

## **153 COMPLAINT INVESTIGATION**

### **General**

The Mesilla Marshal's Department has the right and duty to thoroughly investigate all allegations of involvement in criminal activity or other misconduct by its employees. All alleged or suspected violations of General Orders, other policies and procedures, and all complaints directed against departmental employees shall be promptly and thoroughly investigated. Honest, fair, and thorough investigations shall be conducted to ensure the integrity of the organization, the safety of the community, and the rights of citizens and employees alike.

While seeking to maintain its integrity and that of its employees, the Department will not hesitate to impose disciplinary action on employees, recommend removal from employment those who prove to be unfit for law enforcement work, and exonerate unjustified allegations against employees when appropriate.

This General Order establishes a process for the detection and intake of allegations of misconduct, assignment of responsibility for handling complaints, and the execution of investigative responsibilities.

### **153.01 COMPLAINT INTAKE**

#### **Types of Complaints Accepted**

It is the policy of the Mesilla Marshal's Department to accept all first-party complaints against departmental employees made in a timely manner. Complaints of a non-serious nature that have not been made within 30 days of the incident will not be accepted unless directed by the Marshal.

In addition, the following types of complaints will also be accepted:

- A. Complaints made by parents or legal guardians on behalf of minor children
- B. Anonymous complaints of a serious or sensitive nature
- C. Misconduct allegations by a third party, at the discretion of the Marshal

Personnel taking complaints from minor children shall make reasonable effort to have the child's parent or guardian present.

Generally, no action will be taken on anonymous complaints unless the allegation would constitute criminal misconduct or a serious policy violation. In such cases, anonymous complaints will be accepted and pursued to whatever reasonable conclusion the information allows.

### **Complaint Intake Procedures**

Citizens may make a complaint to the Marshal's Department directly in person, via the telephone, or by mail. If a citizen elects to submit a completed Citizen Complaint Form (page 2 only) by standard mail at a later time, the citizen will be provided with a blank form (page 2 only) and pertinent instructions. No telephone complaints of a serious or sensitive nature will be refused because a complainant wishes to remain anonymous. Letters received alleging employee misconduct shall be forwarded to the Marshal for review. All external complaints will be accepted and recorded on a Citizen Complaint Form.

Any time a Citizen Complaint Form is completed, it will be forwarded to the Marshal or his representative in a timely manner, generally no later than the end of the current work day.

All provisions will be made to determine the validity of the complaint before taking appropriate measures pursuant to Paragraph 2 of Subsection B of 29-21-3 NMSA 1978 and shall comply with Section 29-14-4 NMSA 1978.

Investigation of Complaints of Illegal Profiling shall be initiated immediately upon receipt of the complaint and shall be completed within 30 days of the initial complaint provided the complaint is made within 120 days of the alleged violation.

A redacted copy of the complaint shall be submitted to the Attorney General's Office upon completion of investigation to include the disposition of the complaint.

Whenever a Departmental employee initiates a complaint against another employee, the initiating employee will write a memorandum directed through the chain of command to the Marshal. In the event the complaint is against one of the complaining employee's supervisor, the complaint will be given directly to the next level of supervision.

### **Delay or Interference with Complaints**

Any Departmental employee wrongfully interfering with or delaying the initial investigation or documentation of a complaint shall be subject to disciplinary action.

### **Normal Business Hours**

Complaints coming to the Marshal's Department during normal business hours will be directed to the Marshal. A sworn supervisor may be called to take the complaint in the event the Marshal is unavailable.

### **After Hours**

When a citizen wishing to make a complaint contacts a Departmental employee after normal business hours, any sworn supervisor may be called to take the complaint. The Citizen Complaint Form will be completed and forwarded to the Marshal.

### **Complaints of a Serious Nature**

If the complaint is of a serious nature, the Marshal shall be notified immediately. A serious complaint is considered one that is criminal in nature, one that could result in significant disciplinary action (e.g. termination) or one that may result in embarrassment or other concern to the Department.

### **Verification of Complaint Received**

Complainants will be provided with written verification that their complaint was received for processing by the Department.

## **153.02 DUTIES OF EMPLOYEES**

All Departmental employees have an obligation to report any misconduct that comes to their attention to a supervisor. All employees shall cooperate fully in Departmental investigations as required in General Orders.

## **Supervisors**

### **General**

Supervisors shall scrutinize all areas of police action and Departmental operations under their command to discover violations of General Orders or other policies and procedures at the earliest stage.

### **Handling of Complaints and Investigations**

Supervisors and assigned investigators are responsible for maintaining the confidentiality of the contents of an investigation under their control.

Supervisors who accept complaints directly or have been summoned to accept a complaint shall:

- A. If the complaint appears to arise from misinformation, misunderstanding, or acceptable police procedure, the supervisor shall attempt to resolve these issues at the initial contact by offering an explanation. If, after the explanation is completed, the complainant is satisfied and the matter is resolved, no Citizen Complaint Form is necessary.
- B. If the matter is not resolved, the supervisor shall complete page 1 of the Citizen Complaint Form and request that the complainant complete page 2. If the complainant refuses to complete page 2 of the Citizen Complaint Form, the supervisor will note this on page 1.
- C. Immediately initiate and document a preliminary investigation to include:
  1. Identification of witnesses.
  2. Identification of Departmental employees involved.
  3. Collection of any evidence pertinent to the complaint.
  4. Photographs of the complainant or employee if appropriate.
  5. Arrange for any medical examinations or treatments, if necessary.

Arrangements shall be made to provide a photocopy to complainants who sign a Citizen Complaint Form, if requested, by the supervisor taking the complaint.

In the event the complainant will not cooperate with the accepting supervisor in the preliminary investigation, the supervisor shall fully document his or her attempt to complete the investigation and forward this information to the Marshal.

## **TYPES OF INVESTIGATIONS**

### **153.03 CRIMINAL INVESTIGATIONS**

#### **General**

Criminal investigations focus upon alleged or suspected criminal activity by an employee. The Marshal shall regularly review the progress of the investigation until criminal charges are filed or refused by competent authority. Criminal investigations will be completed within a reasonable period of time, consistent with the particular requirements and circumstances of each case.

#### **Investigative Responsibility**

If criminal prosecution of an employee is a possibility, the Marshal may enlist assistance from outside agencies.

#### **Reporting Alleged Criminal Acts**

When a Departmental employee is made aware that another employee may be involved in criminal activity, or when a citizen alleges criminal acts, the advised Departmental employee shall immediately notify a supervisor or Marshal. Supervisors who become aware that an employee may be involved in criminal activity shall not question the employee before, during, or after completion of the criminal investigation, unless specifically directed to do so by the Marshal. Supervisors will leave all questioning of the employee to the assigned investigator.

### **Disclosure of Criminal Investigations**

The contents of a criminal investigation in which a criminal complaint has been issued shall be disclosed in accordance with applicable law as well as state and federal rules of criminal procedure. No reference to unsubstantiated criminal allegations shall be placed in the employee's personnel file maintained by either the Town Clerk or the Marshal's Department, whether by direct reference or within an evaluation.

### **Subsequent Departmental Action**

Acquittal on a criminal charge does not prevent the Department from taking appropriate administrative action against an employee. Allegations of a criminal nature may cause a criminal investigation to occur as well as an administrative investigation.

## **153.04 ADMINISTRATIVE INVESTIGATIONS**

Administrative investigations are non-criminal investigations. Criminal investigations regarding alleged or suspected criminal activity by an employee shall always supersede administrative investigations. Unless otherwise directed by the Marshal, administrative investigations shall begin immediately upon completion of the criminal investigation, without respect to the final adjudication of the criminal charge. Suspension of a criminal investigation for any reason or the termination of employment of any focus employee or witness employee does not preclude the initiation of an administrative investigation.

The Department will strive to complete administrative investigations within 90 calendar days.

### **Internal Investigations (II)**

Internal Investigations (II) are generated for a variety of reasons and are generally initiated within the Department. This type of investigation may result when there is an internal allegation related to misconduct or operational actions of employees on or off duty. Internal Investigations may be derived from a concluded criminal investigation or from some other source within the agency. Generally, unless serious or complex in nature, these operational concerns are investigated by the employee's chain of command and the forwarded to the Marshal for tracking and filing. In the latter instance, the Marshal or his / her designee shall authorize an investigation. The Marshal shall be responsible for conducting Internal Investigations of a serious nature.

### **External Investigations (EI)**

External Investigations (EI) may be categorized by two separate methods: Formal or Informal. These investigations are generated when a citizen makes an allegation of misconduct of a serious or non-serious nature, or nonperformance of duty against an employee of the Department. Examples of this type of investigation would include allegations such as excessive force, illegal search and seizure, false arrest, civil rights violations, quality of service, professionalism, attitude, disparate treatment or unresponsiveness to the community.

### **Category 1 (Formal)**

The Marshal or his designee will investigate External Investigations (EI-C1) that require extensive follow up. This may include complaints involving three or more non-departmental witnesses, complaints that are pending civil litigation, or other complaints as directed by the Marshal. An internal due date of 90 days shall be assigned.

External Investigations (EI-C1) are due from the assigned investigator 90 calendar days from the date of distribution. An extension may be granted by the Marshal.

### **Category 2 (Informal)**

Category 2 External Investigations (EI-C2) involve allegations of a non-serious nature where the citizen elects not to pursue a formal investigative process. The citizen may simply request notification be made to the supervisor for informational purposes only. The complaint will be classified as an EI-C2 and closed.

### **Category 3**

Category 3 External Investigations (EI-C3) involve allegations of a non-serious nature where the citizen is unable to articulate a bonafide complaint. Additionally, this category is used for concerns regarding police conduct that do not rise to the level of a Formal or Informal External Investigation due to a lack of valid facts or no apparent General Order violations. This category of investigation will be closed.

## 153.05 INVESTIGATIVE PROCEDURES

### Purpose and Method of Investigations

The objective of an investigation is to determine the truth. All investigations shall be conducted with full regard for the employee's Constitutional and legal rights.

Criminal investigations shall be conducted in accordance with Departmental General Orders and applicable laws. Non-criminal investigations shall be conducted in accordance with standard investigative techniques. Investigations may include the taking of statements, the gathering and preserving of evidence, and the recording of all information.

Investigators assigned to any non-criminal investigation will:

- A. Make a reasonable effort to record the complaint's statements using equipment that captures audio, video, or both.
- B. Complete assignments within directed time frames or receive approval for extension from the Marshal.
- C. Make a reasonable effort to contact and document all information sources relating to an assignment. If sources or witnesses prove to be unavailable, all efforts to contact them will be documented and made part of the investigative file.
- D. Make a reasonable effort to obtain all available and pertinent information relating to an assignment and add to or prepare an investigative file.
- E. Prepare an investigative report using the following format (bolded font and capitalization indicates appropriate headings):
  1. **COMPLAINT**- An outline of the alleged conduct, the complainant's name, date received by the assigned investigator, and the assigned case number.
  2. **FACTS**- A detailed breakdown of significant facts and information learned from each person interviewed as well as information concerning significant facts and information learned from any examination of relevant reports, diagrams, photographs, video, audio, or other evidence.



3. **ANCILLARY ISSUES-** Reference made to other issues developed during the investigation, if any, including but not limited to General Orders violations or other violations of policies and procedures not related to the actions alleged on the original complaint.
4. **CONCLUSIONS-** Conclusions drawn by the investigator based on the information received that tend to support or refute the allegation(s).
5. **RECOMMENDATION-** Includes a recommended disposition for each alleged action listed on the complaint as established in General Order **153.06 Dispositions**, noting specific violations of General Orders or other violations of policies and procedures, if any, as shown by the evidence.

**Note:** Investigative opinions are allowable in the prepared investigative report.

#### **Peace Officer's Employer-Employee Relations Act**

The Peace Officer's Employer-Employee Relations Act shall be applied and adhered to throughout the procedures in this section and others.

#### **Garrity Warning**

Whenever applicable, the Garrity Warning will be read to the employee. The Garrity Warning is applicable when there is a reason to believe that a criminal investigation will result from the information obtained and reads as follows:

*"I wish to advise you that you are being questioned as part of an administrative investigation of the Marshal's Department. You will be asked questions specifically directed and narrowly related to the performance of your official duties or fitness for office. You are 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 right not to be compelled to incriminate yourself. I further wish to advise you that if you refuse to testify or to answer questions relating to the performance of your official duties or fitness for duty, you will be subject to Departmental charges which could result in your dismissal from the Department. If you do answer, neither your statements nor any information or evidence which is gained by reason of such statements can be used against you in any subsequent criminal proceeding. However, these statements may be used against you in relation to subsequent Departmental charges."*

If an employee is compelled by the threat of possible job loss to make a statement, then neither the statement itself nor the "fruits" of such statement can be used against the employee in any subsequent criminal proceeding.

### **Time Allotments and Extensions**

All investigations shall be thoroughly conducted in a timely and professional manner. The Department shall strive to complete administrative investigations within 90 calendar days of distribution to an assigned investigator. The 90 day period shall include time for administrative review. An extension of up to 30 days may be granted for justifiable reasons by the Marshal. If the assigned investigator feels that more time is needed to complete the investigation, specific reasons will be given to the Marshal in writing prior to the deadline. All requests for extension shall become part of the investigative file. All completed investigations shall be submitted directly to the Marshal.

### **Investigative Personnel**

Assignment of all investigations shall be made with due regard to the sensitivity of personal and professional relationships. At the discretion of the Marshal, a criminal investigation may be conducted by a law enforcement agency other than the Mesilla Marshal's Department.

Administrative Investigations shall be conducted only by the Marshal or his/her designee.

### **Employee Notification and Investigative Scope**

When an employee is the focus of an administrative investigation, they will be advised of the allegation(s) against them and provided information relating to their rights and responsibilities relative to the investigation.

At the Marshal's discretion, it may be advisable to place the employee on administrative leave with pay pending the outcome of the administrative investigation whenever it is apparent that the nature of the charges demonstrates a risk to the integrity of the investigation and the Department as a whole.

Interrogations of Departmental employees with respect to allegations of misconduct shall be limited in scope to activities, circumstances, or acts pertaining to the specific allegations being investigated. Departmental employees shall provide complete and truthful information regarding the incident under review as required in General Orders.

### **Conduct and Recording of Interviews**

Interviews of Peace Officers shall be conducted in accordance with the New Mexico Peace Officer's Employer-Employee Relations Act (29-14-1 to 29-14-11 NMSA 1978).

Generally, interviews will be conducted in the following sequence: complainant, witnesses, and then the focus employee. Reasonable effort shall be made to conduct interviews of an employee during his or her scheduled work hours unless the urgency of the investigation requires otherwise. If an employee is contacted personally or by telephone outside of scheduled work hours, compensation shall be made in accordance with Department policy. Employees shall be advised prior to the interview whether the interview relates to a criminal investigation or an administrative investigation and whether or not they are the focus of the investigation.

Focus officer interviews shall be recorded using audio equipment, video equipment, or both. Equipment for the official recording shall be the responsibility of the assigned investigator.

### **Employee Rights to Counsel**

Departmental employees have the right to have counsel of their choice present during any interview involving allegations of criminal activity against them. Employees who are not the subject of a criminal investigation but are interviewed as witnesses or other parties, do not have the right to the presence of counsel during any interview.

Employees do not have the right to have counsel present during interviews involving any administrative investigation.

### **Employee Requirements**

No employee who is the subject of a criminal investigation shall be required by the Department to answer questions or submit to examinations or tests in violation of their Constitutional rights.

Employees are required to answer questions, submit to tests, or render materials and relevant statements to a competent authority in any administrative investigation pertaining to an employee's function, work responsibility, or position-related activity as required by General Orders. Failure to comply constitutes insubordination.

## **153.06 AVAILABLE TEST OPTIONS**

The Department, depending upon circumstances, may require or offer any of the following tests or investigative steps during the course of an administrative investigation by the Marshal or his designee.

### **Polygraph Examination**

After reviewing all the information collected in the course of an investigation of a peace officer, the Marshal may order the officer to submit to a polygraph examination administered by a licensed polygraph examiner provided that all other reasonable investigative means have been exhausted and the officer has been advised of the administrator's reasons for ordering the polygraph examination.

The examination shall be limited to the specific issue(s) under investigation. A licensed polygraph examiner designated by the Marshal shall administer the examination.

### **Medical or Laboratory Examination**

Upon order of the Marshal, an employee is required to submit to a medical or laboratory examination when involved in a sensitive or serious administrative investigation. The examination shall be limited to the specific issue(s) under investigation and the employee shall be informed of the issue items before the administration of the examination. The examinations shall be administered only by competent medical or laboratory personnel designated by the Marshal.

### **Photographs**

Photographic lineups of Departmental employees may be used in administrative investigations as long as precautions are taken to avoid suggestibility. Current accepted investigative practices regarding photographic lineups shall be adhered to.

### **Physical Lineups**

Upon order of the Marshal, an employee shall be required to stand in a physical lineup for identification purposes in any sensitive or serious administrative investigation.

### **Chemical Breath/Blood Tests**

Chemical Breath/Blood testing will be conducted in accordance with current Town of Mesilla Policy.

### **Financial Disclosure Statements**

A peace officer shall not be required by the Mesilla Marshal's Department to disclose information regarding his or her financial status unless all other reasonable investigative means have been exhausted or except as otherwise required by law.

When all other reasonable investigative means have been exhausted or except as otherwise required by law, and upon order of the Marshal, a Departmental employee is required to submit a full financial disclosure statement when involved in a sensitive or serious non-criminal administrative investigation. The order for disclosure shall be limited to the specific issue(s) under investigation and the employee shall be informed of the items at issue before the request for disclosure.

### **Other**

Depending on the nature of the allegations, other investigative steps may be warranted. These steps are to be carried out in accordance with applicable General Orders, New Mexico State Statutes, and the Constitution of the United States.

### **Integrity of Reports**

Employees shall not remove any original report from an investigative package once the report has been submitted, reviewed, and approved at any administrative level. Any modifications to reports in investigative packages shall be done by an addendum in the appropriate report format. All reports become a permanent part of the package.

## **153.07 DISPOSITIONS**

### **Recommendations and Disposition Options**

The following dispositions are available for investigators to use at the conclusion of their assigned administrative investigations:

1. **SUSTAINED** – conduct alleged apparently occurred and amounts to misconduct.
2. **NOT SUSTAINED**- insufficient evidenced exists to clearly prove or disprove allegation.
3. **UNFOUNDED**- act alleged apparently did not occur.
4. **EXONERATED**- personnel's conduct was lawful, justified and proper.

5. **OFFICED INVESTIGATION**- complainant failed to cooperate with the investigation and there is not enough evidence available to draw a fair conclusion and apply a finding.

#### **Chain of Command Review**

Decisions on disciplinary action against an employee are generally made following a review of the circumstances and recommendations by the employee's chain of command. The Marshal and the Mayor approves or disapproves all recommended disciplinary action. The assigned investigator(s) shall not make recommendations regarding disciplinary action.

#### **Employee Notification**

After the completion of an administrative investigation, the focus employee shall be notified of the disposition by the Marshal.

#### **Citizen Notification**

The complainant shall be sent written notification of the complaint via a letter from the Marshal, preferably within 30 days of completion of the investigation. The letter shall advise only of the disposition(s) of the act(s) alleged.

### **153.08 INVESTIGATIVE RECORDS**

#### **Records Maintained in the Professional Standards Unit**

The Marshal's Department shall maintain copies of all administrative investigations in a secure area. The Marshal is the custodian of these records.

### **153.09 PURGING OF FILES**

Investigative files maintained by the Mesilla Marshal's Department will be purged in accordance with applicable state records retention laws after a review has assured no pending litigation exists involving any file scheduled for destruction. This purging should be accomplished on an annual basis. If litigation is pending, the involved files will not be purged until the litigation has been resolved.



**103**

**CODE OF CONDUCT**

**POLICY**

All Departmental personnel are expected to follow a prescribed code of conduct and are expected to act responsibly both on and off-duty. The Department holds its personnel accountable for all actions which adversely affect its operations or mission.

Any violation of General Orders may be made the subject of disciplinary action against Departmental employee(s) responsible for such violation. It is understood that no rules can be established which embrace all situations in the discharge of police duties. Some things must necessarily be left to the discretion of the individual employee. If, however, an employee deviates from the rules or established procedures, the employee must be able to demonstrate that the action was necessary. The final authority on such determinations rests with the Marshal.

Rules of conduct shall apply to all Departmental employees except where, by their nature, they are inapplicable. Failure to comply with any provisions of General Orders or other Department policies and procedures shall subject an employee to disciplinary action.

**103.01**

**COMPLIANCE WITH LAWS, RULES, AND REGULATIONS**

**A. General Responsibilities and Requirements**

All Departmental employees shall perform their duties as required or as directed by law, the Constitutions of the United States and the State of New Mexico, Departmental General Orders, City Administrative Directives, or order of a supervising officer. The administrative delegation of the enforcement of specialized laws and ordinances to particular units of the Department does not relieve members of other units from the responsibility for taking prompt, effective police action to enforce those laws when the occasion arises. All Departmental employees shall assist other employees when asked. Such assistance shall include the utilization of any special skills or talents that an employee may have. Any question as to whether the assistance is necessary for completion of a legitimate police task shall be referred to a supervisor.



**Actions Taken Under Color of Authority**

Any action taken by a Departmental employee under color of authority subjects the employee to all applicable provisions of Department General Orders and City Administrative Directives.

**B. Required Knowledge**

All officers shall have a working knowledge of all criminal, constitutional, and motor vehicle laws and ordinances in force in the Town of Mesilla, as well as Town Administrative Directives, Department General Orders and Standard Operating Procedures. All officers shall also obey all laws pertaining to them in NMSA 3-13-2 and all other laws and ordinances.

Non-sworn employees shall have a working knowledge of all laws, Town Administrative Directives, Department General Orders, and Standard Operating Procedures.

All Departmental personnel are responsible for seeking and obtaining any additional information or clarification necessary to comply with laws, ordinances, Town Administrative Directives, Department General Orders, Standard Operating Procedures.

**C. Obedience to General Orders, Laws, Procedures and Directives**

All Departmental personnel shall observe and obey all laws, Town Administrative Directives and Departmental General Orders, as well as any Standard Operating Procedures established by the Marshal.

**D. Countermanding Directives**

Commissioned supervisors shall exercise direct command, supervision or direction over sworn and non-sworn personnel outside his / her usual command in all situations where the police purpose or the reputation of the Department is jeopardized. Commissioned supervisors, however, shall not unnecessarily give directives to personnel not under their immediate supervision. Whenever directives so given require personnel receiving them to leave his / her regular post or assignment, the supervisor giving the directive shall, as soon as practical, inform the Marshal of the action taken. Under these circumstances, personnel must obey the directives of the countermanding supervisor.

**E. Reporting Violations of Laws, Ordinances, General Orders or Policies Required**

Departmental personnel having knowledge of other personnel violating laws, ordinances, Town Administrative Directives, Department General Orders,

Standard Operating Procedures or otherwise disobeying orders, whether on or off duty, shall report such violations immediately to the Marshal through their chain of command.

**F. Protective Orders**

Departmental personnel shall obey all Protective Orders which may be filed against them or filed by the employee against another person. The employee will immediately provide a copy of any Protective Order which affects him or her to the Marshal through the chain of command.

**G. Commissions or Omissions**

Departmental personnel shall not commit or omit any acts which constitute a violation of any rules, regulations, directives or orders of the Department.

**H. Conduct to Reflect Favorably on Department**

Departmental personnel shall conduct themselves, on and off duty, in such a manner as to reflect favorably on the Department.

**I. Personnel Arrested or Cited**

Departmental personnel who are arrested or cited for any criminal offense or traffic violation which occurred in any jurisdiction, must inform the Marshal.

1. This includes any arrest or citation that occurred while on or off duty.
2. Departmental personnel will provide this information to the Marshal within 48 hours after the arrest or citation.

**J. Action under Color of Authority**

Any action taken by Departmental personnel under color of authority subjects the employee to all applicable provisions of Department General Orders and Town Administrative Directives.

Departmental personnel shall not engage in any conduct, on or off duty, which is unbecoming or detrimental to their duties, position, or to the Department. All personnel shall conduct their private and professional lives in such a manner as to avoid adverse reflection upon the Department or themselves as employees of the Department. Departmental personnel shall treat each other and all persons with whom they have contact with respect and courtesy.

All personnel shall not permit their names or photographs to be used to endorse any products or service as representatives of the Department without the express permission of the Marshal.

**103.03 EXPECTED CONDUCT TOWARD THE PUBLIC**

All persons having business with the Department are entitled to courteous and respectful consideration and must be given in every assistance that may be proper under the rules of this Department. All personnel shall remain completely impartial toward all persons coming to the attention of the Department. Personnel shall politely provide their name and badge (call sign) number, and department issued identification card with their photograph to any person who requests it. This mandate to present department identifiers does not pertain to personnel who are actively working in an undercover capacity. Personnel shall not mistreat or abuse, whether physically or verbally, any prisoner or person having business with the Department.

**103.04 NOTICES TO DEPARTMENT OF CERTAIN ACTIVITIES REQUIRED**

All Departmental personnel shall keep the Department informed of any activity, situation, or problem with which would logically be concerned. Personnel shall notify their supervisor in writing any time they are involved as a witness, victim or suspect in any situation under investigation by this or any other law enforcement agency. Personnel shall notify the Marshal of any address or telephone number change or change of name within 48 hours. Personnel involved as a plaintiff or defendant in any civil action resulting from their activity as a Department member shall report this fact in writing to the Marshal and Town Attorney's Office within 48 hours.

**103.05 CRIMINAL CONDUCT PROHIBITED**

Departmental personnel shall not engage in any conduct, on or off duty, regardless of their whereabouts, which is in violation of the law. Criminal conduct is sufficient grounds for disciplinary action regardless of whether the employee is cited, indicted, tried and / or convicted of a criminal offense.

**103.06 COMPLIANCE WITH THE CODE OF ETHICS AND DEPARTMENT VALUES REQUIRED**

All personnel with law enforcement powers shall abide by the standards of the Law Enforcement Code of Ethics, which is incorporated in this manual. All personnel shall be familiar with and strive to model the Department's values in all actions.

**103.07 REQUIRED CONDUCT AND PARTICIPATION IN ADMINISTRATIVE INVESTIGATIONS**

All Departmental personnel are required to fully and truthfully participate in, and cooperate with, any administrative investigation to which they are a focus or witness. Personnel shall provide all complete and truthful information, whether specifically requested or not. Personnel shall comply with all directions given by the chain of command and the Professional Standards Unit. All administrative investigations are confidential. Personnel shall not divulge any information regarding these investigations unless specifically authorized to do so.

**103.08 INSUBORDINATION PROHIBITED**

Departmental personnel shall not be insubordinate to any superior officer through disrespectful or discourteous conduct or by refusing to take any lawfully and properly directed action. Insubordination shall also include the willful violation of any rules and regulations promulgated by the Department.

**103.09 COWARDICE PROHIBITED**

Officers shall not evade their duty in the face of danger.

**103.10 CRUEL, UNLAWFUL OR IMPROPER TREATMENT PROHIBITED**

Departmental personnel shall not treat any person or animal cruelly, use excessive physical force, fail to observe the Constitutional rights of any person, or neglect to take any necessary humane actions when circumstances require.

**103.11 RECOMMENDING ATTORNEYS, BONDSMEN, OR OTHER SERVICES**

Departmental personnel shall not recommend attorneys, bondsmen, bail brokers or commercial services of competing companies while on duty.

**103.12 POSTING BAIL**

Departmental personnel shall not post bail for any other person except immediate family.

**103.13 GIFTS, GRATUITIES, FEES, REWARDS, LOANS ETC. PROHIBITED**

Except as may be specifically authorized by the Marshal, employees shall not solicit or accept, directly or indirectly, any gift, gratuity, loan, service or fee when there is a direct or indirect connection between the solicitation and their Departmental employment.

Except as may be specifically authorized by the Marshal, Departmental personnel shall not accept any reward for services rendered in the line of duty or to any person or agency.

Except as may be specifically authorized by the Marshal, Departmental personnel are prohibited from buying, selling or promoting anything of value from or to any complainant, suspect, witness, defendant, prisoner or other person involved in any police related contact.

Departmental personnel shall not:

- A. Use their official positions to gain entry into any event or any location without paying admission except in the line of duty. Such events or locations include, but are not limited to:
  - 1. Sporting events
  - 2. Liquor establishments
  - 3. Concerts
  - 4. Places of amusement
- B. Use their official position or official identification card or badge to solicit:

1. Personal or financial gain
2. Privileges not otherwise available to them except in the performance of duty
3. The avoidance of consequences regarding illegal acts

Any officer who plans to receive reduced / free rent must receive prior approval to the Marshal.

#### **103.14 ENDORSEMENTS**

Departmental personnel shall not knowingly permit their names or photographs to be used to endorse any product or service as a representative of the Department without the express permission of the Marshal. Departmental personnel shall not use or permit the use of the Departmental uniform, logo or badge in any unauthorized manner or for any private purpose without the express permission of the Marshal.

#### **103.15 TRUTHFULNESS**

- A. No Departmental employee shall knowingly make a false statement about a fact, either orally or in writing, in connection with any investigation, assignment or inquiry.
- B. Departmental personnel shall not knowingly sign any false official statement or report, commit perjury, or give false testimony before any court, grand jury, board, commission, judicial or administrative hearing or department hearing whether or not under oath.
- C. Departmental personnel are required to report completely, honestly, and accurately all facts and information pertaining to any investigation, whether criminal or administrative, or other matter of concern to the Department.
- D. This rule does not apply to questioning or interrogation of a person involved in a criminal investigation, or where the officer is engaged in an approved undercover role where such misrepresentation is not inconsistent with law or accepted police practice.

**103.16 SECURITY AND CONFIDENTIALITY OF DEPARTMENTAL BUSINESS REQUIRED**

- A. **Confidentiality:** Departmental personnel shall consider the operations and official business of the Department to be confidential. Personnel shall not release such information to anyone not authorized to receive it except in accordance with Departmental policy and procedures.
- B. **Security of Department Records:** Departmental personnel shall not reveal the contents of any Department record or file, including any electronic versions, to any person not entitled to the information. Information shall not be released to the public or news media unless by persons authorized to make such releases.
- C. **Department Records and Paperwork:** Departmental personnel shall not steal, alter, destroy, forge, remove, copy or tamper with any kind of police record, report, citation or document, including any electronic version, without proper authorization. Departmental personnel are prohibited from retaining personal copies of official police reports and shall incorporate all notes and working files into the official record maintained by the Department.

**103.17 CONSORTING PROHIBITED**

Departmental personnel shall avoid associating with persons who have an open and notorious reputation in the community for criminal behavior (immediate family ties may be excluded) except in the discharge of their official duties and with the express permission of the Marshal.

**103.18 SPECIAL CONSIDERATION AND ASSIGNMENT**

Departmental personnel shall no solicit the aid of any citizen or Town Trustee to be transferred within the Department from one classification of work to another, or transferred from one assignment to another, nor shall any employee knowingly

permit any petition or request to be circulated by citizens on their behalf. Should an employee learn such petition or request, they will notify their supervisor immediately.

Departmental employees will not complain to any Town Trustee regarding police department policy, regulations, administrative or personnel matters. This rule should not affect the right or privilege of any employee to speak to any councilor on a personal matter that does not concern Departmental operations. Any complaints regarding Departmental matters will be brought forwarded to the Marshal.

**103.19 MAINTENANCE OF MINIMUM STANDARDS REQUIRED**

Departmental personnel are expected to meet, maintain and demonstrate all minimum Departmental standards and performance expectations at all times. Departmental personnel shall also maintain all necessary certifications and meet any requirements of their position classification at all times. Failure to maintain any required standards, certifications or other requirements shall be grounds for disciplinary action up to and including termination. Departmental personnel shall attend all training sessions as required or at the direction of their supervisors or commanders.

Commissioned personnel shall meet all New Mexico Law Enforcement Academy (NMLEA) standards necessary to maintain peace officer certification. Revocation of peace officer certification shall be grounds for immediate dismissal of any commissioned employee. Suspension of a commissioned employee's peace officer certification by NMLEA shall subject the employee to disciplinary action up to and including termination.

**103.20 STRIKES OR LABOR STOPPAGE PROHIBITED**

Departmental personnel shall not engage in work stoppages or strikes. The term "strike" means the concerted failure to report for duty, the willful absence from one's position, the stoppage of work, or the abstention in whole or in part from the full, faithful and proper performance of the duties of employment for the purpose of



inducing, influencing or coercing a change in conditions, compensation, rights, privileges or obligations of employment.

### **103.21 PROHIBITED USE OF PROPERTY**

Departmental personnel shall not intentionally or negligently damage, abuse or lose any Departmental property entrusted to them. City owned property, evidence, abandoned and found property, property maintained for safekeeping, and any other property received Departmental personnel shall not be used, converted, copied or distributed for personal use by any employee or by any other person. Any property coming into the possession of an employee shall be handled in accordance with established procedures.

### **103.22 ON DUTY CONDUCT STANDARDS**

- A. **General Conduct Required:** Departmental personnel shall be punctual in reporting for duty at the time and place designated by their supervisors. Departmental personnel may not be absent from any duty assignment without permission or authorized leave. All Departmental personnel are to remain at their assignment and on duty until properly relieved by another member or dismissed by proper authority.
- B. **Chain of Command:** Departmental personnel shall utilize the chain of command in all official actions as appropriate.
- C. **Response to Calls:** Departmental personnel shall respond to all calls for service without delays and in a manner that is consistent with normal safety precautions.

Departmental personnel shall respond to calls assigned by MVRDA and will keep MVRDA advised of all changes of activity or status.

Unassigned units responding to a call will notify MVRDA, and if the call is already sufficiently covered, unassigned units will leave the scene so other areas of the city are not left without proper coverage.

- D. **Prohibited On Duty Conduct:** Departmental personnel are prohibited from engaging in any activity, action or conduct that detracts from their obligations and responsibilities while on duty. Such activity, action or conduct shall be construed as neglect of duty and can result in disciplinary action. Such activities, actions or conduct include but are not limited to:

- a. Engaging in personal conversation or business, resulting in neglect or inattention to duty.
  - b. Failure to take proper action on any offense or condition of which the employee has acquired knowledge which would require police attention including failure to make an arrest and make a report.
  - c. Sleeping on duty.
  - d. Leaving assigned duty post during a tour of duty without proper authorization.
  - e. Cowardice
- E. **Completion of Assignments:** Departmental personnel are expected to thoroughly and professionally complete all job-related tasks or duties as assigned.
- F. **Alcohol, Intoxicants or Drugs:** Except as otherwise provided, no employee shall be on duty under the influence of intoxicants or drugs, be impaired by the use of medications, whether prescribed or not, or be otherwise unfit for duty because of their use, nor shall any employee drink or purchase any alcoholic beverages or use any controlled substance not prescribed to them while on duty or in uniform. No employee in plainclothes shall drink or purchase alcoholic beverages while on duty except when necessary in the performance of their duty and then only with the approval of their supervisor. In addition, no employee shall report for work with the odor of an alcoholic beverage about his / her person or on his / her breath. Departmental personnel who are prescribed controlled substances or medications which may affect their ability to perform their duties shall adhere to the Town's policies and requirements.

Departmental personnel shall not possess any intoxicants or controlled substances on Departmental premises or within Departmental property except when necessary in the performance of a police task. Such materials brought on Departmental premises or within Departmental property in the furtherance of a police task shall be properly identified and stored according to proper evidentiary procedures.

Employees found to be in violation of any of the provisions of the Town's Drug and Alcohol policy shall be subject to disciplinary action up to and including termination.

- G. **Tobacco Products / Shelled Seeds and Nuts:** Departmental personnel may smoke while on duty, however, smoking or the use of other tobacco products or shelled seeds and nuts is prohibited when in direct contact with the public, when engaged in traffic or crowd control, or when in violation of other City guidelines or ordinances relating to smoking. Those employees who choose to smoke or use other tobacco products while on-duty are responsible for the safe and sanitary disposal of these items (i.e. chewing tobacco should be placed into a separate sealed receptacle prior to being disposed of in a trash can). Smoking is not permitted in any Town vehicle. Smoking in Departmental facilities is prohibited except as set forth in Town of Mesilla's policies.
- H. **Investigations:** Departmental personnel shall not withhold any information about criminal activity. Officers shall not undertake self-assigned investigations, whether on or off duty, without prior supervisory notification and approval.
- I. **Gambling:** No form of gambling shall be permitted on Departmental property or while on duty, except in the performance of police duties and then only with the approval of the employee's supervisor.
- J. **Offensive Conduct, Materials, and Statements:** Departmental personnel on duty or on City property shall not possess, reproduce, circulate, post any material or make any statements that may be considered offensive based on the City's policies regarding equal employment opportunity and affirmative action.

### 103.23 OFF DUTY CALL OUT STANDARDS

- A. **Call Out:** During off duty time, Departmental personnel shall be subject to call out duty as needed. Personnel shall not be contacted off duty except when in the considered judgment of the person initiating the call, the mission of the Department requires it.
- B. **Emergency Stand-by:** Departmental personnel shall be subject to emergency stand-by as deemed necessary by the Marshal.
- C. **Standards for Police Action While Off Duty:** Off duty officers shall act in an official capacity if they become aware of an incident requiring police action when time is of the essence or if such action will safeguard life, property or prevent the escape of a felon or violent criminal. If off duty officers become

aware of an incident requiring police action but not meeting this standard, they will report the incident to the appropriate law enforcement agency as soon as possible.

- D. **Involvement in Neighborhood Disputes Prohibited:** Officers shall not intentionally become involved in disputes involving their neighbors, friends, associates or relatives. Officers shall not make an arrest or take other official actions in personal matters or those of their family or neighbors unless such action is warranted by the immediate threat of serious bodily harm or significant property damage. A supervisor shall be notified as soon as possible.
- E. **City Telephones:** The practice of requesting or accepting collect calls at the Department is allowable only for official business. City telephones are provided for official business use. Personal calls shall be kept to a minimum and as short as possible. Whenever possible, land line phones should be used instead of mobile phones.

F.

#### **103.24 OUTSIDE EMPLOYMENT**

- A. Personnel may engage in outside employment only after express permission has been granted by the Marshal and the Mayor in accordance with the Town Personnel Manual Section 600. Such permission can be withdrawn at any time at the discretion of the Marshal or Mayor.
- B. Employees engaged in outside employment must update their status with the Marshal's Office on an annual basis or when any change occurs.
- C. If an officer owns property and / or acts as a landlord, that officer should not perform any law enforcement related duties on said property.
- D. Military leave shall be excluded from this policy.
- E. All employees enlisted or commissioned in the U. S. Armed Forces including the National Guard and Reserves are required to notify the Department of their membership status.

#### **103.25 DOCUMENTING OFFICER / EMPLOYEE PERFORMANCE**

All performance of Departmental personnel shall be documented by the employee's supervisor and / or the Professional Standards Unit.

**103.26 ILLEGAL PROFILING PROHIBITED**

- A. **Illegal Profiling** - A prohibited activity that consists of targeting individuals for enforcement action or other police action based solely upon race, ethnicity, gender, sexual orientation, religious affiliation, economic status or age.
- B. Departmental personnel of the Mesilla Marshal's Department will not engage in or condone profiling as defined above and contained in Section 29-21-1 thru 29-21-4 NMSA 1978.
- C. Duties of Departmental Personnel
  - 1. To ensure that no employee of the Department conducts any police activity, i.e. traffic enforcement, tactical plans, field contacts, arrests, asset seizure, forfeiture efforts, etc. in violation of profiling prohibitions as defined above.
  - 2. To immediately report any person suspected of illegal profiling to a supervisor.

**103.27 CONDUCT UNBECOMING A DEPARTMENTAL EMPLOYEE**

Departmental employees shall not conduct themselves in a manner which would bring discredit upon themselves, the Department or any employee of the Department and shall conduct themselves both on and off duty in a manner so as to reflect favorably upon the Department. Additionally, conduct of employees shall be in such a manner which would not impair the operations or efficiency of the Department. Situations that would bring discredit to the Mesilla Marshal's Department include but are not limited to the following:

- A. Domestic Violence as defined in 40-13-2 NMSA and Domestic Disturbance as defined under town ordinance.
- B. Driving while under the influence of intoxicating liquor or drugs as defined in 66-8-102 and / or as defined under applicable town ordinance.
- C. Public Affray as defined in state statute and / or under town ordinance.
- D. Drinking in public as defined under town ordinance.

E. Any criminal act or traffic violation (petty misdemeanor, misdemeanor or felony).

## **103.28**

### **PROHIBITED POSSESSOR**

#### **General**

All sworn employees and those civilian employees whose positions require handling firearms, must at all times maintain the legal ability to possess a firearm.

#### **Reporting Required**

Any Department employee served with an Order of Protection or similar court order shall present a copy it to the employee's chain of command prior to returning to duty. Any person wishing to serve such an order on an employee shall be directed to a supervisor who shall review the order to determine whether it contains a firearms prohibition and shall immediately serve the order on the affected employee. The supervisor shall immediately take any action required by the order and notify the chain of command.

Any employee arrested for a criminal offense which may be considered domestic violence under state, local or federal law shall immediately report such arrest to the employee's chain of command. Any conviction, including convictions which have not been previously reported, shall be similarly reported through the chain of command.

#### **Administrative Action**

The Town Attorney's office shall be contacted to review all orders of protection or similar court orders to determine whether the employee may continue to possess a firearm while on duty. If possession is permitted, it shall be for on duty purposes only and the service weapon shall be provided to the officer and surrendered to a supervisor on a daily basis.

All sworn, and any non-sworn members whose position requires the handling of firearms, who are no longer permitted by operation of state or federal law to possess a firearm should be placed on leave immediately.

A member who is unable to regain the ability to legally possess a firearm within a reasonable amount of time shall be terminated from Town employment at the discretion of the Town.

The Department may, separate from and in addition to any discipline resulting from the loss of the right to possess a firearm, take any necessary disciplinary action related to the employee's misconduct, including any events underlying or associated with the issuance of any Order of Protection or similar court order, or any arrest.