



# **Pine-Strawberry Fire District Employment Practices 3.6**

**Subject: Investigations**

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## **I. PURPOSE:**

The purpose of this policy is to establish a consistent framework for timely, complete, and fair supervisory investigations of member alleged misconduct.

## **II. POLICY:**

It is the policy of the Pine-Strawberry Fire District (PSFD) to take all complaints, allegations, or observations of member misconduct seriously and investigate them thoroughly, fairly, and professionally, and when necessary take corrective action in accordance with District policy.

## **III. SCOPE:**

This policy applies to all full-time, part-time, volunteer, and non-contract PSFD members.

A. Any PSFD contract member, including the Fire Chief, shall be subject to the terms of that contract and applicable District policy.

B. The Board retains the right to investigate any alleged misconduct or breach of contract in a fair and equitable manner of its choice.

## **IV. DEFINITIONS:**

For purposes of this policy:

A. Misconduct means any observed or alleged act of commission or omission which constitutes a violation of District policy or standard of conduct.

- B. Alleged misconduct means claims of misconduct or evidence of misconduct which has not yet been substantiated or refuted by investigation.
- C. Preponderance of evidence means that in light of the totality of the circumstances and available evidence, the inferences or conclusions drawn by a reasonable person are more likely than not to be true.
- D. Totality of the circumstances means all information and evidence available to the investigator of the circumstance, pertaining to the incident being investigated.
- E. Investigating supervisor is a PSFD member of actual or acting supervisory rank, responsible for the conduct and documentation of an investigation.
- F. An Impartial third-party investigator is a person who is not an employee of the District and who has been tasked with the responsibility of investigating the incident. Examples include but are not limited to certified law enforcement officers, licensed private investigators, attorneys and paralegals, and active or retired fire service supervisors, managers, or executives.

## **V. PROCEDURE:**

Because of the complexity of human interaction in the workplace, rapidly evolving situations encountered in response to fire service emergencies and interactions with the public in times of distress, no policy can adequately direct the investigation process for all observed or alleged misconduct.

- A. Supervisors may make inquiries into a situation or incident which do not amount to an investigation.
  - 1. If information or evidence of misconduct or alleged misconduct comes to light, an investigation should be initiated if the situation cannot be resolved by other means.
  - 2. All investigations will be guided by the principles of fairness, equity, honesty, professionalism, courtesy, and completeness.
  - 3. Complaints of misconduct made by other District members, outside agencies, or the public will be taken seriously, carefully considered, and fully investigated.
    - a. If an explanation of the circumstances and actions satisfies the complainant, a formal investigation may not be required (at the discretion of the supervisor receiving the complaint).

- b. In allegations of serious misconduct, the complainant may be asked to submit a written statement clearly stating the circumstances of the misconduct alleged.
- B. Nothing in this policy shall preempt a supervisor's discretion in the application of training or counseling to correct errors, mistakes, or minor infractions.
- C. Investigations will focus on the totality of the circumstances and should address the "who, what, when, where, how, and why" of the incident.
- D. All investigations shall be discussed with the Fire Chief. Unless otherwise directed by the Fire Chief, investigation of misconduct will be the responsibility of the direct supervisor of the involved member who will:
  - 1. Determine the purpose of the investigation.
  - 2. Gather any applicable physical evidence, photographs, or documentation.
  - 3. Identify and interview witnesses.
  - 4. Determine which, if any, policy(s) applies to the situation.
  - 5. Identify the member(s) involved.
  - 6. Notify the involved member(s) of the investigation.
    - a. There may be circumstances where the interests of the District, member(s), or the public require that notification of the investigation be delayed.
      - i. If there are indications of criminal conduct, the internal misconduct investigation may be suspended and all available evidence and information turned over to law enforcement.
      - ii. If there are indications of ongoing intentional misconduct, notification may be delayed until such time as a pattern of misconduct is either sustained or refuted.
      - iii. If the member is unavailable or incapacitated.
      - iv. Any decision to delay notification of an investigation should be made in consultation with the Fire Chief unless the Fire Chief is involved.

7. Interview the involved member(s).
  - a. Before beginning the interview, instruct the member to answer all inquiries truthfully.
  - b. Instruct the member to refrain from discussing the investigation.
    - i. Some legally required exceptions may apply.
  - c. The supervisor may require the member to give a detailed written account of the incident.
    - i. This may be accomplished on the "Disciplinary Action Form" if misconduct is established.
  - d. There may be situations where the stress involved in an emergency situation dictates delaying the interview.
8. Gather any necessary collateral information or evidence.
  - a. Examples of collateral information or evidence include accident reports, dispatch records, training records, or any other information which aids in the understanding of the circumstances.
9. Draw a conclusion.
  - a. There are generally four conclusions that may be drawn from an investigation:
    - i. Member misconduct is supported by a preponderance of the evidence; the violation (allegation) is sustained.
      - (a.) Disciplinary action may be recommended in accordance with the Disciplinary Action Policy.
    - ii. Member misconduct is refuted by a preponderance of the evidence; the member's conduct is exonerated.
      - (a.) The member's actions occurred as alleged but were proper, lawful, and within policy.
      - (b.) The member's actions did not occur as alleged and were proper, lawful, and within policy.
      - (c.) No disciplinary action is recommended.
    - iii. Member misconduct is inconclusive (neither sustained nor refuted by a preponderance of the evidence) or
      - (a.) No disciplinary action is recommended.

- iv. The member's actions did occur, and while it may have been outside policy, was lawful and directed toward the best outcome for all involved under the circumstances; the alleged violation is not sustained.
  - (a.) No disciplinary action is recommended.
  - (b.) Non-disciplinary counseling or training may be recommended.

10. Document the investigation.

E. In some circumstances an investigation may be conducted by another investigating supervisor or an impartial third-party investigator, at the discretion of the Fire Chief.

- 1. If the involved member's direct supervisor cannot, for any reason, conduct the investigation, the Fire Chief will assume responsibility or assign it to another investigating supervisor.
  - a. If the Fire Chief directs that an investigation be conducted by an impartial third-party, a PSFD supervisor will oversee the investigation and;
  - b. Provide any evidence or relevant information available to the investigator.
  - c. Determine if misconduct is sustained and make a disciplinary recommendation.
  - d. When the investigation is completed, compile all the information, evidence, documentation, and recommendations for inclusion in the member's personnel file.
  - e. Any cost or fees charged by a third-party investigator must be specified in writing.

F. The investigation and conclusions will be thoroughly documented:

- 1. In memorandum form if no misconduct is established.
- 2. On the "Disciplinary Action Form" if misconduct is established.

G. Whether or not misconduct is established, the investigation and any supporting documentation will be retained in the involved member(s) personnel file.

- 1. A copy of the investigation documentation will be provided to the involved member.

- a. Non-District member witness identifying information and contact information may be redacted.
      - i. If the member elects to appeal, they will be provided an un-redacted copy of the complete investigation.
    - b. Any legally protected (attorney-client, HIPAA) or other confidential information will be redacted.
  - 2. Investigation documents retained in personnel files will not be redacted.
- H. An investigating supervisor may request legal advice from the District's attorney at any time during the investigation through the chain of command.

## **VI. OTHER CONSIDERATIONS:**

- A. There may be specific protections or procedures imposed where a memorandum of understanding or other agreement between the District and an employee group regarding misconduct investigations exists.
- 1. These provisions and conditions must be honored.
- B. There may be circumstances where a criminal allegation arises in the course of a misconduct investigation, in which case the member may lawfully decline to answer questions without disciplinary consequence, pending the outcome of the criminal investigation. In that event, management may make use of Garrity warning.
- 1. Garrity Protections (Garrity v. New Jersey, 385, U.S., 493, (1967)) provide a means for PSFD, as a public employer, to conduct a separate administrative investigation into member misconduct even when there is the possibility of criminal liability by the member, while protecting member's Fifth Amendment protections against self-incrimination.
    - a. The prerogative to conduct an administrative investigation in the presence of an indication of criminal conduct should be used judiciously and at the discretion of the Fire Chief (or Board if the Fire Chief is the subject of the investigation).
  - 2. The purpose of an administrative investigation is to determine if there has been an actionable violation of District policy and is never to gather evidence of criminal conduct to be used in a criminal proceeding.

3. A member may invoke his or her Garrity protection at any time in any investigation and no inference shall be made as to misconduct or criminal conduct by the invocation of these protections.
4. The investigation must avoid compromising avenues of investigation by law enforcement and must:
5. Protect members' Fifth Amendment rights against compelled self-incrimination.
6. To accomplish these objectives and protect member's rights, the District should offer, and the member must invoke, what is known as Garrity protections.
7. Unlike Miranda warnings, Garrity protections are not automatic and must be affirmatively invoked (rather than waived as in Miranda) by the member.
  - a. To invoke Garrity protections, the member must ask the following questions of the District investigator:
    - i. Am I being administratively investigated for alleged violation(s) of District policy (cite the policy, if known)?
    - ii. Are you (the investigator) ordering me to truthfully answer these questions?
    - iii. Can I be disciplined if I do not truthfully answer these questions?
    - iv. Can that discipline include termination of my employment?
    - v. Does answering these questions give me immunity from my answers being used against me in a criminal proceeding?
  - b. These questions may be provided to the member by the investigator.
  - c. The Garrity questions and answers should be witnessed by an independent member and will be included in the investigation documentation.
8. If the answers (by the investigator) are all in the affirmative, the member may be compelled, under disciplinary penalty up to and including termination of employment, to answer investigative questions truthfully.
  - a. If the member fails to truthfully answer questions, they may be subject to disciplinary action up to termination of employment in

- b. addition to or in lieu of, any discipline resulting from the original allegation(s).
- 9. Members are free to consult with a labor organization representative (if applicable) or legal counsel before answering any questions.
- 10. The administrative investigation must be focused solely on the violation of policy.
- 11. In order to avoid tainting of evidence or compromising any investigative pathways, the administrative investigation must be kept strictly separate from the criminal investigation.
  - a. The District investigator may not share answers or statements with the criminal investigator.
  - b. The District investigator may not share or suggest avenues of investigation derived from administrative questioning with the criminal investigator.
- 12. If there is any doubt regarding the conduct of an investigation after Garrity protections have been invoked, the member, investigator, and District are encouraged to seek legal counsel before proceeding.