

<b>Disciplinary Process</b>	Directive No:	02.25
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	Supersedes:	Title 22.1 22,2
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Gordon "Buz" Dillon  
Chief of Police

**PURPOSE**

The purpose of this directive is to establish a uniform system whereby behavior or performance by agency members, which is inconsistent with the standards of conduct established by the Chief of Police, are remedied by the application of positive corrective measures or through administering justified and equitable discipline.

The procedures for investigating an allegation or suspicion of misconduct are described in General Order – 02.22 "Investigation of Personnel Misconduct". The procedures for appealing or "grieving" disciplinary action that may be taken pursuant to this directive are described in General Order – 02.26 "Grievance Process".

**DISCUSSION**

The purposes of discipline are to facilitate coordination of effort, develop self-control and character, and foster orderliness and efficiency. One of the primary measures of the level of discipline in a police agency is the orderliness with which it operates. The degree of this orderliness is directly related to conformance with written directives and standards of conduct established by the agency. To that end, supervisors and command staff must promote together the understanding throughout the Department that misconduct and unacceptable performance will with certainty result in either corrective measures or disciplinary action appropriate for the circumstances. This understanding is perhaps the greatest deterrent to misconduct and poor performance. It is said that "deterrence is a function of certainty and not severity".

The Key West Police Department adopts the philosophy that a well disciplined organization is an efficient and effective organization. Discipline must be certain, swift, consistent, fair and impartial. The type and degree of discipline must be justified and appropriate for the circumstances. It is the policy of the Department to provide "positive discipline", defined by this agency as Corrective Action, to train and counsel members in those instances where such members need guidance in performing their duties. Imposition of "negative discipline", defined by this agency as Disciplinary Action, becomes necessary when such training and counseling fails to rectify improper action or unacceptable performance, or the member commits a pronounced violation.

**SCOPE**

All persons assigned to, or performing official functions for the City of Key West - Department of Police, whether sworn or non-sworn, temporary or permanent, regardless of whether they are a paid employee or volunteer, shall be governed by this directive. Specific responsibilities and requirements are contained in this Directive for:

- Chief of Police
- All Bureau Commanders
- Commander – Bureau of Professional Standards
- Special Services Section
- Training Officer

**DEFINITIONS**

**Misconduct** - Actions or inactions on the part of a member of the Key West Police Department, that if substantiated, would constitute a violation

of state or federal laws, local ordinances, City of Key West Policy and Procedures, or Departmental written directives.

**Corrective Action** – Positive discipline of an educational nature such as verbal instruction, documented remedial training or documented Supervisor Counseling, all intended to correct or improve performance.

**Disciplinary Action** – Official action in the form of a Written Reprimand, Suspension, Demotion or Dismissal (also sometimes referred to as “termination”). All disciplinary action must be approved by the Chief of Police.

**Punitive Disciplinary Action** – Official action that may adversely affect the “property interests” of the subject member in the form of a Suspension, Demotion or Dismissal. In addition to the approval required of the Chief of Police, the City Manager must authorize such action.

**Summary Action** – Corrective or Disciplinary Action taken on a member when prima facie evidence is present to conclude without further Inquiry or Internal Investigation that the member violated a verbal order or written directive, or whose actions or performance was inconsistent with the established standards of conduct.

**DIRECTIVE**

**02.25.01 SUMMARY ACTION**

**02.25.01.01** As stated in the Discussion section of this directive, the degree of orderliness in this agency is directly related to the conduct and performance of its members, which in turn, is largely dependent upon how effective the supervisors are in maintaining proper discipline. It is the responsibility of every supervisor to continuously monitor the actions and performance of their subordinates and intercede as needed to ensure compliance with applicable laws and departmental directives, as well as consistency with the goals and objectives of the Department.

**02.25.01.02** A supervisor who observes actions by a subordinate that violate any departmental written directive, or who believes the subordinate’s actions or performance is inconsistent with the standards of conduct established in General Order – 02.21, “Code of Ethics and Standards of Conduct”, must promptly

address the matter. If the supervisor is the member’s immediate supervisor, the supervisor should promptly initiate summary corrective or disciplinary action using the guidelines delineated in 02.25.01.05 of this directive.

**02.25.01.03** If the supervisor is not the member’s immediate supervisor, the matter should be brought to the attention of the member’s supervisor. Although not required in every instance, the supervisor who observes the actions or performance should generally then be responsible for initiating the summary action using the guidelines delineated in 02.25.01.05 of this directive.

**02.25.01.04** Summary action of course may be taken only when prima facie evidence is present to conclude without further Inquiry or Internal Investigation that a member violated a verbal order or written directive, or whose actions or performance was inconsistent with the established standards of conduct.

**02.25.01.05 CORRECTIVE ACTION**

If it is determined by the supervisor that summary Corrective Action, as defined in this directive, is justified and appropriate for the circumstances, the supervisor may initiate such action without further approval.

- A. Corrective Action in the form of Remedial Training shall be documented on KWPD FORM008 “Documentation of Reorientation and Remedial Training” in accordance with General Order 02.10. The original of the form will be forwarded to the Training Division to be filed in the member’s training file. A copy of the form will be entered in the member’s evaluation file that is maintained by his supervisor.
- B. Corrective Action in the form of Supervisor Counseling shall be documented on KWPD FORM038 “Supervisor’s Counseling”. The purpose of this form is to provide the member with written guidance and instruction to improve the member’s work product or to correct less serious unacceptable conduct. A copy of the completed form should be provided to the member and the original placed in the member’s evaluation file that is maintained by his supervisor. This form will not be placed in the member’s official personnel file unless used later as supporting documentation for disciplinary action that may be taken against the member in the

future if the described conduct or unacceptable work product is repeated.

<b>02.25.02</b>	<b>NON-SUMMARY ACTION</b>
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**02.25.01.06 DISCIPLINARY ACTION**

A. If it is determined by the supervisor that summary Disciplinary Action, as defined in this directive, is justified and appropriate for the circumstances, the supervisor shall prepare a written report in memorandum format describing the circumstances in detail. The report will include the Disciplinary Action recommended by the supervisor and its justification. The supervisor will also prepare the appropriate Human Resources (HR) form. *(Note: At this point, the HR form will not be signed by the Chief of Police or subject member.)*

*(Note: Inasmuch as a "Predetermination Hearing" is not conducted by the Bureau Commander for Letters of Reprimands, if the supervisor is considering a Letter of Reprimand, prior to preparing his report or HR forms, he should first discuss his intentions with the member and allow him/her the opportunity to address the charges. If, after the discussion with the subordinate, the supervisor believes that disciplinary action is still warranted, the supervisor should proceed accordingly).*

B. The supervisor shall submit his written report, along with the applicable Human Resources (HR) forms and any other documentation, to the subject member's Bureau Commander. The Commander will determine if the disciplinary action recommended by the supervisor is appropriate.

(1) If it is determined by the Commander that Corrective Action is more appropriate for the circumstances, the Commander will instruct the supervisor to initiate such action in the form of verbal instruction, documented remedial training or documented Supervisor Counseling without further approval following the procedures in 02.25.01.05 of this directive.

(2) If it is determined by the Commander that the Disciplinary Action recommended by the supervisor is justified and appropriate for the circumstances, the Commander will first discuss the matter with the Chief of Police and recommend to him either a Letter of Reprimand, Demotion, or Dismissal. The procedures described in 02.25.02.04 (A) or (B) will then be followed.

**02.25.02.01** Non-summary Corrective and Disciplinary Actions are those actions which may only be taken upon completion of an Inquiry or Internal Investigation, (regardless of the reason), when the subject member's Bureau Commander determines by preponderance of the evidence that the member did violate a written directive, or whose actions or performance were inconsistent with the standards of conduct established in General Order – 02.21, "Code of Ethics and Standards of Conduct".

**02.25.02.02** The results of the Inquiry or Internal Investigation will be presented to a Bureau Commander, (generally the subject member's Bureau Commander), for the purpose of determining a conclusion of fact by preponderance of the evidence. If any portion of the allegations or suspicions is sustained, the Commander will determine whether the appropriate resultant administrative action will be "Corrective" or "Disciplinary".

**02.25.02.03** If it is determined by the Commander that Corrective Action, as defined in this directive, is justified and appropriate for the circumstances, the Commander may initiate such action in the form of verbal instruction, documented remedial training or documented Supervisor Counseling without further approval. The procedures described in 02.25.01.05 (A) or (B) will then be followed for Remedial Training or Supervisor Counseling.

**02.25.02.04** If it is determined by the Commander that Disciplinary Action, as defined in this directive, is justified and appropriate for the circumstances, the Commander will first discuss the matter with the Chief of Police and make one of the following recommendations to him based on the totality of the member's culpability:

A. Letter of Reprimand

If the Chief of Police approves the issuance of a "Letter of Reprimand", the Bureau Commander will prepare a Letter of Reprimand to the subject member in memorandum format, as well as the appropriate Human Resources form. The Chief of Police must sign the HR form to indicate his approval. Inasmuch as the subject member will already have been given the opportunity to answer the charges during Inquiry or Internal Investigation phase, as well as the member's later option to formally

contest the action through the grievance process, no Pre-determination Hearing will be conducted for a Letter of Reprimand. The procedures described in 02.25.02.05.B will then be followed.

**B. Suspension, Demotion or Dismissal**

(1) If the Chief of Police acknowledges the recommended disciplinary action of suspension, demotion, or dismissal, the subject member will be notified of the disciplinary action being proposed and invite the member to attend a "Predetermination Hearing" normally conducted by the Chief of Police. This Hearing affords the subject member an opportunity to present any information or evidence to be considered before a final determination of formal action is made.

(2) The Chief of Police should thoroughly review all the information and evidence contained in the case file prior to conducting the Predetermination Hearing. He may elect to have the Bureau Commander who recommended the action, and/or the case investigator present during the Hearing.

(3) The member is not required to attend the hearing. The member may submit a written response in addition to, or in lieu of his attendance. The member may be accompanied by legal counsel or other representation, or have his response presented by proffer.

(4) After considering all information and evidence that may be presented to him by the subject member during the Pre-determination phase, the Chief of Police will determine a final course of action.

**02.25.02.05 FINAL COURSE OF ACTION**

Upon conclusion of the Pre-Determination phase, the Chief of Police will determine the final course of action. Unless the Chief of Police reverses the Bureau Commander's conclusion of fact, any one of the following administrative actions may be ordered by the Chief of Police:

**A. Corrective Action**

(1) Positive discipline of an educational nature such as verbal instruction, documented remedial training or documented Supervisor Counseling. Documentation of the corrective action taken will be maintained with the case file.

(2) Corrective Action in the form of Remedial Training shall be documented on KWPD FORM008 "Documentation of Reorientation and Remedial Training" in accordance with General Order 02.10. The original of the form will be forwarded to the Training Division to be filed in the member's training file. A copy of the form will be entered in the member's evaluation file that is maintained by his supervisor.

(3) Corrective Action in the form of Supervisor Counseling shall be documented on KWPD FORM038 "Supervisor's Counseling". The purpose of this form is to provide the member with written guidance and instruction to improve the member's work product or to correct less serious unacceptable conduct. A copy of the completed form should be provided to the member and the original placed in the member's evaluation file that is maintained by his supervisor. This form will not be placed in the member's official personnel file unless used later as supporting documentation for disciplinary action that may be taken against the member in the future if the described conduct or unacceptable work product is repeated.

**B. Letter of Reprimand**

(1) The Bureau Commander will prepare a Letter of Reprimand to the subject member in memorandum format, as well as the appropriate Human Resources (HR) form. The Chief of Police must sign the HR form to indicate his approval.

(2) Both the Letter of Reprimand and HR form will be presented to the subject member. Although his signature is not required, the member shall be asked to sign the HR form to acknowledge receipt. If the member elects not to sign the HR form, his refusal should be indicated on the form. The member may prepare a written response to the Letter of Reprimand which will remain as a permanent attachment thereto. The member should retain a copy of both documents.

(3) All documents and supporting evidence/information related to the matter for which the disciplinary action was taken, including the Letter of Reprimand, completed HR form, and any written response by the subject member, shall be forwarded to the Commander of the Bureau of Professional

Standards who is responsible then for the procedures described in 02.25.03.02.B.

C. Suspension, Demotion or Dismissal

(1) The Bureau Commander will prepare the appropriate Human Resources (HR) form indicating the type of disciplinary action being taken on the subject member: suspension without pay, demotion, or dismissal. The Chief of Police must sign the HR form to indicate his approval.

(2) The HR form will be presented to the subject member. Although his signature is not required, the member shall be asked to sign the HR form to acknowledge receipt. If the member elects not to sign the HR form, his refusal should be indicated on the form. The member should retain a copy of the HR form.

(3) If the final action is dismissal, the subject member will be provided with the following at a minimum:

- Reason for the dismissal and effective date, which are both indicated on the HR form;
- Status of fringe and retirement benefits after dismissal; and
- Copies of supporting documentation relating to the dismissal.

(4) All documents and supporting evidence/information related to the matter for which the disciplinary action was taken, including the completed HR form itself, shall be forwarded to the Commander of the Bureau of Professional Standards who is responsible then for the procedures described in 02.25.03.02.B.

**02.25.03 DISCIPLINARY RECORDS**

**02.25.03.01** Regardless of whether the disciplinary action taken was summary or non-summary in nature, the subject member's Bureau Commander shall forward to the Commander of the Bureau of Professional Standards all documents, information and evidence relating to the disciplinary action.

**02.25.03.02 MAINTENANCE & STORAGE**

A. Special Services Section

The Commander of the Bureau of Professional Standards will forward to the Special Services Section copies of the HR form signed by the Chief of Police. If the final disciplinary action is a Letter or Reprimand, a copy of the letter and any written response from the subject member will likewise be forwarded. The Special Services Section will enter these documents into the subject member's personnel file, and forward the originals to the City's Human Resources Department.

B. Bureau of Professional Standards

Because it is impractical to contain in the subject member's personnel file all documents, information and evidence relating to disciplinary action taken against him/her, the Commander of the Bureau of Professional Standards will develop a system for archiving of all disciplinary records. Such files will include copies (or originals as appropriate) of all documents, information and evidence relating to all disciplinary action taken by the Department on any of its members. The files will be indexed by member's names. Although these files, for the most part, are subject to public inspection under the public records law, they shall be maintained in a locked container with access limited to the Chief of Police and agents of the Bureau of Professional Standards. These files may be purged in accordance with the Florida public records retention schedule providing that documentation of the disciplinary action taken and a summary of the reason for the action is contained in the subject member's personnel file. This requirement is met if the procedures described in 02.25.03.02.A are followed.

**02.25.04 APPEAL PROCESS**

Members who want to appeal disciplinary action taken against them should follow the procedures described in General Order 02.26 "Grievance Process".

**REFERENCES**

- City of Key West Policies and Procedures

## EVOLUTION

- Title 22.1 “Complaint and Disciplinary Procedures”
- Title 22.2 “Summary Punishment for Less Serious Transgression”

## ATTACHMENTS

KWPD FORM038 “Supervisor’s Counseling”

Key West Police Department  
**Supervisor's Counseling**

This is to serve as notice to you that your action(s) or work product described below is inconsistent with the standards expected of you, or that is required of you by law, City of Key West policies and procedures, or Key West Police Department directives.

***Description of Circumstances:***

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***Recommendations for Improvement or Corrective Action Taken:***

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You are reminded that should this unacceptable conduct or work product be repeated in the future, disciplinary action may be taken against you.

Counseled By (Print)	Signature	Date
Entered into the Performance Evaluation Database by:	Entered By	Date
If not entered, explain why:		

With my signature below, I acknowledge receipt of this notice. I understand that it will be placed in my supervisor's file and may be used for performance evaluation purposes. I further understand that this notice may also be placed in my official personnel file as supporting documentation for disciplinary action that may be taken against me in the future if the above described conduct or work product is repeated.

Subject Member's Name (Print)	Signature	Date
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CC: Supervisor's File  
Subject Member

## ***Investigation of Personnel Misconduct***

Directive No: 02.22  
This Version Date: 05-09-2002  
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Gordon "Buz" Dillon  
Chief of Police

### **PURPOSE**

The purpose of this directive is to establish a process for the prompt and just disposition of allegations or suspicion of misconduct on the part of any member of the Key West Police Department regardless of whether internally or externally generated. The processes of corrective action or discipline that may be taken as a result is described in General Order – 02.25 "Disciplinary Process".

### **DISCUSSION**

The Department must work as an integral part of the community it serves. Because of the need for an open line of communication between the citizenry and the Department, a fair and effective avenue to address legitimate grievances against Department members must be provided. The system must, on the other hand, provide members protection from false charges and provide a safeguard of due process.

As the integrity of the Department is essential to its position of public trust, the Department must establish a system of investigating allegations or suspicion of misconduct regardless of whether internally or externally generated.

It is necessary to have a system that provides a uniform structured review of all complaints and investigation of suspected misconduct. The system must also provide uniform documentation of all investigations and dispositions.

### **SCOPE**

All persons assigned to, or performing official functions for the City of Key West - Department of Police, whether sworn or non-sworn,

temporary or permanent, regardless of whether they are a paid employee or volunteer, shall be governed by this directive. Specific responsibilities and requirements are contained in this Directive for:

- All Supervisors
- Watch Supervisor
- All Bureau Commanders
- Internal Affairs Inspector
- Commander – Bureau of Professional Standards
- Chief of Police

### **DEFINITIONS**

**Inquiry** – As it relates to a complaint of alleged misconduct, an Inquiry is designed to first assess the merit and substance of the complaint. Additionally, the Inquiry will provide information as to whether any further action is warranted, and if so, the most appropriate course of action, (i.e. disposition at that level or an Internal Investigation).

**Internal Investigation** – A formal administrative or criminal investigation authorized by the Chief of Police and conducted by, or in conjunction with, the Key West Police Department on one of its members as a result of an allegation or suspicion of possible misconduct.

**Complaint** – An allegation of misconduct.

**Misconduct** - Actions or inactions on the part of a member of the Key West Police Department, that if substantiated, would constitute a violation of state or federal laws, local ordinances, City of Key West Policy and Procedures, or Departmental written directives.

**Corrective Action** – Action of an educational nature such as verbal instruction, documented remedial training or documented Supervisor Counseling, all intended to correct or improve performance.

**Disciplinary Action** – Official action in the form of a Written Reprimand, Suspension, Demotion or Termination. All disciplinary action must be approved by the Chief of Police.

**Punitive Disciplinary Action** – Official action that may adversely affect the “property interests” of the subject member in the form of a Suspension, Demotion or Termination. In addition to the approval required of the Chief of Police, the City Manager must authorize such action.

**Register** – A log used to record complaints against Key West Police Department members. The Register may be in handwritten form or electronic database.

**DIRECTIVE**

**02.22.01 INTERNAL AFFAIRS**

As one of its functions performed in accordance with Florida Statutes, the Bureau of Professional Standards – Office of Internal Affairs is responsible for recording and registering all complaints of alleged misconduct on the part of any member of this agency, as well as for controlling and overseeing the investigation of those complaints.

**02.22.02 INTERNAL COMPLAINTS**

**02.22.02.01** Any complaint that one member may have against another should first be addressed through chain of command at the supervisor level. If the issue cannot be satisfactorily resolved or if the allegation is of a serious nature that could result in criminal or punitive disciplinary action (suspension, demotion or termination) if substantiated, the supervisor shall forward the matter directly to his respective Bureau Commander.

**02.22.02.02** The Bureau Commander shall review the matter for resolution. If the Commander feels that an Internal Investigation (criminal or administrative) is needed, he may request the Bureau of Professional Standards –

Office of Internal Affairs to conduct the Internal Investigation. The Bureau of Professional Standards – Office of Internal Affairs will first conduct an Inquiry. Pursuant to 02.22.07.04B, if the Inquiry reveals that an Internal Investigation appears warranted, the matter will be presented to the Chief of Police for authorization.

**02.22.03 EXTERNAL COMPLAINTS**

**02.22.03.01** All supervisors shall courteously and willingly receive any and all complaints of alleged misconduct from any source and regardless of when the alleged event may have occurred. The majority of externally generated complaints may be from civilians. Any person who wishes to make a complaint of alleged misconduct against any member of the Key West Police Department may do so in person, by telephone, letter or email. Although the Department encourages the complainant to provide his/her name and contact information in the event the Department needs to re-establish contact, anonymous complaints will also be received and processed to the extent possible with the information given.

**02.22.03.02 LETTERS & EMAILS**

Letters and emails containing complaints of alleged misconduct should be forwarded directly to the Office of Internal Affairs. The Internal Affairs Inspector will prepare KWPD FORM027 “Personnel Complaint Form” with the information provided in the letter or email, and provide a brief synopsis of the complaint. The Inspector may need to make contact with the sender to ascertain additional information.

**02.22.03.03 TELEPHONE OR IN PERSON**

- A. A person who telephones the Department or who appears in person to make a complaint should be referred to the subject member’s on-duty supervisor. If the subject member’s supervisor is off-duty or not immediately available, the complainant shall be referred to the on-duty Watch Supervisor.
- B. If the complaint is against the supervisor receiving it, the complainant shall be referred to the next higher level supervisor in the chain of command or directly to the Office of Internal Affairs.

C. The supervisor shall meet (if local) with the complainant and attempt to resolve any minor allegations of misconduct (demeanor, procedural violations, etc.) to the complainant's satisfaction. The supervisor will present to the complainant Appendix-A of this General Order: "Explanation of the Complaint and Commendation Process", and be prepared to assist the complainant by answering any questions he/she may have about the process. If the complaint is of a serious nature that may expose the City to liability if not immediately addressed, the supervisor shall take necessary and reasonable action to limit liability.

D. The supervisor shall prepare KWPD FORM027 "Personnel Complaint Form", and provide a brief synopsis of the complaint. When it appears to the supervisor that the complainant is apparently under the influence of an intoxicant or drug, or condition bearing on the credibility of the complainant, the supervisor shall note these conditions and any other pertinent remarks. The physical condition of the complainant should be documented and photographed, specifically noting any visible marks or injuries (or lack of marks or injuries) that may be relative to the complaint.

E. The supervisor will indicate on the Personnel Complaint Form his assessment:

**Resolved** – The matter was resolved to the complainant's satisfaction and, therefore, no further action appears needed.

**Court Issue** – The complaint pertains solely to the lawfulness or justification of enforcement action, and such action appears not to constitute a violation of the law or departmental directives. The proper forum for resolution is a court of law.

**Formal Complaint** – The matter was not resolved to the complainant's satisfaction nor does it appear to be a "court issue".

F. The supervisor should secure a sworn written or verbal statement from the complainant. If the complainant elects not to provide a statement at that time, blank statement forms should be provided along with clear instructions to have the statement given under oath, notarized and returned as soon as possible to the Key West Police Department's Office of Internal Affairs.

G. Although not required at this point, the supervisor may find it prudent to conduct an inquiry at this time and document the results.

H. The supervisor shall forward the original Personnel Complaint Form, (and sworn statement if completed), along with the results of any inquiry he may have conducted, to the Office of Internal Affairs prior to the end of his tour of duty.

<b>02.22.04</b>	<b>RELIEF FROM DUTY</b>
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**02.22.04.01** The Chief of Police, or any supervisor or Bureau Commander may relieve a member from duty (with pay if a compensated employee) until the next business day when it appears that such action is in the best interest of the member, the Department or the City due to allegations or reasonable suspicion of serious misconduct or when the member's fitness for duty is in question. When such action is taken, the subject member's Bureau Commander, as well as the Commander of the Bureau of Professional Standards or Internal Affairs Inspector will be promptly notified.

**02.22.04.02** In consultation with the Bureau of Professional Standards, it will then be the responsibility of the subject member's Bureau Commander on the next regular business day to inform the member of his assignment, (i.e. return to regular duty, administrative duties, suspension with pay, etc.).

<b>02.22.05</b>	<b>RESTRICTIONS</b>
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**02.22.05.01 CONFIDENTIALITY**

A. In accordance with F.S. 112.533(4) "Receipt and Processing of Complaints", any member who has knowledge of the existence of a formal complaint, Inquiry or Internal Investigation, or who is involved as a subject or witness in a complaint, Inquiry or Internal Investigation, may not disclose (verbally or otherwise) the existence or material matters of the complaint, the Inquiry or Internal Investigation to any individual or party except the member's attorney/representative or individual having official responsibilities in the case until such time as the subject member is officially notified by the Bureau of Professional Standards that the matter has been closed, and therefore a matter of public record. Violation of this provision will subject

the member to disciplinary action and possible criminal charges.

- B. A complaint filed against a law enforcement officer of this agency and all information obtained pursuant to the investigation by the agency of such complaint shall be confidential and not disclosed to the public until the investigation ceases to be active, or until the subject member is officially notified by the Bureau of Professional Standards that the matter has been closed. [F.S. 112.533(2)(a)]

C. **Time Limits**

Every reasonable effort shall be made to complete the Inquiry (and Internal Investigation if conducted) and make a conclusion of fact within 45 days from receipt of the complaint. An Inquiry or Internal Investigation shall be presumed to be inactive, and therefore a matter of public record, within 45 days after the complaint is received unless the Inquiry or Internal Investigation is continuing with a reasonable, good faith anticipation that an administrative finding will be made in the foreseeable future. [F.S. 112.533(2)(b)]

D. **Security of Files / Records**

Any member exercising control over any notes, reports, statements or other items involving a complaint, Inquiry or Internal Investigation shall take reasonable measures to always safeguard them from theft, loss, alteration, or unlawful disclosure.

**02.22.05.02** No member may independently participate in the Inquiry or Internal Investigation without the expressed consent of the Commander of the Bureau of Professional Standards or assigned investigator.

**02.22.05.03** No member may contact the complainant or complainant's witnesses concerning the allegation without the expressed consent of the Commander of the Bureau of Professional Standards or assigned investigator when appropriate for the sole purpose of opening dialogue in an attempt to resolve any misunderstanding.

**02.22.05.04** No member may be present during investigative contact with the complainant or the complainant's witnesses without the expressed consent of the Commander of the Bureau of Professional Standards or assigned investigator.

<b>02.22.06</b>	<b>INITIAL REVIEW</b>
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**02.22.06.01** The Internal Affairs Inspector shall forward the completed Personnel Complaint Form and any attached documentation to the Commander of the Bureau of Professional Standards.

**02.22.06.02 REGISTER / DATABASE**

The Bureau of Professional Standards – Office of Internal Affairs shall maintain a “Register” to record all complaints made against Department members. The Register may be in the form of a handwritten logbook or an electronic database.

**02.22.06.03 LOGGING**

The Commander of the Bureau of Professional Standards will log the complaint in the Register and assign it a Control Number. The subject member's name will generally be entered at this time unless the complaint is made from an anonymous source. To lessen adverse impact on members from false charges, if the complaint is from an anonymous source, although the existence of the complaint itself will be entered, the subject member's name will not be entered into the “subject member name field” in the Register or database until such time as any Inquiry or Internal Investigation is concluded and one or more allegation is substantiated.

**02.22.06.04** The Commander will review the complaint and indicate his initial evaluation:

- The matter was resolved to the complainant's satisfaction and, therefore, no further action appears needed;
- The complaint pertains solely to the lawfulness or justification of enforcement action, and such action appears not to constitute a violation of the law or departmental directives. The proper forum for resolution is a court of law;
- The complaint, as described, does not constitute a violation of the law or departmental directives, and, therefore, no further administrative action will be taken on the matter;
- In order to assess the merit and substance of the complaint, an Inquiry will be conducted. The Inquiry will determine whether any further action is warranted, and if so, the most appropriate course of action.

## 02.22.07 INQUIRIES

**02.22.07.01** If the Commander of the Bureau of Professional Standards initial evaluation of the complaint is that an Inquiry should be conducted, the member who is the subject of the complaint will be notified.

**Note:** The subject member may not be notified if the allegation is of a serious criminal nature and when his knowledge of the matter could interfere with an investigation or the member's due process.

### 02.22.07.02 ASSIGNMENT

The Commander will assign the matter, as he sees appropriate, to the Internal Affairs Inspector, other supervisor, or himself for the purpose of conducting an Inquiry. The purpose of the Inquiry is to first assess the merit and substance of the complaint. Additionally, the Inquiry will determine whether any further action is warranted, and if so, the most appropriate course of action.

### 02.22.07.03 INQUIRY PROCEDURES

- A. The assigned investigator shall thoroughly inquire into the circumstances of the alleged event. The investigator shall attempt to secure a sworn tape-recorded or written statement if not already provided. Allegations are sometimes convoluted among the complainant's opinions and irrelevant comments, therefore, it is important that the investigator clearly identify the specific allegation(s) and address each allegation separately.
- B. The investigator should identify and speak with all civilian and police witnesses (to the extent practical and necessary). Although not required of witnesses in an Inquiry, their statements may be taken under oath in a tape-recorded interview or written statement.
- C. The investigator may ask the subject member to provide a written report of the event that would otherwise be a regularly required work-product. Because an Inquiry may be the foundation upon which disciplinary action (letter of reprimand, suspension, demotion or termination) against the member may be taken if the allegation or suspicion is substantiated, in consideration of F.S. 112.532 Officer's Bill of Rights, in an Inquiry the sworn or non-sworn member will not be subjected to an interrogation.

However, the subject member may volunteer a statement if he elects to do so. When such a statement is provided, it shall be noted that the statement was offered voluntarily.

- D. Physical evidence should either be collected or photographed as appropriate.
- E. Due to the sensitivity and impact of internal affairs matters on the agency and relations with the public, the assigned investigator should keep the Commander of the Bureau of Professional Standards informed of the progress of the Inquiry at frequent and regular intervals. If at any time during the course of the Inquiry the investigator discovers credible information that gives cause to suspect the subject member has committed a serious criminal offense, the investigator should immediately cease the Inquiry and consult with the Commander of the Bureau of Professional Standards.

### 02.22.07.04 INQUIRY REPORT

- A. The assigned investigator will prepare a report documenting the results of the Inquiry. The report will include a summary of facts, pertinent testimony and evidence gathered during the course of the Inquiry that would enable a reasonable person to make a conclusion as to whether or not the accused or suspected member committed the act. Although it may be necessary for the investigator to draw certain conclusions as to various facts throughout the Inquiry and in his report, he will not make a formal conclusion of fact, or "finding", as to the allegation against the member.
- B. The investigator will forward his report and all supporting documentation to the Commander of the Bureau of Professional Standards. If the Inquiry reveals credible information that would rise to a reasonable suspicion that the subject member committed a criminal offense, or that would give cause to believe that he/she committed a non-criminal violation that is likely to result in punitive disciplinary action by the Department (suspension, demotion, or termination) if substantiated, the Commander will present the matter to the Chief of Police. At the direction of the Chief of Police an Internal Investigation (administrative or criminal as appropriate) may be conducted. (See 02.22.08)

In the absence of any cause to then suspect the subject member has committed a criminal offense or non-criminal conduct that could result in punitive disciplinary action, the Commander will present the case file to the subject member's Bureau Commander.

**02.22.07.05 CONCLUSION OF FACT**

The subject member's Bureau Commander shall review the report and all supporting documents in order to make a conclusion of fact by preponderance of the evidence for each allegation/suspicion for each subject member. (See 02.22.08.07)

**02.22.07.06 CORRECTIVE OR DISCIPLINARY ACTION**

If the subject member's Bureau Commander substantiates any allegation/suspicion, he will make a recommendation to the Chief of Police for corrective or disciplinary action appropriate for the violation. (see 02.22.08.09) If the subject member has resigned during the Inquiry, no corrective or disciplinary action will of course be taken. Resignations of sworn members while under investigation will be indicated on the appropriate FDLE form that is prepared by the Special Services Section when any sworn member separates from the Department.

**02.22.07.07 CLOSURE & NOTIFICATIONS**

The subject member's Bureau Commander shall return the case file to the Commander of the Bureau of Professional Standards, who, when assured that the matter has been adequately addressed, will be responsible for the requirements in 02.22.08.10.

**02.22.08 INTERNAL INVESTIGATIONS**

**02.22.08.01** If the Inquiry reveals credible information that would rise to a reasonable suspicion that the subject member committed a criminal offense, or that would give cause to believe that he/she committed a non-criminal violation that is likely to result in punitive disciplinary action by the Department (suspension, demotion, or termination) if substantiated, the Commander will present the matter to the Chief of Police. At the direction of the approval of the Chief of Police an Internal Investigation (administrative or criminal as appropriate) may be conducted.

**02.22.08.02 ASSIGNMENT**

A. The Commander of the Bureau of Professional Standards will assign the matter

appropriately for the circumstances and nature/complexity of the allegations to either the Internal Affairs Inspector, other supervisor, member of the Bureau of Criminal Investigations or himself for the purpose of conducting the Internal Investigation. If an allegation or suspicion of criminal misconduct is involved, more than one investigator may be assigned.

B. Any criminal investigation that may be conducted shall be done so independently from any administrative investigation. This may be accomplished by conducting the criminal investigation first followed by any administrative investigation. When this is done, the investigator may be the same person for both investigations.

If criminal and administrative investigations are conducted simultaneously, the criminal investigation will be assigned to one investigator and the administrative investigation assigned to another.

C. With the approval of the Chief of Police, certain criminal investigations may be referred to, or conducted jointly with, outside agencies for the purpose of conducting an investigation.

**02.22.08.03 NOTICE OF INTERNAL INVESTIGATION**

Although the member may have been already informed of the complaint in the Inquiry phase, the Commander of the Bureau of Professional Standards will prepare KWPD FORM055 "Notice to Subject Member of Internal Investigation". The Notice will include at a minimum:

- Name of all complainants
- Nature of the allegation(s)
- Authorization by the Chief of Police
- Name of the lead investigator
- The member's individual rights and responsibilities relative to the investigation

**02.22.08.04 COMPLIANCE**

The Commander of the Bureau of Professional Standards, the Internal Affairs Inspector, supervisor or other member assigned as the investigator in an Internal Investigation is authorized by the Chief of Police to direct any Key West Police Department member (regardless of rank or position) as may be necessary during the course of the investigation and when specifically related to the investigation.

Key West Police Department members who are either a witness or the subject of any Internal Investigation are required to fully comply with all lawful instructions from the assigned investigator or other designated departmental authority, whether given verbally or in writing. Willful refusal to comply with instructions, or refusal to truthfully and completely answer questions during any administrative interview, may result in additional departmental charges and subsequent disciplinary action up to and including possible termination

#### **02.22.08.05 INVESTIGATIVE PROCEDURES**

A. The assigned investigator shall conduct a thorough investigation into the alleged event, and identify and address each allegation or suspicion. To ensure due process and continuity in investigative procedures, the following procedures will apply to both sworn and non-sworn members. The investigation will conform to all requirements of applicable collective bargaining agreements and law (including but not limited to F.S. 112.532 Officer's Bill of Rights).

#### **B. Witnesses**

The investigator shall attempt to identify and speak with all civilian and police witnesses who he reasonably expects may have relevant information. Witness statements offering relevant information should be documented in a sworn tape-recorded interview or sworn written statement. A member being interviewed as a witness shall be so informed and that he is not the subject of the Internal Investigation.

#### **C. Criminal Investigation: Interview of Subject Member**

Whenever a sworn or non-sworn member is the subject of a criminal investigation, he/she is entitled to all the rights and privileges guaranteed by the laws and the constitution of this state and the Constitution of the United States, including the Fifth Amendment right not to be compelled to incriminate him/herself. If the member under interrogation is under arrest, or is likely to be placed under arrest as a result of the interrogation, the Miranda warning will be read to the member prior to the commencement of the interrogation.

#### **D. Administrative Investigation: Interview of Subject Member**

Whenever a sworn or non-sworn member is under investigation during administrative proceedings and subject to interrogation by members of this agency for any reason which could lead to disciplinary action, such interrogation shall be conducted under the following conditions:

(1) The interrogation shall be conducted at a reasonable hour, preferably at a time when the member is on duty, unless the seriousness of the investigation is of such a degree that immediate action is required.

(2) The interrogation shall take place either at the investigator's office or other private office at any Key West Police Department facility designated by the investigator.

(3) The member under investigation shall be informed of the rank, name, and command of the officer in charge of the investigation, the interrogating officer, and all persons present during the interrogation. All questions directed to the member under interrogation shall be asked by and through one interrogator at any one time.

(4) Prior to any interrogation, the member shall be informed of any and all allegations for which he/she is the subject of the investigation. Prior to any interrogation, the subject member will be informed of the names of all complainants, and provided a copy of any and all written statements made by the complainant and/or witnesses, along with any other pertinent material.

(5) Interrogating sessions shall be for reasonable periods and shall be timed to allow for such personal necessities and rest periods as are reasonably necessary.

(6) The member under interrogation shall not be subjected to offensive language or be threatened with transfer, dismissal, or disciplinary action. No promise or reward shall be made as an inducement to answer any questions.

(7) The formal interrogation of a member, including all recess periods, shall be recorded on audio tape, or otherwise preserved in such a manner as to allow a transcript to be prepared, and there shall be

no unrecorded questions or statements. Upon the request of the interrogated member, a copy of any such recording of the interrogation session must be made available to the interrogated officer no later than 72 hours, excluding holidays and weekends, following said interrogation.

(8) At the request of any member under investigation, he or she shall have the right to be represented by counsel or any other representative of his or her choice, who shall be present at all times during such interrogation whenever the interrogation relates to the member's continued fitness for service. When requested, the member will be allowed twenty-four (24) hours to contact, consult with, and secure the attendance of a representative. The member may be accompanied by one individual acting as legal counsel or representative during the interrogation.

*Note: The individual acting as legal counsel or representative does not have the right to cross-examine, interfere with the interrogation or interrupt the questioning.*

(9) Notwithstanding the rights and privileges described herein, this part does not limit the right of an agency to discipline or to pursue criminal charges against a member.

(10) The subject member being interviewed under administrative proceedings shall be read the "Garrity" warning prior to the commencement of the interrogation. The subject member shall truthfully and completely answer all questions directed to him during the administrative interview. Pursuant to Garrity vs. New Jersey, U.S. Supreme Court, Jan-67, due to the fact that the subject member is compelled to comply with all instructions in an administrative investigation, and because unlike a criminal investigation the subject member has no right to remain silent during an administrative interview, any such information/evidence obtained by compelled means shall not be used in the criminal investigation (except "perjury") unless the member has waived his/her constitutional rights afforded in the criminal investigation. However, information and evidence obtained from any criminal investigation may be used in the administrative investigation.

(11) Questions directed to the subject member during the interrogation shall be narrowly and specifically related to the allegation or suspicion.

E. **Physical Characteristics, Medical or Laboratory Examinations**

Members who are the subject of an administrative Internal Investigation can be compelled to submit to medical and physical characteristic evidence tests when such tests are germane and narrowly related to the investigation. Such tests may include, but not be limited to, hair, skin, bodily fluids, breath tests and fingerprints and shall be conducted at Department expense. Members are advised that evidence obtained in this manner can be used only for administrative purposes.

F. **Photographs and Line-Ups**

Photographs may be taken of the member who is the subject of an Internal Investigation, or the member may be compelled to participate in a line up, for the purpose of identification, when relevant to the investigation.

G. **Financial Disclosure Statements**

Members who are the subject of an Internal Investigation may be compelled to disclose financial statements when such information is material to the investigation.

H. **Instruments for the Detection of Deception**

Members will not be compelled to submit to electronic deception examinations. Nothing in this paragraph is intended to preclude such an examination if the examination is requested by the member.

I. **Administrative Searches**

In as much as members are hereby placed on notice that they should have no expectation of privacy regarding the following, members may be compelled to submit to a search of Department property such as vehicles, lockers, computers, electronic messages and desks under their control. A warrant for such a search is not required and employees who do not comply may be subject to disciplinary action. Members are advised that evidence found by compelled means can only be used for administrative purposes.

J. A member shall not be subject to having his or her residence, place of private business or private vehicle searched unless a valid search warrant has been obtained or he/she voluntarily agrees to such a search.

## 02.22.08.06 INVESTIGATION REPORT

### A. Criminal Investigation

(1) The assigned investigator will prepare a report documenting the results of the criminal Internal Investigation. The report will include a summary of facts, pertinent testimony and evidence gathered during the course of the investigation that would enable a reasonable person to make a conclusion as to whether or not the accused or suspected member committed the act. Neither the investigator's report nor case file shall contain evidence/information that was obtained through compelled means unless the subject member waived his constitutional rights and such waiver has been documented in the report and case file.

(2) The investigator will forward his report and all supporting documentation to the Commander of the Bureau of Professional Standards. If probable cause exists to believe that the subject member has committed a criminal offense, with the concurrence of the Chief of Police, the Commander will forward the matter to state or federal prosecutors as appropriate.

### B. Administrative Investigation

(1) The assigned investigator will prepare a report documenting the results of the administrative Internal Investigation. The report will include a summary of facts, pertinent testimony and evidence gathered during the course of the investigation that would enable a reasonable person to make a conclusion as to whether or not the accused or suspected member committed the act. The report may contain evidence/information that was obtained during the criminal investigation. Although it may be necessary for the investigator to draw certain conclusions as to various facts throughout the investigation and in his report, he will not make a formal conclusion of fact, or "finding", as to the allegation(s) against the member.

(2) The investigator will forward his report and all supporting documentation to the Commander of the Bureau of Professional Standards who will present the case file to the subject member's Bureau Commander.

## 02.22.08.07 CONCLUSION OF FACT

This paragraph applies only to administrative proceedings (Inquiries or administrative Internal Investigations). The subject member's Bureau

Commander shall review the report and all supporting documents in order to make a conclusion of fact for each allegation. If the Bureau Commander feels that additional investigation is needed to resolve any questions that he may have before he feels comfortable in issuing a finding, he will inform the investigator of any such questions. The investigator will address those issues and forward the results directly back to the Bureau Commander. The subject member's Bureau Commander will make a conclusion of fact (finding) by preponderance of the evidence for each allegation for each subject member. If the event in question has more than one allegation, the Commander must determine a conclusion of fact (finding) for each identified allegation. The finding for each allegation will be classified by one of the following:

- **Unfounded** – The allegation/suspicion is demonstrably false or there is no credible evidence to support it;
- **Exonerated** – The allegation/suspicion is true, however, the actions of the agency or its member was consistent with Departmental written directives.
- **Not Sustained** – There is insufficient evidence to prove or disprove the allegation/suspicion.
- **Not Involved** – Although the event in question may have occurred, the member accused or suspected was determined to not be involved.
- **Policy Deficiency** – The allegation/suspicion is true, however, the member's actions were consistent with Departmental written directives, which appear to provide insufficient or incorrect guidance and, therefore, in need of amendment.
- **Sustained** – There is sufficient evidence to substantiate the allegation/suspicion and that the action by the member is inconsistent with Departmental written directives.
- **Sustained In Part** – The event in question has two or more allegations/suspensions of misconduct and of which, at least one is sustained.
- **Other Misconduct** – Substantiated misconduct not mentioned in the initial

allegation/suspicion was revealed during the Inquiry/Internal Investigation.

**02.22.08.08** This paragraph applies only to administrative Internal Investigations. The member's Bureau Commander will present the report and his "findings" to the Chief of Police, along with any recommendations for corrective or disciplinary action. If the Chief of Police does not agree with the Commander's findings, the Chief will prepare a written explanation, which will be attached to the Bureau Commander's report, and the Chief's findings will prevail.

**02.22.08.09 CORRECTIVE OR DISCIPLINARY ACTION**

This paragraph applies only to administrative Internal Investigations. If the subject member's Bureau Commander substantiates any allegation, he will make a recommendation to the Chief of Police for corrective or disciplinary action appropriate for the member's overall culpability. (see General Order – 02.25) Any corrective or disciplinary action recommended by the Bureau Commander as a result of a substantiated allegation or suspicion must first be approved by the Chief of Police. If the subject member has resigned during the Inquiry, no corrective or disciplinary action will of course be taken. Resignations of sworn members while under investigation will be indicated on the appropriate FDLE form that is prepared by the Special Services Section when any sworn member separates from the Department.

**02.22.08.10 CLOSURE & NOTIFICATIONS**

All completed case files will be returned to the Commander of the Bureau of Professional Standards, who, when assured that the matter has been adequately addressed, will:

- Notify the complainant in writing as to results of the Inquiry or Internal Investigation;
- Notify each subject member that the case is closed, the final conclusion of fact for each allegation, and case disposition if not already known; and
- Examine the case file to ensure that all documents have been correctly prepared and routed.
- Close and file the case file after making any necessary entries in the Register.

**02.22.09 EARLY WARNING SYSTEM**

**02.22.09.01** The Bureau of Professional Standards - Office of Internal Affairs will alert the respective Bureau Commander when a member under his command has received within the preceding six months:

- Three (3) complaints regarding alleged rudeness or inappropriate demeanor that were either sustained, sustained in part or not-sustained; or
- Two (2) complaints regarding alleged inappropriate or unlawful use of force that were either sustained, sustained in part or not-sustained.

**02.22.09.02** The Commander of the Bureau of Professional Standards will supply the member's Bureau Commander with the relevant complaint history. The member's Bureau Commander shall meet with the member and his/her supervisor for the purpose of discussing any personal and professional issues that may have bearing on the member's performance. This dialogue is intended to assess any possible needs of the member or the Department, and shall not be construed to prematurely imply that the member is in need of Department intervention.

**02.22.10 FALSE ALLEGATIONS**

The Department welcomes and encourages those who sincerely believe that the conduct of any one of its members is improper or inappropriate to file a complaint using the procedures described in this directive. Just as aggressively as the Department will investigate complaints and take appropriate action against members for substantiated misconduct, the Department will be equally aggressive in seeking prosecution of individuals who knowingly and willingly made false allegations. When probable cause exists to believe that an individual has indeed made a false allegation, the Commander of the Bureau of Professional Standards or Internal Affairs Inspector shall first secure the approval of the Chief of Police before proceeding.

## 02.22.11 RECORDS

**02.22.11.01** The Bureau of Professional Standards – Office of Internal Affairs will be responsible for the security and maintenance of all closed Internal Affairs case files. These original files will be stored in a secure location under the control of the Bureau of Professional Standards – Office of Internal Affairs.

**02.22.11.02** Case files containing closed internal affairs investigations and records will be made available to any person or organization as a public record in compliance with F. S. Chapter 119, the public records law. Observation of the Internal Affairs process and related records by the public is encouraged and welcomed. Any individual or organization wanting to view these records may do so by contacting the Bureau of Professional Standards - Office of Internal Affairs to arrange a mutually convenient time. (See also General Order – 04.01 regarding compensation for certain public records requests).

### 02.22.11.03 PERSONNEL AND SUPERVISOR'S FILES

Only summaries of those cases with a final classification of Sustained, Sustained in Part, or Other Misconduct may be inserted in the member's Personnel File or Supervisor's File. Of those substantiated cases, only those for which a member received "disciplinary action" (as defined in this directive) will be placed in the member's permanent Personnel File. All other substantiated cases where "corrective action" (as defined in this directive) was taken will be placed in the file maintained by the member's Supervisor for the purposes of performance evaluation and monitoring the member's improvement.

## REFERENCES

- IACP Model Policy – "Investigation of Employee Misconduct", July 2001.
- North Miami Beach (FL) Police Department Procedural Directive #6-83 "Internal Affairs" Revision Date: 01/01/01
- University of Florida Police Department 1400 "Internal Affairs and Citizen Complaints" Revision Date: 08/97

- Daytona Beach (FL) Police Department 73.1 "Citizen Complaints" 11/01/98
- Collective Bargaining Agreement between the Florida Police Benevolent Association, Inc (Key West Chapter) and the City of Key West, FL.
- Garrity vs. New Jersey United States Supreme Court, Jan-67
- Following Florida Statutes:  
F.S. 112.532 "Law Enforcement Officers' Correctional Officers' Rights"  
F.S. 112.533 "Receipt and Processing of Complaints"  
F.S. Chapter 119  
F.S. 837.012 "Perjury When Not In An Official Proceeding"  
F.S. 837.05 "False Reports to Law Enforcement Authorities"  
F.S. 837.06 "False Official Statements"

## EVOLUTION

- Policy, Title 22.1 "Professional Standards / Complaints Against Police Officers and Department Personnel", November 1998
- Policy, Title 22.2.S2 "Administrative Searches", November 1998

## ATTACHMENTS

- Appendix A, "Explanation of the Complaint and Commendation Process"
- KWPD FORM027, "Personnel Complaint Form"