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## INVESTIGATION OF COMPLAINTS AND DISCIPLINE

### POLICY 160

#### 1. PURPOSE

This section establishes procedures for dealing with violations of policy, procedure or standards of conduct. It also provides processes for investigating complaints in order to ensure the public's continued confidence in the integrity of the County. These procedures provide employees with a process by which they may document, refute, or confirm allegations, and resolve allegations in an appropriate manner. Alleged violations and complaints will be resolved by exoneration, corrective action, or discipline as appropriate.

#### 2. AUTHORITY TO DISCIPLINE

The authority and responsibility for discipline rests with County Officials. County Officials may delegate authority to discipline as necessary.

#### 3. COMPLAINTS AGAINST EMPLOYEES TO BE THOROUGHLY INVESTIGATED

It is both necessary and desirable that Pend Oreille County consistently and critically examine all actions of employees that represent a liability to the County, the community or the employee. Complaints must be professionally and thoroughly investigated in order to:

- a. Ensure the public confidence, trust, and cooperation in the County.
- b. Protect Department employees unjustly accused.
- c. Preserve morale.
- d. Discover misconduct so that corrective action or discipline may be quickly and fairly administered.

Complaints which are investigated in a diligent and impartial manner are less likely to cause citizens or employees to be antagonized.

#### 4. NOTIFICATION OF HUMAN RESOURCES OFFICE

The Human Resources Office has oversight responsibility for all investigations involving employee misconduct. Prior to commencement of any investigation into allegations of a serious nature involving misconduct, violations of policy or law, the County Official and/or his designee shall notify the Human Resources Office of the allegations.

#### 5. COMPLAINT INVESTIGATION SYSTEM

NOTE: Receipt of a complaint and its subsequent investigation are not discipline. In fact, the overwhelming majority of complaints received fail to result in any form of discipline.

With the exception of the Sheriff's Department that maintains its own system, all records of investigations against employees are maintained by the Human Resources Office. Investigatory files are confidential and maintained in a file separate from personnel files. If an investigation results in disciplinary action, documentation of the disciplinary action is directed to the personnel file. Access to investigative files is on a need to know basis only with permission of the Human Resources Office and County Official.

The procedures and techniques involved in conducting a personnel complaint investigation and preparing any subsequent disciplinary action will vary somewhat depending upon the origin and nature of the complaint. Internal investigations are confidential in nature. Supervisors will take all reasonable precautions in maintaining the confidentiality of investigations and records. The supervisor will be limited in his/her procedural approach by laws, rules and regulations of the County, and elements of the appropriate labor contract.

### 5.1 Receiving Complaints

All citizens who wish to file complaints against employees will be informed of the manner in which a complaint may be filed. Complaints from citizens and other agencies shall be taken only by a supervisor or higher. When an employee is approached with a complaint he/she shall refer the person making the complaint to an appropriate supervisor. If a supervisor or County Official cannot be reached, the complainant shall be informed that he/she will be contacted by an appropriate supervisor at the earliest possible time, or if the complainant prefers, he/she will be advised when the next appropriate supervisor will be available.

In all cases, the employee speaking to the complainant shall obtain the name, address, and phone number of the person wishing to make the complaint, and shall forward the information to the employee's supervisor. All information received by the employee from the complainant shall be treated as highly confidential.

Complaints of misconduct made by a fellow employee should be directed by the reporting employee to their supervisor, County Official, or the Human Resources Office.

### 5.2 Processing Complaints

Complaints against employees (originating from a citizen, a fellow employee, another agency, or serious violations as determined by the County Official) will be thoroughly reviewed. Assuming that the complaint does not involve illegal activity, the employee will be informed of the charges prior to any disciplinary action and permitted to provide an explanation or comment on the charges. Where possible illegal activity is involved, employees will be given every right due any other person in the context of a criminal investigation. Interviews of employees will comply with procedures outlined in these policies unless addressed otherwise in an appropriate labor contract. Employees involved in the investigation of complaints should always consider the appearance of fairness in their investigations. No employee will initiate internal investigations without proper authority.

### 5.3 Harassment Of Complainants

Employees shall be courteous and prompt in dealing with persons wishing to make a complaint. No employee will harass, verbally abuse, or threaten any citizen who files a complaint against that employee or any other employee.

#### 5.4 Supervisor Responsibilities

The supervisor taking the initial complaint will obtain as much information as possible from the complainant, to include a written statement. The supervisor shall notify the affected employee's County Official of the details of the complaint in written memorandum.

#### 5.5 County Official Responsibilities

The County Official shall cause an investigation of the complaint to be made. County Officials are responsible to ensure that county, department, and labor agreement procedures are adhered to by supervisors assigned to investigate and for the coordination, proper investigation, and documentation of complaints within their departments. County Officials are responsible to ensure that appropriate discipline, counseling, or corrective action resulting from sustained complaints occurs and that it is proper, fair, and consistent.

If it appears the complaint may reasonably result in disciplinary action, County Officials shall notify the Human Resources Office. In such cases the Human Resources Office will assist in the coordination of the investigative and disciplinary process and ensure that procedures regarding investigation and discipline are followed.

#### 5.6 Notification Of Employee Complained Against

In all complaints, the County Official shall cause notification of the employee complained against of the existence and nature of the complaint unless there exists an investigatory reason for withholding such timely notification. The affected employee shall also be notified of the disposition of any complaint investigation. Failure to provide notification shall not affect the disposition of the complaint or any discipline which may result.

#### 5.7 Duties Of The Employee Complained Against And Employees With Information

Each employee shall immediately report all information known to that employee that is relevant to an ongoing investigation; reveal the existence of physical evidence or other information which tends to corroborate or refute accounts of complainants, employees and witnesses; and candidly and forthrightly volunteer any information believed by the employee to be relevant to any County inquiry. These duties apply to employees whose conduct is under investigation as well as employees who are, or become, witnesses by virtue of information known to them.

#### 5.8 Duty To Reply/Cooperate

Employees will answer fully all questions that a supervisor may ask regarding performance of official duties and will cooperate with the internal investigation process.

During any question period, if the employee becomes suspect in criminal activity, he/she shall be afforded every right due any other person in the context of a criminal investigation.

An employee who refuses to answer questions or make a statement may be subject to disciplinary action. An employee who is ordered to answer questions or make statements may not have those statements used against the employee in criminal proceedings. *Garrity v. New Jersey*, 385 U.S. 493 (1967).

#### 5.9 Representation During Interview

An internal investigation is an administrative matter. When an employee reasonably believes that the interview may result in discipline, the employee may insist on having a labor representative (shop steward or unit officer), or, in the case of a non-represented employee, a fellow employee, present. The representative may ask questions and participate in discussions, but may not otherwise interfere with the interview.

If an employee refuses to participate in an interview and the purpose does not relate to discipline of that employee, or the employee's belief that discipline may result is not reasonable, the investigator shall so inform the employee. The employee's failure to proceed under such circumstances may lead to discipline. If a representative is demanded based on a reasonable belief, and refused, the employee may not be disciplined based on information disclosed by the employee during the meeting after the refusal.

### 6. DISPOSITION OF INTERNAL INVESTIGATIONS

Upon conclusion of the investigation, the investigator shall make a determination as to his findings. Upon completion of the review of the charges in a complaint, the matter will be classified as:

- a. Exonerated - the alleged conduct occurred but it was lawful and proper.
- b. Unfounded - the complaint was false or unfounded.
- c. Not sustained - there was insufficient evidence to prove or disprove the allegation.
- d. Sustained - the allegation was supported by proper and sufficient evidence.

The investigating supervisor shall submit to the County Official all reports, documentation, and findings. Included in the file shall be a narrative of recommendations which shall consider the findings of the current investigation, mitigating circumstances, other violations or deficiencies, and disciplinary factors.

The County Official shall review the investigative file and may elect to:

- a. Cause disciplinary or corrective action to be taken as appropriate.
- b. Cause further investigation to take place, either by himself or his assigned supervisor.
- c. Dispose of the investigation without disciplinary action.

Upon conclusion of the action, the County Official will cause the investigative file, to include any documented disciplinary action, to be filed with the Human Resources Office. Any documented disciplinary action will be directed to the affected employee's personnel file.

## 7. ADMINISTRATIVE LEAVE

Immediate suspension with pay is sometimes appropriate when reason exists to ensure continued fitness for duty, during investigation of complaints, or pending disciplinary action. Administrative leave may be imposed at the discretion of the County Official whenever the circumstances warrant; for example, when an employee is involved in a traumatic incident or is suspected of misconduct which may warrant discharge or relief from duty. Any employee placed on administrative leave is required to adhere to the following conditions:

- a. Employees on administrative leave are expected to be at home and available for telephone contact during business hours unless specifically approved otherwise by the appropriate County Official.
- b. Employees may be required to check in by telephone daily with their County Official or his designee.
- c. Employees are not allowed to enter into the workplace or upon County Facilities except to conduct required business with the County with prior permission of the County Official, or in response to a supervisory directive.
- d. Employees are required to adhere to standards of conduct and other workplace rules while on administrative leave.

## 8. CORRECTIVE ACTION

Corrective action is not considered disciplinary action. Corrective action may be taken in lieu of discipline whenever such action is deemed more appropriate than discipline under the circumstances. Corrective action may take the form of oral or written counseling by the supervisor advisory memoranda to the employee stating performance expectations in positive terms, and/or retraining. Written work improvement plans may be initiated by a supervisor or a County Official in order to assist the employee to improve in the performance of duty and to correct errors and omissions involving specific misconduct, bad faith or negligence which could warrant discipline. Documentation of corrective action may be used to substantiate the appropriateness of discipline in the event the employee fails to respond appropriately to corrective action.

## 9. PRE-DISCIPLINARY PROCEDURES

When a County Official intends to impose disciplinary action, prior to taking such action, the County Official in coordination with the Human Resources Office will:

- a. Notify the employee in writing of the nature of the charges, which may include a copy of the complaint against the employee and will identify the directives or standard of conduct, whether stated in these policies or not, which appears to have been violated, and other documents gathered during the investigation.
- b. Outline the nature of discipline being considered or proposed.
- c. Schedule the employee for a pre-disciplinary meeting to provide an opportunity to respond orally or in writing concerning the charges and allegations (*Cleveland Board*

*of Education v. Loudermill, 470 U.S., 532, 1985*). The employee may be required to attend and may attend with a labor representative or fellow employee of the employee's choice. The meeting is intended to ensure that the employee has a full opportunity to refute the charges and have the employee's position considered prior to the implementation of discipline. The meeting is not intended to afford the employee an opportunity to present testimony, or to call witnesses or accusers for the purpose of cross-examining them. Attorneys are not allowed at pre-disciplinary hearings except with the permission of the County Official.

## 10. DISCIPLINARY ACTION

This section on employee discipline procedures and termination is for guidance only. It is not a contract between the County and its employees. The County recognizes that each disciplinary decision and termination must be judged on its own particular facts. Fairness and common sense dictate that these unique situations will be reviewed and decided in the context of surrounding circumstances. The severity of the action generally depends on the nature of the offense and an employee's work record and may range from verbal counseling to discharge.

### 10.1 Types Of Disciplinary Action

Disciplinary action may be taken against any employee for a violation of law, County rules, policies, or procedures. Such action may include but will not be limited to:

- a. Verbal or Written reprimand.
- b. Suspension without pay.
- c. Demotion.
- d. Termination of employment.

The disciplinary procedures contained below recognize employment rights and procedural safeguards provided by applicable statutory and case law. In order to provide a fair method of correcting, and when necessary, the County will use progressive discipline procedures when appropriate.

### 10.2 Disciplinary Factors

Several factors will be considered when determining disciplinary action. Among these considerations are mitigating circumstances, other recent or similar violations, and the disciplinary action taken in those incidents, etc. Other factors which are considered include, but are not limited to:

- a. The nature of the job. Some employees are at a higher administrative or supervisory position. Associated with the higher position is higher visibility and higher standards.
- b. The size of the County, in terms of manpower, makes it a relatively small organization and therefore conduct of employees is more visible to the public than in large communities.
- c. Is the employee conduct discreet or is there notoriety, and who gave it notoriety?

- d. What is the atmosphere of the community or city in which the act was performed or where the employee works?
- e. Is the conduct criminal by state, federal or local law?
- f. How serious is the offense regarding criminal violations?
- g. Does the issue raise such question or inference that the employee cannot handle sensitive information or material?
- h. Is conduct likely to cause damage to the confidence in the County by the public?
- i. Does the conduct negatively affect public respect of the County?
- j. Does the conduct raise a question as to the employee's emotional, mental or physical suitability?
- k. Is the conduct likely to cause an interruption in the work force or reduction in employee morale?
- l. Does the conduct significantly impair the ability of the employee to aggressively or objectively complete work assignments?

### 10.3 Notifying Employee Of Disciplinary Action

In all cases of disciplinary action taken against employees involving suspension, demotion, and/or termination of employment, the employee shall be notified in writing. The written notification shall include:

- a. A statement citing the reason for the disciplinary action;
- b. The effective date of the disciplinary action; and
- c. Advisement of appeal rights.

## 11. COMPLAINTS OF CRIMINAL ACTIVITY

Complaints against members which allege criminal violation will be referred to law enforcement as appropriate. An internal investigation may be conducted at the same time as a criminal investigation. It is recognized that the standard of proof in disciplinary matters is substantially different than that affecting charging decisions and/or convictions in criminal matters. Charging or conviction in criminal matters is not a determining factor in the disposition of internal investigations.

## 12. APPEAL/GRIEVANCE/FAIR TREATMENT POLICY

It is the policy of the County to provide for an orderly process whereby employees may have their appeals, problems, and complaints considered as fairly and rapidly as possible without fear of repercussion. Every effort shall be made to find an acceptable solution by informal means at the lowest possible level of supervision.

Unless otherwise specified by labor agreement, employees will utilize the appeal procedures contained in these policies. In no case shall any employee appeal a disciplinary action through more than one appeals procedure.

### 12.1 Non-Disciplinary Appeal/Grievance

The following procedures shall be followed if an employee or group of employees in the County believes an injustice has occurred because of:

- a. Lack of a County or department policy;
- b. A policy that is unfair;
- c. Deviation from a policy;
- d. Disagreement with another employee or supervisor;
- e. A discretionary action of a department in the application of the rules and regulations of the County;

Step 1: An employee wishing to discuss a specific issue or problem of a non-disciplinary nature shall do so by first starting with his supervisor.

Step 2: When a non-disciplinary appeal cannot be resolved with the supervisor, the appeal shall be directed to the County Official in writing. The County Official will investigate the matter and make a decision, in writing. The County Official may conduct further interviews or request further information before making a decision. The decision of the County Official shall be final unless the problem is concerning a county policy, in which case it can be appealed to the County Commissioners if not settled by the County Official. The County Commissioners decision shall be final.

## 12.2 Disciplinary Appeal

Employees subject to the disciplinary provisions of this section may appeal disciplinary suspension, reduction in pay, demotion, or termination when the action is believed to be unjustified by the employee.

Notice of the appeal must be filed not later than five (5) business days after the effective date of the action. The notice shall be in writing and shall include at least the following information:

- a. A statement of the complaint and the facts upon which it is based.
- b. The remedial action requested.
- c. A statement of the reasons why the remedial action is appropriate.
- d. A statement of any policies, procedures or law or rules which have not been adhered to or which should be followed.
- e. A copy of all evidence submitted for consideration during the investigation, pre-disciplinary, and disciplinary processes.

The appeal shall be heard by the Board of Commissioners within fifteen (15) business days after the appeal is filed, unless a later time is agreed to by the parties. The Board of Commissioners shall furnish the County Official concerned with a copy of the notice of appeal in advance of the hearing.

- (1) Briefs

Briefs or other memoranda of law may be submitted by the parties in support of or in response to an appeal. Each party is permitted one (1) primary brief not exceeding fifteen (15) double-spaced pages in length. In addition, the appellant may submit a reply brief not exceeding ten (10) pages in length. The Commissioners may, at their discretion, waive or modify these page limits at the request of either of the parties in order to accommodate complex legal and factual issues.

Briefs must be limited to the specific issues set forth in the appellant's statement of appeal.

(2) Motions

Motions and responses to motions shall not exceed fifteen (15) double-spaced pages in length without prior approval of the Commissioners.

(3) Subpoenas And Records

The Board has power to administer oaths, subpoena witnesses and compel the production of books and papers pertinent to any investigation or hearing authorized by law. The Superior Court, on petition of the Board of Commissioners or a party, may compel obedience to the subpoena and shall enforce refusal to obey or to testify in the same manner as refusal to obey or testify pursuant to a subpoena issued from the Superior Court. The Board of Commissioners, before issuance of any subpoena, may require a prima facie hearing for the purpose of showing the relevance of the subpoena.

Every person served with a subpoena requiring attendance before the Board of Commissioners shall be entitled to the same fees and mileage as are allowed by law to witnesses in civil suits and actions, except that no person shall be entitled to any fee or mileage that is on duty as a Pend Oreille County employee when called as a witness. The fees and mileage allowed by this section shall be tendered by the party seeking the subpoena and shall accompany the subpoena when presented to the Board of Commissioners for issuance.

(4) Parties' Rights And Responsibilities

Parties to an appeal hearing are limited to the appellant, parties presenting information or involved in the investigation, pre-disciplinary, or disciplinary process and the County. Others are welcome to attend and observe but shall not participate in the hearing. Although appellants have the right to be represented by an attorney, representation by an attorney is not required. Where a party has designated a representative, the representative shall exercise the rights of the party.

All parties and others participating in and observing hearings shall conduct themselves with civility and deal courteously with all persons involved in the proceedings.

(5) Default

The Board may dismiss an appeal by an Order of Default where the appellant, without good cause, fails to appear or is unprepared to proceed at a scheduled and properly noticed hearing.

(6) Hearing Format

Appeal hearings, although generally informal in nature, shall have a structured format and shall be conducted in a manner deemed by the Board to make the relevant evidence most readily and efficiently available to the Board and to provide the parties a fair opportunity for hearing.

The order of an appeal hearing will generally be as follows:

- a. Overview on process and conduct of hearing;
- b. Background presentation by County;
- c. Appellant's argument;
- d. Rebuttal; and
- e. Closing argument of parties.

The order or content of the hearing may be modified or a different order established, as the Board deems necessary for a clear and fair presentation. The order of the hearing may also be modified as agreed upon by the parties, with the Board approval.

The order of presentation at hearing shall not alter or shift any burden(s) or presumption(s) established by applicable law(s).

(7) Board Decision

A decision of the Board on appeal may include, but need not be limited to, a statement regarding the following:

- a. Background - The nature and background of the proceeding, including identification of party representatives participating in the hearing, pre-hearing determinations, and other similar information.
- b. Findings - The individual facts that the Board finds relevant, credible, and requisite to the decision, based on review of the disciplinary record and the record developed at the hearing.
- c. Conclusions - Legal and factual conclusions based upon specific provisions of law and the findings of fact.
- d. Decision - The Board decision as to the outcome of the appeal (affirm, reverse, or remand) based upon a consideration of the whole record and supported by substantial evidence in the record.

(8) Evidence

The evidence relied upon by the Board shall be limited to the disciplinary record and the record developed at the hearing. The Board shall not take new evidence not submitted during the investigation, pre-disciplinary, and disciplinary processes at the appeal hearing, but may consider newly discovered evidence of a material nature which could not, with reasonable diligence, have been produced during those processes. Newly discovered evidence must be presented by one of the parties to the action and may not be accepted ex parte.

### 12.3 Ex Parte Communication

No person shall communicate ex parte, directly or indirectly, with the Board concerning the merits of a matter on appeal before the Board. All communication shall be directed to the Clerk of the Board at 625 W. 4<sup>th</sup> St., P. O. Box 5025, Newport, WA 99156. Any communication received by the Board's office or a member of the Board shall be transmitted to the Clerk of the Board.

Members of the Board shall not communicate ex parte, directly or indirectly, with any person concerning the merits of a matter on appeal before the Board.

If a prohibited ex parte communication is made to or by a member of the Board such communication shall be publicly disclosed, and proper discretion shall be exercised by the member of the Board on whether to disqualify him or herself for that particular hearing.

Ex parte communication will not be considered by any member of the Board as part of his/her decision.

### 12.4 Appointment Of A Hearings Officer

The Board may refer any issue to a Hearings Officer who shall conduct the proceedings in accordance with these rules. In such event, all provisions of these rules relating to the duties and authority of the Board shall also apply to the Hearings Officer in the conduct of the hearing. The Hearings Officer shall issue Recommended Findings, which shall be reviewed by the Board based solely on the record and applicable law. The Board may adopt the Findings by voice vote. In all other cases the Board shall issue final written decision within ten (10) days from receipt of the Recommended Findings.

The Board may delegate to the County Prosecutor or to a special counsel the responsibility for presiding at any hearing conducted before the Board. In such a case, the Board may act as fact finder. The presiding officer will make all procedural and evidentiary rulings.