Dispatch transmissions
- e. Drug and Alcohol test results

The following are the Human Resources Division's (HRD) contact persons for obtaining drug and alcohol tests for department members:

- i. For all enlisted department members, contact Ms. Lori Hinkley for directions.
- ii. For all other department members, contact Ms. Mary Lee Klein for directions.
- f. E-mails
- g. Employee Time and Attendance Report, PD-89

- h. Field Services Bureau Daily Report, UD-2
  - i. Medical records (if possible)
  - j. Pictures
  - k. Police reports (from MSP and other law enforcement agencies)
  - l. Uniform Law Citation, UD-8
  - m. Videotape from non-law enforcement sources (i.e., banks, ATMs)
  - n. Voicemail messages
  - o. Written correspondence (i.e., memos, letters, notes)
- D. The report shall be completed and submitted within 60 days. After the IA investigation has been completed in AICS and is ready for review, the following steps shall be taken:
- (1) The field investigator shall contact the IA case supervisor and Human Resources Division Labor Relations Section via email to inform them that the report is ready for review in AICS. The IA case supervisor shall review and discuss any questions, concerns, or the need for additional follow-up with the field investigator.
  - (2) The IA case supervisor shall review the report to ensure that it is complete, objective, and free of any biases.
  - (3) The IA case supervisor shall then notify the affected district/division via e-mail that the report is ready for their review. The field investigator shall not forward the report to the affected division/district commander for review.
- E. Case Disposition
- (1) An Internal Affairs investigation shall be closed with one of the following dispositions:
    - a. Sustained  
The accused member committed all or part of the alleged act(s) of misconduct.
    - b. Not Sustained  
The investigation produced insufficient information to clearly prove or disprove the allegation(s).
    - c. Exonerated  
The member's actions were justified, legal, and proper.
    - d. Unfounded  
Indicates the alleged act(s) did not take place.
  - (2) IA, with the district/division commander's input, shall make the final determination of the case disposition, providing copies of "Sustained" investigations to the HRD and affected Region/Bureau.

- (3) IA shall provide a letter regarding final disposition of the case to complainant/victim and employees, if deemed necessary.

F. Form Retention Disposition

- (1) Absolutely no copies of the internal investigation or Complaint Against Member form, UD-93 shall remain at the work site or district/division. To do so is a violation of Bullard- Plawecki Right-to-Know Act.
- (2) The original Complaint Against Member form, UD-93, all supporting documents, and tapes shall be sent to IA for retention.

4. ADDITIONAL INFORMATION

Members may contact Internal Affairs at 517-336-XXXX with any questions and concerns.