



## DIRECTIVE

### DEPARTMENT OF NATURAL RESOURCES

#### Division of Enforcement

Subject: <b>ALLEGATIONS AGAINST CONSERVATION OFFICERS</b>	
Directive Number: <b>A-3-05</b>	Effective Date: <b>JUNE 22, 2005</b>
Special Instructions: <b>Rescinds Directive A-3-2000</b>	
Reference: <b>Minnesota Rules 3900.9500, 6700.2100, 6700.2200, 6700.2701; Minn. Stat. 13.39, 13.43, 43A.38, 43A.39, 626.89; Applicable Work Agreements.</b>	
Distribution: <b>All Conservation Officers</b>	
Number of Pages, Including Appendices and Signature Page: <b>12</b>	

This directive is for division use only and does not modify or supersede any law. Violations of this directive may form the basis for departmental administrative action. This directive should not be viewed as creating a higher standard of safety or care in any evidentiary sense and should not apply to any criminal or civil proceeding except civil proceedings related to departmental administrative action.

#### I. PURPOSE

Public support and the effectiveness of the division depend largely upon the professionalism, integrity, and public image of its members. Because these attributes are of paramount importance, this directive establishes procedures governing the receipt and handling of complaints against conservation officers and, when warranted, the investigation and disposition of such complaints.

#### II. SCOPE

The procedures set forth in this directive govern the receipt, processing and disposition of complaints against conservation officers employed by the Department of Natural Resources (DNR), Division of Enforcement. Investigations into alleged misconduct of licensed peace officers will be in accordance with Minnesota Statute 726.89, the Peace Officer Discipline and Procedures Act.

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#### IV. DEFINITIONS

- A. **“Complaint”**, for purposes of this directive, means an oral or written expression of a performance concern about an officer, or an oral or written allegation that an officer has engaged in misconduct. As used in this directive, “complaint” is not synonymous with the same terms as used in the Minnesota Government Data Practices Act or the Peace Officer Discipline Procedures Act.
- B. **“Human Resources Bureau”**, for purposes of this directive, is the Administrator or Assistant Administrator of the DNR’s Bureau of Human Resources.
- C. **“Misconduct”** means conduct which, if established, constitutes the violation or attempted violation of constitutional provisions, oath of office, laws, directives, work rules, procedures, policies, instructions, etc., of the State of Minnesota, DNR, or the Division of Enforcement.
- D. **“Officer”** means a sworn, POST licensed peace officer employed by the Division of Enforcement as a conservation officer.
- E. **“Performance concern”** means a concern, disagreement or criticism of an officer’s exercise of discretion or manner of carrying out the officer’s duties. A performance concern does not involve misconduct.
- F. **“Service review”** is a non-disciplinary problem-solving process carried out by Division supervisors or managers for resolving routine performance concerns. Examples of service reviews would include complaints as to interpretation of law being enforced, level of corrective action taken (warning or citation), rudeness, etc. Service reviews will not include complaints of harassment or discrimination. Repeated complaints about the manner in which an officer carries out his/her duties will require a discussion and planning session between the Standards and Training Manager and the Human Resources Bureau as to whether the complaint should be handled as a service review or misconduct.
- G. **“Standards & Training Manager”**, for the purposes of this directive, is the Division of Enforcement's Standards and Training Manager.

## V. GENERAL OVERVIEW

The Human Resources Bureau is responsible for coordinating all Division of Enforcement misconduct investigations with the Director of Enforcement or his designee.

It is not possible to develop a single approach that will fairly meet the needs of each unique set of circumstances. Therefore, within the bounds of governing laws and agreements, the agency will maintain the flexibility to develop customized approaches and solutions to issues as they develop. Although flexibility must be preserved, complaints will generally be handled in the following manner:

- A. Complaints alleging a performance concern generally will be handled by the service review process. Division supervisors and managers will conduct service reviews. However, if circumstances change to indicate that disciplinary action may be appropriate if the allegation is true, the complaint will be discussed between the Standards and Training Manager and the Human Resources Bureau to determine the most appropriate way to proceed.
- B. Complaints alleging misconduct will be discussed with the Human Resources Bureau. Decisions on who will investigate the misconduct will be made by the Human Resources Bureau in consultation with the director or his designee.

## VI. ACCEPTANCE, SORTING, AND DOCUMENTATION OF COMPLAINTS

- A. Responsibilities for accepting complaints. A person indicating a desire to make a complaint about an officer should generally be referred to the officer's supervisor. However, any agency manager or supervisor may take a complaint and then refer it to the Standards and Training Manager. The Standards and Training Manager or the supervisor taking the complaint shall be responsible for advising the complainant that providing false allegations against a peace officer may constitute a violation of law.
- B. The Standards and Training Manager or supervisor receiving a complaint shall elicit basic identifying information and details sufficient to determine whether the complaint is in the nature of misconduct or a service review and may answer questions on policy or procedure that the complainant has in an attempt to resolve the issue with the complainant. The supervisor will contact the Standards and Training Manager and advise what was discussed. The Standards and Training Manager will advise the supervisor as to what the next step will be in handling the complaint.
- C. All complaints will be discussed with the Standards and Training Manager who will maintain a log of all complaints received.

- D. Performance concerns. If it is apparent that the complaint involves nothing more than a performance concern, the supervisor should attempt to immediately resolve the concerns of the complainant and then advise the Standards and Training Manager of the complaint prior to talking to the officer.
- E. Consultation and sorting. If the complaint appears to involve misconduct, the Standards and Training Manager shall discuss the complaint with the Human Resources Bureau. Decisions to conduct investigations should be based on a reasonable belief that there is a need to discover the actual facts underlying a complaint.
- E. Notification. The officer shall be notified of a complaint, whether a performance concern or misconduct, as soon as it is reasonable to do so.
- F. Documentation. All complaints shall be documented, regardless of source or content on the form prescribed by the division for this purpose.

## **VII. SERVICE REVIEW**

### **A. In General:**

1. A service review is an informal process for resolving complaints that involve no more than performance concerns. Special circumstances (e.g., a pattern of complaints) may call for addressing service concerns as a complaint of misconduct.
2. A service review is a non-disciplinary, problem-solving process. If the result of the process is a conclusion that the officer's performance was appropriate, the officer should be provided with this feedback so as not to discourage similar performance in the future. If the result of the process is a conclusion that an officer's performance could improve, for example, through coaching, additional training or more clearly defined instructions or expectations, the supervisor should implement these actions as part of the service review process.

### **B. Procedures:**

1. Service reviews should generally be conducted by the supervisor of the officer who is the subject of the complaint.
2. When it is apparent that a complaint involves no more than a performance concern, the supervisor should make immediate efforts to resolve the

concern. The availability of this process should not be used as an opportunity to dissuade someone from making a complaint about misconduct. Efforts to resolve a complaining party's concerns might include, for example, providing an explanation of the law or an explanation of law enforcement procedures.

3. If the performance concern is resolved during the initial contact, the supervisor shall document this fact along with information as to how the concern was resolved. The supervisor shall also advise the officer who was the subject of the complaint of the nature of the performance concern and how it was resolved.
4. If the supervisor deems it advisable, the supervisor may elicit a verbal account of the incident from the officer, either in person or by phone, or require the officer to prepare (or submit any already prepared) written reports, memoranda or other documentation concerning the incident.
  - a. In either case, the supervisor should advise the officer that the information is being sought as part of a service review process and that a service review process will not lead to disciplinary action against the officer.
  - b. If an officer who is the subject of the complaint declines to cooperate with the service review process, the matter may be handled through investigation.

## **VIII. INVESTIGATIVE PROCESS**

- A. The Human Resources Bureau, in discussion with the Standards and Training Manager, shall determine the extent of any investigation necessary and who will conduct the investigation.
- B. Investigative steps may include, but are not limited to: gathering statements from the complaining party and other persons believed to have knowledge of the incident; gathering and analyzing physical evidence including documentary evidence, reports, law enforcement records, court documents, medical records, computer files, photographs and any other data bearing on the truth or falsity of the allegations; and viewing the scene of the alleged incident.
- C. Prior to taking a formal statement, an officer under investigation shall be provided with written notice of the identity of the primary investigator and a summary of the allegations (including the date, time and place of the alleged misconduct, if this information is known with specificity).

- D. Investigators shall be deemed to have the full authority of the appointing authority for purposes of requiring officers to cooperate with investigations and administering *Garrity* and other investigative advisories.
- E. All investigations will conclude with the issuance of a written report.

## **IX. GUIDELINES FOR CONDUCTING INVESTIGATIONS**

- A. Unless instructed to proceed differently by the Human Resources Bureau, Investigators should use the following procedures:
  - 1. Prepare an investigation plan, including witnesses to be interviewed and information and evidence to be sought and considered during the investigation. This planning process shall include consideration of the appropriate *Tennessee* and *Garrity* advisories to be used during the course of the investigation.
  - 2. Request copies of all previously prepared documents that relate to the incident, which is the subject of the complaint(s).
  - 3. At least 48 hours advance notice of a formal statement should generally be given to an officer whose formal statement will be taken, but in all cases a summary of the allegations shall be provided to an officer prior to the taking of a formal statement. This summary of the allegations shall include the date, time and place of the alleged misconduct, if this information is known with specificity. Based on the information available at the time, this summary shall also include the laws, rules, policies, directives, procedures, instructions, etc., allegedly violated. This advance notice and summary shall be prepared in consultation with the Human Resources Bureau.
  - 4. Immediately advise the Human Resources Bureau if any additional misconduct is discovered during the investigation.
  - 5. Ensure that *Tennessee* and/or *Garrity* advisories are given as appropriate.
  - 6. Interview witnesses or persons with information relevant to the complaint(s) or investigation(s).
  - 7. Obtain and properly secure all physical evidence.
- B. Comply with the provisions of the Peace Officer Discipline Procedures Act, as appropriate, including the following:

1. Ensure that a complaint has been signed and the officer has been provided a summary or allegations before taking any formal statements.
  2. Attempt to conduct a formal interview during an officer's regular duty hours, at a DNR or state facility, unless another location is mutually agreed upon. Reasonable rest periods shall be provided and the duration of the interview shall be a reasonable time period.
  3. An officer has the right to have an attorney or union representative present during a formal interview. When the presence of an attorney or union representative is requested, no interview may be conducted unless the officer has had a reasonable opportunity to obtain a representative. An interview may be conducted if the officer has not obtained representation after being given a reasonable amount of time to do so or after the officer waives his/her rights to such representation in writing
  4. The entire session at which a formal statement is taken shall be tape-recorded. Upon written request, the officer shall be provided a copy of a transcript or a copy of the tape recording within a reasonable time.
  5. Conservation Officers shall not be required to produce financial records except if required by a valid search warrant or subpoena.
  6. Conservation Officer photographs may be displayed to a witness as part of an investigation, but may not be otherwise released to the public without the officer's written permission.
- C. Questions asked of officers during investigations must be related to the matters or subject being investigated, to the officer's performance of official duties or fitness for office, or another officer's official duties or fitness for office. Officers shall, if necessary, be ordered to answer all questions relevant to the investigation through the administration of an appropriate *Garrity* advisory.
- D. No officer shall be asked, required or encouraged to submit to a polygraph examination.
- E. Investigators shall prepare an investigative report which shall include:
1. A summary of the allegations against the officer identifying the rules, procedures, policies, directives, statutes or constitutional provisions that would likely be violated if the allegations were true.
  2. A written evaluation, based on an analysis of the evidence, as to whether each allegation is supported by the evidence.



3. Any mitigating circumstances relevant to the complaint, allegation(s), or investigation such as training deficiency, policy deficiency, or supervisory deficiency.
4. Any relevant statements, reports, documents, photos or other matters of an evidentiary nature.
5. Findings for each separate allegation in the complaint will be determined as to one of the following:
  - a. Sustained - the particular allegation of misconduct is supported by the evidence.
  - b. Not Sustained - there is insufficient evidence to prove or disprove the particular allegation of misconduct.
  - c. Unfounded - the particular allegation of misconduct is false.
  - d. Exonerated - the particular allegation is true, but the officer's actions do not constitute misconduct.

**X. INTEGRITY OF THE INVESTIGATORY PROCESS**

- A. Officers shall cooperate during the investigatory process and to answer questions truthfully and completely.
- B. No officer shall impede or interfere with an investigation, solicit information regarding an investigation from investigators or other individuals or discuss any aspect of the complaint or investigation with other officers or individuals. This does not prohibit discussions or communications between an officer and the officer's bargaining unit representative or attorney.
- C. No officer shall destroy any evidence, documents, logs, photos, recordings or any other information or property that may be relevant to an investigation.
- D. Until the completion of the investigation, officers who are involved in an investigation either as the subject or a witness, shall not discuss the details of the incident, investigation, statement, complaint or allegation with anyone other than the investigator, their attorney or union representative.

## **XI. PRE-DISCIPLINARY PROCEDURE (LOUDERMILL HEARING)**

Prior to the imposition of disciplinary action involving suspension without pay, demotion or discharge of a non-probationary officer, the officer shall be provided with a summary of the information and findings from the investigation and the disciplinary action being considered. An officer shall have an opportunity to respond to the evidence and present any exculpatory evidence prior to disciplinary action taking effect.

## **XII. DISCIPLINARY ACTION**

If imposed, disciplinary action shall be determined according to the appropriate work agreements or policies. Disciplinary action may include reprimand, suspension, demotion or discharge. Decisions concerning disciplinary action shall be made by the director or the director's designee, the Human Resources Bureau, and the Commissioner's Office. The officer's work record, prior findings or determinations of misconduct, other aggravating factors and any mitigating factors may be considered in determining level or extent of discipline. No disciplinary letter or reprimand may be placed in an officer's personnel record unless the officer has been given a copy of the letter of discipline or reprimand.

## **XIII. APPEALS**

An officer who is the subject of disciplinary action may appeal the action as provided by the work or collective bargaining agreements, plans, policies or statutory provisions governing the officer's employment.

## **XIV. NOTIFICATIONS**

- A. Officer under investigation. The officer who is alleged to have engaged in misconduct shall receive notification of the adjudication of a complaint.
- B. Officer's Supervisor. The immediate supervisor of an officer who is alleged to have engaged in misconduct shall receive notification of the adjudication of a complaint.
- C. Complainant. All complainants will receive notification when the review or investigation of a complaint has been completed unless such notification could jeopardize any ongoing criminal, civil or administrative investigation being conducted by this department or any other government agency. The Standards and Training Manager shall ensure that the complainant has been advised of the completion of any service review process. The Human Resources Bureau shall notify the complainant of the completion of any investigation.

## XV. RECORDS AND RETENTION

- A. Service review data. Service review data shall be maintained in its existing form for a period of two years, after which time the data shall be periodically reduced to summary data in a form in which the officers are not identifiable.
- B. Misconduct. Complaints that involve allegations of misconduct shall be logged immediately with the Standards and Training Manager, who shall be designated to maintain and store such records. The log will include the date of the complaint, the date of the alleged misconduct, the officer who is subject of the complaint or allegation, the nature of the alleged misconduct, the complainant and the disposition of the complaint or allegation.
- C. Investigation files shall be maintained by the Human Resources Bureau. Service review files will be maintained by Enforcement. All service review and investigative files will be kept separately from personnel files.
- D. Notices of disciplinary actions may be included in personnel files as provided by appropriate work or collective bargaining agreements or other policies, and as provided by the Minnesota Government Data Practices Act (Minn. Stat. Ch. 13).

By Authority of:



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COL Michael R. Hamm  
Chief Conservation Officer/Division Director  
Division of Enforcement



**DIRECTIVE NO. A-3-05 SIGNATURE**

I have received a copy of **Directive A-3-05, Allegations Against Conservation Officers**, which I have read, placed in my directives manual and have had an opportunity to discuss with my supervisor.

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Officer's Printed Name

Badge No.

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Officer's Signature

Date

This sheet shall be signed and returned to your immediate supervisor within seven working days after receipt of this directive. Directive sign-off sheets will be filed and maintained in the officer's division file in the Division of Enforcement.