

PROFESSIONAL CONDUCT UNIT

STANDARD: NYSLEAP Chapter 25
NYSSA # 72, 81-88

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REFER TO: John Cleere

I. OBJECTIVE:

To establish a functional component within the SCSO, on an as needed basis, with the responsibility to investigate and resolve, fully and objectively, complaints about the SCSO or allegations of misconduct made against its members; and, to monitor the professional conduct, integrity and discipline of each SCSO member.

II. POLICY:

It shall be the policy of the SCSO to investigate fully complaints against the agency and its members. It shall also be the policy of the SCSO to reach a prompt resolution of such complaints or allegations, after an objective and impartial investigation, in order that, while maintaining the credibility and integrity of the SCSO, the public will be assured that police misconduct will not be tolerated, but, at the same time, provide a mechanism through which a member, unjustly accused, can be vindicated.

III. DETAILS:

- A. Functions** - The Professional Conduct Unit (PCU) shall be responsible for receiving, processing, supervising and controlling any investigation arising from a complaint or allegation made against the SCSO, any of its members or employees from the general public.
- B. General** – It is essential that the citizens of Seneca County have confidence in their Sheriff's Office and in the administration which supervises the exercise of police authority. Toward this end, procedures for expeditious processing of allegations of misconduct or excessive use of force by members must be instituted.
1. Citizens are encouraged to come forward with any legitimate complaints of misconduct or excessive use of force by SCSO members. These complaints will be received courteously and handled in an efficient manner. All SCSO members will assist and cooperate in this process in accordance with established procedures.

2. It is recognized that SCSO employees are often subject to intense pressures in the discharge of their duties. It is imperative that employees remain calm and neutral under circumstances that are likely to generate tension, excitement and emotion. In such situations, words, actions and events frequently result in misunderstanding and confusion.
3. It benefits both the community and SCSO employees to have in place a procedure for the investigation of allegations and their underlying causes. Standardized procedures insure that the investigations will be conducted in a consistent and professional manner.
4. These procedures will apply to any legitimate complaint or allegation of misconduct or excessive use of force against an employee or the Sheriff's Office. Anonymous complaints will be investigated insofar as possible with the information provided.

C. Organization and authority -The Undersheriff and Chief Deputy, for the purpose of this policy will as co-equals shall share command and responsibility for the Professional Conduct Unit (PCU) and shall have the duty to coordinate and delegate investigative efforts by command or supervisory personnel. Because of the sensitivity and potential impact of investigations alleging misconduct, the Undersheriff and Chief Deputy shall report to the Sheriff the commencement, status and disposition of all PCU investigations. The Undersheriff shall keep and secure all records of internal investigations making copies only with the approval of the Sheriff.

D. Duties and responsibilities –

1. Assuring proper employee conduct is a responsibility of first line supervisors and extends through every level to the top of the chain of command. This directive is not intended to relieve supervisory personnel of their responsibility. Supervisors shall, whenever practical, take action on any complaint against an employee which is of a minor nature, the result of a misunderstanding, or which needs little or no investigation or mitigation before it can be resolved.
2. Alleged behavior or conduct involving rudeness, tardiness, insubordination, misuse of county property, unsafe driving, improper procedural matters or any other conduct unbecoming a member of the SCSO, depending upon the seriousness of the allegation, may not result in an investigation by the PCU, but rather, may be investigated by a member's immediate supervisor as a disciplinary matter. (See "**Code of Conduct**" paragraph E., this Manual). Supervisors are encouraged to provide counseling to members and or employees who violate SCSO policy, procedures and rules in an attempt to modify and change behavior to bring the member or employee into compliance with SCSO policies, procedures and rules. Supervisor's when counseling a member or employee are required to document any such counseling session on SCSO-AD-100. Both the Supervisor and member or employee are required to sign and date the counseling

form, which is not an admission of guilt by the member or employee, but, merely an acknowledgement of receiving such counseling form. Counseling is not a form of discipline as defined by the NYS Civil Service Law and respective employee contract agreements. All such counseling memorandums, with original signatures, will be forwarded to the Undersheriff.

3. Citizen complaints against employees that cannot be resolved by line supervisors will be referred to the PCU, who will conduct a thorough investigation and thereafter, render fair and impartial evaluations of all complaints so referred.
4. The PCU shall review all complaints of the following (in addition to conducting investigations into complaints that cannot be resolved by line supervisors), or any complaint which the PCU warrants its attention to, including, but, not limited to:
 - a. Allegations of excessive force;
 - b. Allegations of criminal conduct;
 - c. Deprivation of civil rights;
 - d. Allegations of corruption or dishonesty; and,
 - e. Allegations of unlawful arrest.

E. Receiving and recording complaints –

1. A "Citizen's Comment Form" (SCSO-AD-001) shall be made available for receiving comments from citizens, and shall be publicized through the regular community relations activities. The form shall also be available at the Sheriff's Office, at substations and on the Seneca County Sheriff's website at:
<http://sheriff.co.seneca.ny.us>
2. The Chief Deputy receives all "Subject Resistance Reports" (SCSO-LE-001) from all SCSO Divisions for review with respect to violation of SCSO policies, procedures and rules. If, after review, the Chief Deputy indicates a PCU investigation is warranted, such investigation will be initiated.
3. If it becomes apparent there is a possibility that both criminal violations and violations of SCSO policies, procedures or rules exist, the PCU will ensure that two separate and distinct investigations are undertaken. One such investigation conducted by members assigned by the PCU will focus on criminal law violations, and the other such investigation will focus on violations of SCSO policies, procedures and rules. Information gleaned from either investigation will not be shared with the other. Members are afforded certain constitutional protections (See "**GARRITY v. NEW JERSEY, 385 U.S. 493 (1967)**") where they may be required to answer truthfully questions posed to them during an administrative investigation. The results of those interviews will not be shared with members conducting a criminal investigation unless so ordered by a Court of competent jurisdiction.
4. Any employee of the Sheriff's Office is authorized to receive a complaint against or comment in favor of any other employee, pursuant to the following SCSO rules or procedures.

- a. Any employee receiving a minor complaint from a citizen, if knowledgeable about the situation, should attempt to resolve the complaint by giving an explanation to the citizen, if possible.
 - b. If the employee cannot resolve the complaint with an explanation, or if the citizen wishes further action, the latter shall be provided with a "**Citizen's Comment Form**" at that time or by mail immediately thereafter.
5. All employees are strictly charged with the responsibility of courteously receiving any complaints that may be lodged against the SCSO or any employees thereof, whether made in person, by telephone or mail.
6. The following procedure will be followed upon receipt of a complaint against personnel of the Seneca County Sheriff's Office, which complaint cannot be resolved as in Section E, paragraph 4(a) above:
 - a. As noted above, the vehicle for recording complaints is the Citizen Comment Form, to be executed by the receiving member. Calls to the Seneca County E-911 Center shall be forwarded to the appropriate duty supervisor for handling or call back. If the PCU will obviously be involved, the caller should be advised by the duty supervisor that the matter will be handled administratively.
 - b. If the complaint concerns an employee, the completed Citizen Comment Form shall be referred to the employee's immediate supervisor. If this person is not available, referral shall be to the next level of supervision.
 - c. If the complaint can be resolved by the supervisor, the supervisor shall document the resolution and forward the completed form to the Chief Deputy or to the Jail Administrator, as appropriate. If the complaint cannot be resolved by the supervisor, a memorandum setting forth the facts and circumstances surrounding the complaint along with an explanation as to why the complaint can not be resolved by the Supervisor will be attached to the Citizen Comment form and it will be forwarded through the chain of command to the Chief Deputy or the Jail Administrator.
 - d. The Chief Deputy or Jail Administrator shall acknowledge receipt of the form by signing and retaining one copy. The original and one copy shall be forwarded to the PCU.
 - e. The PCU shall forward the copy to the Sheriff for notification and shall retain the original in a file kept for this purpose.
 - f. The PCU shall maintain a log of all comment forms received, indicating those resolved at the supervisory level and those requiring investigation.
 - g. Upon receipt of a complaint for investigation, the PCU shall notify the complainant by sending a written notice acknowledging the complaint. The complainant shall also be notified upon completion of the investigation.

F. Employee Rights

1. Sheriff's Office employees shall not be afforded any preferential treatment in cases involving violations of the law.

G. Records - To ensure the confidentiality of all records generated in connection with an internal affairs investigation by the PCU, the Undersheriff shall arrange for and supervise their secure storage within the confines of the SCSO. Such records shall be maintained outside both the regular personnel files and the Records Division and shall not be released except to comply with state or local laws, or a court order. [See Public Officers Law, Section 87(2)(b)]

H. Time limits/communications -

1. The Sheriff shall be notified immediately and in writing (a copy of the Citizen's Comment Form will suffice) of accusations against members involving criminal activity, gross misconduct, or in any case in which the PCU would be required to investigate.

Citizen complaints involving less serious transgressions, such as rudeness, tardiness, etc., shall be brought to the attention of the Sheriff when appropriate, through the chain of command, with a copy of the Citizen's Comment Form, no later than 48 hours after receipt.

2. Complainants will receive an update or final disposition of the complaint within 90 days of its receipt.

Protracted investigations will be updated to the complainant every 30 days thereafter, with final disposition to occur within 90 days of the original receipt, unless extended by the authority of the Sheriff. That member of the PCU to whom the investigation is assigned shall be responsible for complying with the provisions for such notification.

3. The Sheriff shall be advised of the progress of the PCU investigation at least once a week.
4. In the event the Citizen's Comment Form indicated that the complainant intends to file a notice of claim against the county or, if subsequent developments suggest that a claim may result, the County Attorney shall be notified immediately and all further correspondence with the complainant will be conducted by the County Attorney's Office. The County Attorney will attempt to comply with times set for response and disposition and will keep the Sheriff advised as to the progress of the complaint.

I. Consultation with the County Attorney/District Attorney -In order to further protect the integrity of the SCSO and its members, accusations against members alleging criminal activity or activity which would reasonably incur liability for the County, will require consultation with the appropriate office by the PCU.

At any time, during the course of any internal or PCU investigation, the Sheriff, members of the PCU or their designee will consult with either the County Attorney and/or District Attorney in any case involving alleged criminal conduct on the part of the member or employee. It should be recognized that the Sheriff or his designee(s) are also free to consult with the County Attorney and/or District Attorney during any investigation in order to obtain legal advice or assistance in case preparation.

In some cases the extent of the investigation may be limited to substantiating the falsity of the accusations. In others, the investigation may conclude with the matter being referred to the District Attorney's Office for prosecution under New York State statutes proscribing false statements and false reports.

- J. Supervisory investigations** - As stated under paragraph D. above, supervisory personnel shall have the authority to investigate allegations of minor misconduct; however, when criminal conduct is alleged or if the incident, by itself or with other incidents, threatens the proper operation of the SCSO, the matter shall be referred to the PCU, via the Undersheriff and Chief Deputy, who shall cause an investigation without delay. In cases of questionable circumstances or outcome, the supervisor shall consult with the Undersheriff and Chief Deputy to determine the course of the investigation.
- K. Purging PCU files** - Those investigations where litigation is pending and the complaint was unfounded will not be purged until final disposition. Investigations that are three years old and classified as unfounded may be purged with the approval of the Sheriff. Sustained complaints will not be purged.
- L. Dispositions** - Completed investigations by the Professional Conduct Unit will be classified as one of the following:
1. Sustained – dispositions are those in which the PCU investigation has determined misconduct, incompetence, or a violation of a Rule, Regulation, Directive, Policy, Procedure or Order has occurred. These PCU investigations will be closed by the imposition of penalties as provided, “Paragraph M”. A report of such action will be entered into the accused members personnel file. The accused member shall be notified of such action or;
 2. Not Sustained – dispositions are those in which the PCU investigation has determined there was insufficient information or evidence to prove, or disprove, the accusation; or
 3. Exonerated - The member's conduct described in the complaint was justified, lawful and proper; or
 4. Unfounded – dispositions are those in which the PCU investigation has determined there is no basis upon which to believe any misconduct, incompetence, or violation of any Rule, Regulation, Directive, Policy, Procedure or Order occurred.
 5. Policy Failure - The member's conduct, while not desirable under the circumstances, could be justified under some interpretation of a regulation and may indicate a failure of that policy to be pertinent, current and unambiguous. In

the event of this finding, the matter will be submitted through the chain of command for clarification and determination.

PCU investigations which result in Not Sustained, Exonerated or Unfounded dispositions may be purged from PCU files with the approval of the Sheriff.

M. Penalties - The Sheriff may after a thorough review of the results of a PCU investigation impose penalties ranging from a counseling memorandum, to discipline including, but not limited to, suspension without pay, not exceeding 30 days, loss of leave credits, demotion of rank, fine not to exceed \$100.00 or termination

N. Administrative Leave – The Sheriff has sole discretion in placing a member or employee on administrative leave for a short period of time. Administrative leave may be granted by the Sheriff after consulting with the Personnel Director, County Attorney and Risk Manager and will be time specific. No member shall be charged with accruals during time spent on administrative leave.

The authority to relieve a member from duty shall extend to supervisory personnel levels. If a member or employee is relieved from duty by a supervisor, such supervisor will prepare a comprehensive report outlining the facts and circumstances surrounding such relief from duty which will be submitted to the Sheriff within twenty four (24) hours. The Supervisor will order the affected member or employee to report to the SCSO Administration Bureau at 10:00 a.m., on the first business day following such relief from duty. The supervisor affecting such relief from duty will make such administrative notifications as outlined in “**Administrative Notifications**”, this manual.

The authority to fire an employee rests solely with the Sheriff or Undersheriff, but may be based on a recommendation from supervisory or administrative personnel. Arrest or indictment for a crime may cause immediate suspension of a member from the SCSO.