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1. PURPOSE

The purpose of this policy is to establish a disciplinary system including but not limited to procedures and criteria for the proper application of disciplinary action toward department personnel.

- 1.1. To recognize discipline as a means by which behavior can be changed and modified to provide better quality police service, increase public confidence, and achieve departmental objectives.
- 1.2. To recognize it as a form of training, dependent for its success on subordinates having a desire to change and supervisors having a willingness to provide training and direction to facilitate needed behavioral change.

2. PERSONS AFFECTED

All personnel.

3. POLICY

Department personnel, regardless of rank, shall be subject to the disciplinary process and/or non-disciplinary action for violations of departmental orders, policies, rules or directives.

- 3.1. All supervisory personnel are authorized to initiate the disciplinary process and/or non-disciplinary action for violations of departmental orders, policies, rules, or directives committed by any subordinate.

4. DEFINITIONS

- 4.1. **Charge** – A charge is the designation of a specific offense committed by the accused member, each distinct offense being the subject of a separate charge.
- 4.2. **Specification** – A specification is a clear and concise statement of supporting facts relating to the offense charged.

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5. DISCIPLINARY PROCESS/NON-DISCIPLINARY ACTION

- 5.1. **Disciplinary Process** – A process initiated by means of complaint recorded within the appropriate complaint form which may result in administrative action taken against personnel to include suspension, disciplinary transfer, demotion, dismissal, written reprimand or any combination thereof.
- 5.2. **Non-disciplinary Action** – Any administrative action taken in regards to a complaint against a member to include Supervisory Documentation which may result in one or more of the following:
 - 5.2.1. No Action Taken
 - 5.2.2. Verbal warning
 - 5.2.3. Counseling
 - a. Training
- 5.3. Once it has been determined that personnel are in fact in violation of a departmental order, policy or rule of conduct, the supervisor shall be guided by the following:
 - 5.3.1. If the supervisor is going to take non-disciplinary action for minor policy violations, the supervisor shall ensure that the contemplated action is fair, impartial and consistent with policies and procedures related to Supervisory Documentation, and/or;
 - 5.3.2. If the supervisor is going to initiate the disciplinary process, the member being potentially disciplined shall be notified of the reason(s) in writing within 48 hours after the action is taken by being provided an original copy of the Complaint Report. In addition, a copy of the Complaint Report and the original investigative report shall be forwarded to the Police Chief, via channels, by the next working day.
- 5.4. Whenever circumstances are of such a nature as to warrant immediate relief from duty, personnel may be placed on temporary leave of absence pending the outcome of any investigation being conducted. Supervisors shall adhere

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to the policies and procedures pertaining to relieving personnel from duty located in Procedures Manual 8.1.

6. COMPLAINTS

Complaints against department personnel shall be processed in the following manner:

6.1. Complaints by Personnel

6.1.1. Personnel receiving a complaint or making a complaint against other personnel shall communicate with the complainant's commanding officer, and shall be guided by his/her instructions.

6.2. Complaints Against Superior Officers

6.2.1. Complaints against superior officers by subordinate personnel shall be prepared in writing and forwarded to the commander of the superior officer, thence through official channels to the Police Chief.

6.3. Complaints by the Office of Professional Standards

6.3.1. Complaints against personnel may be made by members of the Office of Professional Standards should information yield violations of departmental orders, policies, rules, or directives, regardless from where the information originated.

6.3.2. The Office of Professional Standards shall be guided by the Hawai'i Police Department Office of Professional Standards Standard Operating Procedures.

6.4. Complaints by Supervisors

6.4.1. Complaints against personnel under their command may be made by supervisors should information yield violations of departmental orders, policies, rules, or directives, regardless from where the information originated.

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6.5. Complaints by Members of the Public

All personnel are to courteously receive any member of the public intending to make a complaint against the department or personnel for alleged misconduct and shall be guided by the following:

6.5.1. Someone who is not department personnel making a complaint of an incident involving misconduct by department personnel shall be referred to a supervisor. If a supervisor is unavailable, the receiving person shall take and forward the complainant's name, address, and telephone number to a supervisor immediately.

6.5.2. Supervisors will contact the complainant and be guided by the following:

a. For all complaints of misconduct by department personnel, the complainant shall be provided with the option of filing the complaint with the department, the Police Commission, or both.

- If the complainant elects to make a complaint with the Hawai'i County Police Commission, they will be provided a Hawai'i County Police Commission Form which will need to be completed by the complainant and notarized. The complainant will be referred to the Hawai'i County Police Commission; and/or

- If the complainant elects to make a complaint with the Hawai'i Police Department, they will be provided a Written Complaint form which will need to be completed by the complainant and notarized. Complaint(s) shall be in writing and sworn to by the complainant in accordance with the police union's collective bargaining agreement.

b. For instances of minor policy violations in which the supervisor is of the opinion that a complaint can be avoided if immediately addressed in a reasonable and satisfactory manner, the supervisor may elect to address the complaint by

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following the policies and procedures for non-disciplinary action outlined within this General Order.

6.5.3. If the complaint is of a serious type and nature or of sufficient gravity that immediate action, such as relieving personnel from duty, must be taken, supervisors shall make the appropriate notifications and adhere to the policies and procedures set forth in Procedures Manual 8.1.

6.5.4. Allegations of criminal misconduct by personnel shall be referred to the Office of Professional Standards and also referred to the respective area Criminal Investigation Division/Traffic Enforcement Unit. Supervisors shall adhere to the policies and procedures set forth in Procedures Manual 8.1.

7. RESPONSIBILITY OF SUPERVISOR

A supervisor receiving a complaint from a member of the public shall be responsible for:

- 7.1. Obtaining and recording all pertinent facts and details pertaining to the complaint from the complainant.
- 7.2. Obtaining a written statement sworn to by the complainant utilizing a Written Complaint form.
- 7.3. Forwarding without delay all pertinent information relative to the complaint, to include but not limited to the complainant's written statement, to the Office of the Police Chief for further action.
- 7.4. When a complaint is received or comes to the attention of a supervisor other than the one to whom such member is assigned, the commanding officer to whom the member is assigned shall be notified without delay and shall be furnished with a copy of the complaint.

8. DISPOSITION OF MINOR VIOLATIONS

- 8.1. Supervisors may address minor policy violations committed by department personnel and are authorized to take immediate action when in their judgment no other course is indicated or that repetitions can be prevented

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by counseling and/or training. Supervisors should be mindful that their actions are based on fairness to personnel and the department and should promote the morale and motivation of personnel.

8.1.1. **Counseling** – Supervisors are responsible for providing basic intervention such as counseling when there is a recognizable problem with performance or behavior of personnel. The goal of counseling is to change negative behavior before discipline is necessary. Effective counseling provided in a timely manner can prevent future disciplinary action. Counseling should include the correcting of the inappropriate conduct. Supervisors shall be guided by the following procedures:

- a. Supervisors shall complete a Supervisory Documentation form containing a summary of the incident.
- b. Supervisors shall complete a memorandum to the personnel they intend to counsel. The memorandum should contain an explanation of the circumstances, the goal of the intended counseling, and a description of the intended counseling. The memorandum shall be attached to the completed Supervisory Documentation form.
- c. Supervisors may elect to conduct counseling to address cases in which personnel have minor performance or behavioral issues relating to isolated minor policy violations. If, however, the issues escalate into patterns of behavioral issues supported by current patterns of collected documents, Supervisors shall reference the criteria for the activation of the Employee Early Recognition System (Procedure Manual Section 4.7) to deem whether the activation of the Employee Early Recognition System would be the appropriate course of action.
- d. Upon completion of the counseling, Supervisors shall assess the effectiveness of the counseling, document the results in a memorandum, and attach the memorandum to the original Supervisory Documentation form.

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8.1.2. **Training** – Training is a form of counseling and a means of improving the productivity and effectiveness of personnel through positive and constructive methods. Supervisors should adopt a philosophy of training members in response to isolated minor policy violations. Supervisors may consider training a subordinate in such cases when the member’s attitude and demeanor indicate a lack of understanding rather than a clear disregard for regulations. Supervisors shall be guided by the following procedures:

- a. Supervisors shall complete a Supervisory Documentation form containing a summary of the incident and will check the action taken as “Counseling.”
- b. Supervisors shall complete a memorandum to the personnel in need of training. The memorandum should contain an explanation of the circumstances, the goal of the intended training, and a description of the intended course of training. The memorandum shall be attached to the completed Supervisory Documentation form.
- c. Supervisors may elect to utilize in-service training to address cases in which personnel demonstrate a lack of understanding of a minor nature. When addressing deficiencies of a greater magnitude, Supervisors should seek out more formalized training and additional resources by consulting with the Training Section.
- d. Upon completion of the training, Supervisors shall reassess the effectiveness of the training with personnel, document the results in a memorandum, and attach the memorandum to the original Supervisory Documentation form.

9. INVESTIGATIONS OF COMPLAINTS

9.1. All complaints made against the department or its personnel shall be investigated, to include anonymous allegations. To ensure the integrity of the department’s operations and personnel, all allegations of misconduct shall be investigated, regardless of their source.

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- 9.2. The Police Chief may direct a special investigator designated by him to investigate complaints against department personnel.
- 9.3. All investigations and all action taken shall be in accordance with the requirements of statutory law, departmental policies and procedures and bargaining unit contracts in effect at the time.

10. RESPONSIBILITY OF INVESTIGATOR

- 10.1. Personnel conducting investigations shall be responsible for the thoroughness and accuracy of their investigations.
- 10.2. Investigators shall be guided in the preparation of a Complaint Report by the following:
- 10.2.1. If there are several charges, they should be numbered consecutively in the same report. Violations charged should be qualified by indicating the number or section of the rules of the department which have been violated. When charges are brought against two or more officers, separate misconduct charges shall be prepared for each officer.
- 10.2.2. If the offense has been committed more than once, or in more than one way, there should be distinct specifications. Each specification shall be complete in itself and contained in one paragraph. The specifications under each charge shall be numbered consecutively.
- 10.3. Prior to interrogating personnel, the investigators shall prepare a Complaint Report and inform the accused personnel of the nature of the investigation or interrogation and give the accused personnel a copy of the Complaint Report and a copy of the Written Complaint sworn to by the complainant. Accused personnel shall then be afforded a reasonable time to answer the complaint in writing.
- 10.4. Upon completion of his investigation, the investigating officer shall forward the complete file to the Police Chief via the superior officer who made the assignment and the Bureau Commander.

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11. DUTIES AND RESPONSIBILITIES OF DEPARTMENT PERSONNEL

- 11.1. During any departmental investigation, board hearing, or any authorized departmental proceeding, or any Police Commission proceeding, it shall be the duty and responsibility of department personnel to truthfully, fully and directly answer any and all questions specifically, directly and narrowly relating to his or her duties and actions.
- 11.2. Department personnel that receive a complaint from the Hawai'i County Police Commission should, as a matter of courtesy, call and confirm receipt of the complaint and are encouraged to attend the meetings or submit a memorandum to the Police Commission addressing the allegations. Personnel that choose to attend the meetings should appear in appropriate court attire.

12. DETERMINATION TO BE MADE

- 12.1. In reporting the results of personnel investigations and evaluating the complaints made against personnel, one of the following determinations listed below shall be established.
- 12.1.1. **Unfounded** – A complaint is "unfounded" when the investigation indicated that the act or acts complained of did not occur.
- 12.1.2. **Exonerated** – A complaint is referred to as "exonerated" when the investigation indicates that the act or acts complained of did occur but that they were justified lawful and proper.
- 12.1.3. **Not Sustained** – A complaint is referred to as "not sustained" when the investigation fails to discover sufficient evidence to clearly prove or disprove the allegations made in the complaint.
- 12.1.4. **Sustained** – A complaint is referred to as "sustained" when the investigation discloses sufficient evidence to clearly prove the allegations made in the complaint to indicate that the act or acts complained of merit disciplinary action.

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13. APPEAL PROCESS

- 13.1. Personnel subjected to disciplinary action may appeal the ruling if so desired.
- 13.2. Any appeal filed shall be in accordance with the grievance procedures specified in the governing collective bargaining contract for said personnel.

14. MAINTENANCE OF DISCIPLINARY RECORDS

- 14.1. Records of disciplinary action shall be maintained in personnel files in Administration and may also be kept with the Office of Professional Standards. Records shall be kept in a secure file with access to authorized personnel.
- 14.2. Disciplinary records kept in personnel files shall be purged as prescribed by the most current Collective Bargaining Agreement, except as provided by law.