

Personnel Complaints

1009.1 PURPOSE AND SCOPE

This policy provides guidelines for the reporting, investigation, and disposition of complaints regarding the conduct of members of the Fargo Police Department. This policy shall not apply to any questioning, counseling, instruction, informal verbal admonishment, or other routine or unplanned contact of a member in the normal course of duty, by a supervisor or any other member, nor shall this policy apply to a criminal investigation.

1009.2 POLICY

The Fargo Police Department takes seriously all complaints regarding the service provided by the department and the conduct of its members.

The Department will accept and address all complaints of misconduct in accordance with this policy and applicable federal, state and local law, municipal and employment agreements.

It is also the policy of this department to ensure the community can report misconduct without concern for reprisal or retaliation.

1009.3 PERSONNEL COMPLAINTS

Personnel complaints include any allegation of misconduct or improper job performance that, if true, would constitute a violation of department policy or of federal, state or local law, policy or rule.

Inquiries about conduct or performance that, if true, would not violate department policy or federal, state or local law, policy or rule may be handled informally by a supervisor and shall not be considered a personnel complaint. However, in order to assist with data tracking, eliminate duplicative reporting, promote community transparency, and to ensure consistency in review, such procedural inquiries shall be documented on a department memorandum and forwarded to the Professional Accountability Unit (PAU). These inquiries generally include clarification regarding policy, procedures or the response to specific incidents by the Department.

1009.3.1 COMPLAINT CLASSIFICATIONS

Personnel complaints shall be classified in one of the following categories:

Informal Complaint - An informal complaint generally includes minor, non-repetitive violations that may be addressed through training, policy review, or oral reprimand of the involved member. Upon receipt of a complaint, the division commander shall consult with the Professional Standards Division (PSD) commander and the Assistant Chief to determine if the incident may be appropriately addressed as an informal complaint.

Formal Complaint - A formal complaint is an incident in which further action is warranted in order to determine the veracity of the allegation. This may be determined based on the seriousness or complexity of the allegation or the repetitive nature and/or pattern of misconduct by the member. Such complaints shall be investigated by the PAU unless otherwise directed by the Chief of Police.

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The Chief of Police may authorize referral to an outside law enforcement agency as deemed appropriate under the circumstances to alleviate any conflict of interest that may affect the integrity of the investigation as determined by the Chief. Formal complaints shall be investigated by a member higher in rank than the member under investigation and if sustained may result in official department discipline up to and including termination.

1009.3.2 SOURCES OF COMPLAINTS

Personnel complaints may be generated internally or externally.

Internal Complaints - A personnel complaint that is filed by a member of the Department.

External Complaint - A personnel complaint that is filed by any non-department member (community member, outside organization, etc.). External complaints shall be investigated as formal complaints.

The following applies to the source of complaints:

- (a) Individuals from the public may make complaints in writing, by email, in person, by telephone or anonymously. However, efforts should be made to properly identify the complainant in order to ensure the integrity of the complaint.
- (b) Anonymous complaints shall be accepted and investigated by the PAU. However, unless other objective or sufficient evidence is available or provided to support a violation of department policy or law, no further action shall be taken against the accused member.
- (c) Any department member becoming aware of alleged misconduct shall immediately notify their on-duty supervisor, who should obtain any appropriate preliminary information and consult with the Shift Commander. Alleged misconduct involving a supervisor or above shall be reported directly to the Professional Standards Division commander.
- (d) Any member serving in a supervisory rank should initiate a complaint based upon observed misconduct or a report alleging misconduct that, if true, could result in disciplinary action.
- (e) Tort claims and lawsuits may generate a personnel complaint.
- (f) If an initiated investigation discloses misconduct or improper job performance that was not alleged in the original complaint, the investigator shall take appropriate action with regard to any additional allegations.
- (g) A personnel complaint from a person whose judgment, perception or ability to communicate is or appears to be impaired due to alcohol intoxication, drugs or other controlled substances, or whose conduct and behaviors evidence significant mental health issues should be accepted. However, the details of their impairment should be documented via department memo, noting any body-worn camera video, and forwarded to PAU. These complainants should be handled similarly to anonymous complaints.

Allegations of criminal misconduct, excessive or unnecessary use of force, or civil rights violations shall be received and promptly investigated by the department or outside agency as determined by

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the Chief, who shall be notified in all such instances regardless of how or when the complaint was received. Allegations that are unfounded or refutable via body-worn camera or other evidence, do not require immediate notification.

1009.4 AVAILABILITY AND ACCEPTANCE OF COMPLAINT

1009.4.1 COMPLAINT FORMS

Personnel complaint forms shall be accessible at the front desk of police headquarters and online on the Department website.

Personnel complaint forms in languages other than English may also be provided, as determined necessary or practicable. Translation services should be used in lieu of a translated document if one does not exist.

1009.4.2 ACCEPTANCE OF ORAL COMPLAINTS

Although written complaints are preferred, a complaint may also be filed orally, either in person or by telephone. Such complaints shall be directed to a supervisor. If a supervisor is not immediately available to take an oral complaint, the receiving member shall obtain contact information sufficient for the supervisor to contact the complainant. The supervisor, upon contact with the complainant, shall complete and submit a complaint form as appropriate.

Although not required, complainants should be encouraged to file complaints in person so that proper identification, signatures, photographs or physical evidence may be obtained and the interview recorded via department body-worn camera.

1009.4.3 ACCEPTANCE OF WRITTEN COMPLAINT FORMS

Personnel complaints should be directed to and received by an on-duty supervisor or shift commander preferably assigned to the division in which the member alleged to be involved is assigned, unless undue delay would result. If a person wishes to submit a completed complaint form they shall be courteously accepted by any department member. However, the member shall request the complainant remain while the member promptly notifies the appropriate supervisor or Shift Commander to allow for in-person contact with the complainant.

In some instances, a complainant's questions and/or concerns regarding a department employee's actions or conduct may be immediately resolved through review of body-worn camera or informal discussion regarding policy or law as noted in this policy. However, if a complainant is dissatisfied with the resolution or information provided, the complaint shall be accepted and forwarded to the PAU for appropriate review and disposition.

1009.4.4 FALSE COMPLAINTS

The Department shall investigate and make appropriate prosecutorial referrals towards any person who knowingly and intentionally files a false claim against any department member. Knowingly making a false complaint against a law enforcement officer may subject the complainant to criminal charges.

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1009.5 DOCUMENTATION

Supervisors shall ensure that all complaints are documented on a department approved form and/or within an approved database. The supervisor shall ensure that the nature of the complaint is defined as clearly as possible, to include a brief description of the allegation, date, time, and location of the incident. In addition, the name, address, and telephone number(s) of the complainant, witness, or others who may have information directly related to the complaint should also be included.

Any accompanying documentation relative to a personnel complaint, to include any written statements, photographs, other recordings, or any other information provided by the complainant at the the time the complaint is received by the Department should be attached and included in the initial complaint file.

1009.6 ADMINISTRATIVE INVESTIGATIONS

Allegations of misconduct shall be administratively investigated as follows.

1009.6.1 SUPERVISOR RESPONSIBILITIES

In general, the primary responsibility for the investigation of a formal personnel complaint shall rest with the Professional Accountability Unit (PAU). In most cases, PAU will conduct the investigation and provide the Professional Standards Division (PSD) commander with a regular update as to the status of the complaint investigation. If approved by the PSD commander, PAU may assign a formal personnel complaint (in whole or in part) to a command officer, sergeant, or other department supervisor who will be responsible for conducting the complaint investigation and returning it to the PAU.

A supervisor who becomes aware of alleged misconduct shall take appropriate steps to prevent aggravation of the situation.

The responsibilities of department supervisors include, but are not limited to:

- (a) Ensuring that upon receiving or initiating any complaint, a complaint form is completed.
 - 1. The original complaint form shall be reviewed by the Shift Commander who shall forward the complaint to the division commander as soon as practicable, but no later than 48 hours after acceptance. The division commander shall take appropriate action to determine who will have responsibility for the investigation pursuant to section 1009.3.1 of this policy.
 - 2. In circumstances where the integrity of the investigation could be jeopardized by reducing the complaint to writing or where the confidentiality of a complainant's identity is at issue, a supervisor shall orally report the matter to the PSD commander, who will initiate appropriate action.
- (b) Responding to all complaints in a courteous and professional manner.
- (c) Resolving those personnel complaints that can be resolved immediately.
- (d) Notifying the Shift Commander, the PAU, and Chief of Police upon receipt of a complaint involving allegations of a serious nature.

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- (e) Promptly contacting the Shift Commander and PSD commander for direction regarding their roles in addressing a complaint that relates to sexual, racial, ethnic or other forms of prohibited harassment or discrimination. The PSD Commander shall promptly notify the Chief of any such complaint. The Chief or assigned designee shall ensure the Human Resources Division is notified as appropriate.
- (f) Conducting an initial investigation as follows:
 - 1. Making reasonable efforts to obtain names, addresses and telephone numbers of witnesses.
 - 2. When appropriate, ensuring immediate medical attention is provided and photographs of alleged injuries are taken.
 - 3. Review any relevant BWC or in-car video.
 - 4. Except for criminal allegations, obtain and include any administrative statements or information as appropriate. Administrative statements may include general inquiry information, such as why a member was late for duty, why force was deployed, etc., but should not evolve into additional questioning of the member.
 - 5. Ensuring that the procedural rights of the accused member(s) are followed.

1009.6.2 NOTICE TO EXTERNAL COMPLAINANT

The member conducting an external complaint investigation should:

- (a) Inform the complainant of the investigator's name and the complaint number within three days of the assignment.
- (b) Ensure interviews of the complainant are generally conducted during reasonable hours.
- (c) Provide the complainant with periodic updates on the status of the investigation, as appropriate.

1009.6.3 ADMINISTRATIVE INVESTIGATION PROCEDURES

Whether conducted by a department supervisor, a member of the Professional Accountability Unit or a supervisor from another law enforcement agency, the following guidelines apply to all department members interviewed as part of a formal personnel complaint:

- (a) Unless otherwise determined by the Chief of Police, a department employee who is the subject of a formal personnel complaint shall be notified in writing as soon as practicable. The written notification shall be provided to the employee by PAU and shall specify the Department or City of Fargo employment policy, rule, procedure, directive, or law the employee is alleged to have violated, as well as a brief description of the allegation.
- (b) Prior to any interview, an employee shall again be informed of the nature of the investigation, read the employee obligations and protections requirements for internal investigations, and provided a copy of the PAU memorandum outlining this information.

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- (c) Interviews of the member shall be conducted during reasonable hours and preferably when the employee is on-duty. If the employee is off-duty, he/she shall be compensated in accordance with the Compensation Policy (1019).
- (d) Interviews of the member shall be at the Fargo Police Department or other reasonable and appropriate place.
- (e) No more than two interviewers should be involved in the interview of the member, with one designated as the primary who should ask questions of the member.
- (f) Personnel who are the subject of a complaint investigation shall respond in full to the complainant's allegation(s). This may include, but is not limited to, obtaining a written response from the department employee whenever it is appropriate to do so.
- (g) All interviews should be for a reasonable period and the employee's personal needs should be accommodated.
- (h) No employee should be subjected to offensive or threatening language, nor shall any promises, rewards or other inducements be used to obtain answers.
- (i) Any employee refusing to answer questions directly related to the investigation may be ordered to answer questions administratively and may be subject to discipline for failing to do so.
- (j) In the event a criminal investigation is also being conducted as a result of the members conduct, the following guidelines apply:
 - 1. A member should be given an order to answer questions in an administrative investigation that may incriminate the member in a criminal matter only after the member has first been given a Garrity advisement.
 - 2. Administrative investigators should consider the impact that compelling a statement from the member may have on any related criminal investigation and should take reasonable steps to avoid creating any foreseeable conflicts between the two related, but separate investigations.
 - 3. No information or evidence administratively compelled from a member may be provided to anyone involved in conducting any related criminal investigation or to the prosecutor.
- (k) All members subjected to interviews which could result in discipline have the right to have an uninvolved representative or legal counsel present during the interview. The member may ask to consult with the representative, but is solely responsible to respond to the questions posed.
- (l) All interviews shall be audio and video recorded by the approved investigator. Any other department members and/or their representatives are prohibited from audio or video recording any portion of the investigative or pre-disciplinary interviews and processes. If the employee has been previously interviewed, a copy of the recorded interview may be provided to the employee prior to any subsequent interview upon request.

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- (m) In order to maintain the integrity of each individual's statement, involved members shall not consult or meet with a representative, or attorney collectively, or in groups prior to being interviewed.
- (n) All members shall provide complete and truthful responses to questions posed during interviews.
- (o) Members shall not discuss the content or information presented during the interview(s) with any other department member, unless serving as the member's representative, until the personnel complaint is completed and has been closed by the Professional Accountability Unit.
- (p) No member may be directed to submit to a deception detection device examination.

1009.6.4 ADMINISTRATIVE INVESTIGATION FORMAT

All investigations of personnel complaints shall be thorough, complete, and formatted as follows:

Introduction - Include the identity of the member(s), the identity of the assigned investigator(s), the initial date and source of the complaint.

Synopsis - Provide a brief summary of the facts giving rise to the investigation.

Summary - List the allegations separately, including applicable policy sections, with a brief summary of the evidence relevant to each allegation. A separate recommended finding should be provided for each allegation. This is limited to the investigator's assessment as to whether or not he/she believes there is sufficient evidence to substantiate each allegation listed and any additional policy violations that were discovered through investigation or interviewing of the member.

Evidence - Each allegation should be set forth with the details of the evidence applicable to each allegation provided, including comprehensive summaries of member and witness statements. Other evidence related to each allegation should also be detailed in this section.

Exhibits - A separate list of exhibits (e.g. recordings, photos, documents, full copies of policy, etc.) should be attached to the report and referenced therein.

1009.6.5 PERSONNEL COMPLAINT DISPOSITIONS

Both informal and formal personnel complaints shall be classified with one of the following dispositions:

Unfounded - When the investigation discloses the alleged acts did not occur or did not involve department members. Complaints determined to be frivolous will fall within the classification of unfounded.

Exonerated - When the investigation discloses the alleged act occurred, but the act was justified, lawful, proper, and within the scope of the department policies, rules, procedures, directives, or the City of Fargo's employment policies.

Not sustained - When the investigation discloses there is insufficient evidence to sustain the complaint or fully exonerate the member.

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Sustained - When the investigation discloses sufficient evidence to establish the act occurred and it constituted a violation of policy, procedure or other prohibited misconduct.

Incomplete - The investigation could not be completed due to uncooperative complainants, witnesses, resignation of the member or other factors outside the control of the Department. However, resignation of a member may not negate a dispositional finding if sufficient evidence exists to establish a policy violation.

1009.6.6 PERSONNEL COMPLAINT TIMELINES AND NOTICE

Informal Complaints - Informal personnel complaints should be completed within 10 days following the consultation with the PAU pursuant to section 1009.3.1 of this policy. The Professional Standards Division (PSD) commander is responsible to ensure the discipline decision is imposed and completed and that internal complainants are served with written notification of the complaint disposition.

Formal Complaints - Formal personnel complaints shall proceed with due diligence in an effort to complete the investigation within 60 days from the date of assignment by the PAU, unless an extension is approved by the Professional Standards Division (PSD) commander.

External complainants shall be notified by the Chief via official department correspondence. The written notification shall include a brief summary of the investigative findings and whether or not discipline was imposed.

1009.6.7 REOPENING OR CONTINUATION OF A PERSONNEL COMPLAINT

In the event new or otherwise relevant information regarding any personnel complaint is discovered after final disposition, the Chief of Police may order the complaint investigation reopened, after which the context of the complaint and the disposition may be subject to change.

If at any time prior to the conclusion of a formal personnel complaint investigation the complainant decides to withdraw their complaint, but the investigation has disclosed a possible violation of any department policy, rule, procedure, directive, or the City of Fargo's employment policies, the investigation shall continue until a conclusion is reached and an appropriate disposition determination is made by the Chief of Police.

1009.6.8 COMPLAINT REGARDING THE USE OF A CONFIDENTIAL INFORMANT

A member conducting an investigation regarding the alleged misuse of a confidential informant in violation of North Dakota Century Code (NDCC) § 29-29.5-01 et seq. shall comply with the investigation timeframe and notification requirements of NDCC § 29-29.5-07.

1009.7 DISPOSITION OF FORMAL PERSONNEL COMPLAINTS

Upon completion of a formal personnel complaint investigation, the Professional Accountability Unit shall forward the complaint file to the Chief for preliminary review. The Chief may return it for additional investigation or approve it for review by the Department executive staff.

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1009.7.1 EXECUTIVE STAFF RESPONSIBILITIES

Upon receipt of a completed formal personnel complaint investigation, the executive staff, which consists of all division commanders led by the assistant chief, shall meet and receive a full presentation from the Professional Accountability Unit Lieutenant or designee, review the entire investigative file, the member's personnel file, and any other relevant materials. The executive staff may return the entire investigation to the assigned investigator or PAU for further investigation or action as appropriate.

The executive staff shall make recommendations regarding the sustainability and disposition of any allegations and the amount of discipline, if any, to be imposed. The entire complaint file shall then be forwarded to the Chief of Police for final review and disciplinary decision within seven (7) days following the PAU presentation, unless an extension is authorized by the Chief of Police.

When forwarding any written recommendation to the Chief of Police, the executive staff shall include all relevant materials supporting the recommendation. Actual copies of a member's existing personnel file need not be provided and may be incorporated by reference.

In addition to the evidence, facts, and circumstances involved, the executive staff shall also consider the following in determining a disciplinary recommendation:

- (a) **Employee Motivation** - Was the member acting in the public's best interest and/or attempting to accomplish a legitimate law enforcement purpose?
- (b) **Degree of Harm** - What was the monetary cost to the Department or community; what was the extent of personal injury; what was the impact on public confidence towards the Department; what is the nature and seriousness of the members actions?
- (c) **Employee Experience** - Is the member involved new or inexperienced in their current position or in law enforcement in general; have they successfully completed similar tasks or investigations previously?
- (d) **Intentional and Unintentional Errors** - Was the action reasonably the best decision with the information available or was it contrary to the law, an established ministerial duty, training, policy or otherwise malicious in nature; did the member intentionally commit or omit an action, decision, etc.?
- (e) **Employee Past Record** - Is the members conduct repetitive or part of a pattern over time of poor judgment or decision-making; what is the member's work performance and discipline history; were there any previous efforts to remediate the employee's misconduct or performance deficiencies?

If any part of the disciplinary recommendation submitted to the Chief of Police involves an economic sanction, specifically a suspension from duty without pay, a demotion or termination of employment with the department, the employee who is the subject of the disciplinary recommendation shall be provided a deprivation hearing with the Chief of Police prior to the imposition of a final disciplinary decision. A deprivation hearing shall also be required prior to any disciplinary decision if, separate from any recommendation submitted to the Chief of Police, the Chief of Police considers an economic sanction to be a viable outcome to the complaint.

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1009.7.2 PRE-DISCIPLINE EMPLOYEE RESPONSE

The Department shall strive to ensure that the due-process rights of department members are protected. Department members should always be afforded a fair and reasonable opportunity to respond to any allegation which results, or may result, in the initiation of a formal personnel complaint.

The pre-discipline process shall provide the member with an opportunity to present a written or oral response to the Chief of Police prior to imposition of any recommended discipline.

Once the member has completed his/her response or if the member has elected to waive any such response, the Chief of Police shall consider all information received in regard to the recommended discipline.

1009.7.3 NON-ECONOMIC DISCIPLINARY SANCTION

If the disciplinary action proposed involves a non-economic sanction (training, policy review, oral or written reprimand), the PAU shall provide the member with a written notice informing them of the decision before the discipline is issued by the Chief and provide the following to the member:

- (a) An opportunity to respond orally or in writing to the Chief of Police prior to the final issuance of the discipline.
 - 1. If the member elects to respond orally, the presentation shall be recorded by the Department. Upon request, the member shall be provided with a copy of the recording.
 - 2. Upon a showing of good cause by the member, the Chief of Police may grant a reasonable extension of time for the member to respond.
- (b) If requested by the member, access to all of the materials considered by the executive staff in recommending the proposed discipline.

1009.7.4 ECONOMIC DISCIPLINARY SANCTION

Any member whose discipline recommendation includes an economic sanction, such as suspension without pay, demotion or termination, shall be provided with a written notice by the PAU informing them of the disciplinary recommendation and provide the following to the member:

- (a) An opportunity to respond orally or in writing to the Chief of Police prior to the scheduled deprivation hearing.
 - 1. If the member elects to respond orally, the presentation shall be recorded by the Department. Upon request, the member shall be provided with a copy of the recording.
 - 2. Upon a showing of good cause by the member, the Chief of Police may grant a reasonable extension of time for the deprivation hearing to occur to ensure adequate time to review the material.
- (b) Access to all of the materials considered by the executive staff in recommending the proposed discipline.

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1009.7.5 DEPRIVATION HEARING

Members shall be allowed a minimum review time of five (5) calendar days to review and prepare any response prior to a deprivation hearing. The Professional Accountability Unit shall ensure a representative from the City of Fargo City Attorney's Office and Human Resources Division attend all deprivation hearings. The involved member shall consider the following regarding participation in the deprivation hearing:

- (a) The response is not intended to be an adversarial or formal hearing designed to accommodate the presentation of testimony or witnesses. Members shall be treated with courtesy and respect at all times, and shall be interviewed in a private setting whenever possible.
- (b) The member may suggest that further investigation be conducted or may offer any additional information or mitigating factors for the Chief of Police to consider.
- (c) In the event the Chief of Police elects to cause further investigation to be conducted, the member shall be provided with the results prior to the imposition of any discipline.
- (d) The member may thereafter have the opportunity to further respond orally or in writing to the Chief of Police on the limited issues of information raised in any subsequent materials.
- (e) Members may bring with them a person of their own choosing to any pre-determination hearing held with the Chief of Police. The member may present any pertinent information to the Chief of Police for consideration prior to any disciplinary determination. Members wishing to present any additional information to the Chief of Police following such a hearing shall have not less than 48 hours to do so.

1009.7.6 CHIEF OF POLICE RESPONSIBILITIES

Upon completion of a formal personnel complaint investigation, the investigative report shall be forwarded to the Chief of Police as outlined in this policy. The report shall include the executive staff review and recommendations. The Chief of Police shall review the recommendation and all accompanying materials. The Chief may meet with the executive staff if necessary to further discuss and understand their recommendations. The Chief of Police may accept or modify any classification or recommendation for disciplinary action and/or return the file to the Professional Accountability Unit for further investigation or action.

Once the Chief of Police is satisfied that no further investigation or action is required, the Chief of Police shall determine the proper discipline, if any, which should be imposed. The Chief of Police shall be responsible for the final determination relative to employee discipline and will ensure it is imposed accordingly. The Chief of Police shall render a timely written decision to the member and specify the grounds and reasons for discipline and the effective date of the discipline. Once the Chief of Police has issued a written decision, the discipline shall become effective.

Discipline dispositions may include any of the following or a combination thereof:

- (a) Training
- (b) Policy Review

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- (c) Oral Reprimand
- (d) Mediation
 - 1. The complaint is resolved to the satisfaction and mutual agreement of the complainant and department employee through formal discussion and/or explanation.
- (e) Written Reprimand
- (f) Suspension without pay
- (g) Demotion
- (h) Termination

A member who is suspended without pay shall be subject to the requirements detailed in section 1009.9 (Administrative Leave) during the term of suspension.

Any disciplinary disposition may also include a formal referral to the City Employee Assistance Program (EAP) or a department approved public safety psychologist as appropriate. Compliance with any such referral is mandatory. Additional guidance is provided in policy 1015 (Fitness for Duty)

1009.8 ADMINISTRATIVE SEARCHES

Assigned lockers, storage spaces and other areas, including desks, offices, department phones, and vehicles, may be searched as part of an administrative investigation upon a reasonable suspicion of misconduct.

Such areas may also be searched any time by a supervisor for non-investigative purposes, such as obtaining a needed report, radio or other document or equipment.

1009.9 ADMINISTRATIVE LEAVE

When a complaint of misconduct is of a serious nature, or when circumstances indicate allowing the member under investigation to continue to work would adversely affect the mission of the department, the Chief of Police or the authorized designee may temporarily place the member on paid administrative leave. Any member placed on administrative leave:

- (a) May be required to relinquish any department badge, identification, assigned weapons and any other department equipment.
- (b) Shall be required to continue to comply with all department and city policies, as well as any lawful orders of a supervisor.
- (c) May be temporarily reassigned to a different shift or be directed not to enter any department or city facilities until the investigation is completed. The member may be required to remain available for contact at all times during such shift, and will report as ordered.

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1009.10 CRIMINAL INVESTIGATION

Where a member is accused of potential criminal conduct, a separate supervisor or investigator shall be assigned to investigate the criminal allegations apart from any administrative investigation. Any separate administrative investigation may parallel a criminal investigation.

The Chief of Police shall be notified as soon as practicable when a member is accused of criminal conduct. The Chief of Police may request a criminal investigation by an outside law enforcement agency. Under no circumstances shall a department supervisor or superior commence questioning of a member accused of a criminal violation unless exigent circumstances exist or approval has been granted by the Chief of Police.

A member accused of criminal conduct shall be provided with all rights afforded to a civilian. Except for public safety concerns, the member should not be administratively ordered to provide any information in the criminal investigation. No information or evidence administratively compelled from a member may be provided to anyone involved in conducting the criminal investigation or to any prosecutor.

The Fargo Police Department may release information concerning the arrest or detention of any member, including an officer, that has not led to a conviction. No disciplinary action should be taken until an independent administrative investigation is conducted.

1009.11 RESIGNATIONS/RETIREMENTS PRIOR TO DISCIPLINE

In the event a member tenders a written resignation or notice of retirement prior to the imposition of discipline, it shall be noted in the file. The tender of a resignation or retirement by itself shall not serve as grounds for the termination of any pending investigation or discipline. The PSD commander shall consult with the Chief of Police to determine if such matters require further investigation depending on the potential for any criminal conduct, seriousness of the complaint and/or the availability of other sufficient information.

Any member resigning or retiring while under investigation shall be considered to have left the Department "not in good standing." For sworn members, this disallows the issuance of an HR 218 license to carry a concealed firearm pursuant to the Law Enforcement Officer Safety Act (LEOSA). See policy 207 (Retiree Concealed Firearms) for additional information.

1009.12 POST-DISCIPLINE APPEAL RIGHTS

Non-probationary members have the right to appeal a suspension without pay, demotion, or termination from employment to the City of Fargo Civil Service Commission in accordance with Fargo Municipal Code #7-0305, and City of Fargo Policy #300-008A.

1009.13 PROBATIONARY EMPLOYEES AND OTHER MEMBERS

All non-sworn members and re-employments shall serve a one year probationary period. A sworn member's probationary period starts upon hire date and shall end one-year after completion of the North Dakota Peace Officer Standards and Training (POST) certification and the Department field training program (Fargo City Ordinance 7-0302 (H)). Probationary employees may be disciplined

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and/or released from employment without notice or cause at any time. These individuals are not entitled to any rights under this policy.

Any probationary period may be extended for a period not to exceed six months at the discretion of the Chief of Police in cases where the individual has been absent for more than a week or when additional time to review the individual is considered to be appropriate (see also the Temporary Modified-Duty Assignments Policy).

1009.14 RETENTION OF PERSONNEL COMPLAINT FILES

All personnel complaints shall be maintained in accordance with the established records retention schedule and as described in the Personnel Files policy (1012).

Personnel complaint records are subject to review and/or inspection as prescribed by North Dakota Century Code (NDCC) 44-04-18.1 and/or the policies governing the review and/or inspection of any such records established by the Department and/or the City of Fargo. Personnel complaint records shall be securely maintained by the Professional Accountability Unit (PAU) and may be accessed only upon written request to PAU unless otherwise authorized by the Chief of Police.

Any documentation relative to employee discipline which accompanies a personnel complaint shall be included in the complaint file. In addition, a copy of any final discipline determination made by the Chief of Police, and/or any written form of discipline which accompanies a personnel complaint, shall be forwarded to the City of Fargo's Human Resources Office for inclusion in the employee's personnel file. The Department's complaint files shall be retained indefinitely.

1009.15 PROFESSIONAL STANDARDS DIVISION COMMANDER RESPONSIBILITIES

In addition to the executive staff role, the Professional Standards Division (PSD) commander is responsible for the overall integrity and management of the Department's personnel complaints to include:

- (a) Ensuring all personnel complaints are documented in an electronic system that records and tracks them. The system shall include the nature of the complaint, member(s) involved, disposition and the actions taken to address the complaint.
- (b) Conducting an annual audit of the system and sending a report to the Chief of Police detailing all relevant data that will assist the Department in identifying operational or personnel issues, trends or concerns.
- (c) The implementation of any processes designed to identify officers who may be in need of additional training or review based on identified patterns of violations, department-wide training deficiencies or other matters that may affect the good order of the Department.
- (d) Ensuring quarterly and annual reports relative to personnel complaints are created, reviewed, and presented to the Chief of Police, executive staff, appropriate boards or commissions and the public as directed.

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- (e) Provide the Chief of Police with regular updates as to the status and number of personnel complaint investigations.

1009.16 TERMINATION REPORTING

When an officer is terminated, notice of the nature and cause of the termination, the effective date of the termination, and a statement indicating whether or not the Department recommends denial, suspension or revocation of the officer's peace officer license, shall be forwarded to the North Dakota Peace Officer Standards and Training Board within 30 days of the termination by the Chief of Police or his/her designee (ND Administrative Code § 109-02-02-18).

1009.17 REVISION DATE - 07/26/2024