

KINGSTON COVENTRY LLC

Christopher J. Gramiccioni (019762008)

1 Gatehall Drive, Suite 305

Parsippany, New Jersey 07054

973.370.2227

chris@kingstoncoventry.com

Attorney for Plaintiffs

MIRZA M. BULUR, in his official capacity as the
ACTING PUBLIC SAFETY DIRECTOR for the
CITY OF PATERSON and APPROPRIATE
AUTHORITY, CITY OF PATERSON POLICE
DEPARTMENT, and ENGELBERT RIBEIRO in
his official capacity as the POLICE CHIEF of the
CITY OF PATERSON POLICE DEPARTMENT,

Plaintiffs,

v.

THE NEW JERSEY OFFICE OF THE
ATTORNEY GENERAL, MATTHEW J.
PLATKIN in his official capacity as ATTORNEY
GENERAL OF THE STATE OF NEW JERSEY,
OFFICE OF THE ATTORNEY GENERAL,
JOHN DOES 1-10, MARY DOES 1-10, and XYZ
CORPORATIONS 1-10,

Defendants.

SUPERIOR COURT OF NEW JERSEY
PASSAIC COUNTY
LAW DIVISION

CIVIL ACTION

Docket No. PAS-L-

**VERIFIED COMPLAINT FOR
DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF**

Plaintiffs, Mirza M. Bulur, in his official capacity as acting Public Safety Director for the City of Paterson and an appropriate authority for the City of Paterson Police Department, and Engelbert Ribeiro, in his official capacity as Police Chief of the City of Paterson Police Department (hereinafter, "Plaintiffs"), by way of Verified Complaint against Defendants the New Jersey Office of the Attorney General; Matthew J. Platkin in his official capacity as Attorney General of the State of New Jersey, Office of the Attorney General; John Does 1-10, Mary Does 1-10; and XYZ Corporations 1-10 (collectively, "Defendants"), by and through their

attorney, Christopher J. Gramiccioni, Esq., of the firm Kingston Coventry LLC, allege and state as follows:

INTRODUCTION

1. This is a civil action is brought pursuant to the Uniform Declaratory Judgments Act, N.J.S.A. 2A:16-51 et seq., against Defendants for the unprecedented and unlawful supersession and takeover of the operations of City of Paterson Police Department, in violation of the New Jersey Constitution and State law.
2. Plaintiffs respectfully seek an Order declaring that Defendants' continued command and control of the Paterson Police Department exceeds the bounds of their statutory and constitutional authority, and inappropriately usurps lawful authority granted to municipalities by the New Jersey Legislature.
3. Plaintiffs further respectfully seek an Order directing Defendants to, except for the Department's internal affairs component, immediately restore command and control of the Paterson Police Department to Plaintiffs.
4. Plaintiffs further respectfully seek an Order terminating the administrative function by Defendants with respect to the occupancy of the Paterson Police Department and removing Defendants from the Paterson Police Department.

THE PARTIES

5. Plaintiff Mirza M. Bulur is the duly appointed acting public safety director of the City of Paterson and an "appropriate authority" for, among other municipal divisions, the City of Paterson Police Department, as designated by the governing body of the City of Paterson via ordinance and consistent with N.J.S.A. 40A:14-118.

6. Plaintiff Engelbert Ribeiro is the duly appointed chief of the City of Paterson Police Department, and took the oath of office on March 3, 2023. Plaintiff Ribeiro joined the Paterson Police Department in 1996 and, prior to his appointment as Chief, served in the Department's patrol, major crimes and narcotics divisions. Plaintiff Ribeiro is the first Latino chief of police in the history of the City of Paterson.

7. Defendant the New Jersey Office of the Attorney General is a principal department of the executive branch of the State of New Jersey and is overseen by state cabinet member and Attorney General, Matthew J. Platkin.

8. Defendant Matthew J. Platkin, in his official capacity as the Attorney General of New Jersey, is the chief law enforcement officer of the State of New Jersey and the individual who approved of all the actions complained of herein.

9. The position of Attorney General is established by the New Jersey Constitution. N.J. Const. (1947), Art. V, Section IV. An Attorney General is appointed by the Governor with the advice and consent of the State Senate.

10. The New Jersey Office of the Attorney General's Department of Law and Public Safety is organized into various divisions that operate under the supervision of the Attorney General. Included among those divisions are the Division of Criminal Justice ("DCJ") and the Police Training Commission ("PTC").

JURISDICTION AND VENUE

11. This Court has jurisdiction and venue over the matter because Plaintiff Bulur is a resident of Passaic County, New Jersey; the actions that gave rise to this matter occurred within Passaic County, New Jersey; and the property at issue is located in Passaic County, New Jersey.

FACTUAL BACKGROUND COMMON TO ALL COUNTS

12. On March 27, 2023, Defendant Matthew J. Platkin exercised his purported “supersession authority” as the State’s chief law enforcement officer, and directed Defendant the New Jersey Office of the Attorney General (“OAG”) to assume full responsibility of the day-to-day operations of the Paterson Police Department, inclusive of the Department’s internal affairs function. See Letter from Attorney General to Paterson Police Department staff dated March 27, 2023, attached hereto as Exhibit A; see also OAG Standard Operating Procedure dated March 27, 2023, attached hereto as Exhibit B.

13. Citing the “extraordinary power” of his office, Defendant Platkin indicated that a change was necessary due to “fiscal challenges,” a “revolving door of leadership,” and “high-profile cases of misconduct” which allegedly resulted in a loss of trust between the Department and the community. See Exhibit A.

14. New Jersey statutory authority did not expressly or impliedly authorize Defendants to assume the day-to-day control and operations of a municipal police department. Notwithstanding this lack of authority, Defendants cited only their “extraordinary powers” as grounds for their unprecedented action.

15. Plaintiff Ribeiro who, at that time had been serving as police chief for 24 days, was relieved of command by Defendants. Defendants appointed a command team consisting of an interim officer-in-charge from the New Jersey State Police (“NJSP”), subordinate NJSP officer, and an OAG Assistant Attorney General. See Exhibit B.

16. Defendants also advised Department personnel that New York City police officer Isa M. Abbassi (hereinafter, “Abbassi”) would be appointed two months later in May 2023 to serve as the officer-in-charge of the Paterson Police Department. See Exhibit B.

17. Prior to Defendants' correspondence to Paterson Police staff, Defendant Platkin and other officials met with Plaintiff Ribeiro in his office to inform him of Defendants' takeover of the Paterson Police Department. Plaintiff Ribeiro was escorted from his office, asked several times whether he planned to retire under the circumstances, and later given the opportunity remove his belongings from his office. See Certification of Engelbert Ribeiro, attached as Exhibit C.

18. Later that same day of March 27, 2023, Defendant Platkin held a press conference announcing Defendants' supersession of the Paterson Police Department, assuming "all control of law enforcement functions" of the Department. The lone justification provided in Defendants' takeover decision was an alleged "crisis of confidence" due to an undisclosed "number of events and concerns" of the Department. See <https://www.nj.com/passaic-county/2023/03/nj-attorney-general-announces-takeover-of-troubled-paterson-police-department.html>.

19. On or about April 28, 2023, Plaintiff Ribeiro was initially advised he would be reassigned to the DCJ Training Academy in Sea Girt, New Jersey, but later learned that Defendants intended to send him to the Police Training Commission (PTC) at OAG in Trenton, New Jersey. See Exhibit C.

20. In or about late April and early May 2023, Plaintiffs and City of Paterson officials repeatedly requested to Defendants' command staff that Plaintiff Ribeiro be reassigned to Paterson City Hall since he remained a city employee whose salary is funded by City of Paterson taxpayers. On or about May 5, 2023, the City of Paterson corporation counsel sent an e-mail to the interim officer-in-charge and the OAG Assistant Attorney General, both members of the command staff that assumed control following supersession, formally requesting the same. In this e-mail, Defendants were informed that the City administration was not supportive of Plaintiff Ribeiro's assignment to Trenton, and requested that Plaintiff Ribeiro instead be detailed

to City Hall. See E-Mail from Paterson Corporation Counsel of May 5, 2023, attached as Exhibit D. No response was ever received.

21. During a May 9, 2023 press conference, Defendant Platkin was specifically asked about Plaintiff Ribeiro's employment status and subsequent assignment. Defendant Platkin responded, in substance and in part, "I can't speak about personnel decisions . . . that's a city [of Paterson] decision." See Bergen Record article of May 16, 2023, attached as Exhibit E (referencing May 9, 2023 press conference).

22. Though Defendants indicated that Plaintiff Ribeiro's reassignment was a "city decision," Defendants unilaterally reassigned Plaintiff Ribeiro, rejecting the earlier requests for his assignment to Paterson City Hall. This unilateral reassignment was memorialized without the consent or approval of Plaintiffs or the City of Paterson in a Memorandum of Understanding ("MOU") purportedly dated on or about May 9, 2023 – the same day Defendant Platkin claimed Plaintiff Ribeiro's assignment was a "city decision" during a press conference, and four (4) days after the City of Paterson's request to assign Plaintiff Ribeiro to City Hall was ignored. See MOU of May 9, 2023, attached as Exhibit F.

23. Neither Plaintiffs nor the City of Paterson were a party to the MOU. Rather, the MOU was executed by Defendant Platkin and counter-executed by Defendants' designee who Defendant Platkin appointed as interim officer-in-charge of the Paterson Police Department upon supersession. See Exhibit F; see also Certification of Mirza M. Bulur, attached as Exhibit G. The MOU did not reference any statutory provision or identify any authority relied on by Defendants to effectuate this reassignment.

24. On or about May 9, 2023, Abbassi assumed command of the Paterson Police Department.¹ Upon information and belief, Abbassi is not licensed or certified to serve as a police officer in the State of New Jersey as required by the Police Training Act and other applicable state law.

25. Defendants have never provided a timeline for the cessation of their command and control of the Paterson Police Department. See Exhibit G.

26. Defendants have never provided a transition plan for the transfer of command and control back to Plaintiffs. See Exhibit G.

27. Defendants have failed to report, at least monthly, to Plaintiff Bulur or the City of Paterson on the operation of the police force, as required by state law. See Exhibit G.

28. In 1991, the New Jersey Attorney General issued the first Internal Affairs Policy and Procedures (“IAPP”) Directive, which established statewide standards for the operation of internal affairs units in New Jersey. In 1996, the New Jersey Legislature mandated that each law enforcement agency in the State of New Jersey adopt its own policies consistent with the IAPP.²

29. Defendants’ derive their limited supersession authority from the New Jersey Legislature in certain delineated instances, which provides that the Attorney General may

(1) supersede a county prosecutor in any investigation, criminal action or proceeding, (2) participate in any investigation, criminal action or proceeding, or (3) initiate any investigation, criminal action or proceeding. In such instances, the Attorney General may appear for the State in any court or tribunal for the purpose of conducting such investigations, criminal actions or proceedings as shall be necessary to promote and safeguard the public interests of the State and secure the enforcement of the laws of the State.

¹ See <https://www.nj.gov/ag-platkin-announces-isa-abbassi-has-assumed-command-of-the-paterson-police-department/#:~:text=PATERSON%20%E2%80%93%20Attorney%20General%20Matthew%20J.of%20the%20Paterson%20Police%20Department>.

² See <https://www.njoag.gov/iapp/#:~:text=In%201991%2C%20the%20Attorney%20General,IA%20units%20in%20New%20Jersey>’ see also N.J.S.A. 40A:14-181.

See N.J.S.A. 52:17B-107(a); see also IAPP Directive 22-14 with IAPP revisions, attached as Exhibit H. As of the date of Defendants' supersession in March 2023, this statute has not been amended to allow for broader supersession authority than that specifically delineated by statute.

30. Defendants' most recent revision of the IAPP Directive, issued in November 2022, expanded Defendants' limited supersession authority in unprecedented fashion. Defendants' most recent version of the IAPP allows for Defendants to take control of "an entire law enforcement agency" and "assume any or all of the duties, responsibilities and authority normally reserved to the chief law enforcement executive and agency." See Exhibit H.

31. All previous IAPP versions issued since its 1991 inception limited the Attorney General's supersession authority to assuming control of a policy agency's internal affairs department when deemed necessary. Under legacy versions of the IAPP, municipal police forces were apprised of their duty to cooperate with the Attorney General:

To improve the administration of the criminal justice system, including the efficient delivery of police services. For . . . municipal enforcement law enforcement agencies, cooperation in internal affairs matters begins with strict adherence to the Attorney General's policy requirements.

See e.g., IAPP Directive issued August 2020.³ Legacy versions of the IAPP reflected the need to incorporate emerging best practices into the State's internal affairs system. As set forth in previous IAPP Directives, uniform implementation of the IAPP to statewide law enforcement agencies is derived from legislative authority codified in N.J.S.A. 40A:14-181, 52:17B-98 and 52:17B-107. See e.g., August 2020 IAPP Directive. None of these statutes authorize or reference wholesale or limited takeover of the daily operations of a municipal police department.

³ The August 2020 IAPP Directive can be found at: <https://www.nj.gov/oag/iapp/>.

32. Defendants' latest revision of the IAPP, however, purports to unilaterally expand the Attorney General's authority to allow for the wholesale takeover of the day-to-day operations of any municipal police executive or agency. See Exhibit H.

33. The City of Paterson is organized under the mayor-council form of the Faulkner Act, which confers upon such municipalities the greatest possible powers of local self-government and home rule, consistent with the New Jersey State Constitution. See N.J.S.A. 40:69A-30. Under this form of governance, any contract requires the approval of the mayor and council as a matter of law. See N.J.S.A. 40:69A-36, 40.

34. Defendants' ultra vires command and control of the Paterson Police Department exceeds their statutory authority and runs contrary to existing State law.

35. N.J.S.A. 2A:16-51 provides that the purpose of the Declaratory Judgment Act is to be liberally construed to effectuate its purpose – to “settle and afford relief from uncertainty and insecurity with respect to rights, status and other legal relations.”

36. The Declaratory Judgment Act empowers the Court to declare rights, status and other legal relations, affected by a statute or otherwise within its legal and equitable jurisdiction. See N.J.S.A. 2A:16-52; 2A:16-53.

COUNT I
Violations of the New Jersey State Constitution and the Home Rule Act

37. Plaintiffs repeat and reallege the allegations in Paragraphs 1 through 36 as if fully set forth herein.

38. Defendants' continued full command and control of the City of Paterson Police Department violates the New Jersey State Constitution, the Home Rule Act and its legislative progeny. The New Jersey State Constitution confers broad regulatory powers to municipalities and provides specified constitutional protections of any “law formed for local government.”

This municipal authority “shall be liberally construed in [the municipality’s] favor.” See N.J. Const. (1947), Art. IV, § VII, para. 11.

39. This historical concept of “home rule” was codified in the Home Rule Act and its progeny to ensure municipalities were given the fullest powers in self-governance, to include the police function to preserve the public peace and order. See N.J.S.A. 40:42-4, 40:48-1, 40:48-2. The Legislature has decreed that municipalities “are and shall remain the broad repository of local police power in terms of the right and power to legislate for the general health, safety and welfare of their residents.” N.J.S.A. 40:41A-28.

40. Defendants’ ultra vires supersession of the City of Paterson Police Department, without statutory authority and in unprecedented fashion, unconstitutionally and unlawfully infringes on Plaintiffs’ and the City of Paterson’s rights under the Home Rule Act and the New Jersey State Constitution.

41. As a direct result of Defendants’ violations of State law, Plaintiffs have and continue to suffer irreparable harm.

COUNT II
Violations of N.J.S.A. 52:17B-107

42. Plaintiffs repeat and reallege the allegations in Paragraphs 1 through 41 as if fully set forth herein.

43. Defendants’ reliance on N.J.S.A. 52:17B-98 and 52:17B-107 to supersede the day-to-day operations of the City of Paterson Police Department, as set forth in their revised IAPP Directive, exceeds the statutory authority provided by the New Jersey Legislature and violates the spirit of the same. See Exhibit G.

44. N.J.S.A. 52:17B-98 provides as a declaration of public policy of the State to “encourage cooperation among law enforcement officers and to provide for the general supervision of

criminal justice by the Attorney General as chief law enforcement officer of the State, in order to secure the benefits of a uniform and efficient enforcement of the criminal law and the administration of criminal justice throughout the State.”

45. The statute was passed in recognition of the threat organized crime presented to institutions, causing a loss of confidence in agencies of government. See N.J.S.A. 52:17B-98. Supersession of the day-to-day operations of a municipal police agency in contravention of the New Jersey Constitution and State law is not authorized or referenced.

46. N.J.S.A. 52:17B-107 expressly curtails the Attorney General’s supersession authority, limiting exercise of this power to: (1) superseding a county prosecutor in any investigation, criminal action or proceeding; (2) participation in any investigation, criminal action or proceeding; or (3) initiating any investigation, criminal action or proceeding. Crucially, this statute expressly limits Defendants’ supersession to a specific matter – an investigation, a criminal action or a proceeding. Neither statute, nor any other controlling authority, provides for Defendants’ wholesale takeover of the day-to-day law enforcement and administrative operations of a municipal police department.

47. By attempting to justify its supersession of the Paterson Police Department under the guise the above-referenced statutes, Defendants pervert the clearly expressed limitations by the Legislature and exceed their existing statutory authority, in violation of N.J.S.A. 52:17B-107.

48. As a direct result of Defendants’ violations of State law, Plaintiffs have and continue to suffer irreparable harm.

COUNT III
Violations of N.J.S.A. 40A:14-118

49. Plaintiffs repeat and reallege the allegations in Paragraphs 1 through 48 as if fully set forth herein.

50. Defendants' continued full command and control of the City of Paterson Police Department violates Title 40A of New Jersey statutes, namely N.J.S.A. 40A:14-118 which states, in pertinent part, "[t]he governing body of any municipality, by ordinance, may create and establish, as an executive and enforcement function of municipal government, a police force, whether as a department or as a division, bureau or other agency thereof, and provide for the maintenance, regulation and control thereof."

51. N.J.S.A. 40A:14-118 further provides that "[a]ny such ordinance, or rules or regulations, shall provide that the chief of police, if such position is established, shall be the head of the police force and that he shall be directly responsible to the appropriate authority for the efficiency and routine day to day operations thereof, and that he shall, pursuant to policies established by the appropriate authority," among other obligations, "[h]ave, exercise, and discharge the functions, powers and duties of the force;" and "[p]rescribe the duties and assignments of all subordinates and other personnel."

52. The City of Paterson appointed Plaintiff Ribeiro as the Chief of the Paterson Police Department, consistent with N.J.S.A. 40A:14-118 and City of Paterson ordinance. Due to Defendants' unlawful and unprecedented takeover of the Paterson Police Department, Plaintiff Ribeiro has been stripped of his statutory ability to perform his sworn duties and responsibilities. See Exhibit C. Moreover, Plaintiff Ribeiro's purported reassignment by Defendants per the May 9, 2023 MOU is invalid because it is signed by Defendant Platkin and a state employee acting at Defendants' behest, constituting the State's attempt to enter into a contract with itself in violation of State law. See Exhibit F; see also N.J.S.A. 40A:69A-36, 40.

53. Defendants' continued encroachment of Plaintiff Ribeiro's proper exercise of his sworn duties and responsibilities is unauthorized by existing statute and is in direct contravention of governing State law.

54. As a direct result of Defendants' violations of State law, Plaintiffs have and continue to suffer irreparable harm.

COUNT IV
Violations of N.J.S.A. 40A:14-118(e)

55. Plaintiffs repeat and reallege the allegations in Paragraphs 1 through 54 as if fully set forth herein.

56. N.J.S.A. 40A:14-118(e) requires that the head of the police force "[r]eport at least monthly to the appropriate authority in such form as shall be prescribed by such authority on the operation of the force during the preceding month and make such other reports as may be requested by such authority."

57. As more fully set forth above, Defendants have unequivocally indicated that they are in full command and control of the City of Paterson Police Department.

58. Defendants have failed to issue or provide any such monthly report to the appropriate authority since the commencement of Defendants' March 2023 takeover of the Paterson Police Department. See Certification of Mirza M. Bulur, attached as Exhibit G.

59. By failing to provide the required monthly reports to Plaintiff Bulur and/or the City of Paterson, Defendants violate the express obligations as the head of Paterson Police Department, in violation of N.J.S.A. 40A:14-118(e).

60. As a direct result of Defendants' violations of State law, Plaintiffs have and continue to suffer irreparable harm.

COUNT V
Violations of N.J.S.A. 52:17B-66

61. Plaintiffs repeat and reallege the allegations in Paragraphs 1 through 60 as if fully set forth herein.

62. The statute known as the “Police Training Act,” as amended on July 21, 2022, mandates the certification and licensing of all individuals serving as a police officer in the State of New Jersey. See N.J.S.A. 52:17B-66. Under this law, all persons appointed to serve as a police officer must have completed an approved police training course, and all police officers must maintain current professional licensure as of January 1, 2024.

63. Upon information and belief, Abbassi has not completed an approved police training course and is not currently a licensed police officer in the State of New Jersey. By appointing Abbassi to serve as the chief executive of the Paterson Police Department, Defendants have violated N.J.S.A. 52:17B-66.

64. As a direct result of Defendants’ violations of State law, Plaintiffs have and continue to suffer irreparable harm.

COUNT VI
Violations of N.J.S.A. 40A:14-122.8

65. Plaintiffs repeat and reallege the allegations in Paragraphs 1 through 63 as if fully set forth herein.

66. N.J.S.A. 40A:14-147 states, in pertinent part, “no permanent member or officer of the police department or force shall be removed from his office, employment or position for political reasons or for any cause other than incapacity, misconduct, or disobedience of rules and regulations established for the government of the police department and force, nor shall such member or officer be suspended, removed, fined or reduced in rank from or in office,

employment, or position therein, except for just cause as hereinbefore provided and then only upon a written complaint setting forth the charge or charges against such member or officer.”

67. Following Defendants’ unlawful and unprecedented takeover of the Paterson Police Department, Plaintiff Ribeiro was removed from the office of the chief of police and has been stripped of his statutory ability to perform his sworn duties and responsibilities, without just cause or proper notice via written complaint. See Exhibits C and F.

68. Plaintiff Ribeiro’s removal from his office and position directly contravenes the City of Paterson governing body that appointed him to this position, and removal does not relate to “incapacity, misconduct, or disobedience of rules and regulations” on the part of Plaintiff Ribeiro. See N.J.S.A. 40A:14-147.

69. By relieving and reassigning Plaintiff Ribeiro from his position as the chief of the police of the City of Paterson Police Department without proper cause, Defendants have violated N.J.S.A. 40A:14-147.

70. As a direct result of Defendants’ violations of State law, Plaintiffs have and continue to suffer irreparable harm.

COUNT VII
Violations of N.J.S.A. 2A:35-1

71. Plaintiffs repeat and reallege the allegations in Paragraphs 1 through 70 as if fully set forth herein.

72. Defendants have commandeered office space in the City of Paterson Police Department, which is located within the City of Paterson Public Safety Department. See Exhibit G. Defendants, in particular, have taken over the office established by the appropriate authority as the chief of police’s office.

73. As described above, Defendants have prohibited Plaintiff Ribeiro, the duly appointed police chief of the Paterson Police Department, from occupying the office identified as the police chief's office.

74. Defendants have not entered into a lease agreement with the Paterson Public Safety Department or the City of Paterson for use and occupancy of the municipal building.

75. Defendants have not provided the Paterson Public Safety Department or the City of Paterson remuneration for the use and occupancy of the Paterson Public Safety Department municipal building.

76. The use and occupancy of the Paterson Public Safety Department municipal building is largely administrative, and has little to do with the law enforcement function of Defendants.

77. The occupancy of space within the Paterson Public Safety Department is not necessary for Defendants to perform their law enforcement function.

78. As a direct result of Defendants' violations of State law, Plaintiffs have and continue to suffer irreparable harm.

COUNT VIII
Violations of N.J.S.A. 40A:14-156

79. Plaintiffs repeat and reallege the allegations in Paragraphs 1 through 78 as if fully set forth herein.

80. N.J.S.A. 40A:14-156 permits a municipal police chief or mayor, in the event of an emergency, to seek police aid from outside of the territorial jurisdiction in certain limited circumstances. Such reassignment of police personnel may occur "in order to protect life and property or to assist in suppressing a riot or disorder." Assignments of police personnel may also occur in limited non-emergency situations pursuant to mutual aid agreements to further public safety.

81. The PTC is not a municipality, a police department or any organization that renders police aid. See N.J.S.A. 40A:14-156. Additionally, the May 9, 2023 MOU purportedly authorizing Plaintiff Ribeiro to be assigned to the PTC was not agreed to by any Paterson Public Safety Department or City of Paterson official.

82. Under the Faulkner Act mayor-council form of government to which the City of Paterson prescribes, any contract requires the approval of the mayor and council as a matter of law. N.J.S.A. 40:69A-36, 40. The referenced MOU constitutes Defendants' attempt to enter into a contract with themselves and is not supported or endorsed or authorized by Plaintiffs or City of Paterson administration. See Exhibits F and G.

83. By relieving and reassigning Plaintiff Ribeiro from his position as the chief of the police and reassigning him to the PTC via the pretense of an enforceable MOU, Defendants have violated N.J.S.A. 40A:14-156.

84. As a direct result of Defendants' violations of State law, Plaintiffs have and continue to suffer irreparable harm.

WHEREFORE, Plaintiffs seek an Order:

- a. Immediately ceasing Defendants' full command and control of the City of Paterson Police Department.
- b. Recognizing Plaintiff Engelbert Ribeiro as the duly appointed and qualified chief of the City of Paterson Police Department.
- c. Immediately returning command and control of the City of Paterson Police Department to Plaintiffs and the appropriate authority in accordance with the Home Rule Act, N.J.S.A. 40A:14-118, the New Jersey State Constitution, New Jersey statutes and City of Paterson ordinances.

- d. Requiring Defendants to provide monthly reports detailing operations of the City of Paterson Police Department from April 2023 to the present.
- e. Terminating Defendants' use and occupancy of all space taken over within the Paterson Public Safety Department building.
- f. Expressly limiting Defendants' authorized control to the internal affairs function of the City of Paterson Police Department, until such time as deemed appropriate for the Paterson Police Department to resume said function.
- g. For such other relief as the Court may deem proper and necessary.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Christopher J. Gramiccioni, Esq., has been designated as trial counsel in the above-captioned matter.

CERTIFICATION PURSUANT TO RULE 4:-5-1

I hereby certify that to the best of my knowledge, the matter within is not the subject of any other action pending in any Court or the subject of a pending arbitration proceeding, and no other action or arbitration proceeding is contemplated. Further, at this time, I know of no other parties that should be joined in this action.

CERTIFICATION PURSUANT TO RULE 1:38-7(c)

Pursuant to R. 1:38-7(c), I certify that confidential personal identifiers have been redacted from documents now submitted to the Court, and will be redacted from all documents submitted in the future in accordance with R. 1:38-7(b).

KINGSTON COVENTRY LLC

By: */s/ Christopher J. Gramiccioni*
Christopher J. Gramiccioni (019762008)
Attorney for Plaintiffs

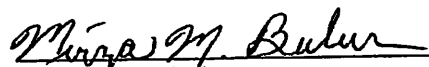
Dated: October 6, 2023

VERIFICATION OF PLEADING

I, Mirza M. Bulur, being of full age certify as follows:

1. I am the duly appointed acting Director of the City of Paterson Department of Public Safety and I have been designated as an appropriate authority over the City of Paterson Police Department.
2. I read the Verified Complaint and, based on my personal knowledge, know that the facts contained in the Complaint are true, and I incorporate by reference those facts in this Verification.

10-6-2023
Date



Mirza M. Bulur
City of Paterson Public Safety Department

KINGSTON COVENTRY LLC

Christopher J. Gramiccioni (019762008)

1 Gatehall Drive, Suite 305

Parsippany, New Jersey 07054

973.370.2227

chris@kingstoncoventry.com

Attorney for Plaintiffs

MIRZA M. BULUR, in his official capacity as the
ACTING PUBLIC SAFETY DIRECTOR for the
CITY OF PATERSON and APPROPRIATE
AUTHORITY, CITY OF PATERSON POLICE
DEPARTMENT, and ENGELBERT RIBEIRO in
his official capacity as the POLICE CHIEF of the
CITY OF PATERSON POLICE DEPARTMENT,

Plaintiffs,

v.

THE NEW JERSEY OFFICE OF THE
ATTORNEY GENERAL, MATTHEW J.
PLATKIN in his official capacity as ATTORNEY
GENERAL OF THE STATE OF NEW JERSEY,
OFFICE OF THE ATTORNEY GENERAL,
JOHN DOES 1-10, MARY DOES 1-10, and XYZ
CORPORATIONS 1-10,

Defendants.

SUPERIOR COURT OF NEW JERSEY
PASSAIC COUNTY
LAW DIVISION

CIVIL ACTION

Docket No. PAS-L-

**ORDER TO SHOW CAUSE
PRELIMINARY INJUNCTION
PURSUANT TO R. 4:52**

THIS MATTER being brought before the Court by Christopher J. Gramiccioni, Esq. of the firm Kingston Coventry LLC, attorney for Plaintiffs Mirza M. Bulur, in his official capacity as the acting Public Safety Director for the City of Paterson and appropriate authority for the City of Paterson Police Department, and Engelbert Ribeiro, in his official capacity as the police chief of the City of Paterson Police Department (hereinafter, "Plaintiffs"), seeking relief by way of preliminary injunction at the return date set forth below pursuant to R. 4:52, based upon facts set forth in the Verified Complaint filed herewith and for good cause shown.

IT IS ON this ____th day of October 2023, **ORDERED THAT** Defendants the New Jersey Office of the Attorney General and Matthew J. Platkin, in his official capacity as Attorney General of the State of New Jersey (hereinafter, “Defendants”), appear and show cause before the Superior Court at the Passaic County Civil Courthouse in Paterson, New Jersey at _____ o’clock or as soon thereafter as counsel can be heard, on the _____th day of _____, 2023, why an Order should not be issued preliminarily ordering, enjoining and restraining Defendants from:

1. Transferring full command and control of the City of Paterson Police Department from Plaintiff Engelbert Ribeiro and Plaintiff Mirza M. Bulur as an appropriate authority pursuant to New Jersey statute.
2. Restraining Defendants and their designated and appointed staff from exercising command and control of the City of Paterson Police Department.
3. Restraining Defendants from performing administrative and operational functions of the City of Paterson Police Department, including, but not limited to:
 - a. Use of City of Paterson Police Department and City of Paterson equipment.
 - b. Requisition and use of space at the City of Paterson Police Department and the Paterson Public Safety Department.
4. Ordering Defendants to return all property of the City of Paterson Police Department with the exception of internal affairs records and materials.
5. Ordering Defendants to immediately provide monthly reports to the appropriate authority on the operation of the City of Paterson Police Department detailing the operation of the Department, as required by State law, during the takeover of the Department by Defendants.

6. Ordering Defendants to continue to perform the internal affairs function of the City of Paterson Police Department until such time as deemed appropriate for the Department to resume said function.

7. Granting such other relief as just, necessary and equitable.

AND it is **FURTHER ORDERED THAT:**

8. A copy of this Order to Show Cause, Verified Complaint, legal memorandum and any supporting certifications or exhibits submitted in support of this application be served upon Defendants ___ personally, or _____, within ____ days of the date hereof, in accordance with R. 4:4-3, this being original process.

9. Plaintiffs must file with the Court their proof of service of the pleadings on Defendants no later than three (3) days before the return date.

10. Plaintiffs must file and serve any supplemental legal memoranda and/or any accompanying certifications or exhibits in support of this Order to Show Cause and the request for entry of injunctive relief and proof of service by _____. The supplemental papers must be filed with the Clerk of the Superior Court in the county listed above and a copy of the supplemental papers must be sent directly to the chambers of Judge _____.

11. Defendants shall file and serve a written response to this Order to Show Cause and the request for entry of injunctive relief and proof of service by _____. The original documents must be filed with the Clerk of the Superior Court in the county listed above. A directory of those office is available in the Civil Division Management Office in the county listed above at www.njcourts.gov. You must send a copy of your opposition papers directly to Judge _____, whose address is _____,

New Jersey. You must also send a copy of your opposition papers to Plaintiffs' attorney whose name and address appears above. A telephone call will not protect your rights; you must file your opposition and pay the required fee of \$_____ and serve your opposition on your adversary if you want the Court to hear your opposition to the injunctive relief Plaintiffs are seeking.

12. Plaintiffs must file and serve any written reply to Defendants' Order to Show Cause opposition by _____. The reply papers must be filed with the Clerk of the Superior Court in the county listed above and a copy of the reply papers must be sent directly to the chambers of Judge _____.

13. If Defendants do not file and serve opposition to this Order to Show Cause, the application will be decided on the papers on the return date and relief may be granted by default, provided that Plaintiffs file proof of service and a proposed Form of Order at least three (3) days prior to the return date.

14. If Plaintiffs have not already done so, a proposed Form of Order addressing the relief sought on the return date (along with a self-addressed stamped return envelope with return address and postage) must be submitted to the Court no later than three (3) days before the return date.

15. Defendants take notice that Plaintiffs have filed a lawsuit against you in the Superior Court of New Jersey. The Verified Complaint attached to this Order to Show Cause states the basis of the lawsuit. If you dispute this Verified Complaint, you, or your attorney, must file a written Answer to the Verified Complaint and proof of service within thirty-five (35) days from the day of service of this Order to Show Cause; not counting the day you received it.

16. These documents must be filed with the Clerk of the Superior Court in the county listed above. A directory of these offices is available in the Civil Division Management Office in the county listed above and online at www.njcourts.gov. Include a \$ _____ filing fee payable to the “Treasurer, State of New Jersey.” You must also send a copy of your Answer to Plaintiffs’ attorney whose name and address appear above. A telephone call will not protect your rights; you must file and serve your Answer (with the fee) or judgment may be entered against you by default. Please note that opposition to this Order to Show Cause is not an Answer and you must file both. Please further note that if you do not file and serve an Answer within thirty-five (35) days of this Order, the Court may enter a default judgment against you for the relief sought by Plaintiffs.

17. If you cannot afford an attorney, you may call the Legal Services Office in the county in which you live, or the Legal Services of New Jersey statewide hotline at (888) LSNJ-LAW (888.576.5529). If you do not have an attorney and are not eligible for free legal assistance, you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A directory with contact information for local Legal Services Offices and lawyer referral services is available in the Civil Division Management Office in the county listed above and online at www.njcourts.gov.

18. The Court will entertain argument, but not testimony, on the return date of the Order to Show Cause, unless the Court and parties are advised to the contrary no later than ____ days before the return date.

HON. _____, J.S.C

KINGSTON COVENTRY LLC

Christopher J. Gramiccioni (019762008)

1 Gatehall Drive, Suite 305

Parsippany, New Jersey 07054

973.370.2227

chris@kingstoncoventry.com

Attorney for Plaintiffs

MIRZA M. BULUR, in his official capacity as the
ACTING PUBLIC SAFETY DIRECTOR for the F
CITY OF PATERSON and APPROPRIATE
AUTHORITY, CITY OF PATERSON POLICE
DEPARTMENT, and ENGELBERT RIBEIRO in
his official capacity as the POLICE CHIEF of the
CITY OF PATERSON POLICE DEPARTMENT,

Plaintiffs,

v.

THE NEW JERSEY OFFICE OF THE
ATTORNEY GENERAL, MATTHEW J.
PLATKIN in his official capacity as ATTORNEY
GENERAL OF THE STATE OF NEW JERSEY,
OFFICE OF THE ATTORNEY GENERAL,
JOHN DOES 1-10, MARY DOES 1-10, and XYZ
CORPORATIONS 1-10,

Defendants.

SUPERIOR COURT OF NEW JERSEY
PASSAIC COUNTY
LAW DIVISION

CIVIL ACTION

Docket No. PAS-L-

**ORDER TO SHOW CAUSE
PRELIMINARY INJUNCTION
PURSUANT TO R. 4:52**

THIS MATTER being brought before the Court by Christopher J. Gramiccioni, Esq. of the firm Kingston Coventry LLC, attorney for Plaintiffs Mirza M. Bulur, in his official capacity as the acting Public Safety Director for the City of Paterson and appropriate authority for the City of Paterson Police Department, and Engelbert Ribeiro, in his official capacity as the police chief of the City of Paterson Police Department (hereinafter, "Plaintiffs"), seeking relief by way of preliminary injunction at the return date set forth below pursuant to R. 4:52, based upon facts set forth in the Verified Complaint filed herewith and for good cause shown.

IT IS ON this ____th day of _____ 2023, **ORDERED TO** Defendants, the New Jersey Office of the Attorney General and Matthew J. Platkin, in his official capacity as Attorney General of the State of New Jersey (hereinafter, “Defendants”), as follows

1. Full command and control of the City of Paterson Police Department shall be transferred to Plaintiff Engelbert Ribeiro and Plaintiff Mirza M. Bulur, as an appropriate authority pursuant to New Jersey statute, effective immediately and upon entry of this Order.
2. Defendants and their designated and appointed staff shall hereby be restrained from exercising command and control of the City of Paterson Police Department.
3. Defendants shall hereby be restrained from performing administrative and operational functions of the City of Paterson Police Department, including, but not limited to:
 - a. Use of City of Paterson Police Department and City of Paterson equipment.
 - b. Requisition and use of space at the City of Paterson Police Department and the Paterson Public Safety Department.
4. Defendants shall return all property of the City of Paterson Police Department with the exception of internal affairs records and materials.
5. Defendants shall immediately provide monthly reports to the appropriate authority on the operation of the City of Paterson Police Department detailing the operation of the Department, as required by State law, during the takeover of the Department by Defendants.
6. Defendants shall continue to perform the internal affairs function of the City of Paterson Police Department, until such time as deemed appropriate for the Department to resume said function.

7. _____

which is other relief the Court deems just, necessary and equitable.

HON. _____, J.S.C

EXHIBIT A



State of New Jersey

OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
PO BOX 080
TRENTON, NJ 08625-0080

PHILIP D. MURPHY
Governor

MATTHEW J. PLATKIN
Attorney General

SHEILA Y. OLIVER
Lt. Governor

March 27, 2023

To the Dedicated Men and Women of the Paterson Police Department:

Earlier this morning I exercised the supersession authority of my position as the Chief Law Enforcement Executive in the State of New Jersey, and the Office of the Attorney General (“OAG”) assumed responsibility for the day-to-day operations of the Paterson Police Department, inclusive of its Internal Affairs function.

I am exercising this extraordinary power of my office to better support your Department. For too long this Department has suffered fiscal challenges, and been subjected to the whims of a revolving door of leadership. These challenges along with high-profile cases of misconduct – some of it being criminal – on the part of a few officers have sullied the good name of the hundreds of officers trying to do good work here and the trust between the community and the Department has deteriorated as a result. The status quo is not addressing these longstanding issues. A change is needed.

That is why I am bringing in nationally recognized leadership to work with members of this department to raise up the good work being done, and address areas in need of reform and repair. I have appointed an innovative police leader to take command of your Department beginning in May, and in the interim, I am putting in place a team of some of the best and brightest from my office to work with you and the incoming OIC to lead this Department. The changes to the Department’s command structure are set forth in the attached Standard Operating Procedure issued today.

The new leadership team that I have put in place today will endeavor to answer the many questions we anticipate you will have about this change, and we will look to share information with you as transparently as possible as we move forward together. To that end, I look forward to addressing department personnel on duty and at headquarters today. I will also circulate an invitation to join a Zoom meeting later this afternoon for those of you not yet on shift today, and we will continue to set up meetings with the various shifts in the coming days.

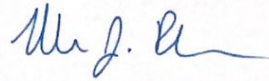
Today is the first step of a long journey. But we are going to be with you at every step to get you the tools, resources, training, and leadership you need to be safe and effective in delivering critical services to the people of this city.



EXHIBIT A


While the transition we begin today may bring a sense of uncertainty for many of you, I am certain that the work we are about to do together will bring about positive change. I know that one day in the not too distant future the Paterson Police Department will come out on the other side of this reformation as an example of excellence and innovation in policing and a source of pride for the residents and officers of Paterson.

Respectfully yours,

A handwritten signature in blue ink, appearing to read "M. J. Platkin", with a long horizontal flourish extending to the right.

Matthew J. Platkin
Attorney General

EXHIBIT B

OFFICE OF THE ATTORNEY GENERAL / PATERSON POLICE DEPARTMENT			
STANDARD OPERATING PROCEDURE			
VOLUME: 2023	CHAPTER: 001	# OF PAGES: 2	
SUBJECT: Supersession of the Paterson Police Department & Resulting Chain of Command Changes			
EFFECTIVE DATE: March 27, 2023	REVISIONS		
	DATE	PAGE #	SECTION
BY THE ORDER OF: Matthew J. Platkin Attorney General			

As of March 27, 2023, and until further notice, Attorney General Matthew J. Platkin is exercising his supersession authority over the Paterson Police Department, and the Office of the Attorney General is assuming control over the day-to-day operations of the Paterson Police Department, as well as the department's internal affairs function.

Attorney General Platkin names Isa Abbassi to serve as the Officer-in-Charge (OIC) of the Paterson Police Department, effective on a date to be determined in May of 2023. Upon commencement of his employment with the Office of the Attorney General, OIC Abbassi will be assigned to serve as the Chief Law Enforcement Officer of the Paterson Police Department reporting directly to the Attorney General through First Assistant Lyndsay V. Ruotolo.

Attorney General Platkin appoints the following personnel from the Department of Law and Public Safety to assume the following leadership roles within the Paterson Police Department:

- Major Frederick P. Fife of the New Jersey State Police will serve as the Interim Officer-in-Charge of the Paterson Police Department and will report directly to the Attorney General through the First Assistant Attorney General. During this interim period, Major Fife will serve as the Chief Law Enforcement Officer of the Paterson Police Department.
- Captain Jafca Mandziuk of the New Jersey State Police is temporarily assigned to the Paterson Police Department reporting directly to the Interim OIC. Captain Mandziuk will assume supervisory oversight over, among other things, the criminal investigative units within the Paterson Police Department.

The OIC, and the Interim OIC until such time as the OIC assumes command, will set the chain of command within the Paterson Police Department until further notice.

Attorney General Platkin also appoints the following legal personnel from the Department of Law and Public Safety to work in consultation with the newly appointed sworn leadership of the Paterson Police Department:

EXHIBIT B

- Assistant Attorney General Joseph Walsh of the Office of Public Integrity and Accountability will serve as Senior Advisor, reporting directly to the Attorney General through the First Assistant Attorney General.

Please be advised that to the extent any criminal and/or administrative investigations are being conducted by a division or office within the Department of Law and Public Safety, the DLPS personnel assigned to directly oversee the day-to-day functions of the Paterson Police Department are not participating in any such investigations.

Compliance with the instant Standard Operating Procedure is mandatory.

KINGSTON COVENTRY LLC
Christopher J. Gramiccioni (019762008)
1 Gatehall Drive, Suite 305
Parsippany, New Jersey 07054
973.370.2227
chris@kingstoncoventry.com
Attorney for Plaintiffs

MIRZA M. BULUR, in his official capacity as the
ACTING PUBLIC SAFETY DIRECTOR for the
CITY OF PATERSON and APPROPRIATE
AUTHORITY, CITY OF PATERSON POLICE
DEPARTMENT, and ENGELBERT RIBEIRO in
his official capacity as the POLICE CHIEF of the
CITY OF PATERSON POLICE DEPARTMENT,

Plaintiffs,

v.

THE NEW JERSEY OFFICE OF THE
ATTORNEY GENERAL, MATTHEW J.
PLATKIN in his official capacity as ATTORNEY
GENERAL OF THE STATE OF NEW JERSEY,
OFFICE OF THE ATTORNEY GENERAL,
JOHN DOES 1-10, MARY DOES 1-10, and XYZ
CORPORATIONS 1-10,

Defendants.

SUPERIOR COURT OF NEW JERSEY
PASSAIC COUNTY
LAW DIVISION

CIVIL ACTION

Docket No. PAS-L-

**CERTIFICATION OF
ENGELBERT RIBEIRO**

ENGELBERT RIBEIRO, being duly sworn upon his oath, according to law, hereby certified and says:

1. I am the Chief of Police of the Paterson Police Department, a division under the City of Paterson Public Safety Department. I have served as a police officer at the Paterson Police Department since 1996.
2. During my career, I have served in the Department's patrol, major crimes and narcotics divisions, serving in several supervisory capacities at the ranks of sergeant, lieutenant, captain and deputy chief.

3. On March 3, 2023, after working my way through the ranks of the Paterson Police Department for 27 years, the City of Paterson appointed me to serve as the Department's Chief of Police. I am the first Latino police chief in the history of the City of Paterson.
4. After serving as police chief for approximately twenty-four (24) days, I was relieved of command by the New Jersey State Office of the Attorney General (hereinafter, "NJOAG"), at the direction of Attorney General Matthew J. Platkin (hereinafter, "AG Platkin"), on March 27, 2023.
5. On March 27, 2023, after completing a meeting with the Paterson Public Safety Director, I returned to my office where a number of individuals were gathered in my conference room, including AG Platkin and New Jersey State Police ("NJSP") Major Frederick P. Fife. AG Platkin stated that he intended to use his power of supersession to take control of the Paterson Police Department, and advised that Major Fife would be temporarily in charge until someone else arrives in the coming weeks. AG Platkin then asked me to leave my office in the hands of NJOAG. To date, I have never received any written justifications for these actions.
6. After leaving my office, Major Fife advised that anything I was currently responsible for as the chief of police would now be his responsibility. Major Fife asked me several times whether I would retire as a result of the supersession but, at that time, was unable to say what my role and assignment would be going forward. Later that same day, I was given the opportunity to remove my personal belongings from my office.
7. In the early afternoon of March 27, an e-mail and video message was sent to the entire staff of the Paterson Police Department. In that correspondence, AG Platkin informed my staff that OAG had superseded and taken over the day-to-day operations of the Department. AG Platkin also held a press conference announcing the takeover.

8. On March 28, 2023, I met with Major Fife where we discussed various Departmental administrative matters and other daily operational topics. Major Fife informed me that he had selected his interim command staff. For the remainder of the week, I had no further contact with any NJSP or NJOAG officials.

9. During the week of April 3, 2023, I was away on official business. The following week of April 10, 2023, I attended training at the Passaic County Prosecutor's Office. On April 23, 2023, I was advised that I was not permitted to attend the swearing-in of our Department's new recruit class. Major Fife stated, in substance and in part, that NJOAG did not want me to attend and did not want my name on the graduation pamphlet.

10. On April 28, 2023, I met with Major Fife and Assistant Attorney General ("AAG") Joseph Walsh, one of the members of NJOAG's staff that took over the Department. During the meeting, Major Fife advised that NJOAG had decided to assign me to the Division of Criminal Justice ("DCJ") Academy in Sea Girt, New Jersey in early May, following "chief" Isa Abbassi's arrival. I asked what authority NJOAG had to send me away from Paterson, to which Major Fife replied, in substance and in part, that since the AG had taken over and is now in charge, "they can assign [you] anywhere" they like.

11. During this meeting, I stated that I was not ready to retire or relocate, and that I believed the Paterson City administration would not approve of my relocation since they paid my salary. I also asked if I could meet with Abbassi to discuss an alternative to my relocation and reassignment, but was told it was futile at that point because the "decision had been made." Both Major Fife and AAG Walsh reiterated that, as of Friday, May 5, 2023, I would not be permitted to return to the Paterson Police Department or perform any duties there. The meeting ended with

them advising me that they would let me know when I could meet with the director of the DCJ Academy at Sea Girt.

12. On May 2, 2023, I met Major Fife and AAG Walsh and they informed me that I would be going to the DCJ Academy, but instead be assigned to the Division of Criminal Justice Police Training Commission ("PTC") in Trenton, New Jersey. Again, I advised that City administration would not be supportive and requested that I be assigned to City Hall.

13. On May 4, 2023, during a State Police Chiefs' Association meeting, AAG Walsh introduced me to the head of the PTC and indicated that I would be assigned to work there following the Police Unity Tour. AAG Walsh further advised that he and Major Fife would meet with City administration officials to discuss my new assignment at the PTC. I again advised that City administration did not agree with my relocation and suggested that I could be assigned to Paterson City Hall instead. AAG Walsh advised that he would convey it to his chain of command.

14. On May 5, 2023, I was informed by the City of Paterson Mayor that the City and my request for assignment to Paterson City Hall was rejected, and that I would be reassigned and relocated to the PTC in Trenton. Since my reassignment, I have attempted to remain current in training by seeking to attend certain training courses, but my requests have been denied.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: October 5, 2023

Respectfully submitted,



ENGELBERT RIBEIRO

EXHIBIT D

Andre Sayegh

From: Aymen Aboushi
Sent: Friday, May 05, 2023 2:05 PM
To: 'Frederick Fife'; Joseph Walsh
Cc: Kathleen Long; Christian Callegari
Subject: Chief Ribeiro

AAG Walsh, Major Fife,

This correspondence is in follow up to our meeting yesterday regarding Chief Ribeiro. As discussed, the Administration is not in favor of removing Chief Ribeiro from the City and sending him to Trenton as contemplated by the Attorney General. Chief Ribeiro remains a City employee whose salary is funded by the City of Paterson taxpayers. As such, his functions should remain City based. Furthermore, assigning him outside of the City means that he will miss out on the opportunity to collaborate with OIC Abbassi and do whatever is necessary to help move the Paterson Police Department forward. Lastly, Chief Ribeiro was selected as the Police Chief after a rigorous selection process that included significant input, and approval by, the State. The intention is that Chief Ribeiro will resume his duties as Chief once State intervention has ended. Having Chief Ribeiro maintain his ties to the City of Paterson is critical to the long term success of the Paterson Police Department.

In light of the foregoing, and other points raised during the meeting, the Administration's proposal is that Chief Ribeiro will be detailed temporarily to City Hall during the early tenure of OIC Abbassi. This will enable Chief Ribeiro to deploy his talents on City-based projects, develop professionally, and remain readily available to assist OIC Abbassi as needed.

The Administration appreciates the due consideration and the collaborative effort on this matter.

Aymen A. Aboushi, Esq.
Corporation Counsel
Director of Law, City of Paterson
155 Market Street
Paterson, NJ 07505
Tel: (973) 321-1366

This email communication may contain CONFIDENTIAL INFORMATION WHICH ALSO MAY BE LEGALLY PRIVILEGED and is intended only for the use of the intended recipients identified above. If you are not the intended recipient of this communication, you are hereby notified that any unauthorized review, use, dissemination, distribution, downloading, or copying of this communication is strictly prohibited. If you are not the intended recipient and have received this communication in error, please immediately notify us by reply email, delete the communication and destroy all copies.

Paterson's police chief has been transferred to a state role in Trenton. This is why

3-minute read

Joe Malinconico

Paterson Press

AD

0:08

SKIP

PATERSON — State law enforcement officials have transferred the city's deposed police chief, Engelbert Ribeiro, to a new assignment in Trenton, despite the mayor's request to keep him in Paterson.

Ribeiro on Monday began a new job at the New Jersey attorney general's Police Training Commission, with the city still paying his \$225,000 annual salary, according to multiple sources familiar with the situation.

Ribeiro took the oath of office as chief on March 3 before being relieved of command 24 days later in the state takeover of the troubled Paterson Police Department.



“For operational effectiveness, the parties involved have determined that an assignment outside of the PPD is the most appropriate for former chief Ribeiro at this time,” said a statement issued by the New Jersey Attorney General’s Office.

Subscriber exclusive: NJ attorney general first considered Paterson police takeover in 2022

Tension at City Hall

Mayor Andre Sayegh plans to put Ribeiro back in the chief’s position after the state intervention has ended, according to city government correspondence obtained by Paterson Press. But no one has disclosed exactly how long the state takeover will last.

Sayegh had wanted Ribeiro reassigned to Paterson City Hall, where he would have worked on various Paterson law enforcement projects, city officials said in correspondence.



By remaining in Paterson, city officials said, Ribeiro would have an opportunity to interact with the man the state has put in charge of the municipal police, Isa Abbassi, who recently retired from the New York City Police Department as a chief. Abbassi has said he would be putting together a two-year plan for the Paterson department.

“We find it unfortunate that at present Chief Ribeiro is not involved in the transitioning of this department,” said Mason Maher, president of the union that represents Paterson’s ranking police officers. “We believe he is an asset and is an extremely knowledgeable resource, which is why he was selected as chief only three weeks before these events.

“We want to be clear that this is of no fault of his nor a reflection of his capabilities,” Maher continued, saying he hoped the state would reconsider Ribeiro’s Trenton assignment.

Questions raised

Activist Ernest Rucker said he opposed transferring Ribeiro to the Trenton commission.

“This is completely unacceptable,” said Rucker, who earlier this year praised Ribeiro’s efforts to build trust by reaching out to Paterson community leaders. “Why not keep him here and train him? What happens when the takeover is over, and he becomes chief again? If you don’t train him now, then you might have the same issues.”

The leader of Paterson’s Black Lives Matter group, Zellie Thomas, declined to comment on Ribeiro’s reassignment. Thomas in recent months has called for the termination of various Paterson Police Department members, but Ribeiro has not been on his list.

“I don’t know too much about him,” Thomas said of Ribeiro. “He wasn’t chief when a lot of the problems were happening.”

The state takeover of the Paterson police followed several years of controversies in the department, including the controversial March 3 shooting of activist Najee Seabrooks.

Neither Sayegh nor Ribeiro could be reached for comment about the chief’s new assignment in Trenton. The state is paying Abbassi’s \$200,000 salary as officer in charge in Paterson, officials said.

'I can effect change': Abbassi pledges to listen to Paterson voices in police takeover

'There can only be one person in charge'



Reporters asked Attorney General Matthew Platkin about Ribeiro's status during a press conference in Paterson last week.

"That's a city decision," Platkin said in response.

Another reporter asked about the chief being assigned to a training commission in Trenton.

"I can't speak about personnel decisions," Platkin said. "But that's a city decision."

But local officials said Ribeiro's transfer to the commission in Trenton was a state decision.

In an interview with Paterson Press on May 3, Abbassi made it clear he did not want Ribeiro looking over his shoulder.

“There can only be one person in charge,” Abbassi said in that interview. “It’s me.”

Meanwhile, Platkin spoke about the Paterson police takeover when he addressed the state Assembly Budget Committee on Monday morning.

“And I want to restate what I have said previously: Doing this right will require financial support,” Platkin told the legislators. “It would be unrealistic to expect otherwise.

“I look forward to briefing the Legislature with an estimate of those costs as quickly as possible,” the attorney general added.

Joe Malinconico is editor of Paterson Press.

EXHIBIT F

**Memorandum of Understanding
Providing for the Temporary Mobility Assignment
of Paterson Police Chief Englebert Ribeiro**

This Memorandum of Understanding ("MOU" or "Agreement") sets forth the agreement between the New Jersey Department of Law and Public Safety, Division of Criminal Justice ("DCJ"), and the Police Department of Paterson, New Jersey ("Paterson PD") (each a "Party," and collectively, the "Parties") providing for the temporary mobility assignment ("Assignment") of Paterson Police Chief Englebert Ribeiro ("Ribeiro") from Paterson PD to DCJ.

1. **Assignment:** For the duration of this Agreement, Ribeiro shall be assigned to the DCJ Police Training Commission ("PTC") in Trenton, New Jersey, and shall report to Administrator John Cunningham and/or Deputy Attorney General Stephen Wenger. Ribeiro's responsibilities at the PTC shall include assisting with its administrative functions, providing training support, in-service curriculum development, liaising with statewide law enforcement agencies, and other related tasks as assigned. Ribeiro shall retain his status as a sworn law enforcement member.
2. **Duration:** The Assignment will commence on May 15, 2023, and terminate six (6) months after this date, on November 15, 2023. The Assignment may terminate earlier as provided for below or, with the mutual written agreement of the Parties, be renewed for six-month extensions.
3. **Location:** The Assignment location shall be the PTC at 25 Stockton Street, Trenton, New Jersey. Occasional reimbursable travel may be required as part of the Assignment.
4. **Supervision and Control:** During the Assignment period, Ribeiro shall be under the operational supervision and control of DCJ, but shall remain under the administrative supervision and control of Paterson PD.
5. **Timekeeping and Requests for Leave and Work Hours:** During the Assignment period, Ribeiro shall follow Paterson PD's time and attendance and leave procedures, and utilize Paterson PD's timekeeping system to report his hours worked while on the Assignment. Leave requests shall be copied to and coordinated with DCJ.
6. **Policies:** Ribeiro shall sign a written acknowledgement of receipt of all DCJ policies and guidelines including, without limitation, those governing travel and reimbursement at the start of his Assignment.

EXHIBIT F

7. **Salary and Benefits:** At all times during the Assignment period, Paterson PD will continue to be responsible for Ribeiro's salary and fringe benefits, and will maintain all benefits to which Ribeiro is entitled through employment with Paterson PD. Paterson PD will remain responsible for making any required income-tax withholdings and all payments due as an employer's contribution under federal, state, and local laws. While DCJ has the right, pursuant to this Agreement, to direct the details and means by which Ribeiro accomplishes his assigned tasks for the duration of the Assignment, Ribeiro shall at all times remain an employee of Paterson PD.
8. **Liability:** Subject to the New Jersey Tort Claims Act (N.J.S.A. 59:1-1 et seq.) and the New Jersey Contractual Liability Act (N.J.S.A. 59:13-1 et seq.), the Parties agree to be responsible for the negligent or wrongful acts or omissions of their respective employees.
9. **Compliance with the Law:** During the term of this MOU, all Parties shall comply with all federal, state and municipal laws, rules and regulations generally applicable to the activities performed pursuant to this MOU.
10. **Assignability and Third-Party Beneficiary Rights:** This Agreement does not create in any individual or entity the status of third-party beneficiary. The rights, duties and obligations contained in this Agreement shall operate only between the Parties and shall inure solely to the benefit of the Parties. The provisions of this Agreement are intended only to assist the Parties in defining and performing their respective roles and responsibilities. The Parties intend and expressly agree that only the Parties shall have any legal or equitable right to seek to enforce this Agreement, to seek any remedy arising out of a Party's performance or failure to perform any term or condition of this Agreement.
11. **Severability:** Nothing in this Agreement is intended to conflict with applicable New Jersey State laws. Each provision of this Agreement shall be deemed separate and severable from the others. If a provision of this Agreement is inconsistent with an applicable New Jersey State law, the remaining provisions or portions of this Agreement shall be unaffected thereby and shall remain in full force and effect.
12. **Entire Agreement:** This Agreement contains the entire agreement between the Parties concerning the subject matter hereof. Neither Party has relied upon any other writing or any oral statements, representations, promises, or inducements in entering into this Agreement. No provision of this Agreement may be amended or modified, unless such amendment or modification is in writing and signed by DCJ and Paterson PD.

EXHIBIT F

- 13. **Enforceability:** The Parties agree that this MOU shall not be enforceable as a matter of law or equity in any court or dispute resolution forum. Additionally, the Parties agree that the conditions of this MOU are not binding, and the sole remedy for non-performance under this MOU shall be termination, with no damages or penalty available to any Party.
- 14. **Non-Waiver:** The failure by either Party to insist on performance of any term or condition or to exercise any right or privilege included in this MOU shall not constitute a waiver of same unless explicitly denominated in writing as a waiver and shall not in the future waive any such term or condition or any right or privilege. No waiver by a Party of any breach of any term of this MOU shall constitute a waiver of any subsequent breach or breaches of such term.
- 15. **Termination of MOU:** This MOU may be terminated at any time prior to its conclusion, with or without cause, by any Party upon 30 days' written notice to the other Party, unless the notice requirement is waived in writing by both parties.

The terms of this MOU have been read and understood by the persons whose signatures appear below.


NEW JERSEY DEPARTMENT OF LAW AND PUBLIC SAFETY, OFFICE OF THE ATTORNEY GENERAL



 Matthew J. Platkin
 Attorney General

5/9/23
 Date

POLICE DEPARTMENT OF PATERSON, NEW JERSEY


 Frederick P. Fife
 Interim Officer in Charge
 Paterson Police Department

9 May 2023
 Date

EXHIBIT G

KINGSTON COVENTRY LLC
 Christopher J. Gramiccioni (019762008)
 1 Gatehall Drive, Suite 305
 Parsippany, New Jersey 07054
 973.370.2227
chris@kingstoncoventry.com
Attorney for Plaintiffs

MIRZA M. BULUR, in his official capacity as the :
 ACTING PUBLIC SAFETY DIRECTOR for the :
 CITY OF PATERSON and APPROPRIATE :
 AUTHORITY, CITY OF PATERSON POLICE :
 DEPARTMENT, and ENGELBERT RIBEIRO in :
 his official capacity as the POLICE CHIEF of the :
 CITY OF PATERSON POLICE DEPARTMENT, :

Plaintiffs,

v.

THE NEW JERSEY OFFICE OF THE :
 ATTORNEY GENERAL, MATTHEW J. :
 PLATKIN in his official capacity as ATTORNEY :
 GENERAL OF THE STATE OF NEW JERSEY, :
 OFFICE OF THE ATTORNEY GENERAL, :
 JOHN DOES 1-10, MARY DOES 1-10, and XYZ :
 CORPORATIONS 1-10, :

Defendants.

SUPERIOR COURT OF NEW JERSEY
 PASSAIC COUNTY
 LAW DIVISION

CIVIL ACTION

Docket No. PAS-L-

**CERTIFICATION OF
MIRZA M. BULUR**

MIRZA M. BULUR, being duly sworn upon his oath, according to law, hereby certified
 and says:

1. I am the duly appointed acting Director of the City of Paterson Public Safety Department.
2. Prior to my appointment as acting Director, I served as the Assistant Director of the Paterson Public Safety Department.
3. In July 2022, the Mayor of the City of Paterson appointed me to serve as acting Director and the appropriate authority of the Paterson Department of Public Safety because Director Jerry Speziale informed him that personal and familial matters required his attention and absence.

EXHIBIT G

4. The position of Director of the Paterson Public Safety Department has been designated as an “appropriate authority,” pursuant to N.J.S.A. 40A:14-118, by City of Paterson Ordinance No. 19-001, dated January 18, 2019. Additionally, the Mayor of the City of Paterson, an interested party to this matter who appointed me to my position, is also an “appropriate authority” under this statute.

5. On March 27, 2023, the New Jersey Office of the Attorney General (“NJOAG”) and Attorney General Matthew J. Platkin (“AG Platkin”) announced their supersession and takeover of the full operations of the Paterson Police Division. In doing so, they replaced the municipally-appointed chief executive of the Paterson Police Division, Chief Engelbert Ribeiro, with their designated interim command staff until their installation of New York City police officer Isa M. Abbassi (“Abbassi”) as the head of the Paterson Police Division.

6. NJOAG and AG Platkin informed my Department and Paterson City administration that Abbassi would formally take over Paterson Police Division’s operations effective May 9, 2023. Since this date, Abbassi and his appointed staff has run the police division at the express direction of NJOAG and AG Platkin.

7. Since the referenced takeover by NJOAG, AG Platkin and Abbassi, they have occupied space within the Paterson Police Division, an agency housed within the Paterson Department of Public Safety, and members of their staff have operated City of Paterson vehicles.

8. Since their takeover of the day-to-day operations of the Paterson Police Division, NJOAG, AG Platkin or Abbassi have not provided a timeline for their cessation of the Department, nor any transition plan for the transfer of command and control back to my Department or Chief Ribeiro. Nor have any of these parties reported, at least monthly, to the Department of Public Safety or the City of Paterson as to the operation of the City’s police force.

EXHIBIT G

9. Upon being relieved of his command of the Paterson Police Division, NJOAG and AG Platkin reassigned Chief Ribeiro to the Division of Criminal Justice Police Training Commission (“PTC”) in Trenton, New Jersey. Requests by my Department, City of Paterson administration and Chief Ribeiro to assign Chief Ribeiro to work at Paterson City Hall were rejected by NJOAG and AG Platkin.

10. Chief Ribeiro’s reassignment was purported to have been memorialized by NJOAG and AG Platkin in Memorandum of Understanding (“MOU”) between NJOAG and the Paterson Police Department dated May 9, 2023.

11. Neither the Department of Public Safety, the Paterson Police Division, nor Paterson City administration agreed to Chief Ribeiro’s reassignment. Rather, the referenced MOU was signed by AG Platkin and the individual he appointed as interim officer-in-charge of the Paterson Police Division upon supersession – New Jersey State Police (“NJSP”) Major Frederick P. Fife. To date, neither the Mayor of City of Paterson nor I have ever received any written justification or support setting forth the Attorney General’s authority to take over the Paterson Police Department.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

EXHIBIT G

Dated: October 5, 2023

Respectfully submitted,


MIRZA M. BULUR



State of New Jersey

OFFICE OF THE ATTORNEY GENERAL
 DEPARTMENT OF LAW AND PUBLIC SAFETY
 OFFICE OF PUBLIC INTEGRITY AND ACCOUNTABILITY
 PO BOX 085
 TRENTON, NJ 08625-0085
 TELEPHONE: (609) 984-6500

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

MATTHEW J. PLATKIN
Attorney General

THOMAS J. EICHER
Executive Director

ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE NO. 2022-14

TO: All Law Enforcement Chief Executives

FROM: Matthew J. Platkin, Attorney General

DATE: November 15, 2022

SUBJECT: **Transparency in Internal Affairs Investigations**

Transparency regarding law enforcement internal affairs investigations is necessary to foster strong police-community relationships and public trust, as previous Attorney General Directives and judicial opinions have repeatedly explained. In light of those interests, a recent New Jersey Supreme Court decision, *Rivera v. Union County Prosecutor's Office*, 250 N.J. 124 (2022), requires that a range of internal affairs reports may be publicly accessible under the common law right of access upon request.

This Directive is necessary (1) to reduce uncertainty, delays, and litigation costs relating to records requests after *Rivera*; (2) to promote transparency for the sustained¹ misconduct that is most likely to undermine public trust on a uniform basis across the State; and (3) to ensure that sensitive information contained in disclosed internal affairs records is appropriately redacted in a consistent and timely manner. Accordingly, this Directive provides agencies with additional protocols for responding to requests for internal affairs findings going forward. It also increases proactive disclosure as to internal affairs in order to obviate the need for some such requests.

In *Rivera*, the Supreme Court reiterated that internal affairs records are exempt from access under New Jersey's Open Public Records Act. But it unanimously held that internal affairs records are publicly accessible under the common law right to know if, on balance, consideration of the following factors weighs in favor of disclosure over the need for confidentiality:

- “the nature and seriousness of the misconduct”;
- “whether the alleged misconduct was substantiated”;
- “the nature of the discipline imposed”;
- “the nature of the official’s position”; and
- “the individual’s record of misconduct.”

¹ For purposes of this Directive and the Attorney General's *Internal Affairs Policy and Procedures* (IAPP), “sustained” is the equivalent of “substantiated” as it pertains to New Jersey State Police policies.



This Directive now establishes that certain categories of discipline will always require disclosure, and describes what specific internal affairs materials law enforcement agencies must always disclose. As to which categories will always require disclosure, there are certain sustained offenses for which the need for accountability and deterrence necessitates disclosure regardless of the seniority of the officer or their record of misconduct. These categories—assessed based on *Rivera*, the Attorney General’s internal affairs reporting portal, and prior Attorney General Directives relating to *Brady* and *Giglio* obligations—include, but are not limited to, instances of differential treatment and excessive force. These disclosures expand upon Directive 2020-5’s focus on the length of discipline imposed, as experience has shown that metric does not always capture serious misconduct. As to what materials must always be disclosed, this Directive draws a line between materials relating to an investigation’s findings on the one hand, and the wealth of investigative notes that detail (among other things) conversations with witnesses and victims on the other. This Directive mandates the disclosure of the former—to provide the public with information about allegations, findings, and discipline, without delaying disclosure based on a lengthy and costly redaction process.

A directive is an appropriate way to further advance transparency and promote the efficient release of qualifying records for several reasons. *First*, directives provide clarity for agencies, officers, and the public; improve administrability; and promote uniformity. They do so in this context by turning a multi-factor test that is appropriate for courts making case-by-case determinations into a clear set of bright-line requirements that are easier for law enforcement agencies to implement consistently. *Second*, directives can specify in greater detail the content and form of a published report, so as to ensure all information disclosed is sufficient to provide transparency and accountability while maximizing the protection of particularly sensitive content. And *finally*, the creation of directives involves a collaborative process, allowing for input from law enforcement executives at the state, county, and local levels, law enforcement officers and their representatives, advocates, stakeholders, and the public, all to better inform the Attorney General’s final decisions.

It is also important to note what this Directive does not do. *First*, the additional categories of annual disclosure contained in Section I of this Directive apply only prospectively and do not apply to any discipline that has been settled between an officer and law enforcement agency prior to January 1, 2023.² *Second*, this Directive continues to require disclosure of all major discipline on a prospective basis under Directive 2020-5, requires disclosure for certain categories of misconduct regardless of whether major discipline was imposed, and provides additional guidance regarding those disclosures. *Third*, because *Rivera* laid out a multi-factor test, there may be some internal affairs records subject to disclosure that are not covered by this Directive’s rule. For those exceptional cases where disclosure is warranted, especially for high-level officials in a department, agencies cannot deny a request made pursuant to the common law right of access based exclusively on the fact that it does not fall within the enumerated categories of this Directive.

Finally, this Directive provides guidance to law enforcement on what redactions are required prior to disclosure, and aims to do so in a way that is transparent for the public to

² This Directive retracts Directive 2020-6, which sought to disclose certain major discipline information on a retroactive basis and was never implemented due to litigation.

understand the reasoning behind redactions. Redactions are necessary to ensure the required disclosures do not interfere with the proper functioning of the internal affairs process. Disclosure of some information—such as names of complainants, witnesses, and cooperators—risks deterring individuals from participating in the internal affairs process, and undermines the public’s interest in an effective mechanism for police accountability. Information that would interfere with ongoing criminal investigations or prosecutions, or that divulge emergency or security procedures or surveillance techniques, must be redacted to protect their integrity. And certain sensitive information—like medical history, participation in resiliency programs, or mental health—must be redacted because the harm to privacy outweighs the benefits of release. That is why disclosures pursuant to the common law and under OPRA have long allowed for redactions, *Rivera*, 250 N.J. at 150, and why disclosures pursuant to this Directive should be no different.

This Directive also clarifies and confirms the Attorney General’s broad supersession authority over internal affairs. New Jersey law assigns the Attorney General responsibility to ensure the proper, efficient, and uniform handling of law enforcement business in the State and it provides him with the authority to supersede investigations and criminal actions as one tool to achieve those goals. Because proper, efficient, and uniform handling of internal affairs investigations are integral to the law enforcement business of the State, and because oversight over *Internal Affairs Policy & Procedures* is specifically assigned to the Attorney General by N.J.S.A. 40A:14-181, this Directive confirms the Attorney General’s supersession authority includes internal affairs matters.

Pursuant to the authority granted to me under the New Jersey Constitution and the Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 to -117, which provides for the general supervision of criminal justice by the Attorney General as chief law enforcement officer of the state to secure the benefits of a uniform and efficient enforcement of the criminal law and administration of criminal justice throughout the state, I hereby direct all law enforcement and prosecuting agencies operating under the authority of the laws of the state of New Jersey to implement and comply with the *Internal Affairs Policies & Procedures* (IAPP) as revised by this Directive below and to take any additional measures necessary to update their guidelines consistent with IAPP, as required by N.J.S.A. 40A:14-181.

I. Revisions to *Internal Affairs Policies & Procedures* relating to disclosures

A. *Structure of the internal affairs report.* IAPP Section 9.1 is revised as follows:

9.1 The Internal Affairs Report

9.1.1 At the conclusion of the internal affairs investigation, the investigator shall submit ~~a written report consisting of an objective investigative report recounting all of the case’s facts and a summary of the case, along with conclusions for each allegation, and recommendations for further action.~~ **two separate and distinct reports as follows:**

(a) *Investigative **R**eport.* ~~The first part of the **This** report~~ will be an objective recounting of all the relevant information the investigation disclosed, including

statements, documents and other evidence. ~~This part of the~~ Such report is **shall be** similar in all respects to a standard law enforcement investigative report, and should contain a complete account of the investigation.

- (b) *Summary and Conclusions Report*. ~~The investigator should~~ **This report shall summarize the case and provide conclusions of fact for each allegation. The report should be organized as follows:**

- (1) **A Summary of the Allegations against the officer, including a recitation of the alleged facts;**
- (2) **A Summary of Factual Findings in which the investigator outlines the facts proven or supported by the evidence reviewed during the investigation, and applies those facts to each allegation. This shall include a conclusive finding on whether each allegation is to be recorded as exonerated, sustained, not sustained or unfounded. For sustained findings that qualify for disclosure under Section 9.11.2, the summary of factual findings, along with the discipline imposed, should be the basis for the brief synopsis required under Section 9.11.2;**
- (3) **A Discipline Imposed section in which the final discipline imposed on the officer will be recorded. This section should be completed once the discipline imposed becomes final. See Section 9.11.2 for guidance on when the officer's discipline is final.**

Examples of completed Summary and Conclusions Reports are included in Appendix O.

- 9.1.2 If the conduct of an officer was found to be improper, **the Summary and Conclusions Report** must cite the agency rule, regulation, or SOP violated. Any aggravating or mitigating circumstances surrounding the situation, such as unclear or poorly drafted agency policy, inadequate training or lack of proper supervision, shall also be noted **in the Summary and Conclusions Report.**
- 9.1.3 If the investigation reveals evidence of misconduct not based on the original complaint, this too must be reported **and memorialized in both the Investigative Report and the Summary and Conclusions Report.** An investigation concerning this secondary misconduct ~~should~~ **shall** be conducted.

B. ***Maintaining investigation files.*** IAPP Section 9.3 is revised as follows:

9.3 Investigation Files

- 9.3.3 Where an internal affairs investigation results in the filing of criminal charges, the file shall be made available to the ~~County Prosecutor's Office~~ **prosecuting agency.** It ~~will be~~ **is** the responsibility of that office **agency** to decide which items are discoverable and which are **likely** admissible. In these cases, the agency must follow the ~~County Prosecutor's~~ **prosecuting agency's** instructions. **The**

prosecuting agency must have a procedure in place to ensure, in the rare case where a compelled statement has been taken from a subject officer and a criminal case results, that any compelled statements from a subject officer are not impermissibly used in the criminal case.

C. *Release of certain materials upon request.* IAPP Section 9.6 is revised as follows:

9.6 Confidentiality

9.6.1 The nature and source of internal allegations, the progress of internal affairs investigations, and the resulting materials are confidential information **and remain exempt from access under the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1.1 to -13.** The contents of an internal investigation case file, including the original complaint, shall be retained in the internal affairs function and clearly marked as confidential. The information and records of an internal investigation shall only be released or shared under the following limited circumstances:

- (a) If administrative charges have been brought against an officer and a hearing will be held, a copy of all discoverable materials shall be provided to the officer and the hearing officer before the hearing;
- (b) If the subject officer, agency or governing jurisdiction has been named as a defendant in a lawsuit arising out of the specific incident covered by an internal investigation, a copy of the internal investigative reports may be released to the attorney representing the subject officer, agency or jurisdiction;
- (c) Upon the request or at the direction of the County Prosecutor or Attorney General; ~~or~~
- (d) Upon a court order; **or**
- (e) **Upon a request from the Division of Pensions, following an officer's application for a retirement allowance.**

9.6.2 (a) **The Summary and Conclusions Report described in Section 9.1.1(b) shall be released in response to a request made under the common law right of access by any member of the public or press where it satisfies any of the following conditions:**

- (1) **The Summary and Conclusions Report led to a result on or after January 1, 2023, that requires disclosure pursuant to Section 9.11.2;**
- (2) **The agency otherwise concludes that the Summary and Conclusions Report is subject to release pursuant to applicable law or court order;**
or
- (3) **Upon the request or at the direction of the County Prosecutor or Attorney General at any time.**

(b) When an agency concludes that a report is subject to disclosure under Section 9.6.2(a), it shall redact the following before disclosure:

- (1) The names of complainants, witnesses, informants, victims and cooperators, in addition to information that could reasonably lead to discovery of their identities;³
- (2) Non-public, personal identifying information about any individual named in the report, such as their home addresses, phone numbers, dates of birth, social security numbers, familial relationships, etc.;
- (3) Medical information or history, including but not limited to, mental health or substance abuse services and drug or alcohol evaluation, counseling or treatment;
- (4) Information regarding any criminal investigation or prosecution that is not already contained in a public filing, or any information that would impede or interfere with a pending criminal or disciplinary proceeding;
- (5) Any records or material prohibited from disclosure by law;
- (6) Juvenile records;
- (7) Any information which is the subject of a judicial order compelling confidentiality;
- (8) Any other information that would violate a person's reasonable expectation of privacy; and
- (9) Any information regarding law enforcement personnel, procedures, or resources that could create a risk to the safety of any person, including but not limited to law enforcement personnel.

9.6.3 In addition to the situations described in Sections 9.6.1 and 9.6.2, the law enforcement executive may authorize access to a particular file or record for good cause. The request and the authorization ~~should~~ **shall** be in writing, and the written authorization ~~should~~ **shall** specify who is being granted access, to which records access is being granted and for what time period access is permitted. The authorization ~~should~~ **shall** also specify any conditions (i.e., the files may be reviewed only at the internal affairs office and may not be removed). In addition, the law enforcement executive may order any redactions ~~necessary to protect sensitive or privileged information, including an officer's medical or mental health records or details of an ongoing criminal investigation,~~ **consistent with Section 9.6.2(b)**. The law enforcement executive should grant such access sparingly, given the purpose of the internal affairs process and the nature of many of the allegations against officers.

As a general matter, a request for internal investigation case files may satisfy the good cause requirement:

³ In instances of domestic violence, in addition to redaction of the victim's name, all reference to the specific nature of the qualifying relationship should also be redacted to protect the identity of the victim. For example, if the victim is an intimate partner, terms such as "spouse," "partner," "girlfriend," "boyfriend," "husband," or "wife," should also be redacted, and to the extent possible the report should just indicate that the relationship between the victim and the officer was an enumerated relationship under the Domestic Violence Act (N.J.S.A. 2C:25-17 et seq.).

- (a) If a Civilian Review Board that meets certain minimum requirements requests access to a completed or closed investigation file, subject to the conditions described in this section; or
- (b) If another law enforcement agency requests the files because it is considering hiring an officer who was formerly employed at the agency with the internal investigation files.

D. **Public reporting.** IAPP Section 9.11 is revised as follows:

9.11 Public Reports

9.11.1 On an annual basis, every law enforcement agency shall provide to the County Prosecutor and publish on its public website a report summarizing the types of complaints received and the dispositions of those complaints. This report should be statistical in nature. The County Prosecutor shall submit a summary of the reports from all agencies in its jurisdiction to the Office of Public Integrity and Accountability. The Annual Internal Affairs Summary attached to Appendix K ~~may~~ **shall** be used to satisfy the requirements of this Section. **This process shall be overseen and directed by the Attorney General's Office of Public Integrity & Accountability and the Office of Justice Data.**

9.11.2 On a periodic basis, and no later than January 31 of the following year, every agency shall submit to the County Prosecutor and the Attorney General, and publish on the agency's public website, a brief synopsis of all ~~complaints~~ **misconduct** where **an agency member:**

- (a) **Was terminated;**
- (b) **Was reduced in rank or grade;**
- (c) **Was assessed a suspension of more than five days. A suspension of more than five days shall be broadly construed to include any disposition involving a suspension of more than 40 hours of time or the equivalent of five days/shifts if less than 40 hours, regardless of whether any of the suspension time was suspended or held in abeyance. It shall include the loss of vacation, sick or leave time totaling more than 40 hours or the equivalent of five days/shifts. It shall include any combination of suspension time assessed plus loss of vacation, sick or leave time that aggregates to more than 40 hours or the equivalent of five days/shifts. It shall also include any fine that exceeds the gross value of 40 hours, or the equivalent of five days/shifts, of pay;**
- (d) **Had a sustained finding of discrimination or bias against any person because of the individual's actual or perceived race, creed, color, national origin, ancestry, age, marital status, civil union status, domestic partnership status, affectional or sexual orientation, genetic information, sex, gender identity or expression, disability, nationality, familial status, or any other protected characteristic under N.J.S.A. 10:5-1 et seq., regardless of the type or severity of discipline imposed;**

EXHIBIT H

- (e) Had a sustained finding that the officer utilized excessive force in violation of departmental policy or the Attorney General's Use of Force Policy, regardless of the type or severity of discipline imposed;
- (f) Had a sustained finding that the officer was untruthful or has demonstrated a lack of candor, regardless of the type or severity of discipline imposed;
- (g) Had a sustained finding that an officer has filed a false report or submitted a false certification in any criminal, administrative, employment, financial, or insurance matter in their professional or personal life, regardless of the type or severity of discipline imposed;
- (h) Had a sustained finding that an officer intentionally conducted an improper search, seizure or arrest, regardless of the type or severity of discipline imposed;
- (i) Had a sustained finding that an officer intentionally mishandled or destroyed evidence, regardless of the type or severity of discipline imposed;
- (j) Had a sustained finding of domestic violence, as defined in N.J.S.A. 2C:25-19, regardless of the type or severity of discipline imposed;
- (k) Resigned, retired, transferred or separated from the agency, regardless of the reason, while any internal affairs investigation or complaint was pending, and the misconduct ultimately sustained falls within categories (d) through (j) above or would have resulted in an action under categories (a) through (c) had the member not separated from the agency;⁴ or
- (l) Was charged with any indictable crime under New Jersey or an equivalent offense under federal law or the law of another jurisdiction related to the complaint.

“Sustained finding” refers to any finding where a preponderance of the evidence shows an officer violated any law, regulation, directive, guideline policy or procedure issued by the Attorney General or County Prosecutor; agency protocol; standard operating procedure, rule or training, following the last supervisory review of the incident(s) during the internal affairs process where the deadline for appeal has passed or following a ruling by a hearing officer, arbitrator, Administrative Law Judge, Civil Service Commission, or the Superior Court where the deadline for any subsequent appeal has passed. Allegations that cannot be sustained, are not credible, or have resulted in the exoneration of an employee, including where the previous finding has either been vacated, or overturned on the merits in any subsequent action, generally are not considered to be sustained findings subject to the disclosure requirements of this Policy. On the other hand, if the officer negotiates a plea or there is an administrative or civil settlement with the employer whereby the charge is dismissed, the charge would still be considered sustained, if there was sufficient credible evidence to prove the allegation, and the officer does not challenge the finding and obtain a favorable ruling by a hearing officer,

⁴ Section 6.0.1 of the IAPP requires that “All allegations of officer misconduct shall be thoroughly, objectively, and promptly investigated to their logical conclusion in conformance with this policy, regardless of whether the officer resigns or otherwise separates from the agency.”

arbitrator, Administrative Law Judge, Civil Service Commission or the Superior Court.

The reporting and public dissemination requirements of (a) through (j) above become applicable once an officer's discipline is sustained, as defined above. The reporting and public dissemination requirements of (k) and (l) above become applicable at the close of the reporting period during which they occur.

a termination, reduction in rank or grade, and/or suspension of more than five days was assessed to an agency member. This ~~The~~ synopsis of each case, required by this section, shall follow the format provided in Appendix L and shall include the identity of each officer subject to final discipline, a full explanation of the rule, regulation, policy, directive, or law violated, a brief factual summary of their ~~transgressions~~ conduct, and a statement of the sanction imposed. The synopsis shall provide sufficient detail to enable a reader who is not familiar with the case to fully understand the factual scenario that resulted in the disciplinary action. Examples of acceptable synopses may be found in Appendix L (updated November 2022). This synopsis shall not contain the identities of the complainants or any victims. Where discipline relates to domestic violence, the synopsis shall not disclose the relationship between a victim and an officer. In rare circumstances, further redactions may be necessary to protect the identity of a victim. Whenever practicable, notice shall be given to victims of domestic or sexual violence in advance of an agency's disclosure of discipline related to the incident.

The required posting to the agency's public website shall remain in place and publicly accessible.

- 9.11.3 Agencies may not, as part of a plea or settlement agreement in an internal affairs investigation or otherwise, enter into any agreement concerning the content of a synopsis subject to public disclosure under Section 9.11.2, including any agreement regarding the identities of officers subject to final discipline, summaries of ~~transgressions~~ misconduct, or statements of the sanctions imposed. No State, county, or municipal agency, law enforcement unit, or licensed law enforcement officer shall enter into any non-disclosure agreement which seeks to conceal or prevent public review of the circumstances under which the officer separated from or was terminated or fired from employment by the law enforcement unit or State, county, or municipal agency.
- 9.11.4 Whenever a law enforcement officer makes an application to the New Jersey Division of Pensions for retirement benefits, in anticipation of upcoming retirement and the receipt of a pension, both the employing law enforcement agency and the officer shall have an affirmative obligation to report to the Division of Pensions the existence of any pending internal affairs investigation, complaint or case, including those on appeal, as well as any criminal charges

against that officer.⁵

II. Revisions to *Internal Affairs Policies & Procedures* relating to supersession authority

A. *Introduction.* IAPP Section 1 is revised as follows:

- 1.0.1 The purpose of *Internal Affairs Policy & Procedures* is to assist the State's law enforcement agencies with investigating and resolving complaints of police misconduct that originate with members of the public or are generated by the supervisors, officers, or employees of a law enforcement agency. The goals of the policy are to enhance the integrity of the State's law enforcement agencies, improve the delivery of police services, and assure the people of New Jersey that complaints of police misconduct are properly addressed. **The policy applies to all sworn law enforcement employees, as well as County Prosecutors and assistant prosecutors and Assistant Attorneys General and Deputy Attorneys General in the Division of Criminal Justice.** This policy can also be more broadly applied to non-law enforcement employees.
- 1.0.5 It is important for county and municipal law enforcement agencies to recognize that, as they conduct internal affairs investigations, they do so under the general supervision of the Attorney General. The Criminal Justice Act of 1970 designates the Attorney General as the State's chief law enforcement officer. As the chief law enforcement officer of the State, the Attorney General possesses broad authority over criminal justice matters in order to secure the benefits of a uniform and efficient enforcement of the criminal law and the administration of criminal justice throughout the State. N.J.S.A. 52:17B-98. This authority includes the issuance of the IAPP, which carries the force of law. N.J.S.A. 40A:14-181. *In re Attorney General Law Enforcement Directive Nos. 2020-5 and 2020-6*, 246 N.J. 462 (2021). Subordinate law enforcement agencies, including county and municipal police forces, have a duty to cooperate with the Attorney General to improve the administration of the criminal justice system, including the efficient delivery of police services. For county and municipal law enforcement agencies, cooperation in internal affairs matters begins with strict adherence to the Attorney General's policy requirements. Furthermore, N.J.S.A. 52:17B-107 grants the Attorney General broad authority to supersede in any investigation, criminal action or proceeding, which includes internal affairs investigations and disciplinary proceedings. Therefore, whenever ~~in the opinion of the Attorney General the interests of the State will be~~ **determines that it would be appropriate to do so, the Attorney General, or his or her designee, may: (a) supersede a county prosecutor or other law enforcement agency in any investigation, criminal action or proceeding; (b) participate in any investigation, criminal action or proceeding; or (c) initiate any investigation, criminal action or proceeding. This statutory authority applies fully to any and all aspects of the internal**

⁵ See N.J.S.A. 43:1-3 ("honorable service" and the evaluation by the relevant board for same); 43:1-4 (notification to Divisions of Criminal Justice, and Pensions and Benefits, about prosecutions or convictions of members); 43:1-5 (employer must notify the board of disciplinary action taken against a member).

affairs process, and nothing in the IAPP is intended to limit or circumscribe the Attorney General's statutory authority. The Attorney General may supersede and take control of an entire law enforcement agency, may supersede in a more limited capacity and take control of the internal affairs function of an agency, or may supersede and take control of a specific case or investigation. Whenever the Attorney General determines that supersession is appropriate, the Attorney General may assume any or all of the duties, responsibilities and authority normally reserved to the chief law enforcement executive and the agency. Every member of the agency, including the chief law enforcement executive, has a duty to cooperate fully with the Attorney General during the investigation and adjudication of such matters. Within their respective counties, the County Prosecutors shall be vested with the same authority to supersede possessed by the Attorney General on a statewide basis. See N.J.S.A. 2A:158-5.

- 1.0.6 County and municipal law enforcement agencies must also recognize that they conduct internal affairs investigations, particularly those that involve allegations of criminal conduct, under the direct supervision of the County Prosecutors. County and municipal law enforcement agencies must inform the appropriate County Prosecutor when allegations of police misconduct involve potential criminal conduct. In addition, county and municipal law enforcement agencies must confer with and follow the instructions given by the County Prosecutor at all critical points in the investigative process. This is particularly true when the agency is in the process of gathering evidence, including the taking of statements, concerning allegations of criminal conduct. References to County Prosecutors throughout this document should also be understood to refer to the Office of the Attorney General wherever such an interpretation would be appropriate, **such as when the Attorney General has superseded the County Prosecutor or the law enforcement agency.**
- 1.0.9 Policy requirements that the Attorney General has determined are critical and must be implemented by every law enforcement agency include the following:

General Practices

- (a) Each agency must establish by written policy an internal affairs function.
- (b) Each agency must accept reports of officer misconduct from any person, including anonymous sources, at any time.
- (c) Each agency must thoroughly, objectively, and promptly investigate all allegations against its officers.
- (d) Each agency must notify its officers in writing of complaints made against them, unless this notification would interfere with any investigation resulting from these complaints.
- (e) Each agency must notify its officers of the outcome of any Internal Affairs investigation involving them.
- (f) Each agency must notify complainants of the outcome of their complaints.

(g) If an agency's internal affairs investigators are unable to complete an investigation within 45 days of receiving a complaint, they must notify the agency's law enforcement executive,⁶ who may take steps to ensure prompt resolution of the matter.

B. *Accepting reports alleging officer misconduct.* IAPP Section 5.1 is revised as follows:

5.1.8 Complaints against a law enforcement executive, or a member of the executive's senior management team, may originate from a member of the public or from an employee of the agency. All such complaints shall be documented and referred to the County Prosecutor for review. If the subject of the Internal Affairs investigation is the Police Chief, Police Director, Sheriff or Head of Internal Affairs, either the County Prosecutor or the Attorney General's Office shall handle the investigation. The investigation may involve any type of alleged employee misconduct, as described in Section 4.1.3, and shall be conducted pursuant to Section 6 (Investigation of Internal Complaints). **In such matters, the County Prosecutor or the Attorney General's Office shall exercise the authority of the law enforcement executive under Sections 1.0.5 and 6.3.11.** At the conclusion of the investigation, the internal affairs investigator and/or the investigating agency shall make factual findings, summarize the matter, and indicate the appropriate disposition (Sustained, Unfounded, Exonerated, or Not Sustained) as to each allegation of misconduct. *See* Sections 6.2.3, 6.3.9. In cases involving Police Chiefs, ~~final dispositions and recommendations shall be forwarded to the appropriate authority. While the appropriate authority must make the final decision regarding discipline, the County Prosecutor may make a non-binding recommendation regarding the discipline to be imposed by the appropriate authority.~~ **factual findings and preliminary notices of discipline shall be forwarded to the appropriate authority. While the appropriate authority must make the final decision regarding discipline, the County Prosecutor or the Attorney General may make a non-binding recommendation regarding the discipline to be imposed by the appropriate authority.** The County Prosecutor or the Attorney General's Office also may determine that it is appropriate to handle other internal affairs investigations of high-level officials in their discretion. **In those cases of supersession, the County Prosecutor or the Attorney General may exercise any or all of the authority of the law enforcement executive under Sections 1.0.5 and 6.3.11. Nothing in this subsection shall be construed to limit the authority of the Attorney General or the County Prosecutor to supersede in any other investigation, criminal action or proceeding.**

C. *Investigation and adjudication of serious complaints.* IAPP Section 6.3 is revised as follows:

⁶ For the purposes of this document, "law enforcement executive" refers to a law enforcement agency's highest ranking sworn law enforcement officer, typically the chief of police. In situations where the highest ranking officer is recused from a matter, then "law enforcement executive" refers to the next highest-ranking officer without a conflict. **"Law enforcement executive" also refers to the Attorney General and relevant County Prosecutor in cases of supersession, whether that supersession is in whole or in part. Even without supersession, the law enforcement executive remains subject to the direction of the Attorney General and relevant County Prosecutor.**

6.3.11 If the complaint is sustained and it is determined that formal charges should be made, the law enforcement executive, **as defined in the footnote to Section 1.09,** will direct either internal affairs or the appropriate commanding officer to prepare, sign and serve charges upon the subject officer or employee. The individual assigned shall prepare the formal notice of charges and hearing on the charging form. This form will also be served upon the officer charged in accordance with N.J.S.A. 40A:14-147. An example of a charging form is in Appendix F (Note: Civil Service jurisdictions must use forms authorized by the Civil Service Commission).

D. ***Interviewing members of the agency.*** IAPP Section 8 is revised as follows:

8.0.4 A police officer has the same duty and obligation to their employer as any other employee. Thus, where an internal affairs investigation is being conducted solely to initiate disciplinary action, the officer has a duty to cooperate during an administrative interview. The officer also must truthfully answer all questions put to him or her during the course of the investigation. Failure to fully cooperate with an administrative investigation and/or to be completely truthful during an administrative interview can form the basis for disciplinary action separate and apart from the allegations under investigation. **This duty to fully cooperate in an investigation applies to every employee of the agency, whether law enforcement officer or civilian.**

III. **Other Provisions**

- A. ***Non-enforceability by third parties.*** This Directive is issued pursuant to the Attorney General's authority to ensure the uniform and efficient enforcement of the laws and administration of criminal justice throughout the State. This Directive imposes limitations on law enforcement agencies and officials that may be more restrictive than the limitations imposed under federal and New Jersey law. Nothing in this Directive shall be construed in any way to create any substantive right that may be enforced by any third party.
- B. ***Severability.*** The provisions of this Directive shall be severable. If any phrase, clause, sentence or provision of this Directive is declared by a court of competent jurisdiction to be invalid, the validity of the remainder of the document shall not be affected.
- C. ***Effective date and questions.*** The provisions of Section I of this Directive (Revisions to IAPP relating to disclosure) shall take effect on January 1, 2023. However, the provision of Section 9.11.2 requiring more detailed synopses of major discipline cases included in each agency's annual report shall apply to all cases included in the 2022 annual report and to each annual report thereafter. The provisions of Section II of this Directive (Revisions to IAPP relating to supersession authority) shall take effect immediately. The provisions of this Directive shall remain in force and effect unless and until it is repealed, amended, or superseded by Order of the Attorney General. Any questions concerning the interpretation or implementation of this Directive shall be addressed to the Executive Director of the Office of Public Integrity and Accountability, or their designee.

- D. ***Implementation and compliance.*** Every law enforcement agency operating under the authority of the laws of the state of New Jersey shall implement or adopt policies consistent with this Directive. Any officer who knowingly violates the requirements of this Directive or the agency's policy, standing operating procedure, directive, or order, or applicable laws, shall be subject to discipline.



Matthew J. Platkin
Attorney General

Dated: November 15, 2022

ATTEST:



Thomas J. Eicher
Executive Director, Office of Public Integrity and Accountability

INTERNAL AFFAIRS POLICY & PROCEDURES

Office of the Attorney General | State of New Jersey

November 2022
Version

Table of Contents

1	Introduction.....	1
2	Fundamentals of the Disciplinary Process	6
2.1	Policy Management System	6
2.2	Rules and Regulations.....	7
2.3	Responsibility for Discipline.....	9
2.4	Fitness for Duty.....	10
3	Prevention of Misconduct	11
3.1	Recruitment and Selection	11
3.2	Training	11
3.3	Supervision	12
3.4	Early Warning and Risk Management	12
3.5	Staff Inspections	14
3.6	Community Outreach	14
4	Internal Affairs Unit or Function.....	15
4.1	Duties and Responsibilities.....	15
4.2	Selection of Personnel for the Internal Affairs Function	16
4.3	Training of Internal Affairs Personnel.....	18
5	Accepting Reports of Officer Misconduct	19
5.1	Accepting Reports Alleging Officer Misconduct	19
5.2	Immediate Suspension Pending Investigation and Disposition.....	22
6	Investigation of Internal Complaints	24
6.1	Time Limitations	24
6.2	Investigation and Adjudication of Minor Complaints.....	26
6.3	Investigation and Adjudication of Serious Complaints.....	28
6.4	Domestic Violence Incidents Involving Agency Personnel	31
7	Internal Affairs Investigation Procedures	33
7.1	Interviewing the Complainant and Civilian Witnesses	33
7.2	Reports, Records and Other Documents	34
7.3	Physical Evidence.....	35
7.4	Photographs.....	35
7.5	Physical Tests.....	36
7.6	Drug Testing.....	36
7.7	Polygraph	37
7.8	Search and Seizure.....	37
7.9	Electronic Surveillance.....	39

EXHIBIT H

7.10	Lineups.....	41
7.11	Investigation of Firearm Discharges	41
7.12	Collateral Issues	43
8	Interviewing Members of the Agency.....	45
8.1	Overview of Interviews.....	47
8.2	When the Investigation is Criminal and the Officer Is a Subject	48
8.3	When the Investigation is Criminal and the Officer Is a Witness	50
8.4	When the Investigation is Administrative and the Officer Is a Subject.....	50
8.5	When the Investigation is Administrative and the Officer Is a Witness.....	52
8.6	Interviewing Procedures.....	52
9	Internal Affairs Records	54
9.1	The Internal Affairs Report	54
9.2	Internal Affairs Index File.....	55
9.3	Investigation Files	55
9.4	Retention Schedule.....	55
9.5	Security of Internal Affairs Records	56
9.6	Confidentiality	56
9.7	Coordination with Civilian Review Boards.....	59
9.8	Coordination with Other Law Enforcement Agencies	62
9.9	Reporting to Law Enforcement Executive	63
9.10	Reporting to County Prosecutor	63
9.11	Public Reports.....	65
9.12	Personnel Records	67
10	The Responsibilities of County Prosecutors	69

Appendix

Appendix A	Sample Civilian Complaint Information Sheet
Appendix B	Internal Affairs Report Form
Appendix C	Internal Affairs Complaint Notification
Appendix D	Sample Immediate Suspension Notice
Appendix E	Sample Response Letter
Appendix F	Preliminary Notice of Disciplinary Action
Appendix G	Miranda Warning
Appendix H	Sample Use Immunity Grant
Appendix I	Witness Acknowledgement Form
Appendix J	Administrative Advisement Form
Appendix K	Internal Affairs Policy Reporting Form
Appendix L	Annual Major Discipline Reporting Form
Appendix M	Final Notice of Disciplinary Action
Appendix N	Representative Confidentiality Form
Appendix O	Sample Summary and Conclusions Report

Electronic copies of the appendices may be found online at njoag.gov/iapp.

1 Introduction

- 1.0.1 The purpose of *Internal Affairs Policy & Procedures* is to assist the State's law enforcement agencies with investigating and resolving complaints of police misconduct that originate with members of the public or are generated by the supervisors, officers, or employees of a law enforcement agency. The goals of the policy are to enhance the integrity of the State's law enforcement agencies, improve the delivery of police services, and assure the people of New Jersey that complaints of police misconduct are properly addressed. The policy applies to all sworn law enforcement employees, as well as County Prosecutors and assistant prosecutors and Assistant Attorneys General and Deputy Attorneys General in the Division of Criminal Justice. This policy can also be more broadly applied to non-law enforcement employees.
- 1.0.2 State and federal courts have emphasized the importance of the internal affairs function for protecting the constitutional rights and civil liberties of the State's residents. Case law generally requires that law enforcement agencies do three things under the internal affairs function. First, agencies must implement an internal affairs policy that provides for a meaningful and objective investigation of complaints and other evidence of police misconduct. Second, agencies must monitor and track the behavior of police officers for incidents of misconduct. Third, when officers are found to have engaged in misconduct, agencies must correct the behavior. The courts have with increasing frequency issued decisions that set minimum standards of performance for the internal affairs function.
- 1.0.3 The New Jersey Legislature also recognized the importance of the internal affairs function in 1996 with the enactment of N.J.S.A. 40A:14-181. The statute provides that:
- Every law enforcement agency shall adopt and implement guidelines which shall be consistent with the guidelines governing the "Internal Affairs Policy and Procedures" of the Police Management Manual promulgated by the Police Bureau of the Division of Criminal Justice in the Department of Law and Public Safety, and shall be consistent with any tenure or civil service laws, and shall not supersede any existing contractual agreements.
- 1.0.4 In accordance with this mandate, and recognizing that proper administration of internal affairs is a critical priority for the State's criminal justice system, Attorneys General have periodically issued updated versions of this Internal Affairs Policy & Procedures document through the Division of Criminal Justice. This most recent round of revisions reflects the need to incorporate emerging best practices into the State's internal affairs system, and to ensure that all law enforcement agencies in the State are adhering to the guidelines.
- 1.0.5 It is important for county and municipal law enforcement agencies to recognize that, as they conduct internal affairs investigations, they do so under the general supervision of the

Attorney General. The Criminal Justice Act of 1970 designates the Attorney General as the State's chief law enforcement officer. As the chief law enforcement officer of the State, the Attorney General possesses broad authority over criminal justice matters in order to secure the benefits of a uniform and efficient enforcement of the criminal law and the administration of criminal justice throughout the State. *N.J.S.A. 52:17B-98*. This authority includes the issuance of the IAPP, which carries the force of law. *N.J.S.A. 40A:14-181*. *In re Attorney General Law Enforcement Directive Nos. 2020-5 and 2020-6, 246 N.J. 462 (2021)*. Subordinate law enforcement agencies, including county and municipal police forces, have a duty to cooperate with the Attorney General to improve the administration of the criminal justice system, including the efficient delivery of police services. For county and municipal law enforcement agencies, cooperation in internal affairs matters begins with strict adherence to the Attorney General's policy requirements. Furthermore, *N.J.S.A. 52:17B-107* grants the Attorney General broad authority to supersede in any investigation, criminal action or proceeding, which includes internal affairs investigations and disciplinary proceedings. Therefore, whenever the Attorney General determines that it would be appropriate to do so, the Attorney General, or his or her designee, may: (a) supersede a county prosecutor or other law enforcement agency in any investigation, criminal action or proceeding; (b) participate in any investigation, criminal action or proceeding; or (c) initiate any investigation, criminal action or proceeding. This statutory authority applies fully to any and all aspects of the internal affairs process, and nothing in the IAPP is intended to limit or circumscribe the Attorney General's statutory authority. The Attorney General may supersede and take control of an entire law enforcement agency, may supersede in a more limited capacity and take control of the internal affairs function of an agency, or may supersede and take control of a specific case or investigation. Whenever the Attorney General determines that supersession is appropriate, the Attorney General may assume any or all of the duties, responsibilities and authority normally reserved to the chief law enforcement executive and the agency. Every member of the agency, including the chief law enforcement executive, has a duty to cooperate fully with the Attorney General during the investigation and adjudication of such matters. Within their respective counties, the County Prosecutors shall be vested with the same authority to supersede possessed by the Attorney General on a statewide basis. See *N.J.S.A. 2A:158-5*.

- 1.0.6 County and municipal law enforcement agencies must also recognize that they conduct internal affairs investigations, particularly those that involve allegations of criminal conduct, under the direct supervision of the County Prosecutors. County and municipal law enforcement agencies must inform the appropriate County Prosecutor when allegations of police misconduct involve potential criminal conduct. In addition, county and municipal law enforcement agencies must confer with and follow the instructions given by the County Prosecutor at all critical points in the investigative process. This is particularly true when the agency is in the process of gathering evidence, including the taking of statements, concerning allegations of criminal conduct. References to County Prosecutors throughout this document should also be understood to refer to the Office of the Attorney General wherever such an interpretation would be appropriate, such as when the Attorney General has superseded the County Prosecutor or the law enforcement agency.

- 1.0.7 This policy contains mandates that, at the Attorney General’s direction, every law enforcement agency must implement. In some areas, the manner in which these agencies must implement these mandates is a decision that is left to the individual law enforcement agency’s discretion. For instance, every agency must establish an internal affairs function. But certain aspects of the manner in which the mandate is satisfied are left to the discretion of the individual agencies. Individual agencies shall decide, based on the characteristics of their jurisdiction and the workload of their agency, whether the internal affairs function is a full- or part-time unit and how many officers are assigned to work in that unit.
- 1.0.8 Nothing in this document displaces other existing requirements for law enforcement agencies or officers, such as those established by Attorney General Law Enforcement Directives (“AG Directives”), including AG Directive 2018-2 (mandatory random drug testing), AG Directive 2018-3 (mandatory early warning systems), and AG Directive 2019-4 (independent investigations of use-of-force and death-in-custody incidents).
- 1.0.9 Policy requirements that the Attorney General has determined are critical and must be implemented by every law enforcement agency include the following:

General Practices

- (a) Each agency must establish by written policy an internal affairs function.
- (b) Each agency must accept reports of officer misconduct from any person, including anonymous sources, at any time.
- (c) Each agency must thoroughly, objectively, and promptly investigate all allegations against its officers.
- (d) Each agency must notify its officers in writing of complaints made against them, unless this notification would interfere with any investigation resulting from these complaints.
- (e) Each agency must notify its officers of the outcome of any Internal Affairs investigation involving them.
- (f) Each agency must notify complainants of the outcome of their complaints.
- (g) If an agency’s internal affairs investigators are unable to complete an investigation within 45 days of receiving a complaint, they must notify the agency’s law enforcement executive,¹ who may take steps to ensure prompt resolution of the matter.

Notifications to the County Prosecutor

¹ For the purposes of this document, “law enforcement executive” refers to a law enforcement agency’s highest ranking sworn law enforcement officer, typically the chief of police. In situations where the highest ranking officer is recused from a matter, then “law enforcement executive” refers to the next highest-ranking officer without a conflict. “Law enforcement executive” also refers to the Attorney General and relevant County Prosecutor in cases of supersession, whether that supersession is in whole or in part. Even without supersession, the law enforcement executive remains subject to the direction of the Attorney General and relevant County Prosecutor.

- (h) Where a preliminary investigation indicates the possibility of a criminal act on the part of the subject officer, the County Prosecutor must be notified immediately. No further action should be taken, including the interviewing of, or the filing of charges against the officer, until the County Prosecutor so directs.
- (i) Pursuant to AG Directive 2019-4, the agency must notify the County Prosecutor immediately of any use of deadly force, any use of force by an officer that results in death or serious bodily injury, or any death in custody that occurs within its jurisdiction.
- (j) In the rare cases where the agency has not made a charging decision within 180 days of receiving a complaint, the agency must notify the County Prosecutor, who may take whatever steps he or she deems appropriate, including supersession of the investigation, to ensure prompt resolution of the matter.

Recordkeeping & Data Reporting

- (k) Pursuant to AG Directive 2018-3, each agency shall establish an “early warning” protocol for monitoring and tracking the conduct of all officers.
- (l) Each agency must establish and maintain an internal affairs records system which, at a minimum, will consist of an internal affairs index system and a filing system for all documents and records.
- (m) On a quarterly basis, each agency shall submit to the County Prosecutor a report summarizing the allegations received and the investigations concluded for that period. The Attorney General shall establish a schedule for the submission of the reports.
- (n) On an annual basis, each agency shall publish on its public website a report to the public summarizing the allegations received and the investigations concluded for that period. These reports shall not contain the identities of officers or complainants.
- (o) On a periodic basis, and at least once a year, each agency shall submit to the County Prosecutor and publish on the agency’s public website a brief synopsis of all complaints where a fine or suspension of 10 days or more was assessed to an agency member. The synopsis shall not contain the identities of the officers or complainants.

Training

- (p) Each agency shall ensure that officers assigned to the internal affairs function complete training as mandated by the Division of Criminal Justice.
- (q) Each County Prosecutor shall ensure that each agency within the Prosecutor’s jurisdiction implement and maintain a system of ensuring appropriate training for all personnel involved in the agency’s internal affairs function.
- (r) The Division of Criminal Justice shall conduct periodic “train-the-trainer” courses for all persons assigned responsibility for internal affairs training within the County Prosecutor’s Offices.

- 1.0.10 The above list represents critical performance standards that every county and municipal law enforcement agency must implement. Agencies that make a vigorous commitment to the internal affairs process signal their desire to comply with the highest standards of professionalism in law enforcement. They also ensure that their officers will be accountable for their actions to both the agency and the community. Agencies that fail to make such a commitment run the risk of failing to uncover policies, practices and procedures that may undermine legitimate efforts to provide the highest quality law enforcement services.
- 1.0.11 Indifference to the internal affairs function will have a negative impact on the administration of criminal justice and the delivery of police services to New Jersey's residents. Agencies that fail to make the internal affairs function a priority can lose the respect and support of the community. The integrity of individual law enforcement agencies, and the reputation of the State's criminal justice system, can also suffer if agencies fail to identify and correct officer misconduct. In addition, law enforcement agencies that fail to implement a meaningful and objective internal affairs process may be found liable in civil lawsuits for their failure to effectively address officer misconduct. It is for these reasons that the Attorney General has issued this revised policy and directed that the State's law enforcement agencies implement the critical mandates set forth by the policy.
- 1.0.12 The internal affairs process represents the agency's response to allegations and complaints that have been brought to the agency's attention either by agency employees or members of the public. Law enforcement agencies must establish and implement a process of investigation and review that is both meaningful and objective. The process must be designed to ensure that individuals receive adequate redress for legitimate complaints of misconduct. It is not enough for law enforcement executives to adopt a policy governing the receipt, investigation and resolution of complaints of officer misconduct; rather, the policy must be implemented and executed with a commitment to the integrity of the agency and the constitutional rights of the public. Agencies with an objective and fair internal affairs process will limit their risk of civil liability.
- 1.0.13 This policy, the procedures set forth in the policy and the legal citations contained in the text are intended for implementation by all State, county and municipal law enforcement agencies. As made clear in AG Directive 2019-5 (issued concurrently with the publication of this December 2019 version of this policy), all law enforcement and prosecuting agencies operating under the authority of the laws of the State of New Jersey are directed to implement and comply with this policy, and to take any additional measures necessary to update their guidelines consistent with this policy, as required by N.J.S.A 40A:14-181.
- 1.0.14 Law enforcement agencies that fail to comply with the policies and procedures contained within this document may be subject to the same sanctions arising from any other violation of an AG Directive, including supersession of an agency's law enforcement functions by the Attorney General.

2 Fundamentals of the Disciplinary Process

- 2.0.1 Achieving the desired level of discipline within the law enforcement agency is among the most important responsibilities of the law enforcement executive. Yet, this is one of the most frequently neglected processes within many law enforcement agencies. While the word “discipline” was originally defined as instruction, teaching or training, its meaning has shifted toward a concept of control through punishment. This emphasis on control has resulted in discipline being viewed as a negative threat rather than a mechanism for remediation and improvement. Too frequently rules of conduct and disciplinary procedures are used as an end in themselves, and their purpose in reaching agency goals is forgotten. Focusing on the negative aspects of discipline diminishes officer morale and productivity.
- 2.0.2 The first step toward positive discipline is to emphasize instruction and de-emphasize control. This requires the law enforcement executive to focus on organizational practices. The executive must first define the goals and objectives of the agency's units and then announce management's expectations to guide the units toward realizing those goals. The law enforcement executive must establish a means to monitor performance and to correct improper actions.
- 2.0.3 This approach to management as it relates to discipline insures that all subordinates know and understand what must be done, why it must be done, how it must be done and when it must be done. Employees must be clearly told what constitutes satisfactory performance through performance evaluations and similar procedures. N.J.A.C. 4A:6-5.1. Supervisors and managers also must know when and how to take corrective action. To achieve this, management must establish workable procedures for documenting all expectations and advising individuals of their duties and responsibilities.

2.1 Policy Management System

- 2.1.1 The agency's policy management system serves as the foundation for effective discipline. A clearly defined policy management system is designed to move the organization toward its stated goals and set the standard for acceptable performance. The system must incorporate a mechanism for distributing rules, regulations, policies and procedures, and provide for periodic review and revision as necessary. The system should include a classification and numbering mechanism that facilitates cross-referencing where necessary.
- 2.1.2 Law enforcement agencies should have a policy management system that, at a minimum, includes:
- (a) *Rules and regulations.* Principles of behavior that set forth acceptable and unacceptable conduct. In municipal police agencies, the rules and regulations must be

issued by the appropriate authority as designated by ordinance. See N.J.S.A. 40A:14-118.

- (b) *Standard operating procedures (SOPs)*. Written statements providing specific direction for performing agency activities. Each SOP should also include the agency's policy in that area, which is a statement of agency principles that provides the basis for the development of the procedures.
- (c) *Directives or orders*. Documents detailing the performance of a specific activity or method of operation.

2.1.3 The policy management system should clearly and explicitly state management's intentions. Employees must understand what management wants to accomplish and what behavior is expected. Each category of documents in the policy management system should be issued in a distinctive, readily identifiable format.

2.2 Rules and Regulations

2.2.1 The agency's rules and regulations should form a "code of conduct" for employees. It should contain the broadly stated "do's and don'ts," without delving into specific details. For instance, an agency's rules and regulations should state that any use of force by an officer must comply with state and federal law, the Attorney General's and the County Prosecutor's policies, and the agency's S.O.Ps. The specific details of what is considered force, and what constitutes the acceptable use of force, should be found in the agency's use of force S.O.P.

2.2.2 The rules and regulations should identify general categories of misconduct or inappropriate behavior that are subject to disciplinary action. An incident of misconduct or inappropriate behavior may fall into one or more of the following categories:

- (a) *Crime*. Complaint regarding the commission of an illegal act that constitutes a violation of the criminal code including disorderly and petty disorderly persons offenses.
- (b) *Excessive force*. Complaint regarding the use or threatened use of excessive force against a person.
- (c) *Improper arrest*. Complaint that the restraint of a person's liberty was improper, unjust, or violated the person's civil rights.
- (d) *Improper entry*. Complaint that entry into a building or onto property was improper or that excessive force was used against property to gain entry.
- (e) *Improper search*. Complaint that the search of a person or property was improper, unjust, violated established agency procedures or violated the person's civil rights.
- (f) *Differential treatment*. Complaint that the taking of police action, the failure to take police action or method of police action was predicated upon irrelevant factors such as race, appearance, age or sex.
- (g) *Demeanor*. Complaint that an agency member's bearing, gestures, language or other actions were inappropriate.

- (h) *Serious rule infractions.* Complaint for conduct such as insubordination, drunkenness on duty, sleeping on duty, neglect of duty, false statements or malingering.
- (i) *Minor rule infractions.* Complaint for conduct such as untidiness, tardiness, faulty driving, or failure to follow procedures.

2.2.3 The Rules and regulations shall provide for uniform classification of the resolution of complaints as follows:

- (a) *Sustained.* A preponderance of the evidence shows an officer violated any law; regulation; directive, guideline, policy, or procedure issued by the Attorney General or County Prosecutor; agency protocol; standing operating procedure; rule; or training.
- (b) *Unfounded.* A preponderance of the evidence shows that the alleged conduct did not occur.
- (c) *Exonerated.* A preponderance of the evidence shows the alleged conduct did occur, but did not violate any law; regulation; directive, guideline, policy, or procedure issued by the Attorney General or County Prosecutor; agency protocol; standing operating procedure; rule; or training. (For example, at the conclusion of an investigation into an excessive force allegation, the agency finds that the officer used force (alleged conduct) but that the force was not excessive (alleged violation).)
- (d) *Not Sustained.* The investigation failed to disclose sufficient evidence to clearly prove or disprove the allegation.

2.2.4 In addition, the rules and regulations should set forth a schedule of possible penalties an officer might receive when discipline is imposed. The rules and regulations may incorporate a system of progressive discipline. Progressive discipline serves an important role in the process by which the agency deals with complaints of misconduct or inappropriate behavior. In lieu of discipline, counseling, re-training, enhanced supervision, oral reprimand and performance notices can be used as instructional or remedial devices to address deficiencies or inadequate performance.

2.2.5 In providing a range of penalties, the agency can use the disciplinary process to achieve the basic goals of instruction and address inappropriate behavior before minor problems escalate into major problems. At the same time, the subject officer should be made aware that repeated violations of the agency's rules will result in progressive discipline. An internal affairs complaint that has a disposition of exonerated, unfounded or not sustained should not be used to effect progressive discipline.

2.2.6 A system of progressive discipline can include the following elements:

- (a) Oral reprimand or performance notice;
- (b) Written reprimand;

- (c) Monetary fine;²
- (d) Suspension without pay;
- (e) Loss of a promotional opportunity;
- (f) Demotion; and
- (g) Discharge from employment.

- 2.2.7 The disciplinary process should be thoroughly explained in the agency's rules and regulations, including a description of the officer's rights, the identity of the hearing officer, an outline of the hearing process and, if applicable, appeal procedures available to the officers.
- 2.2.8 An agency's rules and regulations, which include the description of the disciplinary process, shall be distributed to all employees. The agency should document that this distribution has taken place. In addition, a copy of the rules and regulations and a copy of the agency's internal affairs S.O.P. shall be made available to a representative of any employee collective bargaining unit.

2.3 Responsibility for Discipline

- 2.3.1 The successful implementation of discipline requires the law enforcement executive to delegate responsibility for the disciplinary process to individual units and supervisors within the agency, and perhaps to Human Resources. Although the levels of authority may vary within an agency's chain of command, the failure to carry out disciplinary responsibilities at any level in that chain will contribute to the organization's ineffectiveness. The task of clearly delineating the authority and responsibility to initiate and impose discipline is essential to the agency's administration.
- 2.3.2 Every supervisor must establish a familiarity with the agency's disciplinary process and develop an understanding of how to implement specific disciplinary procedures when called upon to deal with inappropriate behavior or misconduct. If a supervisor fails to follow these procedures or avoids their responsibility, that supervisor is not conforming to expected behavior and must receive some sort of corrective action. Some supervisors occasionally need to be reminded that the fundamental responsibility for direction and control rests with the immediate supervisor at the operational level, not with the law enforcement executive.
- 2.3.3 To provide such direction and control, supervisory personnel must be granted the proper authority to carry out their responsibilities. To properly exercise this authority, supervisory personnel must be fully familiar with applicable agency rules and regulations. Based on the size and needs of the individual agency, supervisory personnel may be permitted to impose

² Agencies operating under Civil Service Commission statutes (N.J.S.A. 11A:2-20) and regulations may only assess a fine in lieu of a suspension where loss of the officer from duty would be "detrimental to the public health, safety or welfare" or if the assessment is restitution or is agreed to by the employee.

specific disciplinary measures (subject to approval of the law enforcement executive) including oral reprimands or performance notices, written reprimands and suspensions. In addition, the supervisor should be permitted to make written recommendations for other disciplinary actions. The extent of this authority must be clearly stated in the agency's disciplinary rules and regulations.

2.4 Fitness for Duty

- 2.4.1 One of the areas that often involves internal affairs is an employee's fitness for duty. This is not exclusively an internal affairs issue; an officer's fitness may be impacted for reasons other than misconduct. For instance, an officer may become unfit for duty because of a medical problem unrelated to the job. There are occasions, however, when internal affairs may be called upon to assist in determining whether or not an officer is fit for duty.
- 2.4.2 It is incumbent upon a law enforcement agency to ensure that its members are fit to safely and effectively perform the duties of their profession. If, for whatever reason, an officer's fitness for duty is questioned, the agency must have the officer evaluated by competent professionals to answer that question. If a law enforcement executive, commander, supervisor or internal affairs investigator has reasonable concerns about an officer's fitness for duty, they are obligated to begin the process necessary to obtain that evaluation. If the officer in question is obviously unfit for duty, the officer in authority may effect an immediate suspension pending the outcome of the evaluation and investigation. *See* Section 5.2 ("Immediate Suspension Pending Investigation and Disposition").
- 2.4.3 At the same time, law enforcement work places an extraordinary mental and emotional toll on officers, and all officers must be free to seek treatment and support that enables them to cope with those pressures. Accordingly, under no circumstances shall an officer face any sort of discrimination or adverse internal affairs consequences for the sole reason that the officer decided to seek medical or psychological treatment for a mental health concern, including depression, anxiety, post-traumatic stress disorder, or substance use disorder. All officers are encouraged to take advantage of the resources provided by the New Jersey Resiliency Program for Law Enforcement, as well as the other resources identified in AG Directive 2019-1, also known as the "Officer Resiliency Directive."

3 Prevention of Misconduct

3.0.1 Prevention is the primary means of reducing and controlling inappropriate behavior and misconduct. Although disciplinary actions are properly imposed on officers who engage in wrongdoing, they have limited utility if they shield or obscure organizational conditions that permit the abuses to occur. Inadequate training and a lack of appropriate guidance too often are factors that contribute to inappropriate behavior and misconduct. An agency should make every effort to eliminate the organizational conditions that may foster, permit or encourage an employee's inappropriate behavior. In the furtherance of this objective, special emphasis should be placed on the following areas.

3.1 Recruitment and Selection

- 3.1.1 Selecting and appointing the highest quality individuals to serve as law enforcement officers must be a priority of every law enforcement agency. During the selection process, written tests, psychological tests, background investigations and individual interviews should be completed by each candidate in an attempt to identify those who would be best suited for law enforcement employment. Background investigations must include a review of the prior internal affairs files of any candidate.
- 3.1.2 New Jersey law enforcement agencies are required by this policy to disclose the entire internal affairs file of a candidate to prospective law enforcement employers. *See* Section 9 ("Internal Affairs Records"). Candidates with out-of-state law enforcement experience must sign waivers of confidentiality regarding their internal affairs files so that they may be reviewed by the prospective employer, where legally permissible. These procedures may also be used for promotional testing, and assignment to especially sensitive responsibilities or those that pose the greatest opportunities for abuse or wrongdoing. Each agency should establish policies and procedures for recruitment, oral and written examinations, selection and the promotional process.

3.2 Training

- 3.2.1 Basic and in-service training for law enforcement officers should emphasize the sworn obligation of those officers to uphold the law and ensure public safety. Police ethics should be a major component in the training curricula. In addition, the rules, regulations, policies and procedures of the agency, including the disciplinary process, should be stressed. There must also be a process to advise veteran officers of any new statutory requirements or significant procedural changes.
- 3.2.2 An agency's supervisory personnel should always consider the need for training when officers engage in inappropriate behavior or misconduct. The question should be, "Could training have prevented this behavior and can training prevent it from happening in the

future?” Perhaps a particular officer or group of officers needs a refresher course in a certain subject. In addition, changes in the law, the agency or even within the community may trigger the need for a type of training never before given to the officer or agency. Training in this sense can be anything from informal counseling of an officer about a particular policy or procedure to formal agency-wide training. The agency may also take advantage of training offered by other agencies, including police academies, the County Prosecutors, the Division of Criminal Justice, other public or private entities or web-based programs.

3.3 Supervision

- 3.3.1 Proper supervision is critical to the discipline and management of a law enforcement agency. To maximize their effectiveness, agency supervisors should receive appropriate supervisory training as close as possible to the time of their promotion. Emphasis should be placed on anticipating problems among officers before they result in improper performance or conduct. Supervisors are expected to recognize potentially troublesome officers, identify training needs of officers and provide professional support in a fair and consistent manner.

3.4 Early Warning and Risk Management

- 3.4.1 Although the internal affairs process is frequently triggered by the filing of a civilian complaint, law enforcement agencies must also proactively work to detect troubling patterns in police conduct before that conduct escalates into more serious internal affairs issues.
- 3.4.2 To enhance its integrity, provide an optimal level of service to the community and reduce its exposure to civil liability, every law enforcement agency should establish procedures for dealing with problem employees. Law enforcement agencies have a duty to monitor their employees' behavior, and establish mechanisms that provide the internal affairs function and the law enforcement executive with the ability to track the complaint records of individual officers and identify those officers with a disproportionate number of complaints against them. Law enforcement agencies must utilize the information developed by these mechanisms to prevent individual officers from engaging in conduct or behavior that violates the constitutional liberties every member of the community enjoys. It also is expected that law enforcement agencies will utilize the information to prevent development of patterns, practices or trends of inappropriate behavior or conduct.
- 3.4.3 Per AG Directive 2018-3 v2.0, also known as the “Early Warning Systems Directive,” law enforcement agencies are required to implement a specific mechanism to track employee behavior, commonly known as an "early warning system." An early warning system should be designed to identify any pattern or practice by any member of the agency that warrants intervention or remediation before it develops into a more serious problem.

- 3.4.4 Any mechanism or procedure a law enforcement agency establishes to monitor and track the behavior and performance of individual police officers must have as two of its linchpins quality supervision and an objective and impartial internal affairs process. Supervisors who have sufficient time and resources to properly perform their duties should be able to timely identify officers with performance and misconduct issues. Supervisors can react to problems they identify through direction, counseling and effective performance evaluations. Proper training of agency supervisors is critical to the discipline and performance of law enforcement officers. Emphasis should be placed on anticipating problems among officers before they result in improper performance or misconduct. Supervisors are expected to recognize potentially troublesome officers, identify training needs of officers and provide professional support in a consistent and fair manner.
- 3.4.5 Many different measures of officer performance can be regularly examined for any of these troubling patterns or practices. Law enforcement executives shall determine what performance measures are appropriate for the communities they serve, but at a minimum an agency must track the following performance indicators:
- (a) Internal affairs complaints against the officer, whether initiated by another officer or by a member of the public;
 - (b) Civil actions filed against the officer;
 - (c) Criminal investigations of or criminal complaints against the officer;
 - (d) Any use of force by the officer that is formally determined or adjudicated (for example, by internal affairs or a grand jury) to have been excessive, unjustified, or unreasonable;
 - (e) Domestic violence investigations in which the officer is an alleged subject;
 - (f) An arrest of the officer, including on a driving under the influence charge;
 - (g) Sexual harassment claims against the officer;
 - (h) Vehicular collisions involving the officer that are formally determined to have been the fault of the officer;
 - (i) A positive drug test by the officer;
 - (j) Cases or arrests by the officer that are rejected or dismissed by a court;
 - (k) Cases in which evidence obtained by an officer is suppressed by a court;
 - (l) Insubordination by the officer;
 - (m) Neglect of duty by the officer;
 - (n) Unexcused absences by the officer;
 - (o) Any other indicators, as determined by the agency's chief executive.
- 3.4.6 This information should be maintained to facilitate analysis as to individual members, supervisors, squads, districts and assignments, and the agency as a whole. Depending on the size of the agency and the complexity of this data, computerized software that utilizes mathematical algorithms may be best suited to assist in revealing the presence of particular patterns of incidents. However, not all law enforcement agencies have the computer capabilities for such an in-depth screening process. At a minimum, every law enforcement agency should establish a protocol for tracking employee behavior and

reviewing all internal affairs complaints made against its officers, regardless of outcome, for evidence of a pattern or practice of inappropriate or unconstitutional conduct.

- 3.4.7 For further information regarding the Attorney General's requirements for early warning systems, agencies should consult the Early Warning Systems Directive.

3.5 Staff Inspections

- 3.5.1 While the primary responsibility for enforcing agency policies rests with the line supervisors, management cannot rely solely on those supervisors for detecting violations. Administrators should establish a mechanism to determine whether an agency's policies and procedures are being properly implemented. It is necessary for management to know if behavior is, in fact, consistent with the agency's rules and regulations, policies and procedures. The task of detecting such defects should be delegated to an inspection unit or function.
- 3.5.2 Large agencies might establish an inspection unit operating directly out of the office of the law enforcement executive. Small and medium size agencies can successfully accomplish this function by periodically assigning the inspection task to selected unit supervisors. Individuals so assigned must be of unquestioned integrity and hold sufficient rank to achieve the objectives of the inspection function.
- 3.5.3 The inspection function should determine by actual on-site inspection whether personnel are properly implementing management's policies at the operational level. This function is also responsible for reviewing and evaluating procedures. In addition, the inspection unit or function should evaluate the material resources of the agency and the utilization of those resources. This includes, but is not limited to, motor vehicles, communications equipment, computers, office machinery and supplies. The inspection function or unit should report any deficiencies to the law enforcement executive, and recommend any possible solutions and improvements.

3.6 Community Outreach

- 3.6.1 Commanding officers should strive to remain informed about and sensitive to the community's needs and problems. Regularly scheduled meetings to discuss community concerns should be held with public advisory councils, religious groups, schools, businesses and other community leaders. These meetings help commanding officers identify potential crisis situations and keep channels of communication open between the agency and the community. The disciplinary process should be publicized and clearly explained in these forums.

4 Internal Affairs Unit or Function

4.0.1 Every law enforcement agency shall establish, by written policy, an internal affairs unit or function. Depending upon the need, the internal affairs function can be full- or part-time. In either case, this requires the establishment of a unit or the clear allocation of responsibility and resources for executing the internal affairs function. The unit will consist of agency personnel assigned to internal affairs by the law enforcement executive. Personnel assigned to the internal affairs function serve at the pleasure of and are directly responsible to the law enforcement executive or the designated internal affairs supervisor.

4.1 Duties and Responsibilities

4.1.1 The purpose of the internal affairs function is to establish a mechanism for the receipt, investigation, and resolution of officer misconduct complaints. The goal of internal affairs is to ensure that the integrity of the agency is maintained through a system of internal discipline where an objective and impartial investigation and review assure fairness and justice.

4.1.2 The internal affairs function or officer will investigate alleged misconduct by members of the agency and review the adjudication of minor complaints handled by supervisors. In addition, internal affairs shall receive notice of:

- (a) Any firearm discharge by agency personnel, whether on-duty or off-duty, unless the discharge occurred during the course of: (1) a law enforcement training exercise; (2) routine target practice at a firing range; (3) a lawful animal hunt; or (4) the humane killing of an injured animal;
- (b) Any discharge of an agency-owned firearm by anyone other than agency personnel;
- (c) Any use of force by agency personnel that results in injury to any person,
- (d) Any vehicular pursuit involving agency personnel; and
- (e) Any collision involving agency-owned vehicles.

Upon receiving notification, the agency's internal affairs function shall document the incident and determine whether additional investigation is necessary.

4.1.3 An internal affairs function also has an obligation to investigate or review any allegation of employee misconduct that is a potential violation of an AG Directive or Guideline, a Directive issued by a County Prosecutor in that jurisdiction, the agency's rules and regulations, or any allegation that indicates the employee is unable, unwilling or unfit to perform their duties. The obligation to investigate includes not only acts of misconduct that are alleged to have occurred while the subject officer was on-duty, but also acts of misconduct that are alleged to have occurred outside the employing agency's jurisdiction or while the subject officer was off-duty.

- 4.1.4 An internal affairs function may conduct an internal investigation on its own initiative or upon notice to or at the direction of the law enforcement executive or the internal affairs supervisor. Internal affairs may refer investigations to the employee's supervisor for action as permitted by agency policy and procedures.
- 4.1.5 Internal affairs investigations must be considered as important to the agency as any criminal investigation. Members of the internal affairs function therefore should have the authority to interview any member of the agency and to review records and reports of the agency relative to their assignment. In addition, the agency's personnel should be instructed that the internal affairs function acts at the behest of the law enforcement executive in all internal affairs investigations. The agency's personnel should be further instructed that during an internal affairs investigation, every member of the agency, regardless of rank, shall treat an order or a request from a member of the internal affairs function as if the order or request came directly from the law enforcement executive.
- 4.1.6 The internal affairs function shall maintain a comprehensive central file on all complaints received, whether investigated by internal affairs or assigned to the officer's supervisors for investigation and disposition. In addition, internal affairs should establish protocols for tracking all complaints received by the agency and the conduct of all officers. The protocols must include criteria for evaluating the number of complaints received by the agency and the number of complaints filed against individual officers.

4.2 Selection of Personnel for the Internal Affairs Function

- 4.2.1 Personnel assigned to conduct internal affairs investigations should be energetic, resourceful and committed to the agency's mission and the internal affairs function. They must display a high degree of perseverance and initiative. The internal affairs investigator must maintain an appropriate balance between professional commitment and personal and group loyalties. Internal affairs personnel must be of unquestioned integrity and possess the moral stamina to perform unpopular tasks. It is important that these investigators possess the ability to withstand the rigors and tensions associated with complex investigations, social pressures and long hours of work. The investigator must possess the ability to be tactful when dealing with members of the agency and the community. It is recommended that personnel assigned to the internal affairs function provide the agency with the opportunity to access all segments of the community. For example, if a particular community has a significant proportion of the population that speaks a foreign language, the law enforcement executive may wish to consider assigning an officer to the internal affairs function who speaks that language.
- 4.2.2 Law enforcement executives should assign personnel to internal affairs who have sufficient experience and rank to effectively handle sensitive investigations that may include investigations of supervising officers. In addition, law enforcement executives should

encourage (but need not require) officers to complete a tour in the agency's internal affairs function prior to promotion to a leadership position in the agency.

- 4.2.3 Investigations of officer misconduct may proceed in one of two ways. An investigation may be conducted for the purpose of imposing a disciplinary sanction or initiating a criminal prosecution. The distinction between the two is important because each type of investigation has differing legal requirements. Consequently, it is important that the internal affairs investigator be familiar with proper investigative techniques and legal standards for each type of proceeding. It is essential that experienced investigators be assigned to internal affairs investigations. Each investigator must be skilled in interviews and interrogation, observation, surveillance and report writing.
- 4.2.4 Internal affairs investigators should be trained not only in the elements of criminal law, court procedures, rules of evidence and use of technical equipment, but also in the disciplinary and administrative law process. Initially upon assignment, and on an ongoing basis, these investigators should receive training in internal affairs and disciplinary procedures, including training required by the Division of Criminal Justice.
- 4.2.5 Law enforcement executives shall not assign to the internal affairs function any person responsible for representing members of a collective bargaining unit. The conflict of interest arising from such an assignment would be detrimental to the internal affairs function, the subject officer, the person so assigned, the bargaining unit and the agency as a whole. In order to maintain the integrity and confidentiality of investigations, any witness and representative present at an interview shall be required to sign and adhere to a non-disclosure agreement. Witnesses shall be required to sign the form attached as Appendix I. Representatives shall be required to sign the form attached as Appendix N.
- 4.2.6 Investigators must recuse from cases where they have a conflict of interest that may prevent them from being impartial in the investigation of a subject officer. One example is if the investigator and the officer are family members or close personal friends. Additionally, agencies should ensure, if feasible, that the initial investigator of a subject officer is not an officer who is a supervisor within the subject officer's chain of command. In rare cases, this requirement may prove difficult to fulfill because an agency is particularly small.
- 4.2.7 Under no circumstances may a law enforcement agency's internal affairs investigatory function be contracted or delegated to a private entity. Instead, when necessary, law enforcement agencies may request that an internal affairs complaint be investigated directly by the County Prosecutor, who shall determine whether to investigate the matter, refer the matter to the Internal Affairs function of another law enforcement entity, or return the matter to the originating law enforcement agency if the County Prosecutor determines that the original agency can appropriately investigate the matter.

- 4.2.8 Where appropriate, an agency may enter into an agreement with another law enforcement agency to conduct an Internal Affairs investigation, and smaller law enforcement agencies that consistently have difficulty carrying out the internal affairs function are encouraged to explore regional internal affairs arrangements in concert with other law enforcement agencies.
- 4.2.9 Nothing in this policy shall prevent a law enforcement agency from retaining a qualified private individual to serve as a hearing officer or an expert witness.

4.3 Training of Internal Affairs Personnel

- 4.3.1 Each agency shall ensure that officers assigned to the internal affairs function complete training as mandated by the Division of Criminal Justice.
- 4.3.2 Each County Prosecutor shall ensure that each agency within the Prosecutor's jurisdiction implement and maintain a system of ensuring appropriate training for all personnel involved in the agency's internal affairs function.
- 4.3.3 The Division of Criminal Justice shall conduct periodic "train-the-trainer" courses for all persons assigned responsibility for internal affairs training within the County Prosecutor's Offices. These trainers shall be responsible to train the internal affairs officers of agencies within their jurisdiction of the County Prosecutor.

5 Accepting Reports of Officer Misconduct

5.0.1 Every law enforcement agency shall establish a policy providing that any complaint from a member of the public is readily accepted and fully and promptly investigated. Allegations of officer misconduct or complaints of inappropriate behavior can alert the law enforcement executive to problems that require disciplinary action or identify the need for remedial training. In addition, executives must also recognize that complaints from the public provide them with an invaluable source of feedback. Such complaints, whether substantiated or not, increase the executive's awareness of both actual or potential problems and the community's perceptions and attitudes about police practices and procedures. The executive should use complaints from the public as one means of determining whether the agency is falling short of its intended goals.

5.1 Accepting Reports Alleging Officer Misconduct

5.1.1 All complaints of officer misconduct shall be accepted from all persons who wish to file a complaint, regardless of the hour or day of the week. This includes reports from anonymous sources, juveniles, undocumented immigrants, and persons under arrest or in custody. Internal affairs personnel, if available, should accept complaints. If internal affairs personnel are not available, supervisory personnel should accept reports of officer misconduct, and if no supervisory personnel are available, complaints should be accepted by any law enforcement officer. At no time should a complainant be told to return at a later time to file their report.

5.1.2 Members of the public should be encouraged to submit their complaints as soon after the incident as possible. If the complainant cannot personally appear at the agency to file the complaint, a member of the agency, preferably a member of the internal affairs function, should visit the complainant at their home, place of business or other location if necessary to complete the report. Law enforcement agencies are encouraged to establish systems to enable complaints to be accepted by telephone or by email if a complainant does not wish to be interviewed in person or wishes to remain anonymous. Under no circumstances shall it be necessary for a complainant to make a sworn statement to initiate the internal affairs process. Furthermore, every police agency shall accept and investigate anonymous complaints.

5.1.3 The internal affairs investigator, supervisor or other officer receiving the complaint will explain the agency's disciplinary procedures to the person making the complaint. The officer shall advise the complainant that he or she will be kept informed of the status of the complaint, if requested, and its ultimate disposition. To best accomplish this, the agency shall prepare a fact sheet or brochure that includes information on the agency's internal affairs process and what role the complainant can expect to play. If feasible, the fact sheet or brochure should be provided to the complainant at the time the complaint is made. A sample fact sheet is found in Appendix A.

- 5.1.4 The supervisor or other officer receiving the complaint shall complete the appropriate internal affairs report form. The report form should have adequate instructions for proper completion. Attached to this directive as Appendix B is a standardized statewide public complaint form that will be available in multiple languages in electronic format on the Attorney General's website. Agencies shall make available to complainants versions of the standardized form in all of those languages in their offices and, if the agency has a website, online.
- 5.1.5 Upon receipt of an internal affairs complaint, the internal affairs investigator can advise the complainant of the importance of providing accurate and truthful information. However, when providing such advice, internal affairs investigators must remember that it is important to balance the need for receiving complaints of officer misconduct against the danger of discouraging members of the public from coming forward with their complaints. Therefore, any language that would serve to dissuade or intimidate a member of the public from coming forward should be avoided. Accordingly, at no point during the initial intake of a complaint should any officer affirmatively warn a complainant that consequences could potentially result from making misrepresentations or a false report. This does not preclude officers from explaining the potential consequences of false reports to complainants if the officer is specifically asked about this.
- 5.1.6 Although there are complaints against officers that are legitimate and based upon facts, others are contrived and maliciously pursued, often with the intent to mitigate or neutralize the officer's legal action taken against the complainant. The law enforcement agency must fully and impartially investigate the former, while taking a strong stand to minimize the latter. The law enforcement agency should notify the County Prosecutor in any case where a complainant has fabricated or intentionally misrepresented material facts to initiate a complaint of officer misconduct.
- 5.1.7 Anonymous reports of improper conduct by an officer shall be accepted. All efforts will be made to encourage full cooperation by the complainant. The investigation of anonymous complaints can be troublesome. However, accurate information about officer wrongdoing may be provided by someone who, for any number of reasons, does not want to be identified. Therefore, an anonymous report must be accepted and investigated as fully as possible. In the event an agency receives an anonymous complaint, the officer accepting it should complete as much of the internal affairs report form as he or she can given the information received.
- 5.1.8 Complaints against a law enforcement executive, or a member of the executive's senior management team, may originate from a member of the public or from an employee of the agency. All such complaints shall be documented and referred to the County Prosecutor for review. If the subject of the Internal Affairs investigation is the Police Chief, Police Director, Sheriff or Head of Internal Affairs, either the County Prosecutor or the Attorney General's Office shall handle the investigation. The investigation may involve any type of alleged employee misconduct, as described in Section 4.1.3, and shall be conducted pursuant to

Section 6 (Investigation of Internal Complaints). In such matters, the County Prosecutor or the Attorney General's Office shall exercise the authority of the law enforcement executive under Sections 1.0.5 and 6.3.11. At the conclusion of the investigation, the internal affairs investigator and/or the investigating agency shall make factual findings, summarize the matter, and indicate the appropriate disposition (Sustained, Unfounded, Exonerated, or Not Sustained) as to each allegation of misconduct. *See* Sections 6.2.3 and 6.3.9. In cases involving Police Chiefs, factual findings and preliminary notices of discipline shall be forwarded to the appropriate authority. While the appropriate authority must make the final decision regarding discipline, the County Prosecutor or the Attorney General may make a non-binding recommendation regarding the discipline to be imposed by the appropriate authority. The County Prosecutor or the Attorney General's Office also may determine that it is appropriate to handle other internal affairs investigations in their discretion. In those cases of supersession, the County Prosecutor or the Attorney General may exercise any or all of the authority of the law enforcement executive under Sections 1.0.5 and 6.3.11. Nothing in this subsection shall be construed to limit the authority of the Attorney General or the County Prosecutor to supersede in any other investigation, criminal action or proceeding.

- 5.1.9 Complaints may also be received from other law enforcement agencies, such as neighboring municipal police agencies, the County Prosecutors, the Division of Criminal Justice or federal law enforcement agencies. Those complaints should be forwarded to internal affairs for immediate investigation. In some jurisdictions, law enforcement agencies may be subject to the oversight of a civilian review board authorized to accept complaints directly from members of the public. If a civilian review board refers a complaint to a law enforcement agency, then those complaints should be forwarded to internal affairs for immediate investigation.
- 5.1.10 If a person comes to a particular law enforcement agency to make a complaint about a member of another law enforcement agency, he or she should be referred to that agency. The complainant should also be advised that if they have fear or concerns about making the complaint directly to the agency, they may instead file a complaint with the County Prosecutor or the Attorney General's Office.
- 5.1.11 All complaints should be investigated if the complaint contains sufficient factual information to warrant an investigation. In cases where the officer's identity is unknown, the internal affairs investigator should use all available means to determine proper identification. Where civil litigation has been filed and the complainant is a party to or a principal witness in the litigation, the internal affairs investigator shall consult with legal counsel to determine whether an investigation is appropriate or warranted.
- 5.1.12 In some cases, a complaint is based on a misunderstanding of accepted law enforcement practices or the officer's duties. Supervisors should be authorized to informally resolve minor complaints, whenever possible, at the time the report is made. If the complainant is not satisfied with such a resolution, the complaint should be forwarded to internal affairs

for further action as warranted. The process of informally resolving internal affairs complaints requires the exercise of discretion by supervisors. The proper exercise of discretion in such matters cannot be codified.

- 5.1.13 Even if the complainant is satisfied with the informal resolution, the process should be recorded on an internal affairs report form. Regardless of the means of resolution, the integrity of the internal affairs process, particularly the receipt of complaints, demands that complaints and inquiries from any member of the public be uniformly documented for future reference and tracking. The form should indicate that the matter was resolved to the satisfaction of the complainant and sent to internal affairs for review and filing. The internal affairs supervisor should periodically audit those reports indicating that the complaint was informally resolved to ensure that the agency's supervisors are properly implementing their authority to resolve complaints from members of the public.
- 5.1.14 Once a complaint has been received, the subject officer shall be notified in writing that a report has been made and that an investigation will commence. Such notification shall not include the name of the complainant. This notification is not necessary if doing so would impede the investigation. An example of a notification form is found in Appendix C.

5.2 Immediate Suspension Pending Investigation and Disposition

- 5.2.1 In certain serious cases of officer misconduct, the agency may need to suspend the subject officer pending the outcome of the investigation and subsequent administrative or criminal charges. To effect an immediate suspension pending the investigation, at least one of the following conditions must be met:
- (a) The employee is unfit for duty;
 - (b) The employee is a hazard to any person if permitted to remain on the job;
 - (c) An immediate suspension is necessary to maintain safety, health, order, or effective direction of public services;
 - (d) The employee has been formally charged with a first, second or third degree crime; or
 - (e) The employee has been formally charged with a first, second, third or fourth degree crime or a disorderly persons offense committed while on duty, or the act touches upon their employment.
- 5.2.2 Before the immediate suspension of an officer, the law enforcement executive or authorized person should determine which of those criteria apply. The decision whether or not to continue to pay an officer who has been suspended pending the outcome of the investigation rests with the law enforcement executive and appropriate authority, who should carefully consider all ramifications of these choices.

5.2.3 It should be clear that the suspension of an officer before completing an investigation or disposing of a case is a serious matter. Such suspensions may be immediately necessary, as in the case of an officer reporting for work under the influence of alcohol. In other cases, however, a suspension need not be immediate but rather would follow a preliminary investigation into the matter that indicates that one of the above criteria has been met. In any case, suspension prior to disposing of the case must be clearly documented and justified. At the time of the suspension, the individual shall be provided with a written statement of the reasons the action has been taken. (A sample form is found in Appendix D). In the event of a refusal by the individual to accept that written statement, a copy shall be provided to the individual's collective bargaining representative as soon as possible. If a supervisor or commander authorized to do so imposes an immediate suspension, the law enforcement executive must be advised without delay. He or she will then determine the status of the suspension given the facts of the case in light of the above criteria. In no case shall an immediate suspension be used as a punitive measure.

6 Investigation of Internal Complaints

6.0.1 All allegations of officer misconduct shall be thoroughly, objectively, and promptly investigated to their logical conclusion in conformance with this policy, regardless of whether the officer resigns or otherwise separates from the agency.

6.1 Time Limitations

6.1.1 It is vitally important that agencies complete internal affairs investigations in a prompt manner. Long, unnecessary delays do not simply create additional uncertainty for the subject officer; they can also threaten the integrity of an investigation and the trust of the community.

6.1.2 Most internal affairs complaints are straightforward, and most of these routine complaints can be investigated and resolved quickly. In many cases, an internal affairs investigation will take no more than 45 days from the receipt of the complaint to the filing of disciplinary charges. The simpler the case, the quicker the inquiry should be completed.

6.1.3 In more complex matters, however, investigators sometimes need additional time to collect evidence, interview witnesses, or take other necessary investigative steps. In addition, when an officer's alleged conduct gives rise to a criminal investigation, ordinarily, internal affairs investigators should stay their own inquiry pending the resolution of the criminal matter.

6.1.4 If investigators are unable to complete an internal affairs investigation within 45 days of receiving a complaint, they must notify the agency's law enforcement executive on or about the 45th day.³ In such situations, the law enforcement executive should seek to identify the reasons for the extended investigation and whether the internal affairs function requires additional resources or oversight to complete the inquiry in a prompt manner. In addition, the law enforcement executive should ensure compliance with the "45-day rule" established by N.J.S.A. 40A:14-147, which requires that certain disciplinary charges be filed within 45 days of the date the person filing the charge obtained "sufficient information" to do so.

6.1.5 Investigators are required to provide further notice to the law enforcement executive every additional 45 days that the internal affairs investigation remains open (*i.e.*, on or about the 90th, 135th, and 180th days from the receipt of the complaint), and the law enforcement executive should exercise increasing scrutiny of the investigators' work the longer the case remains open.

³ The purpose of this notice is to facilitate prompt resolution of internal affairs investigations, not to create an impediment to discipline in cases that take longer to resolve.

6.1.6 In the rare cases where the agency has not filed disciplinary charges (or decided not to do so) within 180 days of receipt of the complaint, the agency must notify the County Prosecutor. The County Prosecutor, or their designee, shall investigate the reasons for the extended investigation and shall also examine whether the agency's internal affairs function faces any systemic issues that require additional resources or oversight. The County Prosecutor may take any steps necessary to ensure prompt resolution of the pending matter, including supersession of the agency's investigation. The agency shall provide further notice to the County Prosecutor every additional 90 days that the investigation remains open (*i.e.*, on or about the 270th and 360th days from the receipt of the complaint). The chart in Figure 1 provides an overview of that information.

Figure 1.

Timing of Internal Affairs Investigations	
Length of investigation from receipt of complaint	Special notice required
1 to 44 days ("Routine")	None. Case resolved in the ordinary course.
45 days ("More complex")	Law enforcement executive
90 days	Law enforcement executive
135 days	Law enforcement executive
180 days ("Rare cases")	County Prosecutor Law enforcement executive
225 days	Law enforcement executive
270 days	County Prosecutor Law enforcement executive

6.1.7 The law enforcement executive should consult with counsel about compliance with the 45-day rule, which includes several exceptions and tolling provisions. For example, the "45-day rule" does not apply to internal affairs investigations alleging incapacity. In addition, members of the public are not required to make their complaint within 45 days of the incident. But once the agency has received the individual's complaint, the 45-day rule applies.

6.1.8 Commencing a criminal investigation into the subject matter of an internal affairs complaint will suspend the 45-day rule pending the disposition of that investigation; such suspension remains until the disposition of the criminal investigation. (Similarly, a criminal investigation will toll the notice requirements established in Sections 6.1.4 – 6.1.6.) Upon disposition of the criminal investigation, agencies will once again be bound by the 45-day

rule, with the 45-day period starting anew upon termination of the criminal investigation. Therefore, in the event a County Prosecutor has initiated a criminal investigation of an internal affairs matter, the internal affairs function must remain in contact with the County Prosecutor on a regular basis to determine the investigation's progress. Where a County Prosecutor has decided to terminate a criminal investigation and return the matter to the agency for appropriate disciplinary action, the internal affairs investigator and County Prosecutor must be able to document the date on which the County Prosecutor disposed of the criminal investigation.

- 6.1.9 When an agency can conduct an internal affairs investigation and file disciplinary charges within 45 days of the receipt of a complaint, the 45-day rule does not become an issue. In many instances this will be possible. However, if an agency cannot do so, the burden is on the investigator and ultimately the agency to identify the point at which "sufficient information" was developed to initiate disciplinary action. Therefore, it is important that a detailed chronology be maintained of each investigation so that critical actions and decisions are documented.
- 6.1.10 Along these same lines, it is important that there is no unreasonable delay between the conclusion of the investigation by the assigned investigator and the decision to file charges by the person who has that responsibility. Although the 45-day clock begins at the time the person who has the responsibility to file charges has sufficient information, an agency would have a difficult time justifying an extensive bureaucratic delay once any member of that agency has established sufficient information. The need to eliminate bureaucratic delay is one of the reasons that the internal affairs function should be closely aligned with the office of the law enforcement executive in the agency's organizational structure.
- 6.1.11 In addition, all agencies must comply with the time limitations established by N.J.S.A. 40A:14-200 *et seq.* regarding the imposition of discipline. Lastly, agencies operating under the purview of Title 11A must comply with the deadlines for disciplinary action imposed by Civil Service Commission Rules. *See* N.J.A.C. 4A:1-1.1, *et seq.*

6.2 Investigation and Adjudication of Minor Complaints

- 6.2.1 Following the principle that the primary goal of internal affairs and discipline is to correct problems and improve performance, management in the subject officer's chain of command should handle relatively minor complaints. Complaints of demeanor and minor rule infractions should be forwarded to the commanding officer of the subject officer's unit because it is often difficult for an immediate supervisor to objectively investigate a subordinate. In addition, that arrangement might obscure the possibility that part of the inappropriate conduct was the result of poor supervision by the immediate supervisor. While the structure of each law enforcement agency is different, it is recommended that minor complaints be assigned to and handled by a commanding officer at least one step

removed from the officer's immediate supervisor. This includes complaints from within the agency. Often Human Resources may need to be notified and involved.

- 6.2.2 Supervisors investigating minor complaints of inappropriate behavior must strive to conduct a thorough and objective investigation without violating the rights of the subject officer or any other law enforcement officer. Accordingly, all officers who may be called upon to do an internal investigation must be thoroughly familiar with the agency's entire internal affairs policy, including the protection of the subject officer's rights and the procedures for properly investigating internal complaints.
- 6.2.3 The investigator should interview the complainant, all witnesses and the subject officer, and review relevant reports and documents, gather evidence and conduct any other investigation as appropriate. The investigator should then submit a report to the law enforcement executive or appropriate supervisor summarizing the matter and indicating the appropriate disposition. Possible dispositions include:
- (a) *Sustained*. A preponderance of the evidence shows an officer violated any law; regulation; directive, guideline, policy, or procedure issued by the Attorney General or County Prosecutor; agency protocol; standard operating procedure; rule; or training.
 - (b) *Unfounded*. A preponderance of the evidence shows that the alleged conduct did not occur.
 - (c) *Exonerated*. A preponderance of the evidence shows the alleged conduct did occur, but did not violate any law; regulation; directive, guideline, policy, or procedure issued by the Attorney General or County Prosecutor; agency protocol; standard operating procedure; rule; or training. (For example, at the conclusion of an investigation into an excessive force allegation, the agency finds that the officer used force (alleged conduct) but that the force was not excessive (alleged violation).)
 - (d) *Not Sustained*. The investigation failed to disclose sufficient evidence to clearly prove or disprove the allegation.
- 6.2.4 If the investigator determines that the complaint is unfounded, exonerated or not sustained, the investigative report is to be forwarded to internal affairs for review and entry in the index file and filing. The subject officer shall be notified in writing of the investigation's outcome.
- 6.2.5 If the complaint is sustained, the superior officer so authorized should determine the appropriate disciplinary action. Typical disciplinary actions for minor infractions include performance notices, oral reprimands or written reprimands. The superior officer shall complete the appropriate disciplinary document and provide a copy of that document to the officer being disciplined. A copy of the disciplinary document shall be forwarded to the law enforcement executive or appropriate supervisor for review, placed in the officer's personnel file and sent to internal affairs for entry into the index file and filing.

- 6.2.6 Each agency should establish its own protocol for reviewing and purging performance notices and oral reprimands from an employee's personnel file. Written reprimands should remain permanently in the employee's personnel file.
- 6.2.7 A letter shall be sent to the complainant explaining the outcome of the investigation. If the allegation was unfounded or the officer was exonerated, this conclusion shall be stated and defined for the civilian complainant. If the allegation was not sustained, the letter shall provide the complainant with a brief explanation why the complaint was not sustained (e.g., insufficient proof, lack of witnesses, etc.). If the allegation was sustained and discipline was imposed, the letter shall state that the allegation was sustained and that the officer has been disciplined according to agency procedures. See Appendix E.

6.3 Investigation and Adjudication of Serious Complaints

- 6.3.1 All serious complaints shall be forwarded to the internal affairs function. This includes complaints of criminal activity, excessive force, improper or unjust arrest, improper entry, improper or unjustified search, differential treatment, serious rule infractions and repeated minor rule infractions.
- 6.3.2 Unless otherwise directed to do so by the County Prosecutor, the prosecutor's office must be immediately notified of all allegations of criminal conduct. The internal affairs investigator shall refrain from taking any further investigative action until directed to do so by the County Prosecutor unless an imminent threat exists to the safety or welfare of an individual. Once a complaint has been forwarded to the prosecutor's office, that office shall endeavor to review the allegation within 30 days and advise the law enforcement agency whether a criminal investigation will be conducted. In the event the prosecutor's office cannot reach a decision within the initial 30 day period, the deadline may be extended in 30 day increments at the discretion of the County Prosecutor. The law enforcement agency shall be advised of any extensions of the deadline.
- 6.3.3 If a criminal investigation is initiated, the law enforcement agency shall receive periodic and timely updates concerning the course of the investigation. While a criminal investigation is pending, complainants and witnesses may be referred by the law enforcement agency to the county victim witness office for information concerning the criminal investigation. Once the criminal investigation is complete and a disposition of the allegation has been made, the prosecutor's office shall provide the law enforcement agency with its investigative file for use in the internal affairs investigation subject to applicable state statutes, court rules and case law. If the prosecutor's office declines to initiate a criminal investigation or the investigation is administratively closed, it shall notify the law enforcement agency of the outcome in writing.
- 6.3.4 As for administrative complaints, the internal affairs supervisor or law enforcement executive will direct that an internal affairs investigator conduct an appropriate

investigation. Investigators must strive to conduct a thorough and objective investigation without violating the rights of the subject officer or any other law enforcement officer. Internal affairs investigators, and anyone who may be called upon to do an internal investigation, must be thoroughly familiar with the agency's entire internal affairs policy, including the protection of the subject officer's rights and the procedures for properly investigating internal complaints.

- 6.3.5 Internal affairs shall notify the suspect officer in writing that an internal investigation has been started, unless the nature of the investigation requires secrecy. The internal affairs investigator should interview the complainant, all witnesses and the subject officer, review relevant reports and documents, and obtain necessary information and materials.
- 6.3.6 If an officer subject to an administrative investigation has a good-faith basis to question the impartiality or independence of the investigation, then they may report their concerns to the County Prosecutor. Law enforcement officers employed by a County Prosecutor's Office or the Division of Criminal Justice may report concerns to the Office of Public Integrity & Accountability (OPIA). The County Prosecutor may, within their discretion, conduct their own review of the internal affairs investigation and determine whether any further action is warranted, including potential reassignment of the investigation to a different entity.
- 6.3.7 An administrative investigation may commence with the disposition of a complaint against the subject officer by the Superior Court or a municipal court. In the alternative, an administrative investigation may commence with a county or municipal prosecutor's decision to dismiss a complaint against a subject officer. A finding of guilt by the Superior Court or a municipal court may assist in resolving an administrative investigation because such a finding requires proof beyond a reasonable doubt, which is more than is required to meet the burden of proof in administrative matters.
- 6.3.8 A disposition that does not involve a finding of guilt by the courts or where a complaint is dismissed by a county or municipal prosecutor means that proof beyond a reasonable doubt has not been found. However, it does not mean that an administrative investigation cannot be pursued or should be closed. The absence of proof beyond a reasonable doubt does not foreclose the possibility that an investigation may reveal evidence that meets the burden of proof in administrative matters. Thus, the internal affairs investigator must continue the administrative investigation to determine whether evidence exists or can be developed that meets the "preponderance of the evidence" burden of proof for administrative proceedings. Under no circumstances shall an internal affairs administrative investigation be closed merely because a criminal investigation was declined or terminated. In all cases where an investigation is returned to internal affairs because the prosecutor declined or terminated the criminal investigation, internal affairs shall inform the County Prosecutor as to the disposition of the complaint, including any discipline imposed, once the administrative investigation is completed.

- 6.3.9 Upon completing the investigation, the internal affairs investigator will recommend dispositions for each allegation through the chain of command to the law enforcement executive. As previously described, these dispositions may include exonerated, sustained, not sustained or unfounded. Each level of review may provide written recommendations and include comment for consideration by the law enforcement executive.
- 6.3.10 The law enforcement executive, upon reviewing the report, supporting documentation and information gathered during any supplemental investigation, shall direct whatever action is deemed appropriate. If the complaint is unfounded or not sustained or the subject officer is exonerated, the disposition shall be entered in the index file and the report filed. The determination must remain within the discretion of the law enforcement executive.
- 6.3.11 If the complaint is sustained and it is determined that formal charges should be made, the law enforcement executive, as defined in the footnote to Section 1.0.9, will direct either internal affairs or the appropriate commanding officer to prepare, sign and serve charges upon the subject officer or employee. The individual assigned shall prepare the formal notice of charges and hearing on the charging form. This form will also be served upon the officer charged in accordance with N.J.S.A. 40A:14-147. An example of a charging form is in Appendix F (Note: Civil Service jurisdictions must use forms authorized by the Civil Service Commission).
- 6.3.12 The notice of charges and hearing shall direct that the subject officer may: (1) enter a plea of guilty to the charges; (2) enter a plea of not guilty to the charges; or (3) waive their right to a hearing. If the officer enters a plea of guilty or waives their right to a hearing, he or she is permitted to present mitigating factors prior to being assessed a penalty. Conclusions of fact and the penalty imposed will be noted in the officer's personnel file after he or she has been given an opportunity to read and sign it. Internal affairs will cause the penalty to be carried out and complete all required forms.
- 6.3.13 If the subject officer enters a plea of not guilty and requests a hearing, the law enforcement executive will set the date for the hearing as provided by statute and arrange for the hearing of the charges. Internal affairs may assist the assigned supervisor or prosecutor in preparing the agency's prosecution of the charges. This includes proper notification of all witnesses and preparing all documentary and physical evidence for presentation at the hearing.
- 6.3.14 The hearing shall be held before the designated hearing officer. The hearing officer shall recommend a disposition of the charges, including modifying the charges in any manner deemed appropriate. The decision of the hearing officer must be in writing and should be accompanied by findings of fact for each issue in the case.
- 6.3.15 If the hearing officer finds that the complaint against the officer is sustained by a preponderance of the evidence, he or she should recommend any of the penalties which

he or she deems appropriate under the circumstances and within the limitations of state statutes and the agency's disciplinary system.

- 6.3.16 A copy of the decision and accompanying findings and conclusions shall be delivered to the officer or employee who was the subject of the hearing and to the law enforcement executive (if he or she was not the hearing officer) for the imposition of discipline. Upon completion of the hearing, internal affairs will complete all required forms (Civil Service Commission jurisdictions use the Final Notice of Disciplinary Action form DPF-31C), including the entry of the disposition in the index file. If the charges were sustained, internal affairs will cause the penalty to be carried out. Documentation of the charge and the discipline shall be permanently placed in the officer's or employee's personnel file.
- 6.3.17 Upon final disposition of the complaint, in cases where the officer was not notified of the outcome through some written form of discipline, the officer shall be notified of the outcome of the case through a written internal agency communication.
- 6.3.18 In all cases, a letter shall be sent to the complainant explaining the outcome of the investigation. If the allegation was unfounded or the officer was exonerated, this conclusion shall be stated and defined for the civilian complainant. If the allegation was not sustained, the letter shall provide the complainant with a brief explanation why the complaint was not sustained (e.g., insufficient proof, lack of witnesses, etc.). If the allegation was sustained and discipline was imposed, the letter shall state that the allegation was sustained and that the officer has been disciplined according to agency procedures. See Appendix E.

6.4 Domestic Violence Incidents Involving Agency Personnel

- 6.4.1 Law enforcement personnel may become involved in domestic violence incidents. It is important to the integrity of the agency, the safety of the victim and the career of the officer that such matters are handled appropriately. Thus, it is imperative that every law enforcement agency establish a policy for investigating and resolving domestic violence complaints involving its employees.
- 6.4.2 Whenever an officer is involved in a domestic violence incident, either as an alleged perpetrator or as a victim, internal affairs must be promptly notified. Where the officer was the alleged perpetrator, investigating officers must seize their service weapon or any other weapon possessed, as mandated by AG Directives 2000-3 and 2000-4.
- 6.4.3 Every law enforcement agency should promulgate a rule which requires any officer or employee to notify the agency if he or she has been charged with an offense, received a motor vehicle summons or been involved in a domestic violence incident. In cases of domestic violence, the investigating agency should also notify the employing agency's internal affairs investigators as soon as possible.

- 6.4.4 The primary responsibility for investigating the domestic violence incident itself, along with any related offenses, belongs to the agency with jurisdiction over the incident. The processing of domestic violence complaints, restraining orders, criminal complaints, etc., will remain with that agency. In many cases, this will not be the officer's employing agency.
- 6.4.5 The employing agency's internal affairs officers will be responsible for receiving the information and documenting the matter as they would any other misconduct allegation. If the report is that the officer is the victim of domestic violence, it should still be recorded and followed up in case employee assistance is warranted.
- 6.4.6 If a criminal charge has been filed, internal affairs must notify the County Prosecutor immediately even if the incident took place in another county. As the chief law enforcement officer of the county, it is critical that a prosecutor be made aware of any outstanding criminal charges against any law enforcement officer in their county.
- 6.4.7 Internal affairs is responsible for reviewing the incident's investigation and conducting whatever further investigation is necessary to determine if the officer violated agency rules and regulations or if the officer's fitness for duty is in question. In addition, internal affairs will track the proceedings of any criminal charges or civil matters that may arise out of the incident. Internal affairs will also work with the Division of Criminal Justice or the County Prosecutor to determine if and when an officer may have their weapon(s) returned.

7 Internal Affairs Investigation Procedures

- 7.0.1 Only after a thorough and impartial investigation can an informed decision be made as to a complaint's proper disposition. Decisions based upon such an investigation will support the credibility of the agency both among its ranks and the public at large.
- 7.0.2 As with all other investigations, lawful procedures must be used to gather all evidence pertaining to allegations against a law enforcement officer. Investigations for internal disciplinary or administrative purposes involve fewer legal restrictions than criminal investigations.
- 7.0.3 Restrictions that do exist, however, must be recognized and followed. Failure to do so may result in improperly gathered evidence being deemed inadmissible in court. Restrictions that apply to internal affairs investigations may have their basis in state statutes, case law, collective bargaining agreements, local ordinances, Civil Service Commission rules or agency rules and regulations. Internal affairs investigators shall familiarize themselves with all of these provisions.
- 7.0.4 Complaints must be professionally, objectively and expeditiously investigated in order to gather all information necessary to arrive at a proper disposition. It is important to document complainants' concerns, even those that appear to be unfounded or frivolous. If such complaints are not documented or handled appropriately, public dissatisfaction will grow, fostering a general impression of agency insensitivity to community concerns.
- 7.0.5 The internal affairs investigator may use any lawful investigative techniques including inspecting public records, questioning witnesses, interviewing the subject officer, questioning agency employees and surveillance. The investigator therefore must understand the use and limitations of such techniques.
- 7.0.6 It is generally recommended that the complainant and other lay witnesses be interviewed prior to interviewing sworn members of the agency. This will often eliminate the need to do repeated interviews with agency members. However, this procedure does not have to be strictly adhered to if circumstances and the nature of the investigation dictate otherwise.

7.1 Interviewing the Complainant and Civilian Witnesses

- 7.1.1 The investigator assigned an internal investigations case should initially outline the case to determine the best investigative approach and identify those interviews immediately necessary. The investigator should determine if any pending court action or ongoing criminal investigation might delay or impact upon the case at hand. If it appears that the conduct under investigation may have violated the law or the investigation involves the

officer's use of force that resulted in serious bodily injury or death, the County Prosecutor shall be immediately notified of the internal affairs investigation.

- 7.1.2 If the investigation involves a criminal charge against the complainant, an initial interview should be conducted with the complainant. However, the investigator must realize that the complainant is simultaneously a criminal defendant arising out of the same incident and must be accorded all of the appropriate protections. Thus, all further contact with the complainant should be arranged with and coordinated through the County Prosecutor and the complainant's defense attorney.
- 7.1.3 The complainant should be personally interviewed if circumstances permit. If the complainant cannot travel to the investigator's office, the investigator should conduct the interview at the complainant's home or place of employment if feasible. If not, a telephonic interview may be conducted. All relevant identifying information concerning the complainant should be recorded, e.g., name (unless the complainant wishes to remain anonymous), complete address, telephone numbers and area codes, race or ethnic identity, sex, date of birth, place of employment, social security number if necessary and place of employment (name and address). The investigator should grant reasonable requests for accommodations to protect the complainant's identity, such as meeting the complainant at a place other than the investigator's office if the complainant's identity cannot be kept confidential at that location.
- 7.1.4 All relevant facts known to the complainant should be obtained during the interview. An effort should be made to obtain a formal statement from the complainant at the initial interview. Whenever possible, all witnesses to the matter under investigation should be personally interviewed and formal statements taken.
- 7.1.5 When taking a formal statement from a civilian, the investigator shall video- or audio-record the statement according to the same protocols that would apply if the civilian were being interviewed in connection with a criminal investigation. If a witness objects to the recording of the interview, the investigator may proceed with the interview without recording, but must document in writing the reasons for doing so.
- 7.1.6 When taking a formal statement from an officer, the investigator shall video or audio-record the statement, except that in cases that did not arise from a civilian complaint, the investigator need not record the statement unless the officer being interviewed requests such.

7.2 Reports, Records and Other Documents

- 7.2.1 All relevant reports should be obtained and preserved as expeditiously as possible. Internal agency reports relating to a subject officer's duties should be examined. Examples of such

reports include arrest and investigative reports, and radio, patrol, vehicle and evidence logs pertaining to or completed by the officer.

- 7.2.2 The investigator should also examine and retrieve all electronic, computer, digital and video records. These may include analog and digital records created by radio and telephone recorders, computer aided dispatch systems, mobile data terminals, in-car video systems, video surveillance systems and other forms of audio and video recording. In these cases, the relevant data should be copied to an appropriate medium as soon as possible and retained by internal affairs.
- 7.2.3 Records and documents of any other individual or entity that could prove helpful in the investigation should be examined. These may include reports from other law enforcement agencies, hospital records, doctors' reports, jail records, court transcripts, F.B.I. or S.B.I. records, motor vehicle abstracts and telephone and cellular phone records. In some instances, a search or communications data warrant or a subpoena may be necessary to obtain the information.

7.3 Physical Evidence

- 7.3.1 Investigators should obtain all relevant physical evidence. All evidence, such as fingerprints, clothing, hair or fabric fibers, bodily fluids, stains and weapons should be handled according to established evidence procedures.
- 7.3.2 With respect to radio and telephone recordings, the original recording is the best evidence and should be secured at the investigation's outset. Transcripts or copies of the original recordings can be used as investigative leads. Entire tapes or transmissions should be reviewed to reveal the totality of the circumstances.

7.4 Photographs

- 7.4.1 Photographs and video recording tapes can be useful tools if relevant to the investigation. If a complaint involves excessive use of force, photographs of the complainant and the officer should be taken as close as possible to the time of the incident. Photographs also can be used to create a record of any other matter the investigator believes is necessary. Whenever possible, digital color photography should be used.
- 7.4.2 The law enforcement agency should maintain a recent photograph of each officer. These can be used if a photo array is needed for identification purposes. If a photo array is used, it must be properly retained for possible evidentiary purposes.

7.5 Physical Tests

7.5.1 Police officers who are the subjects of internal investigations may be compelled to submit to various physical tests or procedures to gather evidence.

7.5.2 N.J.R.E. 503(a) states that "no person has the privilege to refuse to submit to examination for the purpose of discovering or recording his corporal features and other identifying characteristics or his physical or mental condition." Evidence that may be obtained or procedures that may be used to obtain evidence under this rule include:

- (a) Breath sample;
- (b) Blood sample;
- (c) Buccal swab;
- (d) Requiring suspect to speak;
- (e) Voice recordings;
- (f) Participation in a lineup;
- (g) Handwriting samples;
- (h) Hair and saliva samples;
- (i) Urine specimens;
- (j) Video recording; and
- (k) Field sobriety tests.

7.5.3 For internal affairs investigations that may result in a criminal prosecution, physical tests should be conducted pursuant to a court order or an investigative detention under Rule 3:5A. Officers that refuse to perform or participate in a court-ordered physical test may be subject to a contempt of court sanction and agency discipline for failing to comply with the order.

7.5.4 For internal affairs investigations that may result in an administrative disciplinary proceeding, the internal affairs investigator or the appropriate supervisor may order subject officers to perform or participate in a physical test. The order must be reasonable and relevant to the investigation at hand. Officers that refuse to perform or participate in a lawfully ordered physical test can be disciplined for their refusal.

7.6 Drug Testing

7.6.1 The testing of law enforcement officers in New Jersey for the illegal use of drugs is strictly regulated by the Attorney General's Law Enforcement Drug Testing Policy. This policy permits the testing of applicants and trainees for law enforcement positions. It further specifies that veteran law enforcement officers may be tested for drugs if reasonable suspicion exists that they are using drugs or if they have been chosen as part of a random drug testing program. In any case, drug testing is done through an analysis of urine samples by the State Toxicology Laboratory within the Department of Health.

7.6.2 The Attorney General's Law Enforcement Drug Testing Policy identifies specific responsibilities that may be assigned to internal affairs. These include the collection of specimens, the establishment of a chain of custody and the maintenance of drug testing records. Every officer assigned to internal affairs should be familiar with the Attorney General's Law Enforcement Drug Testing Policy.

7.7 Polygraph

7.7.1 N.J.S.A. 2C:40A-1 states that an employer shall not influence, request or require an employee to take or submit to a lie detector test as a condition of employment or continued employment. To do so constitutes a disorderly persons offense. Therefore, a law enforcement officer should never be asked to take a polygraph examination as part of an internal affairs investigation. The investigator should not even suggest to the officer that a polygraph examination would be appropriate or that it "might clear this whole thing up." However, the subject officer may voluntarily request to take a polygraph examination.

7.7.2 Polygraph tests of civilian complainants and witnesses should only be used when a reasonable suspicion exists that their statements are false. Polygraph examinations should not be used routinely in internal affairs investigations. Under no circumstances should polygraph examinations be used to discourage or dissuade complainants. In addition, a victim of sexual assault cannot be asked or required to submit to a polygraph examination.

7.8 Search and Seizure

7.8.1 All people, including police officers, have a Fourth Amendment right to be free from unreasonable searches and seizures. In an internal affairs investigation, the Fourth Amendment applies to any search the employing agency undertakes. The internal affairs investigator must be cognizant of the various principles governing search and seizure, particularly where the investigator will conduct a search as part of a criminal investigation or will search personal property belonging to the subject officer.

7.8.2 Criminal investigations generally require the investigator to obtain a search warrant to conduct a search. Search warrants require probable cause to believe that the search will reveal evidence of a crime. In internal affairs investigations, a search warrant should be obtained before a search is conducted of a subject officer's personal property, including any home, personal car, bank accounts, safety deposit boxes, briefcases, etc. A warrant also may be necessary where a search of the subject officer's workplace is conducted and it is determined that the officer has a high expectation of privacy in the place to be searched. The internal affairs investigator should consult with the County Prosecutor's Office before undertaking the search of any workplace area in a criminal investigation.

- 7.8.3 The law is somewhat less restrictive as to searches conducted during an administrative investigation. While it appears that an employing agency does not need a warrant to conduct a search during an administrative investigation, the investigator should exercise great care when searching property or items in which the subject officer has a high expectation of privacy. Internal affairs investigators should document their reasons for conducting the search and limit its intrusiveness. If any doubts or concerns exist about the propriety or legality of a search, the investigator should seek advice from legal counsel before proceeding with the search.
- 7.8.4 During either administrative or criminal investigations, generally workplace areas may be searched without a warrant. The critical question is whether the public employee has a reasonable expectation of privacy in the area or property the investigator wants to search. The determination of this expectation must be decided on a case-by-case basis. There are some areas in a person's workplace where this privacy expectation can exist just as there are some where it does not. Areas that several employees share or where numerous employees go to utilize files or equipment would present no expectation, or a diminished expectation, of privacy. Included here would be squad rooms, lobby areas, dispatch areas, government- provided vehicles (patrol cars), general filing cabinets, etc.
- 7.8.5 However, employees may have a greater expectation of privacy in their own lockers, assigned desks or possibly in a vehicle assigned to them solely for their use. If an agency intends to retain the right to search property it assigns to officers for their use, including lockers and desks, it should put officers on notice of that fact. This notification will help defeat an assertion of an expectation of privacy in the assigned property. The agency should issue a directive regarding this matter and provide notice of the policy in any employee handbook or personnel manual (including the rules and regulations) the agency provides. Notice should also be posted in the locker area and on any bulletin boards. The following is a sample of what such a notice should contain:

The agency may assign to its members and employees agency-owned vehicles, lockers, desks, cabinets, etc., for the mutual convenience of the agency and its personnel. Such equipment is and remains the property of the agency. Personnel are reminded that storage of personal items in this property is at the employee's own risk. This property is subject to entry and inspection without notice.

- 7.8.6 In addition, if the agency permits officers to use personally owned locks on assigned lockers and other property, it should be conditioned on the officer providing the agency with a duplicate key or the lock combination.
- 7.8.7 With the introduction of new technologies in law enforcement, it may become necessary to search computers and cell phones or other digital devices, (hereafter "devices"), and seize their contents. The critical question remains whether the public employee has a reasonable expectation of privacy in information stored in a device. While the determination of a

reasonable expectation of privacy must be decided on a case-by-case basis, the law enforcement agency should take steps to actively and affirmatively diminish this expectation. The agency should state, in writing, that it retains the right to enter and review the contents of any agency-issued device at any time. This notice may be worded as follows:

The agency may assign to its members and employees agency-owned electronic devices, including computers and smartphones, for business purposes. Such equipment and its contents are and remain the property of the agency. Personnel are prohibited from installing unauthorized software and from storing personal information in the device, regardless of any password protection or encryption. The devices, their contents, and any email or electronic correspondence originating from or arriving at the device are the property of the agency and are subject to entry and inspection without notice.

- 7.8.8 The courts routinely examine agency practice in evaluating the expectation of privacy. Written notification thus would quickly be nullified if representatives of the agency never entered or inspected any of these areas. In addition to notifying employees of the agency's right to search and inspect, the agency should also, with some regularity, inspect these areas to establish the practice coinciding with the policy. Any search of agency or personal property should be conducted in the presence of the subject officer and a property control officer.
- 7.8.9 A voluntary consent to a search may preclude some Fourth Amendment problems. A consent search eliminates the need to determine what threshold standard must be met before conducting the search or seizure, either for an administrative or criminal investigation. For consent to be legally valid in New Jersey, a person must be informed that he or she has the right to refuse to permit a search.⁴ If a consent search is undertaken, the internal affairs investigator shall follow standard law enforcement procedures and have the subject officer sign a consent form after being advised of the right to refuse such a search.

7.9 Electronic Surveillance

- 7.9.1 N.J.S.A. 2A:156A-1 et seq. governs the use of electronic surveillance information in New Jersey. This statute specifically covers the areas of:
- (a) *Wire communication*, which essentially means any conversation made over a telephone, N.J.S.A. 2A:156A-2a;

⁴ State v. Johnson, 68 N.J. 349 (1975).

- (b) *Oral communication*, which means any oral communication uttered by a person who has an expectation that such communication will not be intercepted, N.J.S.A. 2A:156A-2b;
- (c) *Intercept*, which means to acquire the contents of any wire, electronic or oral communication through the use of any electronic, mechanical or other device, N.J.S.A. 2A:156A- 2c; and
- (d) *Electronic communication*, which means the transfer of signs, signals, writings, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio or other system, N.J.S.A. 2A:156A-2m.

All of these forms of communication are protected from intrusion and interception except under very narrowly defined exceptions.

- 7.9.2 One such exception is when one person in a communication decides to intercept (e.g., record) the conversation. As long as this person is a part of the conversation, such recording is lawful. But if the person stops being a party to the conversation (e.g., he or she walks away from the group or turns the telephone over to someone else), it is no longer lawful for him or her to intercept the conversation.
- 7.9.3 Another exception exists where a person, acting at the direction of an investigative or law enforcement officer, gives prior consent to intercept a wire, electronic or oral communication and is a party to the communication. This "consensual intercept" can only be made after the Attorney General or a County Prosecutor, or their designee, approves it.
- 7.9.4 Pursuant to N.J.S.A. 2A:156A-4b, a law enforcement officer may intercept and record a wire or oral communication using a body transmitter if that officer is a party to the communication or where another officer who is a party requests or requires that such interception be made. Individual departmental or agency policy dictates procedures for such recordings. This kind of law enforcement non-third party intercept can be used during internal affairs investigations.
- 7.9.5 Generally, the use of evidence derived from an authorized wiretap is limited to criminal investigations and prosecutions. Agencies that wish to use wiretap information in a disciplinary proceeding should consult with their County Prosecutor because it may be necessary to obtain a court order to so use it.
- 7.9.6 The monitoring of 9-1-1 telephone lines is required by law. Nothing prohibits the monitoring of other telephones used exclusively for agency business if the agency can demonstrate a regulatory scheme or a specific office practice of which employees have knowledge. In such instances a diminished expectation of privacy exists in the use of these telephones, and monitoring would be acceptable.
- 7.9.7 The New Jersey Wiretap Act applies only to oral, wire and electronic communications. While not specifically covered by this law, reasonable limitations should exist on video

surveillance. The primary issue is one of privacy. Video surveillance, especially covert surveillance, should not be used in areas where employees have a high expectation of privacy, such as locker rooms and bathrooms. In public areas, video surveillance may be used. In many law enforcement agencies, certain areas such as lobbies, cell blocks and sally ports have video surveillance for security reasons. Video obtained from these sources is applicable to internal investigations. Questions about the specific application of video surveillance, especially covert surveillance, should be addressed to the County Prosecutor's Office. It must be emphasized that this refers to video surveillance with no sound recording component.

- 7.9.8 Many law enforcement agencies use in-car video systems, which record the video image from a camera mounted in the car and an audio signal from a microphone worn by the officer. These recordings can be used in internal investigations because the video image is not restricted at all and the officer is a party to the audio portion of the recording at all times.
- 7.9.9 Some agencies equip their patrol vehicles or other vehicles with GPS devices. These devices can locate a vehicle with great accuracy. Information gleaned from these devices may be used in internal affairs investigations because the subject officer has no expectation of privacy in their whereabouts when performing police duties.

7.10 Lineups

- 7.10.1 A law enforcement officer may be ordered to stand in a lineup to be viewed by witnesses or complainants. Probable cause need not exist, and the officer may be disciplined for refusal.⁵
- 7.10.2 The lineup must be constructed so as not to be unfairly suggestive. The same rule applies to photo arrays. See Attorney General Guidelines for Preparing and Conducting Photo and Live Lineup Identification Procedures; October 4, 2012, Memorandum and Revised Model Eyewitness Identification Procedure Worksheets.

7.11 Investigation of Firearm Discharges

- 7.11.1 An agency's internal affairs function shall receive notice of any incidents involving:
- (a) Any firearm discharge by agency personnel, whether on-duty or off-duty, unless the discharge occurred during the course of (1) a law enforcement training exercise; (2) routine target practice at a firing range; (3) a lawful animal hunt; or (4) the humane killing of an injured animal; or

⁵ Biehunik v. Felicetta, 441 F.2d 228 (2d Cir.), cert. denied, 403 U.S. 932 (1971).

- (b) Any discharge of an agency-owned firearm by anyone other than agency personnel.
- 7.11.2 Upon receiving notice, the internal affairs function shall determine whether additional investigation is necessary and whether information must be reported to the County Prosecutor and/or OPIA, pursuant to AG Directive 2019-4, also known as the “Independent Prosecutor Directive,” and other state law. If the firearm discharge occurs while the agency employee is on duty, then the County Prosecutor must be notified. If the firearm discharge results in a fatality, the matter shall be investigated by OPIA or another entity pursuant to the Independent Prosecutor Directive.
- 7.11.3 Any public statements by a law enforcement agency about the conduct of law enforcement officers involved in a firearm discharge require approval by the County Prosecutor or the Attorney General’s Office, depending upon which entity is supervising the investigation.
- 7.11.4 Agency law enforcement officers including internal affairs personnel will participate in the initial investigation only if directed to do so by the County Prosecutor, OPIA, or other designee of the Attorney General. In the general course, employees of the same agency as the subject officer shall not participate in the investigation or attend any investigative activities. This does not, however, preclude any officer from acting as a first responder to the scene of a use-of-force incident, helping to secure the scene, or participating in a be-on-the-lookout search or pursuit related to the incident. All officers are also obligated to comply with any orders of recusal that may be issued pursuant to the investigation.
- 7.11.5 No law enforcement officer shall share, either directly or indirectly (i.e., through another person), any information learned in the course of the use-of-force investigation with any witness without authorization. Nor shall any law enforcement officer who was a witness to the use-of-force incident receive any such information from any sworn or civilian employee of a law enforcement agency without first obtaining authorization from the authority in charge of the investigation or their designee. If any law enforcement officer learns of such an unauthorized dissemination or receipt of information, then they must immediately report that to the authority in charge of the investigation or their designee.
- 7.11.6 Officers who are directed to assist with an initial firearm discharge investigation may be required to operate independently of their ordinary chain of command and report directly to the authority in charge of the investigation or their designee. In all such circumstances, officers shall comply with that requirement.
- 7.11.7 In cases where discharge of a firearm does not result in criminal charges, the prosecutor, OPIA, or other designee of the Attorney General will refer the incident back to the agency for an internal affairs administrative review.
- 7.11.8 Officers conducting administrative investigations of firearm discharges must strive to conduct a thorough and objective investigation without violating the rights of the subject officer or any other law enforcement officer. All supervisors and any other officer who may

be called upon to participate in a firearm discharge investigation therefore must be thoroughly familiar with the agency's entire internal affairs policy, including protection of the subject officer's rights and the procedures for properly investigating firearm discharges. Investigators should review all administrative reports the agency requires. These reports should include a description of the incident, the date, time and location of the incident, the type of firearm used, the type of ammunition used and number of rounds fired, the identity of the officer, and any other information a superior officer requests. The involved officer's supervisor must assist the internal affairs investigator as needed.

- 7.11.9 The investigator must consider relevant law, any Attorney General or County Prosecutor policies and guidelines, and agency rules, regulations and policy. In addition to determining if the officer's actions were consistent with agency regulations and policy, the internal affairs investigator should also examine the relevance and sufficiency of these policies. The investigator should also consider any relevant aggravating or mitigating circumstances.
- 7.11.10 The investigation of a shooting by an officer should include photographs, ballistics tests, and interviews with all witnesses, complainants and the officer involved. All firearms should be treated as evidence according to agency procedures. A complete description of the weapon, its make, model, caliber and serial number must be obtained and, if appropriate, N.C.I.C. and S.C.I.C. record checks should be made.
- 7.11.11 In a firearm discharge investigation, the investigator must determine if the weapon was an approved weapon for that officer and if the officer was authorized to possess and carry it at the time of the discharge. The investigator must also determine if the weapon was loaded with authorized ammunition. The weapon must be examined for its general operating condition and to identify any unauthorized alterations made to it.

7.12 Collateral Issues

- 7.12.1 The work of an internal affairs function should not be limited to resolving complaints by narrowly focusing on whether the subject officer engaged in misconduct. In many cases, the examination of collateral issues presented by the complaint can be as important as the resolution of the allegation itself. For example, while investigating an allegation of excessive force during an arrest, the officer's actions in making the arrest may be improper. In such cases, even though the investigation may exonerate the officer of the excessive force allegation, internal affairs must still examine whether the officer should have been effecting the arrest at all.
- 7.12.2 Examining collateral issues can provide the law enforcement agency and its executive officers with information concerning:
- (a) The utility and effectiveness of the agency's policies and procedures.
 - (b) The competency and skills of individual law enforcement officers.

- (c) Appropriate topics for in-service training programs.
- (d) The allocation of resources by the law enforcement agency and other municipal agencies.

7.12.3 The identification and examination of collateral issues is critically important to the internal affairs process. Internal affairs investigators are in the unique position of examining law enforcement operations from the inside. Their insight, if properly used, can be extremely helpful to management. In contrast, the failure to use this resource can deprive the law enforcement agency of the ability to identify and correct problems with personnel and procedures through self-critical analysis. It can also lead to an erosion of community support for the agency. An internal affairs process that is objective and complete is critical to the credibility and reputation of the law enforcement agency within the community.

8 Interviewing Members of the Agency

- 8.0.1 The interview of a police officer as either the subject of an internal affairs investigation or as a witness to an incident that is the subject of such an investigation represents a critical stage in the investigative process. The information gained during such an interview often will go a long way toward resolving the matter, regardless of the outcome.
- 8.0.2 The difficulty in conducting officer interviews, particularly subject officer interviews, is the differing legal principles that apply depending on the nature of the interview and the type of investigation being conducted. For example, a subject officer suspected of criminal conduct will be interviewed in a manner far different than an officer suspected of committing just a disciplinary infraction. A further distinction may be made when the officer to be interviewed is believed to be a witness to either criminal conduct or an administrative infraction.
- 8.0.3 While a police officer has the same constitutional rights as any other person during a criminal investigation, their status as a police officer may create special concerns. For the most part, the internal affairs investigator should utilize the same procedures and apply the same legal principles to the subject officer as he or she would to any other target or suspect in a criminal investigation. However, the internal affairs investigator should recognize that the interview process of a police officer is somewhat different than that of civilians.
- 8.0.4 A police officer has the same duty and obligation to their employer as any other employee. Thus, where an internal affairs investigation is being conducted solely to initiate disciplinary action, the officer has a duty to cooperate during an administrative interview. The officer also must truthfully answer all questions put to him or her during the course of the investigation. Failure to fully cooperate with an administrative investigation and/or to be completely truthful during an administrative interview can form the basis for disciplinary action separate and apart from the allegations under investigation. This duty to fully cooperate in an investigation applies to every employee of the agency, whether law enforcement officer or civilian.
- 8.0.5 For the internal affairs investigator, it is critical to distinguish between those investigations involving potential criminal conduct and those limited to administrative disciplinary infractions. The investigator also must be able to identify and apply the appropriate procedures to be utilized during the interview process in either a criminal or an administrative investigation. Failure to identify and apply the appropriate procedures can compromise and render inadmissible evidence gathered during the interview process in a criminal investigation or needlessly complicate the interview process during an administrative investigation.

- 8.0.6 The vast majority of internal affairs investigations will be limited to alleged disciplinary infractions and the vast majority of law enforcement officer interviews conducted during an internal affairs investigation will be limited to gathering evidence of disciplinary infractions. But in cases of a potential criminal violation, it is absolutely necessary that the internal affairs investigator coordinate officer interviews with the County Prosecutor's Office.
- 8.0.7 Because the County Prosecutor is ultimately responsible for prosecuting criminal cases, the internal affairs investigator shall defer to the prosecutor's supervision and direction in conducting officer interviews. The investigator shall consult with the County Prosecutor prior to initiating an officer interview in matters that could involve criminal conduct, and shall pay particular attention to the County Prosecutor's instructions concerning the types of interviews to be conducted and procedures to be utilized (e.g., *Miranda* warning, *Garrity* warning,⁶ etc.).
- 8.0.8 Police officer interviews during an internal affairs investigation are rendered difficult by the conflict that exists between the officer's right against self-incrimination in criminal interviews and the obligation to answer questions truthfully during an administrative investigation. So while an agency may compel an officer to answer questions posed during the course of an administrative investigation, an officer cannot be forced to give answers that could be used against him or her in a criminal prosecution. Officers who have been compelled by order to produce incriminating information, with the belief that a failure to do so will result in termination or other serious disciplinary action, cannot have that evidence used against them in a criminal prosecution. However, an officer can be compelled to provide answers during an internal affairs investigation if those answers are to be used as evidence only in a disciplinary proceeding.
- 8.0.9 A subject officer who reasonably believes that what he or she might say during an internal affairs interview could be used against him or her in a criminal case cannot ordinarily be disciplined for exercising their *Miranda* rights. However, an officer can be disciplined for refusing to answer questions during an internal affairs interview if he or she has been told that whatever he or she says during the interview will not be used in a criminal case. Informing an officer that their statement will not be used against him or her in a criminal case is called a *Garrity* warning. This warning informs the officer being interviewed that he or she must cooperate with the investigation and can be disciplined for failing to do so because the County Prosecutor has decided to provide the officer with "use immunity."
- 8.0.10 It is for this reason that the internal affairs investigator must continually reassess the nature of an internal affairs investigation as evidence is being gathered. Having initially determined that a particular allegation is criminal or administrative in nature, it is important for the internal affairs investigator to revisit that decision during the course of an investigation to determine whether any of the evidence gathered following the initial

⁶ *Garrity v. New Jersey*, 385 U.S. 493 (1967) (coerced statements obtained by threat of removal from office cannot be used in criminal proceedings); see Appendix J.

determination changes the investigation's nature and scope. If the nature and scope of an investigation change, the investigator must be prepared to change the methods and procedures he or she utilizes to reflect the new focus. For example, if an investigator initially determines that an allegation appears to be a disciplinary matter but later evidence leads the investigator to conclude that criminal conduct may have occurred, he or she must cease using the methods and procedures appropriate for an administrative investigation and notify the County Prosecutor immediately before proceeding further.

8.1 Overview of Interviews

8.1.1 In the sections that follow, the details of interviewing law enforcement officers in internal matters will be discussed. The chart in Figure 2 provides an overview of that information.

Figure 2.

	Investigation is CRIMINAL	Investigation is ADMINISTRATIVE
Officer is SUBJECT	<ul style="list-style-type: none"> • Prosecutor notification • Treat as any other defendant • <i>Miranda</i> warning if appropriate • No <i>Garrity</i> warning unless prosecutor approves • May require routine business reports • No special reports • Right to counsel (attorney) 	<ul style="list-style-type: none"> • Obligation to cooperate • Administrative interview form • May require special reports • Cannot charge as a subterfuge • Right to representative
Officer is WITNESS	<ul style="list-style-type: none"> • Obligation to cooperate • No <i>Miranda</i> warning • Witness acknowledgement form • May be entitled to a <i>Weingarten</i> representative⁷ 	<ul style="list-style-type: none"> • Obligation to cooperate • Witness acknowledgement form • May be entitled to a <i>Weingarten</i> representative

8.1.2 Serious allegations of officer misconduct may implicate both a violation of a criminal statute and of an agency's rules and regulations. As a result, a criminal investigation and an administrative disciplinary investigation may be needed to properly resolve a misconduct complaint. In general, criminal investigations and administrative investigations should be kept separate to the extent possible, with criminal investigations led by the County Prosecutor's Office preceding internal affairs disciplinary investigations. However, in some cases where both a criminal and an administrative disciplinary investigation are needed, the internal affairs investigator from the subject officer's agency may be expected to help conduct both. Under these circumstances, the methods employed in the criminal investigation conflict with those used in the administrative investigation.

⁷ *N.L.R.B. v. Weingarten*, 420 U.S. 251 (1975) (unionized employee who reasonably believes that an investigatory interview may result in disciplinary action against him or her is entitled to union representation).

- 8.1.3 Typically, this conflict will become most apparent during subject officer interviews. As already explained, a subject officer has the right to remain silent during a criminal investigative interview. But the same officer must cooperate and answer questions posed by their employer during an administrative disciplinary interview. So while the internal affairs investigator cannot require a subject officer to answer questions during a criminal interview, he or she can require that officer to answer questions during an administrative disciplinary interview.
- 8.1.4 The confusion caused by these issues can be alleviated several ways. One way is to separate the investigations by time—the criminal investigation is completed first and then the administrative investigation may follow. Another way is to conduct bifurcated investigations. In a bifurcated investigation, the responsibility for a criminal investigation is separated from that for an administrative investigation. Thus, one investigator (typically from the prosecutor's office) is assigned the responsibility of gathering evidence of criminal wrongdoing while a second (typically the internal affairs investigator from the subject officer's agency) is assigned the responsibility of gathering evidence of a disciplinary infraction.
- 8.1.5 With a bifurcated investigation, the internal affairs investigator will not be forced to juggle the roles of criminal and administrative investigator during an internal affairs investigation. This is particularly important during the subject officer interview for three reasons. First, the internal affairs investigator will not be forced to decide whether and when to issue a *Miranda* or a *Garrity* warning during the interview. In a bifurcated investigation, the criminal investigator will be limited to issuing a *Miranda* warning while the administrative investigator will be limited to issuing a *Garrity* warning. Second, by assigning distinct roles to each investigator, there will be no confusion on the part of the subject officer as to the particular interview's purpose. Third, because a bifurcated investigation permits both the criminal and administrative investigations to take place simultaneously, the administrative investigator can be confident that, once the criminal investigation has been completed, the administrative investigation will also be substantially complete. As a result, the subject officer's agency will have no difficulty complying with the 45-day rule under N.J.S.A. 40A:14-147.
- 8.1.6 In all cases where a subject officer is interviewed pursuant to an administrative or criminal investigation, the interview must be audio recorded by the investigator, and should be video recorded, if practical.

8.2 [When the Investigation is Criminal and the Officer Is a Subject](#)

- 8.2.1 Criminal interviews should be conducted only with the prior approval, or at the direction, of the County Prosecutor. Once an investigation becomes criminal in nature, the subject officer shall be advised that he or she is not required to answer questions as a condition of

employment. Of course, an officer who is the subject of a criminal investigation may elect to voluntarily answer questions with or without an attorney so that the facts known to him and his perspective are available to the investigators.

- 8.2.2 *Miranda* warnings generally are triggered whenever an individual's questioning is custodial in nature. For custodial interviews, the question is whether a reasonable person would believe that he or she is free to leave. So a subject officer who is not free to leave a criminal interview should be provided a *Miranda* warning. See Appendix G.
- 8.2.3 However, the internal affairs investigator should be aware that other factors may also serve to affect a subject officer's decision to answer questions during a criminal interview. For example, directing an officer to appear at a particular time and place may generate confusion on the officer's part as to whether he or she is being required to participate in the interview. When these circumstances or any other questions as to the need to provide a warning in criminal interviews are present, the internal affairs investigator should always consult with the County Prosecutor regarding whether the subject officer should be advised of their right against self-incrimination.
- 8.2.4 If the subject officer agrees to voluntarily provide a statement or waives his rights, the interview may then continue. Unless the officer specifically waives their Fifth Amendment rights, any incriminating statements obtained under direct order will not be admissible in a criminal prosecution but will be admissible in an administrative hearing. The subject officer should be afforded the opportunity to consult with an attorney prior to a compelled interview.
- 8.2.5 If the officer has invoked their *Miranda* rights but the agency deems that it must have the answers to specific questions to properly conduct its investigation, the agency must contact the County Prosecutor to request use immunity for the interview to continue. This contact should be made timely so that the County Prosecutor can review all relevant reports and have a full briefing prior to determining whether to grant use immunity. Use immunity provides that anything the officer says under the grant of immunity, and any evidence derived from their statements, cannot be used against him or her in a criminal proceeding (except for perjury or false swearing if the information is not truthful). But use immunity does not eliminate the possibility that the subject officer will be prosecuted. A criminal prosecution may proceed even though the target or defendant has received use immunity.
- 8.2.6 If the County Prosecutor grants use immunity, the agency shall advise the subject officer in writing that he or she has been granted such immunity in the event their answers implicate him or her in a criminal offense. The officer must then answer the questions specifically and narrowly related to the performance of their official duties, but no answer given nor any evidence derived from the answer may be used against this officer in a criminal proceeding. At this point, any officer refusing to answer is subject to disciplinary charges and possible dismissal from employment.

- 8.2.7 A grant of use immunity shall be recorded on a form the subject officer signs and whose signature is witnessed. The completed form must be made a part of the investigative file. See the sample form in Appendix H. In all cases, approval from the authorizing assistant prosecutor or deputy attorney general must be obtained before giving the *Garrity* warning.

8.3 When the Investigation is Criminal and the Officer Is a Witness

- 8.3.1 When interviewing a law enforcement officer as a witness, he or she must be made aware of the differences between being a witness in a criminal investigation and being the subject of a criminal investigation. The officer also shall be advised that he or she is not the subject of the investigation at this time. Appendix I provides a model form that may be used for this purpose. If at any time the officer becomes a subject of the investigation, he or she shall be advised of that fact and the appropriate procedures must be followed.
- 8.3.2 Officers who are witnesses must cooperate. They must truthfully answer all questions narrowly and directly related to performing their duty. "Performance of duty" includes an officer's actions, observations, knowledge and any other factual information of which they may be aware, whether it concerns their own performance of duty or that of other officers. If the officer feels their answer would incriminate him or her in a criminal matter, the officer must assert their *Miranda* rights.

8.4 When the Investigation is Administrative and the Officer Is a Subject

- 8.4.1 A public employee must answer questions specifically, directly and narrowly related to the performance of their official duties, on pain of dismissal. This obligation exists even though the answers to the questions may implicate them in a violation of agency rules, regulations and procedures that may ultimately result in some form of discipline up to and including dismissal. In short, no "right to remain silent" exists in administrative investigations.
- 8.4.2 However, internal affairs investigators in civil service jurisdictions should be aware that, under civil service rules, an employee cannot be forced to testify at their own disciplinary hearing.⁸ As a matter of fairness, the internal affairs investigator in a civil service jurisdiction should refrain from questioning a subject officer about a particular disciplinary offense if the officer has already been charged with that offense and is awaiting an administrative hearing on the charge.
- 8.4.3 Prior to the start of any questioning, the officer shall be advised that he or she is being questioned as the subject of an investigation into potential violations of agency rules and

⁸ N.J.A.C. 4A:2-2.6(c).

- regulations, or fitness for duty. He or she should be advised of the subject matter under investigation, and that he or she will be asked questions specifically related to performing their official duties.
- 8.4.4 This information shall be recorded on a form which the subject officer signs and whose signature is witnessed. The completed form must be made a part of the investigative file. See the sample form in Appendix I. The form in Appendix I shall only be used for administrative, non-criminal investigations.
- 8.4.5 If the subject officer refuses to answer questions during this interview, the interviewer should inquire about the reason for that refusal. If the officer states that he refuses to answer any questions on the grounds that he may incriminate himself in a criminal matter, even though the investigators do not perceive a criminal violation, the agency should discontinue the interview and contact the County Prosecutor.
- 8.4.6 If the agency wants to continue its administrative interview and the County Prosecutor agrees to grant use immunity, the agency shall advise the subject officer in writing that he or she has been granted use immunity if their answers implicate him or her in a criminal offense. The officer must then answer the questions specifically related to performing their official duties, but no answer given, nor evidence derived therefrom, may be used against the officer in a criminal proceeding. If the officer still refuses to answer, he or she is subject to disciplinary charges for that refusal, including dismissal. This information shall be contained in a form that the subject officer signs and whose signature is witnessed. The completed form must be made a part of the investigative file. See the sample form in Appendix H.
- 8.4.7 If the subject officer refuses to answer on any other grounds, he or she should be advised that such refusal will subject him or her to disciplinary action, including dismissal, in addition to discipline for the matter that triggered the interview in the first place. If the officer still refuses, the interview should be terminated and appropriate disciplinary action initiated.
- 8.4.8 The courts have decided that a public employer must permit an employee to have a representative present at an investigative interview if the employee requests representation and reasonably believes the interview may result in disciplinary action.⁹ However, a representative shall be permitted to be present at the interview of a subject officer whenever he or she requests a representative. While the Sixth Amendment right to counsel does not extend to administrative investigations, an officer shall be permitted to choose an attorney as their representative if he or she so desires.
- 8.4.9 If it appears that the presence of counsel or another representative the subject requests will not disrupt or delay the interview, no reason exists to prevent their presence as an observer. But the representative or attorney cannot cause undue delay in scheduling

⁹ N.L.R.B. v. Weingarten, 420 U.S. 251 (1975).

interviews or interfere in the interview process. If the representative or attorney is disruptive or interferes, the investigator can discontinue the interview and should document the reasons for doing so. The investigator must control the interview and cannot allow the representative or subject to take control.

8.5 When the Investigation is Administrative and the Officer Is a Witness

- 8.5.1 When interviewing a law enforcement officer as a witness, he or she must be made aware of the differences between being a witness in an administrative investigation and being the subject of an administrative investigation. The officer also should be advised that he or she is not the subject of the investigation at this time. Appendix I provides a model form that may be used for this purpose. If at any time the officer becomes a subject of the investigation, he or she should be advised of that fact and the appropriate procedures followed.
- 8.5.2 Officers who are witnesses must cooperate and truthfully answer all questions narrowly and directly related to performing their duty. "Performance of duty" includes an officer's actions, observations, knowledge and any other factual information of which they may be aware, whether it concerns their own performance of duty or that of other officers. If the officer feels their answer would incriminate him or her in a criminal matter, the officer must assert their *Miranda* rights.

8.6 Interviewing Procedures

- 8.6.1 Interviews should take place at the internal affairs office or a reasonable and appropriate location the investigator designates. The subject officer's supervisor should be made aware of the time and place of the interview so the officer's whereabouts are known. Interviews shall be conducted at a reasonable hour when the officer is on duty, unless the seriousness of the matter requires otherwise.
- 8.6.2 The employee shall be informed of the name and rank of the interviewing investigator and all others present during the interview. The questioning session must be of reasonable duration, considering the subject matter's complexity and gravity. The officer must be allowed time for meal breaks and to attend to personal physical necessities.
- 8.6.3 In cases of potential criminal conduct, interviews of subject officers should be recorded consistent with AG Directives 2006-2 and 2006-4. As to serious disciplinary infractions, the agency should audio or video record the interview. A transcript or copy of the recording shall be made available to the officer, if applicable, at the appropriate stage of a criminal or disciplinary proceeding. If the subject officer wishes to record the interview, he or she may do so, and a copy of the recording shall be made available to the agency upon request, at

the agency's expense. Agencies should consider adopting a policy requiring officers to inform the agency or internal affairs investigator if the officer plans to record the interview.

- 8.6.4 Any questions asked of officers during an internal investigation must be "narrowly and directly" related to performance of their duties and the ongoing investigation.¹⁰ Officers must answer questions directly and narrowly related to that performance. All answers must be complete and truthful, but officers cannot be compelled to answer questions having nothing to do with their performance as law enforcement officers, that do not implicate a rule or regulation violation, or that are unrelated to the investigation.
- 8.6.5 At the interview's conclusion, the investigator should review with the subject officer all the information obtained during the interview to alleviate any misunderstandings and to prevent any controversies during a later proceeding.

¹⁰ Gardner v Broderick, 392 U.S. 273 (1968).

9 Internal Affairs Records

9.0.1 Every law enforcement agency shall maintain a system for documenting the work of its internal affairs function and preserving records of this work.

9.1 The Internal Affairs Report

9.1.1 At the conclusion of the internal affairs investigation, the investigator shall submit two separate and distinct reports as follows:

- (a) *Investigative Report*. This report will be an objective recounting of all the relevant information the investigation disclosed, including statements, documents and other evidence. Such report shall be similar in all respects to a standard law enforcement investigative report, and should contain a complete account of the investigation.
- (b) *Summary and Conclusions Report*. This report shall summarize the case and provide conclusions of fact for each allegation. The report should be organized as follows:
 - (1) A *Summary of the Allegations* against the officer, including a recitation of the alleged facts;
 - (2) A *Summary of Factual Findings* in which the investigator outlines the facts proven or supported by the evidence reviewed during the investigation, and applies those facts to each allegation. This shall include a conclusive finding on whether each allegation is to be recorded as exonerated, sustained, not sustained or unfounded. For sustained findings that qualify for disclosure under Section 9.11.2, the summary of factual findings, along with the discipline imposed, should be the basis for the brief synopsis required under Section 9.11.2;
 - (3) A *Discipline Imposed* section in which the final discipline imposed on the officer will be recorded. This section should be completed once the discipline imposed becomes final. See Section 9.11.2 for guidance on when the officer's discipline is final.

Examples of completed *Summary and Conclusions Reports* are included in Appendix O.

9.1.2 If the conduct of an officer was found to be improper, the *Summary and Conclusions Report* must cite the agency rule, regulation, or SOP violated. Any aggravating or mitigating circumstances surrounding the situation, such as unclear or poorly drafted agency policy, inadequate training or lack of proper supervision, shall also be noted in the *Summary and Conclusions Report*.

9.1.3 If the investigation reveals evidence of misconduct not based on the original complaint, this too must be reported and memorialized in both the *Investigative Report* and the *Summary and Conclusions Report*. An investigation concerning this secondary misconduct shall be conducted.

9.2 Internal Affairs Index File

- 9.2.1 The purpose of the internal affairs index file is to serve as a record control device to maintain an inventory of internal affairs case files and to summarize each case's status for authorized personnel. The instrument used for such an index file will vary by agency and could include a log book, index cards or a computerized data base.
- 9.2.2 All internal affairs complaints shall be recorded in the index file. Entries should record each case's basic information, including the subject officer, allegations, complainant, date received, investigator assigned, disposition and disposition date for each complaint. A unique case number assigned to each internal affairs complaint will point to the complete investigation file's location and will simplify case tracking.

9.3 Investigation Files

- 9.3.1 An internal affairs investigation file is needed for all internal affairs reports. Given the wide range of internal affairs allegations a law enforcement agency receives, these investigation files might consist of only the initial report form and the appropriate disposition document. On the other hand, investigation files might include extensive documentation of an investigation.
- 9.3.2 The internal affairs investigation file should contain the investigation's entire work product, regardless of the author. This includes investigators' reports, transcripts of statements, and copies of all relevant documents. The file should also include all related material from other agency incidents that may be applicable. For instance, if an allegation is made of excessive force during an arrest, the internal affairs investigation file should contain copies of the reports from that arrest.
- 9.3.3 Where an internal affairs investigation results in the filing of criminal charges, the file shall be made available to the prosecuting agency. It is the responsibility of that agency to decide which items are discoverable and which are likely admissible. In these cases, the agency must follow the prosecuting agency's instructions. The prosecuting agency must have a procedure in place to ensure, in the rare case where a compelled statement has been taken from a subject officer and a criminal case results, that any compelled statements from a subject officer are not impermissibly used in the criminal case.

9.4 Retention Schedule

- 9.4.1 Investigative records created during an internal affairs investigation are included in the "Records Retention and Disposition Schedule for Local Police Departments" issued by the

New Jersey Division of Archives and Records Management. Under the schedule, files concerning a criminal homicide must be permanently maintained. The schedule also requires that any other file involving a criminal matter resulting in the subject officer's arrest must be maintained for 75 years. While the schedule further suggests that all other criminal or administrative internal affairs investigative records be maintained for at least 5 years, agencies should maintain these files as they relate to a particular officer for that officer's career plus 5 years.

- 9.4.2 Agencies are not required to purge their records at the intervals outlined above, and may adopt longer retention schedules if such schedules benefit the agency. In the case of internal affairs investigative records, longer retention times will provide agencies with the resources and evidence necessary to assist with defending civil lawsuits.
- 9.4.3 While the internal affairs records of other types of law enforcement agencies are not yet specified by the Division of Archives and Records Management, it would be appropriate for all law enforcement agencies to follow essentially the same retention schedule.

9.5 Security of Internal Affairs Records

- 9.5.1 Internal affairs personnel shall maintain a filing system accessible only to unit personnel and the law enforcement executive. Other personnel may be given access based on a specific need, such as a deputy chief in the law enforcement executive's absence. Access to these records must be specifically addressed with agency policy and procedures. The list of those authorized to access these files must be kept to a minimum.
- 9.5.2 Physical security measures also should be taken, such as using securely locked filing cabinets in secured offices. If a law enforcement agency uses computers to maintain internal affairs records of any kind, special security measures must be taken. A stand-alone personal computer is the most secure system to limit unauthorized access to internal affairs records. If a stand-alone computer is not feasible, reasonable measures, including the use of fire walls and/or password protected software, should be utilized to control access to investigative files and related materials.

9.6 Confidentiality

- 9.6.1 The nature and source of internal allegations, the progress of internal affairs investigations, and the resulting materials are confidential information and remain exempt from access under the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1.1 to -13. The contents of an internal investigation case file, including the original complaint, shall be retained in the internal affairs function and clearly marked as confidential. The information and records of an internal investigation shall only be released or shared under the following limited circumstances:

- (a) If administrative charges have been brought against an officer and a hearing will be held, a copy of all discoverable materials shall be provided to the officer and the hearing officer before the hearing;
- (b) If the subject officer, agency or governing jurisdiction has been named as a defendant in a lawsuit arising out of the specific incident covered by an internal investigation, a copy of the internal investigative reports may be released to the attorney representing the subject officer, agency or jurisdiction;
- (c) Upon the request or at the direction of the County Prosecutor or Attorney General;
- (d) Upon a court order; or
- (e) Upon a request from the Division of Pensions, following an officer's application for a retirement allowance.

- 9.6.2 (a) The *Summary and Conclusions Report* described in Section 9.1.1(b) shall be released in response to a request made under the common law right of access by any member of the public or press where it satisfies any of the following conditions:
- (1) The *Summary and Conclusions Report* led to a result on or after January 1, 2023, that requires disclosure pursuant to Section 9.11.2;
 - (2) The agency otherwise concludes that the *Summary and Conclusions Report* is subject to release pursuant to applicable law or court order; or
 - (3) Upon the request or at the direction of the County Prosecutor or Attorney General at any time.
- (b) When an agency concludes that a report is subject to disclosure under Section 9.6.2(a), it shall redact the following before disclosure:
- (1) The names of complainants, witnesses, informants, victims and cooperators, in addition to information that could reasonably lead to discovery of their identities;¹¹
 - (2) Non-public, personal identifying information about any individual named in the report, such as their home addresses, phone numbers, dates of birth, social security numbers, familial relationships, etc.;
 - (3) Medical information or history, including but not limited to, mental health or substance abuse services and drug or alcohol evaluation, counseling or treatment;
 - (4) Information regarding any criminal investigation or prosecution that is not already contained in a public filing, or any information that would impede or interfere with a pending criminal or disciplinary proceeding;

¹¹ In instances of domestic violence, in addition to redaction of the victim's name, all reference to the specific nature of the qualifying relationship should also be redacted to protect the identity of the victim. For example, if the victim is an intimate partner, terms such as 'spouse,' 'partner,' 'girlfriend,' 'boyfriend,' 'husband,' or 'wife,' should also be redacted, and to the extent possible the report should just indicate that the relationship between the victim and the officer was an enumerated relationship under the Prevention of Domestic Violence Act (*N.J.S.A. 2C:25-17 et seq.*).

- (5) Any records or material prohibited from disclosure by law;
- (6) Juvenile records;
- (7) Any information which is the subject of a judicial order compelling confidentiality
- (8) Any other information that would violate a person's reasonable expectation of privacy; and
- (9) Any information regarding law enforcement personnel, procedures, or resources that could create a risk to the safety of any person, including but not limited to law enforcement personnel.

9.6.3 In addition to the situations described in Sections 9.6.1 and 9.6.2, the law enforcement executive may authorize access to a particular file or record for good cause. The request and the authorization shall be in writing, and the written authorization shall specify who is being granted access, to which records access is being granted and for what time period access is permitted. The authorization shall also specify any conditions (i.e., the files may be reviewed only at the internal affairs office and may not be removed). In addition, the law enforcement executive may order any redactions consistent with Section 9.6.2(b). The law enforcement executive should grant such access sparingly, given the purpose of the internal affairs process and the nature of many of the allegations against officers.

As a general matter, a request for internal investigation case files may satisfy the good cause requirement:

- (a) If a Civilian Review Board that meets certain minimum requirements requests access to a completed or closed investigation file, subject to the conditions described in this section; or
- (b) If another law enforcement agency requests the files because it is considering hiring an officer who was formerly employed at the agency with the internal investigation files.

9.6.4 Agencies may receive law enforcement or judicially sanctioned subpoenas directing the production of internal affairs investigative records. Before responding to the subpoena, the law enforcement executive or internal affairs investigator should consult with the agency's legal counsel to determine whether the subpoena is valid and reasonable. Courts may modify or quash invalid or unreasonable subpoenas, but will require the agency seeking to so modify or quash to file an appropriate motion. Similar considerations may provide grounds for opposing a records request from a Civilian Review Board that otherwise satisfies the minimum requirements described below. For that reason, the appropriate agency personnel should consult with legal counsel to determine under what circumstances it would be appropriate to provide notice to any individual who is referenced in records requested by a Civilian Review Board.

9.6.5 If the release of internal affairs documents is appropriate, the agency should inventory the reports released and obtain a signed receipt.

- 9.6.6 Law enforcement agencies may not waive, restrict, or otherwise limit the power of the County Prosecutor or Attorney General to direct that the information or records of an internal investigation be released or shared pursuant to Section 9.6.1(c).

9.7 Coordination with Civilian Review Boards

- 9.7.1 Internal investigation case files generally are not releasable to Civilian Review Boards, but the “good cause” standard may be satisfied when a Civilian Review Board requests records from a completed or closed investigation file and the Civilian Review Board has in place certain minimum procedural safeguards, as described in Section 9.7.2, to preserve the confidentiality of the requested records and the integrity of the internal affairs function, in addition to complying with all other applicable legal requirements. A violation of any of these requirements may result in the revocation of a Civilian Review Board’s access to confidential law enforcement information, including internal affairs records, and potentially may result in other adverse or remedial actions under federal, state, or local law.
- 9.7.2 For the purposes of satisfying the requirements of Section 9.7.1, a Civilian Review Board must implement the following minimum procedural safeguards:

(a) Avoidance of Interference with Ongoing Investigations or Proceedings

The Civilian Review Board must establish policies to avoid interference with ongoing investigations or proceedings, similar to the policies that an internal affairs function must adopt to avoid interference with ongoing criminal investigations or proceedings. Specifically, the policy must make clear that the Board may not commence an investigation of a particular civilian complaint or incident until after any criminal and/or internal affairs investigations have concluded and any resulting discipline has been imposed. This requirement applies regardless of whether the Civilian Review Board is granted authority to recommend discipline, or request reconsideration of any findings or disciplinary decisions, or is limited in its authority to auditing completed investigations. This requirement also applies regardless of whether, as a general matter, the Civilian Review Board is granted access to redacted or unredacted internal affairs records.

After reviewing the relevant internal affairs records and conducting any other lawful investigation that the Civilian Review Board deems appropriate, the Board may, to the extent permitted by law, present its conclusions to the law enforcement executive or appropriate authority; request additional information or clarification regarding the findings or decisions made in the course of the internal affairs investigation; and/or request that the internal affairs investigation be re-opened. Whether to re-open an internal affairs investigation remains within the discretion of the law enforcement executive and, with regard to criminal matters, the County Prosecutor’s Office.

The Civilian Review Board may not override any finding or decision made as part of the internal affairs process, impose discipline, require that another official impose discipline, or render any finding or decision that requires deference from any other official. If a law enforcement agency declines to re-open an investigation at the request of the Civilian Review Board, the Board may issue a final public report regarding the complaint or incident after appropriately redacting the report in accordance with instructions from the law enforcement executive. The personal identity of specific subject officers, complainants, or witnesses may not be disclosed to the public.

Under no circumstances may a Civilian Review Board immunize any person from prosecution or take any other action that would have the effect of conferring immunity on any person.

(b) Confidentiality

The Civilian Review Board must establish and adhere to written policies and procedural safeguards to preserve the confidentiality of internal affairs records and other confidential information, which shall include at least the following requirements:

- (1) *Closed sessions for reviews or investigations.* The Board must be in a closed session whenever the content of internal affairs records are discussed or testimony or other evidence regarding a specific incident is presented.
- (2) *Protection of internal affairs information.* No part of any internal affairs file may be disclosed by the Civilian Review Board under any circumstances to any person who is not a Board member or employee, the law enforcement executive, or a member of the law enforcement agency's internal affairs function, except in a final public report appropriately redacted in accordance with instructions from the law enforcement executive. This prohibition on disclosure includes any statement made by police officers to law enforcement investigators under the provisions of *Garrity v. New Jersey*, 385 U.S. 493 (1967).
- (3) *Personal identifiers.* Even in the Civilian Review Board's final public report, the Board may not disclose the personal identity of subject officers, complainants, or witnesses.
- (4) *Dedicated location for reviewing internal affairs records.* Whenever Civilian Review Board members and staff are granted access to internal affairs records, that review shall take place only in a secure location designated by the law enforcement executive and no internal affairs records may be copied or removed from the designated location.

- (5) *Training*. All Civilian Review Board members and staff shall undergo training approved by the County Prosecutor's Office on the confidentiality of internal affairs records and other investigative material prior to being granted access to such information.
- (6) *Attestation*. All Civilian Review Board members and staff shall receive a copy of the Board's written confidentiality policies and sign a sworn statement that they will comply those policies prior to being granted access to internal affairs records.

The law enforcement executive may condition the Civilian Review Board's access to internal affairs records on the Board's agreement to other protections that the law enforcement executive reasonably considers necessary to safeguard their confidentiality.

(c) *Conflicts of Interest*

The Civilian Review Board must adopt a written conflicts-of-interest policy that addresses both inherent conflicts—which preclude a person's service entirely as a Board member or staffer—and incident-specific conflicts—which require a Board member or staffer's recusal from particular matters. Prior to commencing their service, Board members and staff must sign a sworn statement that they will comply with the Civilian Review Board's written conflicts-of-interest policy.

The Civilian Review Board's conflicts-of-interest policy must include, at a minimum, the following stipulations:

- (1) *Incident-specific conflicts*. Any Board member or staffer with an incident-specific conflict must immediately recuse from all proceedings related to that matter.
- (2) *Inherent conflicts*. At least the following categories of persons are considered inherently conflicted and may not serve as a Board member or staffer:
- a. A sworn officer or employee of a law enforcement agency within the Board's jurisdiction, or any person who has held such a position in the last five years;
 - b. A sworn officer or employee of any other state, county, or local law enforcement agency;
 - c. A prosecutor or criminal defense attorney currently practicing in the county within the Board's jurisdiction;
 - d. A relative of any of the aforementioned individuals, as defined in the New Jersey Conflicts of Interest Law at N.J.S.A. 52:13D-21.2(2)(d);
 - e. A current candidate for public office; or
 - f. With respect to Board membership, a current officer or employee of the municipality.

(3) *Duty to disclose.* Board members and staff have an ongoing duty to affirmatively disclose any conflict of interest that they may reasonably become aware of, whether that conflict is inherent or incident-specific.

(4) *Screening.* If a Board member or staffer has a close personal or business relationship with an interested party or any individual who meets any of the criteria listed under the “inherent conflicts,” the Board member or staff should establish a screen to ensure the non-disclosure of sensitive information involving the Board.

(d) Criminal History of Board Members and Staff

All Civilian Review Board members and staff who support the Board’s work, on a full- or part-time basis, must undergo a criminal history background check. A person who has been convicted of a crime or offense may not be granted access to the content of internal affairs records unless both the law enforcement executive and the County Prosecutor consent to that person being granted such access.

9.8 Coordination with Other Law Enforcement Agencies

9.8.1 In some instances, an officer who was formerly an employee of one law enforcement agency may apply to join a different law enforcement agency. It is imperative that the law enforcement agency that may hire the officer has access to all internal investigative files related to that officer’s previous employment. Without such information, a law enforcement agency is unable to make a fully informed hiring decision.

9.8.2 Accordingly, in any case where a law enforcement agency has reason to believe that a candidate for employment was previously a sworn officer of another law enforcement agency, the hiring agency has an affirmative obligation to identify all such former employers. The hiring agency shall then request all internal affairs files for cases where the candidate was the subject officer, regardless of the ultimate disposition or status of the complaint. If requested, the hiring agency shall provide a written acknowledgement to the releasing agency that it will maintain the confidentiality of said files in accordance with this policy.

9.8.3 If a law enforcement agency receives such a request regarding a former employee, then it shall immediately share copies of all internal investigative information related to that candidate with the hiring agency, in accordance with N.J.S.A. 52:17B-247. Confidential internal affairs files shall not be disclosed to any other party.

9.8.4 This disclosure requirement does not apply when the agency responsible for sharing internal affairs files is unable to do so because the information is clearly subject to a non-

disparagement or non-disclosure agreement. Such agreements must be followed even though they inhibit the ability of law enforcement agencies to fully evaluate candidates applying for positions of public trust, and therefore have the potential to compromise public safety. Given the public safety risks that such agreements pose, county and municipal governing entities and their counsel are strongly discouraged from entering into them.

- 9.8.5 In all cases, law enforcement executives retain the authority to defer a decision on hiring a particular candidate until all extant internal affairs information has been received and reviewed.

9.9 Reporting to Law Enforcement Executive

- 9.9.1 The internal affairs function should prepare periodic reports for the law enforcement executive that summarize the nature and disposition of all misconduct complaints the agency received. This report should be prepared at least quarterly, but may be prepared more often as directed by the executive. The report should include the principal officer; the allegation; the complainant; the age, sex, race and other complainant characteristics that might signal systematic misconduct by any member of the agency; and the investigation's status.
- 9.9.2 Concluded complaints should be recorded and the reasons for termination explained.
- 9.9.3 This report shall be considered a confidential, internal work product. Dissemination of the report should be limited to command personnel, the County Prosecutor, the appropriate authority, or a civilian review board that meets the minimum requirements for access to internal affairs information, if mandated by the governing body.

9.10 Reporting to County Prosecutor

- 9.10.1 On a quarterly basis, every law enforcement agency shall report internal affairs activity to the County Prosecutor on an internal affairs summary report form attached as Appendix K (The fillable form may be found on the Attorney General's website). Each County Prosecutor will provide those law enforcement agencies—including municipal police departments—in their jurisdiction with instructions on completing the forms, and a reporting schedule.
- 9.10.2 The summary report forms must contain sufficient information to enable the County Prosecutor to identify warning signs of potential deficiencies in the internal affairs process. At a minimum, each report must include a brief summary of each internal affairs complaint that was pending before the agency at any point during the reporting period. The summary shall at least include the nature of the complaint, the date the complaint was received, the

current status of the complaint, and, if the case is closed, the final disposition of the complaint with any discipline imposed. A sample form is found at Appendix K.

9.10.3 Honesty is an essential job function for every New Jersey law enforcement officer. Officers who are not committed to the truth, who cannot convey facts and observations in an accurate and impartial manner and whose credibility can be impeached in court cannot advance the State's interests in criminal matters. In addition, defendants in criminal matters may be entitled to certain evidence the prosecutor has concerning the credibility of prosecution witnesses, including police officers. Prosecutors are considered to possess such evidence even when law enforcement agencies create and maintain information concerning the honesty of individual officers. Furthermore, prosecutors may be required to provide such evidence to the court. It is therefore imperative that the internal affairs investigator assist prosecutors with their legal duty to review and, if necessary, disclose evidence that may impact the credibility of police officers. (See Attorney General Law Enforcement Directive No. 2019-6). Thus, the following matters shall be reported to the County Prosecutor so that he or she may evaluate the material's relevance:

- (a) A finding that a police officer has filed a false report or submitted a false certification in any criminal, administrative, employment, financial or insurance matter in their professional or personal life;¹²
- (b) A pending court complaint or conviction for any criminal, disorderly persons, petty disorderly persons, municipal ordinance or driving while intoxicated matter;
- (c) A finding that undermines or contradicts a police officer's educational achievements or qualifications as an expert witness;
- (d) A finding of fact by a judicial authority or administrative tribunal that is known to the officer's employing agency that concludes that a police officer intentionally did not tell the truth in a matter;
- (e) A sustained finding that a police officer intentionally mishandled or destroyed evidence; and
- (f) A sustained finding that a police officer is biased against a particular gender or ethnic group.

9.10.4 That law enforcement agencies report the above-listed incidents to the County Prosecutor's Office does not constitute a mandate or requirement that the information be disclosed to the court. Prosecutors should conduct an independent review of the information provided to determine whether it needs to be disclosed and whether the officer can participate in the prosecution of criminal cases.

¹² This provision is not intended to require that law enforcement agencies initiate internal affairs investigations into the accuracy of every statement, report or certification that may be filed with respect to civil litigation, including matrimonial and employment matters or any other personal or financial matters not directly related to the officer's employment. In most cases, such investigations would be inappropriate. Determinations as to the credibility of statements or certifications made in the context of litigation should be made by the courts or administrative tribunals. Determinations as to the credibility of statements or certifications in other personal or financial matters should be addressed if they arise in the context of an ongoing internal affairs investigation.

9.10.5 Once a decision is reached as to a particular case or defendant, the prosecutor shall, if necessary, discuss their decision with the internal affairs investigator and the law enforcement executive. If it is determined that an officer cannot participate in a criminal prosecution, the prosecutor must advise the agency whether the officer's disability is limited to a particular case, a particular category of cases or all criminal matters.

9.11 Public Reports

9.11.1 On an annual basis, every law enforcement agency shall provide to the County Prosecutor and publish on its public website a report summarizing the types of complaints received and the dispositions of those complaints. This report should be statistical in nature. The County Prosecutor shall submit a summary of the reports from all agencies in its jurisdiction to the Office of Public Integrity and Accountability. The Annual Internal Affairs Summary attached to Appendix K shall be used to satisfy the requirements of this Section. This process shall be overseen and directed by the Attorney General's Office of Public Integrity & Accountability and the Office of Justice Data.

9.11.2 On a periodic basis, and no later than January 31 of the following year, every agency shall submit to the County Prosecutor and the Attorney General, and publish on the agency's public website, a brief synopsis of all misconduct where an agency member:

- (a) Was terminated;
- (b) Was reduced in rank or grade;
- (c) Was assessed a suspension of more than five days. A suspension of more than five days shall be broadly construed to include any disposition involving a suspension of more than 40 hours of time or the equivalent of five days/shifts if less than 40 hours, regardless of whether any of the suspension time was suspended or held in abeyance. It shall include the loss of vacation, sick or leave time totaling more than 40 hours or the equivalent of five days/shifts. It shall include any combination of suspension time assessed plus loss of vacation, sick or leave time that aggregates to more than 40 hours or the equivalent of five days/shifts. It shall also include any fine that exceeds the gross value of 40 hours, or the equivalent of five days/shifts, of pay;
- (d) Had a sustained finding of discrimination or bias against any person because of the individual's actual or perceived race, creed, color, national origin, ancestry, age, marital status, civil union status, domestic partnership status, affectional or sexual orientation, genetic information, sex, gender identity or expression, disability, nationality, familial status, or any other protected characteristic under N.J.S.A. 10:5-1 et seq, regardless of the type or severity of discipline imposed;
- (e) Had a sustained finding that the officer utilized excessive force in violation of departmental policy or the Attorney General's Use of Force Policy, regardless of the type or severity of discipline imposed;
- (f) Had a sustained finding that the officer was untruthful or has demonstrated a lack of candor, regardless of the type or severity of discipline imposed;

- (g) Had a sustained finding that an officer has filed a false report or submitted a false certification in any criminal, administrative, employment, financial, or insurance matter in their professional or personal life, regardless of the type or severity of discipline imposed;
- (h) Had a sustained finding that an officer intentionally conducted an improper search, seizure or arrest, regardless of the type or severity of discipline imposed;
- (i) Had a sustained finding that an officer intentionally mishandled or destroyed evidence, regardless of the type or severity of discipline imposed;
- (j) Had a sustained finding of domestic violence, as defined in N.J.S.A. 2C:25-19, regardless of the type or severity of discipline imposed;
- (k) Resigned, retired, transferred or separated from the agency, regardless of the reason, while any internal affairs investigation or complaint was pending, and the misconduct ultimately sustained falls within categories (d) through (j) above or would have resulted in an action under categories (a) through (c) had the member not separated from the agency;¹³ or
- (l) Was charged with any indictable crime under New Jersey or an equivalent offense under federal law or the law of another jurisdiction related to the complaint.

“Sustained finding” refers to any finding where a preponderance of the evidence shows an officer violated any law, regulation, directive, guideline policy or procedure issued by the Attorney General or County Prosecutor; agency protocol; standard operating procedure, rule or training, following the last supervisory review of the incident(s) during the internal affairs process where the deadline for appeal has passed or following a ruling by a hearing officer, arbitrator, Administrative Law Judge, Civil Service Commission, or the Superior Court where the deadline for any subsequent appeal has passed. Allegations that cannot be sustained, are not credible, or have resulted in the exoneration of an employee, including where the previous finding has either been vacated, or overturned on the merits in any subsequent action, generally are not considered to be sustained findings subject to the disclosure requirements of this Policy. On the other hand, if the officer negotiates a plea or there is an administrative or civil settlement with the employer whereby the charge is dismissed, the charge would still be considered sustained, if there was sufficient credible evidence to prove the allegation, and the officer does not challenge the finding and obtain a favorable ruling by a hearing officer, arbitrator, Administrative Law Judge, Civil Service Commission or the Superior Court.

The reporting and public dissemination requirements of (a) through (j) above become applicable once an officer’s discipline is sustained, as defined above. The reporting and public dissemination requirements of (k) and (l) above become applicable at the close of the reporting period during which they occur.

¹³ Section 6.0.1 of the IAPP requires that “All allegations of officer misconduct shall be thoroughly, objectively, and promptly investigated to their logical conclusion in conformance with this policy, regardless of whether the officer resigns or otherwise separates from the agency.”

The synopsis of each case, required by this section, shall follow the format provided in Appendix L and shall include the identity of each officer subject to final discipline, a full explanation of the rule, regulation, policy, directive, or law violated, a factual summary of their conduct, and a statement of the sanction imposed. The synopsis shall provide sufficient detail to enable a reader who is not familiar with the case to fully understand the factual scenario that resulted in the disciplinary action. Examples of acceptable synopses may be found in Appendix L (updated November 2022). This synopsis shall not contain the identities of the complainants or any victims. Where discipline relates to domestic violence, the synopsis shall not disclose the relationship between a victim and an officer. In rare circumstances, further redactions may be necessary to protect the identity of a victim. Whenever practicable, notice shall be given to victims of domestic or sexual violence in advance of an agency's disclosure of discipline related to the incident.

The required posting to the agency's public website shall remain in place and publicly accessible.

- 9.11.3 Agencies may not, as part of a plea or settlement agreement in an internal affairs investigation or otherwise, enter into any agreement concerning the content of a synopsis subject to public disclosure under Section 9.11.2, including any agreement regarding the identities of officers subject to final discipline, summaries of misconduct, or statements of the sanctions imposed. No State, county, or municipal agency, law enforcement unit, or licensed law enforcement officer shall enter into any non-disclosure agreement which seeks to conceal or prevent public review of the circumstances under which the officer separated from or was terminated or fired from employment by the law enforcement unit or State, county, or municipal agency.
- 9.11.4 Whenever a law enforcement officer makes an application to the New Jersey Division of Pensions for retirement benefits, in anticipation of upcoming retirement and the receipt of a pension, both the employing law enforcement agency and the officer shall have an affirmative obligation to report to the Division of Pensions the existence of any pending internal affairs investigation, complaint or case, including those on appeal, as well as any criminal charges against that officer.¹⁴

9.12 Personnel Records

- 9.12.1 Personnel records are separate and distinct from internal affairs investigation records, and internal affairs investigative reports shall never be placed in personnel records, nor shall personnel records be co-mingled with internal affairs files. When a complaint has a disposition of exonerated, not sustained or unfounded, there shall be no indication in the employee's personnel file that a complaint was ever made.

¹⁴ See *N.J.S.A.* 43:1-3 ("honorable service" and the evaluation by the relevant board for same); 43:1-4 (notification to Division of Criminal Justice, and Pensions and Benefits, about prosecutions or convictions of members); 43:1-5 (employer must notify the board of disciplinary action taken against a member).
[INTERNAL AFFAIRS POLICY & PROCEDURES | November 2022](#)

9.12.2 Where a complaint is sustained and discipline imposed, the only items to be placed into the employee's personnel file are a copy of the administrative charging form and a copy of the disposition form. See Appendix M for a sample form (Note: Civil Service jurisdictions must use forms authorized by the Civil Service Commission). No part of the internal affairs investigative report shall be placed in the personnel file.

10 The Responsibilities of County Prosecutors

- 10.0.1 County Prosecutors are responsible for conducting substantive oversight to ensure that the internal affairs functions of all law enforcement agencies within their jurisdiction are operating professionally and effectively. As specialists with deep experience in the criminal justice system and working in the community, prosecutors are well situated for identifying procedural deficiencies before serious issues emerge with an agency's internal affairs function. As such, County Prosecutors must review the information they receive from law enforcement and the public regarding internal affairs, and swiftly follow up if there are any signs of trouble.
- 10.0.2 County Prosecutor Offices are an important alternative venue for the filing of internal affairs complaints against an officer of any law enforcement agency in their jurisdiction. Prosecutors must be especially alert to any indication from complainants or the public that the process for receiving and investigating complaints of misconduct is not operating in accordance with the guidelines in this document. For instance, any indication that a member of the public who attempted to file a complaint was turned away or dissuaded is extremely serious and must be immediately investigated.
- 10.0.3 It is also critical that County Prosecutors substantively review the summary reports that they receive from the internal affairs functions of agencies in their jurisdiction, including municipal police departments. The role of the prosecutor is not limited to ensuring that such reports are submitted on time. Instead, prosecutors must examine the reports, and conduct follow up investigation when concerning patterns emerge. For instance, if an agency consistently appears to summarily close administrative investigations in instances where criminal investigations are declined, then that would be cause for further investigation. Or, if an agency's officers have been the subjects of numerous serious complaints over a long span of time, but no such complaint has ever been sustained, then that would merit a close review. County Prosecutors are at all times empowered to direct that an agency's internal affairs files be shared with prosecutors for the purposes of facilitating further investigation.
- 10.0.4 County Prosecutors should conduct reviews of agencies with concerning patterns, as well as instituting a process for random reviews of the internal affairs functions of agencies in their jurisdiction. For instance, a County Prosecutor might direct a randomly selected agency to share all internal affairs files for cases that were closed in the previous quarter, so that the prosecutor can ascertain whether the internal affairs guidelines are being rigorously observed both in the procedures being employed and in the substance of the results. Likewise, if excessive force complaints are never sustained by an agency, the County Prosecutor may elect to review the body worn camera footage of force incidents to make an independent assessment. Even if the County Prosecutor's Office finds that there have been no substantive errors in an agency's dispositions or disciplinary decisions, periodic reviews might uncover procedural deficiencies that, if allowed to continue, might

EXHIBIT H

result in serious errors in the future. In instances where a County Prosecutor reviewed a matter for potential criminal prosecution, declined prosecution and referred back for administrative action, the County Prosecutor must review the ultimate disposition of those matters.

Appendix O

SAMPLE SUMMARY and CONCLUSIONS REPORTS

SAMPLE I

Officer's Name: Officer John Smith

Internal Affairs Case No.: 2022-0123

Summary of Allegations

On March 16, 2022, the Absecon Police Department received an anonymous complaint through its online portal that Officer Smith had been drinking on duty and had abused sick leave. Specifically, the first allegation involved Officer Smith consuming alcohol while detailed to escort a funeral procession in February 2022. It is also alleged that on March 7, 2022 the officer used sick leave time while he was actually playing golf.

Summary of Factual Findings

Allegation #1 – Drinking on Duty

Investigation revealed that Officer Smith was assigned to a funeral procession detail on February 22, 2022. His time records indicate he was on duty from 10 am to 3 pm. An interview of 2 witnesses confirmed that the Officer was present at the repast in uniform between approximately 1:30 and 2, but they did not see him drinking. However, a review of the surveillance cameras from the kitchen area of the restaurant revealed him consuming a bottle of beer at 1:52 pm.

Finding: Sustained

Allegation #2 – Misuse of Sick Time

A review of Department payroll records indicates that Officer Smith did request and was granted a full day sick leave on March 7, 2022. When interviewed, the Officer confirmed that he did play golf on that date at approximately 3:15 pm. However, he had two medical appointments earlier that day and did not return home until around 2 pm. Since Department policy only permits leave to be taken in ½ day increments and his appointments took longer than ½ day, the Officer was aware he would be charged a full day of sick leave. However, the policy further provides that Officers do not need to return to work for unused leave if it is less than ½ day. Therefore, he contacted a friend to play golf. The Officer also provided written documentation of his medical appointments.

Finding: Exonerated

Discipline Imposed (to be completed when Discipline is final; See Section 9.11.2)

Based upon a previous DUI offense and two demeanor infractions, Officer Smith was suspended for 10 days and directed to obtain a substance abuse evaluation.

SAMPLE II**Officer's Name:** Trooper Jane Cook**Internal Affairs Case No.:** 2022-0124**Summary of Allegations**

A civilian complainant alleges that on December 20, 2022, in the late evening, New Jersey State Trooper (name) conducted an improper automobile stop on Interstate 78 in the area of Clinton, NJ. Specifically, complainant alleges that Trooper Cook stopped her car for speeding based on racial profiling, was rude and unprofessional in speaking with complainant, arrested her without probable cause and used excessive force in subduing her.

Summary of Factual Findings**Allegation # 1 - Racial Profiling**

Reviews of the DIVR (dash in vehicle recorder), the body worn camera (BWC) and radio communications did not reveal any comments that would support racial motivation in the stop. The DIVR video fails to reveal the race of the driver as conditions were dark. Trooper Cook states on the radio in initiating the stop that the race of the driver is unknown. A review of Trooper Cook's stop history does not reveal a pattern of racial imbalance in stops or other indications of bias. Complainant's claim that others were also travelling over the speed limit does not establish proof of racial profiling.

Finding: Not Sustained**Allegation # 2 - Conduct Unbecoming an Officer**

Reviews of the DIVR, the BWC and radio communications do not reveal any comments that were rude or unprofessional. Trooper Cook remained calm and polite throughout the encounter.

Finding: Unfounded**Allegation # 3 - Arrest Without Probable Cause**

Complainant alleges that she should not have been arrested for a traffic ticket. While an arrest for a traffic ticket would have been improper, the facts show that complainant was not arrested for a traffic ticket, but rather because when her license was run by the trooper it showed that there was an outstanding warrant for her arrest based on a felony complaint.

Finding: Exonerated**Allegation # 4 - Excessive Force**

Review of the DIVR and BWC shows that Trooper Cook slammed complainant to the ground when she asked a question about why she was being arrested. She did not resist or attempt to flee and was not given an opportunity to voluntarily comply with handcuffing. The trooper's conduct was a violation of the Attorney General's Use of Force Policy and the NJ State Police Policy on force.

Finding: Sustained

Discipline Imposed (to be completed when Discipline is final; See Section 9.11.2) – 30-day suspension and retraining.

SAMPLE III**Officer's Name:** Lieutenant Jerry Swan**Internal Affairs Case No.:** 2022-0125**Summary of Allegations**

Patrol officers were dispatched to 123 Main Street on July 4, 2022 at 0210, in response to a loud noise complaint, possibly a domestic dispute. Upon arrival, the officers were met by the resident, Lieutenant Swan, who advised that everything was fine and told the officers to leave. The officers investigated further and located a hysterical female inside the residence with red marks on her face and forearms. The female advised that the injuries were caused by her boyfriend, Lieutenant Swan, with whom she had been arguing and physically fighting. The Lieutenant, who was intoxicated, was belligerent, berated the officers for not leaving when he told them to do so, and indicated that the incident was not a "big deal." The Lieutenant was arrested and charged with simple assault, N.J.S.A. 2C:12-1a(1), and harassment, N.J.S.A. 2C:33-4b. His behavior was loud and disorderly as he was walked in handcuffs to a patrol car. This behavior was witnessed by a group of neighbors who had gathered outside as a result of the commotion. The Lieutenant cursed the neighbors and told them to get back in their homes. The responding officers seized the Lieutenant's duty weapon and two privately owned weapons. During the arrest processing, the Lieutenant continued to berate the officers with numerous personal insults. The female victim refused to cooperate further with police and declined to seek a Temporary Restraining Order. In municipal court, the charges were dismissed when the victim refused to testify. The Lieutenant was ordered to report for a psychiatric exam as part of the "re-arming process" and failed to appear as ordered. Per Attorney General Directive and agency policy, the entire matter was referred to the Internal Affairs Bureau for review.

Summary of Factual Findings**Allegation # 1 - Criminal Behavior (Simple Assault)**

A review of the police reports and body worn camera (BWC) evidence, as well as interviews of the involved officers did not reveal sufficient evidence to sustain the simple assault charge. The victim refused to cooperate with responding officers, the prosecutor or internal affairs detectives. She declined medical attention on the night of the incident. The Lieutenant's statement was that the female victim attacked him and the marks on her body were the result his own self-defense.

Finding: Not Sustained**Allegation # 2 - Criminal Behavior (Harassment)**

The same evidence was considered on the charge of harassment by offensive touching. Notably, the responding officers' BWCs recorded the hysterical victim describing a physical altercation with an intoxicated Lieutenant Swan, who was incensed when she rejected his advances. It was difficult to determine the exact order of events during the altercation, but the evidence, including

the red marks on the victim's face and arms, supports the charge that the physically larger Lieutenant Swan engaged in offensive touching harassment, if not simple assault.

Finding: Sustained

Allegation # 3 - Conduct Unbecoming an Officer

In addition to the harassment of the victim, Lieutenant Swan's behavior in telling the responding officers to leave the scene and then berating and insulting them throughout the process, as well as his disgraceful behavior outside his residence, which was witnessed by civilian neighbors, brings discredit to him and to the police department. It fully supports the charge of Conduct Unbecoming an Officer.

Finding: Sustained

Allegation # 4 - Failure to Follow a Direct Order

The Lieutenant was ordered by the Deputy Chief to appear for a psychiatric exam on October 1, 2022 at 9 am as part of the "re-arming" process. The doctor's office advised the police department that the Lieutenant had failed to appear for the appointment. Further investigation revealed that a member of the doctor's staff had rescheduled the appointment for October 15 and failed to enter the new date into the office computer system, resulting in the call to the police department reporting the Lieutenant's absence. The examination was conducted as scheduled on October 15, 2022.

Finding: Exonerated

Discipline Imposed (to be completed when Discipline is final; See Section 9.11.2) – Demotion of one rank from Lieutenant to Sergeant. One-year suspension with alcohol evaluation and counseling. Counseling to continue for a period to be determined by agency physician, in consultation with the Lieutenant's counselors.

MIRZA M. BULUR, in his official capacity as the
ACTING PUBLIC SAFETY DIRECTOR for the
CITY OF PATERSON and APPROPRIATE
AUTHORITY, CITY OF PATERSON POLICE
DEPARTMENT, and ENGELBERT RIBEIRO in
his official capacity as the POLICE CHIEF of the
CITY OF PATERSON POLICE DEPARTMENT,

Plaintiffs,

v.

THE NEW JERSEY OFFICE OF THE
ATTORNEY GENERAL, MATTHEW J.
PLATKIN in his official capacity as ATTORNEY
GENERAL OF THE STATE OF NEW JERSEY,
OFFICE OF THE ATTORNEY GENERAL,
JOHN DOES 1-10, MARY DOES 1-10, and XYZ
CORPORATIONS 1-10,

Defendants.

SUPERIOR COURT OF NEW JERSEY
PASSAIC COUNTY
LAW DIVISION

CIVIL ACTION

Docket No. PAS-L-

**BRIEF IN SUPPORT OF ORDER TO SHOW CAUSE PURSUANT TO NEW JERSEY
COURT R. 4:52-1(a) AND N.J.S.A. 2A:16-51 et seq.**

KINGSTON COVENTRY LLC

By: Christopher J. Gramiccioni, Esq. (019762008)

1 Gatehall Drive, Suite 305

Parsippany, NJ 07054

Chris@kingstoncoventry.com

(973) 370-2227

Attorney for Plaintiffs

TABLE OF AUTHORITIES

	Page
Cases: <u>Brown v. City of Paterson</u> , 424 N.J. Super. 176 (App. Div. 2012)	20
<u>Chamber of Commerce v. State</u> , 89 N.J. 131 (1982)	20
<u>Crowe v. DeGioia</u> , 90 N.J. 126 (1982)	10, 11, 13, 14, 17, 18
<u>Flagg v. Essex Cnty. Prosecutor</u> , 171 N.J. 561 (2002)	11
<u>FOP, Newark Lodge No. 12 v. City of Newark</u> , 244 N.J. 75 (2020)	12, 15, 19
<u>Garden State Equality v. Dow</u> , 216 N.J. 314 (2013)	10
<u>Inganamort v. Borough of Fort Lee</u> , 62 N.J. 521 (1973)	12
<u>In re Fireman’s Ass’n. Oblig.</u> , 230 N.J. 258 (2017)	21
<u>Keuerleber v. Twp. of Pemberton</u> , 260 N.J. Super. 541 (App. Div. 1992)	12, 22
<u>Matter of City of Newark</u> , 469 N.J. Super. 366 (App. Div. 2021)	17
<u>McNeil v. Legis. Apportionment Comm’n</u> , 176 N.J. 484 (2003)	11, 18, 20
<u>Murray v. Plainfield Rescue Squad</u> , 210 N.J. 581 (2012)	16
<u>New Jersey Builder’s Ass’n. v. Mayor and Twp. Council of E. Brunswick Twp.</u> , 60 N.J. 222 (1972)	13
<u>N.J. Citizen Action v. Riviera Motel Corp.</u> , 296 N.J. Super. 402 (App. Div. 1997)	21
<u>O’Shea v. N.J. Schs. Constr. Corp.</u> , 388 N.J. Super. 312 (App. Div. 2006)	20
<u>Paff v. Galloway Township</u> , 229 N.J. 340 (2017)	17
<u>Quick Check Food Stores v. Springfield Twp.</u> , 83 N.J. 438 (1980)	12
<u>State v. R.Y.</u> , 242 N.J. 48 (2020)	11
<u>Waste Mgm’t of New Jersey, Inc. v. Morris County Mun. Utilities Authority</u> , 443 N.J. 445 (App. Div. 2013)	11

	<u>Waste Mgm't of New Jersey, Inc. v. Union County Mun. Utilities Authority, 399 N.J. Super. 508 (App. Div. 2008)</u>	17
Rules:	<u>R. 4:52-1</u>	10
Statutes:	2A:16-51	20
	40A:14-118	4, 13, 14, 21, 22
	40A:14-147	22
	40A:14-181	8, 10, 14, 15
	40:41A-28	13, 14, 21
	40:42-4	14
	40:48-2	13, 21
	40:69A-30	10, 12, 13, 22
	40:69A-36, 40	10
	52:17B-66	22
	52:17B-97	14
	52:17B-98	10, 14
	52:17B-107	9, 10, 14, 15, 16
NJ Constitution:		5, 12, 14, 22

PRELIMINARY STATEMENT

Plaintiffs bring this suit seeking injunctive relief with preliminary restraints to remedy Defendants' ultra vires supersession and takeover of the operations of the City of Paterson Police Department. In taking this unprecedented action, Defendants' run roughshod the constitutional and statutory rights of Plaintiffs and the City of Paterson. The Defendants' unprecedented takeover of the daily operations of an entire municipal police department unlawfully usurps the longstanding authority granted to municipalities by the New Jersey Legislature and State Constitution. Defendants, moreover, point to no existing statutory authority to support this takeover, instead relying only on a self-serving revised directive executed mere months before their takeover. As such, Plaintiffs seek an Order terminating Defendants' command and control of the Paterson Police Department, and directing Defendants to, with the exception of the Department's internal affairs function, restore full operational command and control of the City of Paterson Police Department to Plaintiffs.

STATEMENT OF FACTS

The Parties

Plaintiff Mirza M. Bulur is the duly appointed full-time interim public safety director of the City of Paterson and an "appropriate authority" for, among other municipal divisions, the City of Paterson Police Department, as designated by the governing body of the City of Paterson via ordinance and consistent with N.J.S.A. 40A:14-118. See Verified Complaint at ¶ 5. Plaintiff Engelbert Ribeiro is the duly appointed chief of the City of Paterson Police Department who took the oath of office on March 3, 2023. Plaintiff Ribeiro joined the Paterson Police Department in 1996 and, prior to his appointment as Chief, served in the Department's patrol, major crimes and narcotics divisions. Plaintiff Ribeiro is the first Latino chief of police in the history of the City of Paterson. Id. at ¶ 6.

Defendant, the New Jersey Office of the Attorney General, is a principal department of the executive branch of the State of New Jersey and is overseen by state cabinet member and Attorney General, Matthew J. Platkin. Id. at ¶ 7. Defendant Matthew J. Platkin, in his official capacity as the Attorney General of New Jersey, is the chief law enforcement officer of the State of New Jersey and the individual who approved of and announced the actions complained of in the Verified Complaint. Id. at ¶ 8. The position of Attorney General is established by the New Jersey Constitution. N.J. Const. (1947), Art. V, Section IV. An Attorney General is appointed by the Governor with the advice and consent of the State Senate. Id. at ¶ 9. The New Jersey Office of the Attorney General’s Department of Law and Public Safety is organized into various divisions that operate under the supervision of the Attorney General. Included among those divisions are the Division of Criminal Justice (“DCJ”) and the Police Training Commission (“PTC”). Id. at ¶ 10.

Defendants’ Supersession and Takeover of the Paterson Police Department

On March 27, 2023, Defendant Matthew J. Platkin exercised his purported “supersession authority” as the State’s chief law enforcement officer, and directed Defendant the New Jersey Office of the Attorney General (“OAG”) to assume full responsibility of the day-to-day operations of the Paterson Police Department, inclusive of the Department’s internal affairs function. Id. at ¶ 12. Citing the “extraordinary power” of his office, Defendant Platkin indicated that a change was necessary due to “fiscal challenges, a “revolving door of leadership,” and “high-profile cases of misconduct” which allegedly resulted in a loss of trust between the Department and the community. Id. at ¶ 13.

Plaintiff Ribeiro who, at that time had been serving as police chief for 24 days, was relieved of command by Defendants. Defendants appointed a command team consisting of an

interim officer-in-charge from the New Jersey State Police (“NJSP”), subordinate NJSP officer and an OAG Assistant Attorney General. Id. at ¶ 15. Defendants also advised Department personnel that New York City police officer Isa M. Abbassi (hereinafter, “Abbassi”) would be appointed in May 2023 to serve as the officer-in-charge of the Paterson Police Department. Id. at ¶ 16. Later that same day of March 27, Defendant Platkin held a press conference announcing Defendants’ supersession of the Paterson Police Department, assuming “all control of law enforcement functions” of the Department.” Id. at ¶ 18. At no time before, during, or after this public announcement did Defendants identify the statutory authority which would have authorized this unprecedented takeover.

Defendants’ Improper Removal and Reassignment of Plaintiff Ribeiro

Prior to Defendants’ correspondence to Paterson Police staff, Defendant Platkin and other officials met with Plaintiff Ribeiro in his office to inform him of Defendants’ takeover of the Paterson Police Department. Plaintiff Ribeiro was escorted from his office, asked several times whether he planned to retire under the circumstances, and only later given the opportunity remove his belongings from his office. Plaintiff Ribeiro was advised that he would be reassigned by Defendants and would not be permitted to return to the Paterson Police Department to perform any duties as the chief of police. Id. at ¶ 17; see also Certification of Engelbert Ribeiro, filed as Exhibit C of Verified Complaint.

On or about April 28, 2023, Plaintiff Ribeiro was initially advised he would be reassigned to the DCJ Training Academy in Sea Girt, New Jersey, but later learned that Defendants intended to send him to the PTC at OAG in Trenton, New Jersey. Id. at ¶ 19; Exhibit C. In or about late April and early May 2023, Plaintiffs and City of Paterson officials repeatedly requested to Defendants’ command staff that Plaintiff Ribeiro be reassigned to Paterson City

Hall since he remained a city employee whose salary is funded by City of Paterson taxpayers. Id. at ¶ 20. On or about May 5, 2023, the City of Paterson corporation counsel sent an e-mail to the interim officer-in-charge and the OAG Assistant Attorney General, both members of the command staff that assumed control following supersession, formally requesting the same. In this e-mail, Defendants were informed that the City administration was not supportive of Plaintiff Ribeiro's assignment to Trenton, and requested that Plaintiff Ribeiro instead be detailed to City Hall. No response was ever received. Id. at ¶ 20; see also E-Mail from Paterson Corporation Counsel of May 5, 2023, filed as Exhibit D.

During a May 9, 2023 press conference, Defendant Platkin was specifically asked about Plaintiff Ribeiro's employment status and subsequent assignment. Defendant Platkin responded, in substance and in part, "I can't speak about personnel decisions . . . that's a city [of Paterson] decision." Id. at ¶ 21. Though Defendants indicated that Plaintiff Ribeiro's reassignment was a "city decision," Defendants unilaterally reassigned Plaintiff Ribeiro, rejecting the earlier requests for his assignment to Paterson City Hall. This unilateral reassignment was memorialized without the consent or approval of Plaintiffs or the City of Paterson in a "Memorandum of Understanding" ("MOU") dated on or about May 9, 2023 – the same day Defendant Platkin claimed Plaintiff Ribeiro's assignment was a "city decision" during a press conference, and four (4) days after the City of Paterson's request to assign Plaintiff Ribeiro to City Hall was ignored. Id. at ¶ 22; see also MOU of May 9, 2023, filed as Exhibit F.

Neither Plaintiffs nor the City of Paterson were a party to this MOU. Rather, the MOU was executed by Defendant Platkin and counter-executed by Defendants' designee who Defendant Platkin appointed as interim officer-in-charge of the Paterson Police Department upon supersession. Id. at ¶ 23; Exhibit F.

Defendants' Deficient Appointment of Abbassi and Failure to Communicate with Plaintiffs

On or about May 9, 2023, Abbassi assumed command of the Paterson Police Department.¹ Upon information and belief, Abbassi is not licensed nor certified to serve as a police officer in the State of New Jersey as required by the Police Training Act and other applicable state law.² Id. at ¶ 24.

Additionally, Defendants have never provided a timeline for the cessation of their command and control of the Paterson Police Department; have never provided a transition plan for the transfer of command and control back to Plaintiffs; and have failed to report, at least monthly, to Plaintiff Bulur or the City of Paterson on the operation of the police force, as required by state law. Id. at ¶¶ 25-27.

Defendants' Drastic Expansion of Professed Authority under the Revised IAPP

In 1991, the New Jersey Attorney General issued the first Internal Affairs Policy and Procedures (“IAPP”) Directive, which established statewide standards for the operation of internal affairs units in New Jersey. In 1996, the New Jersey Legislature mandated that each law enforcement agency in the State of New Jersey adopt its own policies consistent with the IAPP.³ Id. at ¶ 28. As titled, the IAPP Directive focused squarely on the Attorney General’s authority to

¹ See <https://www.nj.gov/ag-platkin-announces-isa-abbassi-has-assumed-command-of-the-paterson-police-department/#:~:text=PATERSON%20%E2%80%93%20Attorney%20General%20Matthew%20J.of%20the%20Paterson%20Police%20Department>.

² Plaintiffs are aware of New Jersey Senate Bill No. 3943 and its Assembly counterpart purporting to provide the Attorney General authority to appoint an officer-in-charge who has not satisfied police training requirements. The bill passed both chambers but has yet to be signed into law. Upon information and belief, Plaintiff Platkin contacted the bill sponsor after Defendants’ takeover of the police department, specifically seeking this legislation to subsequently remediate his overreach. This legislation attempts to provide after-the-fact ratifications to Defendant’s actions pertaining to the appointment of an officer-in-charge who has not satisfied State police training requirements.

³ See <https://www.njoag.gov/iapp/#:~:text=In%201991%2C%20the%20Attorney%20General,IA%20units%20in%20New%20Jersey>’ see also N.J.S.A. 40A:14-181.

establish uniform policies and procedures for internal affairs matters, but does not speak of supersession of the day-to-day operational functions of a police department.

Defendants' derive their limited supersession authority from the New Jersey Legislature in certain instances, which provides that the Attorney General may

(1) supersede a county prosecutor in any investigation, criminal action or proceeding, (2) participate in any investigation, criminal action or proceeding, or (3) initiate any investigation, criminal action or proceeding. In such instances, the Attorney General may appear for the State in any court or tribunal for the purpose of conducting such investigations, criminal actions or proceedings as shall be necessary to promote and safeguard the public interests of the State and secure the enforcement of the laws of the State.

N.J.S.A. 52:17B-107(a); see also IAPP Directive 22-14 with IAPP revisions, filed as Exhibit H.

Defendants' most recent revision of the IAPP Directive, issued in November 2022, unjustifiably, albeit strategically, expanded Defendants' limited supersession authority in unprecedented fashion. Defendants' most recent version of the IAPP allows for Defendants to take control of "*an entire law enforcement agency*" and "*assume any or all of the duties, responsibilities and authority normally reserved to the chief law enforcement executive and agency.*" Id. at ¶ 30; Exhibit H at pp. 10-12.

All previous IAPP versions issued since its 1991 inception limited the Attorney General's supersession authority to assuming control of a police agency's internal affairs department when deemed necessary. Under legacy versions of the IAPP, municipal police forces were apprised of their duty to cooperate with the Attorney General and the need to strictly adhere to the Attorney General's internal affairs policy requirements. Id. at ¶ 31. As set forth in all previous IAPP Directives, uniform implementation of the IAPP to statewide law enforcement agencies is

derived from legislative authority codified in N.J.S.A. 40A:14-181, 52:17B-98 and 52:17B-107.
Id. at ¶ 31;

Defendants’ latest revision of the IAPP, however, attempts to unilaterally expand the Attorney General’s authority to allow for the wholesale takeover of the day-to-day operations of any municipal police executive or agency without statutory authority, and contrary to state law.
Id. at ¶¶ 32, 34; Exhibit H.

The City of Paterson is a “Mayor-Strong” Municipality Under the Faulkner Act

The City of Paterson is organized under the mayor-council form of the Faulkner Act, which confers upon such municipalities the greatest possible powers of local self-government and home rule, consistent with the New Jersey State Constitution. N.J.S.A. 40:69A-30; Verified Complaint at ¶ 33. Under this form of governance, any contract requires the approval of the mayor and council as a matter of law. N.J.S.A. 40:69A-36, 40; Verified Complaint at ¶ 33.

LEGAL ARGUMENT

Plaintiffs are Clearly Entitled to Interim Injunctive Relief

When a plaintiff files a verified complaint seeking injunctive relief, the plaintiff may apply for an order requiring a defendant to show cause why an interlocutory injunction should not be granted pending disposition of the action. R. 4:52-1. Orders to show cause are generally governed by R. 4:52, which prohibits a court from granting any temporary restraints or other interim relief unless a plaintiff can demonstrate that “immediate and irreparable damage will probably result to the plaintiff” if the requested restraints are not granted. R. 4:52-1(a); see also Crowe v. DeGioia, 90 N.J. 126, 132-34 (1982).

Where such injunctive relief is sought, a reviewing court must consider the “familiar standard outlined in Crowe.” Garden State Equality v. Dow, 216 N.J. 314, 320 (2013). In

Crowe, the Supreme Court famously established a four-prong test that must be applied in seeking emergent relief, assessing whether: (1) the requested relief is necessary to prevent irreparable harm; (2) the legal rights underlying the claims are settled; (3) there is a reasonable probability of ultimate success on the merits; and (4) the relative hardship to the parties in granting or denying the relief favors granting the relief. Crowe, 90 N.J. at 132-34. Additionally, when a case presents an issue of “significant public importance,” a court must consider the public interest in addition to the traditional Crowe factors. McNeil v. Legis. Apportionment Comm’n, 176 N.J. 484, 486 (2003).

The standard of review for trial court’s decision in such a matter is an abuse of discretion. Waste Management of New Jersey, Inc. v. Morris County Mun. Utilities Authority, 443 N.J. Super. 445, 451 (App. Div. 2013). A court abuses its discretion when a decision is made “without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.” State v. R.Y., 242 N.J. 48, 65 (2020) (quoting Flagg v. Essex Cnty. Prosecutor, 171 N.J. 561, 571 (2002)).

Crowe Factor #1 – Harm to Plaintiffs is Immediate and Irreparable

In assessing the first Crowe factor, harm is “generally considered irreparable in equity if it cannot be redressed adequately by monetary damages.” Crowe, 90 N.J. at 132. In this matter, Defendants continue to exercise unlawful command and control of the Paterson Police Department (ostensibly in perpetuity in the absence of any timeframe for its supersession to end), despite the appointment of a duly qualified police chief – Plaintiff Ribeiro – via municipal ordinance by the City of Paterson. Verified Complaint at ¶ 6; Exhibit C. As more fully set forth herein, Defendants have violated and continue to violate the New Jersey State Constitution, the Home Rule Act and various New Jersey statutes.

The New Jersey State Constitution confers broad regulatory powers on municipalities and counties (the historical “home rule” concept):

The provisions of this Constitution and of any law concerning municipal corporations formed for local government . . . shall be liberally construed in their favor. The powers of . . . such municipal corporations shall include not only those granted in express terms but also those of necessary or fair implication, or incident to the powers expressly conferred, or essential thereto.

N.J. Const. Art. 4, § VII, par. 11. As indicated, the New Jersey Constitution reflects the longstanding home rule principle that expressly grants municipalities the authority to meet the needs of the community. The home rule principle is “legislatively stitched into the fabric of New Jersey government” and “finds expression in the legislative choice to invest the ‘police powers of the state in local government.’” Fraternal Order of Police, Newark Lodge No. 12 v. City of Newark, 244 N.J. 75, 93 (2020).⁴ Furthermore, the Faulkner Act – of which the City of Paterson subscribes - confers upon municipalities the “greatest possible powers of local self-government and home rule consistent with the Constitution of this State.” N.J.S.A. 40:69A-30; see also Keuerleber v. Township of Pemberton, 260 N.J. Super. 541, 544 (App. Div. 1992). The New Jersey Supreme Court has consistently maintained that such ordinances adopted pursuant to the well-established police powers granted to municipalities are to be “liberally construed in favor of the municipality.” Quick Check Food Stores v. Springfield Twp., 83 N.J. 438, 447 (1980); N.J.S.A. 40:69A-30.

Simply put, the Legislature has expressly granted *municipalities – not the Attorney General* – the broad police powers necessary to ensure the health and safety of its citizens. Id.;

⁴ In exalting the principles of home rule, the Supreme Court cited Inganamort v. Borough of Fort Lee, 62 N.J. 521 (1973). The Court held, “home rule is basic in New Jersey government. It embodies the principle that the police power of the state may be invested in local government to enable local government to discharge its role as an arm or agency of the state and to meet other needs of the community. Whether the state alone should act or should leave the initiative and the solution to local government, rests in legislative discretion.” Id. at 528.

see also N.J.S.A. § 40:48-2 (the “police powers” statute); see also N.J.S.A. 40:41A-28 (municipalities “are and shall remain the broad repository of local police power in terms of the right and power to legislate for the general health, safety and welfare of their residents”). The only limitation to this legislatively-granted power is that municipal action cannot run contrary to statutory or constitutional law. N.J.S.A. 40:69A-30; see also New Jersey Builder’s Ass’n. v. Mayor and Twp. Council of E. Brunswick Twp., 60 N.J. 222, 226-27 (1972) (internal quotations omitted). Plaintiffs’ operation and control of the Paterson Police Department, consistent with the codified desires of the City of Paterson, is wholly consistent with statutory and constitutional law. Plaintiff Ribeiro was appointed as the chief of the Paterson Police Department pursuant to N.J.S.A. 40A:14-118 and City of Paterson ordinances. Plaintiff Ribeiro had been in office for only 24 days before Defendants’ unprecedented and unlawful takeover of the Paterson Police Department. Since then, Plaintiff Ribeiro has been stripped of his statutory ability to perform his sworn duties and responsibilities. See Verified Complaint at ¶ 52; Exhibit C.

Defendants cannot cure their trampling upon these “legislatively-stitched” principles by pointing to a self-serving revision they strategically made to their own IAPP Directive, a mere four (4) months before taking over the entire Paterson Police Department. Their expanded directive was not, and to date has not been, codified in any legislative statute or ratified by the Legislature. Defendants’ decision to unlawfully seize control of the Paterson Police Department without any such statutory basis demonstrates the “irreparable harm” caused to Plaintiffs – one that can only be addressed via the requested injunctive relief. Monetary damages cannot redress the constitutional and statutory violations committed by Defendants. Crowe, 90 N.J. at 132.

Crowe Factor #2 – Plaintiffs Legal Rights are Settled

There is no legal justification for Defendants’ continued command and control of the City of Paterson Police Department. As set forth herein, the New Jersey Legislature has expressly delegated authority to Plaintiffs and the City of Paterson to run the operations of the Paterson Police Department. N.J. Const. (1947), Art. IV, § VII, para. 11; N.J.S.A. 40:41A-28, 40:42-4 and 40:48, *et seq.* Moreover, the statutory criteria for the establishment and operation of a municipal police department is clearly established in N.J.S.A. 40A:14-118 and the Criminal Justice Act of 1970, N.J.S.A. 52:17B-97. Defendants have never provided proper legal justification for their hostile takeover of the Paterson Police Department, relying solely on unsupported and conclusory statements about their hypothetical “supersession authority” as the chief law enforcement officer of the State. See Verified Complaint at ¶¶ 12-13, 18, Exhibits A and B.

Defendants’ justification is devoid of any proper legal authority because there is none.⁵ In the most recent revision of the IAPP, Defendants’ takeover authority is masked by a pretense claiming that the Legislature somehow blessed their ability to do so, citing N.J.S.A. 52:17B-98, 40A:14-181 and 52:17B-107. See IAPP Directive 22-14 with IAPP revisions, filed as Exhibit H. A review of each statutory provision demonstrates that none of these statutes grants the Attorney General the authority to supersede and take over the day-to-day operations of a municipal police department. N.J.S.A. 52:17B-98 simply declares the public policy of this State, stating its purpose to “encourage cooperation among law enforcement officers and to provide for the general supervision of criminal justice by the Attorney General . . . in order to secure the benefits

⁵ In response to an Open Public Records Request (OPRA) inquiring about their claimed takeover authority, Defendants provided a letter sent to City of Paterson Mayor Andre Sayegh and Plaintiff Ribeiro dated March 27, 2023. See Enclosure 1. None of the cited authority provided within addresses, much less even mentions, Defendants’ authority to supersede and take over the day-to-day operations of a municipal police department.

of a uniform and efficient enforcement of the criminal law and the administration of criminal justice throughout the State.”⁶

Likewise, N.J.S.A. 40A:14-181 provides no justification for Defendants’ takeover, as it states:

Every law enforcement agency shall adopt and implement guidelines which shall be consistent with the guidelines governing the “*Internal Affairs Policy and Procedures*” of the Police Management Manual promulgated by the Police Bureau of the Division of Criminal Justice in the Department of Law and Public Safety, and shall be consistent with any tenure or civil service laws, and shall not supersede any existing contractual agreements.

(emphasis added). The plain language of this statute established the authority of Defendants to ensure uniform and consistent *internal affairs policy and procedures* – but contains no authorization for supersession and takeover of the operations of an entire municipal police department. This statute only “directs locally created law enforcement agencies to adopt procedures for the investigation of complaints of police misconduct, consistent with guidelines issued by the State’s chief law enforcement officer: the Attorney General.” Fraternal Order of Police, Newark Lodge No. 12, 244 N.J. at 94.

The express curtailment of Defendants’ supersession authority is set forth in N.J.S.A. 52:17B-107, which limits the exercise of this power to: (1) superseding a county prosecutor in any *investigation, criminal action or proceeding*; (2) participation in any *investigation, criminal action or proceeding*; or (2) *initiating any investigation, criminal action or proceeding* (emphasis added). This statute expressly limits Defendants’ supersession authority to a specific matter – an investigation, a criminal action or a

⁶ This statute, originally codified in 1970 in recognition of the threat organized crime presented to institutions, causing a loss of confidence in agencies of government. Nothing in the plain language of the statute remotely provides Defendants’ authority to supersede and assume control of the day-to-day operations of the Paterson Police Department, in contravention to the police powers provided to the City of Paterson by the Legislature.

proceeding. Neither this statute, nor any other, provides for the wholesale takeover of the day-to-day law enforcement and administrative operations of the Paterson Police Department.

A court’s “primary objective [in] statutory interpretation is to discern and effectuate the intent of the Legislature.” Murray v. Plainfield Rescue Squad, 210 N.J. 581, 592 (2012). “If the Legislature’s intent is clear on the face of the statute, then [the court] must apply the *law as written*” (emphasis added). Id. A reviewing court must presume that the “language used carries its ordinary and well-understood meaning.” Id. (internal quotations omitted). In this case, it is clear that the Legislature specifically intended to limit Defendants’ supersession authority to matters specifically relating to an “investigation, criminal action or proceeding,” rather than wholesale takeover of an entire municipal police department. N.J.S.A. 52:17B-107.

Regardless of these clear statutory limitations, Defendants nevertheless attempt to unilaterally expand their authority in their most recent November 2022 revision of the IAPP Directive, which states:

The Attorney General may supersede and take control of an entire law enforcement agency . . . [and] [w]henver the Attorney General determines that supersession is appropriate, the Attorney General may assume any or all of the duties, responsibilities and authority normally reserved for the chief law enforcement executive and agency.

Exhibit H at 10-11. Such authority is ultra vires and has no statutory or legal basis.

Plaintiffs’ rights are settled and clear and cannot legally be eviscerated by Defendants’ purported “supersession authority,” in direct contravention of the broad powers conveyed by the Legislature to municipalities. Setting aside the obvious fact that Defendants’ “*Internal Affairs Policy and Procedures*” (emphasis added) relate to internal

affairs operations of municipal police departments alone, Defendants wholly exceed their limited statutory the New Jersey Legislature has provided them by claiming authority under the guise of the above-referenced statutes. It is well settled that the operation of a municipal police department is a municipal function, not a State function to be carried out by Defendants. The words chosen by the Legislature in this regard are clear, and this Court must presume that the Legislature “intended the words that it chose and the plain and ordinary meaning ascribed to those words.” Paff v. Galloway Township, 229 N.J. 340, 353 (2017).

Crowe Factor #3 – Reasonable Probability of Ultimate Success on the Merits

Incorporating the arguments set forth above, Plaintiffs make the necessary threshold showing of a “reasonable probability of ultimate success on the merits.” Crowe, 90 N.J. at 133-34. This factor requires the Court to determine “whether the material facts are in dispute and whether the applicable law is settled.” Waste Mgmt. of New Jersey, Inc. v. Union County Utilities Authority, 399 N.J. Super. 508, 528 (App. Div. 2008). Here, all material facts alleged in Plaintiffs’ Verified Complaint are verified and supported by government records, exhibits and applicable State statutes. As such, they are self-authenticating and no extrinsic evidence is necessary to establish authenticity. N.J.R.E. 902. There is no issue of material fact for the Court to settle and Plaintiffs’ have met this burden. Matter of City of Newark, 469 N.J. Super. 366, 378 (App. Div. 2021) (finding that demonstrating “reasonable probability of ultimate success on the merits . . . includes a showing that most of the material are not in dispute”).

Crowe Factor #4 – Relative Hardship to Parties in Granting or Denying Relief

The fourth and final Crowe factor in determining the appropriateness of a preliminary injunction is “the relative hardship to the parties in granting or denying relief.” Crowe, 90 N.J. at

134. There is little if any hardship to Defendants in returning command and control to Plaintiffs. Save three individuals appointed by Defendants upon supersession (Abassi and two designees), the staffing and constitution of the entire Paterson Police Department remains the same. See Verified Complaint at ¶¶ 16, 24. Unquestionably, considering the professed “extraordinary power” of Defendants and the myriad divisions and offices under their control, Defendants can easily find a place to reassign the individuals they appointed to run the Paterson Police Department. Id. at ¶ 13; see also <https://www.njoag.gov/about/divisions-and-offices/>.

Similarly, there is no hardship to Plaintiffs in granting the requested injunctive relief. Plaintiff Ribeiro, who spent an entire career with the Department, is the duly appointed police chief and had taken the oath of office on March 3, 2023. See Verified Complaint at ¶¶ 6, 15; Exhibit C. After working at the Paterson Police Department for 27 years, rising through the ranks and working in various divisional capacities, he remains intimately familiar with the day-to-day operations of the Department. Id. Plaintiff Ribeiro remains “assigned” by Defendants to work at the PTC in Trenton and, as such, can easily reassume control of the Department which he was appointed to lead. Id. at ¶ 19. In summary, there is no hardship to Plaintiffs in granting the requested injunctive relief.

The McNeil Factor – a Case of Significant Public Importance

Finally, as set forth above, a Court must also consider court the public interest in addition to the traditional Crowe factors. McNeil, 176 N.J. at 486. The public interest in this matter – statewide and within the City of Paterson community - is indisputable. There are easily more than 400 municipal police departments across the State of New Jersey, each of which has either a chief of police or director appointed by the municipal governing body. See generally <https://www.njsacop.org/content.asp?contentid=66>. What is at stake is whether Defendants are

to be permitted to, against all existing constitutional and statutory municipal authority, unilaterally decide to seize command and control of an entire municipal police department on a whim. At any given moment, Defendants could assume control of any municipal police department in the State, without regard to the will of the municipal governing bodies that retain police powers, as provided by the New Jersey Legislature. This notion flies in the face of the historic home rule principle that allows each municipality to act in a way it believes is best suited to meet the needs of their communities. Fraternal Order of Police, Newark Lodge No. 12 v. City of Newark, 459 N.J. Super. 458, 489 (App. Div. 2019) (stating “[h]ome rule permits each municipality to act in a way it believes will best meet the local need”).

The public importance of this matter to the citizens of the City of Paterson, who reelected the incumbent mayor with a mandate in May 2022, is equally compelling as the City is organized under the “mayor strong” form of the Faulkner Act, which confers broad executive power to the elected municipal executive.⁷ The duly elected mayor, with the support of the municipal governing body, appointed Plaintiffs to oversee public safety and police operations in the City of Paterson, not Defendants. The Mayor of the City of Paterson did not consent to this takeover, was not consulted prior to its execution, and remains an interested party in these proceedings. As such, the public importance of this issue to the City of Paterson and its citizens is plainly obvious. Similarly, there are hundreds of duly appointed and sworn chiefs of police departments that could find themselves removed from command and reassigned like Plaintiff Ribeiro, regardless of their professional experience and history, in favor of a chief law enforcement executive appointed by Defendants.

⁷ In 2022, Mayor Andre Sayegh was reelected to a second term, garnering nearly 50% of the vote while running against four other candidates. See <https://results.enr.clarityelections.com/NJ/Passaic/112986/web.285569/#/summary>

For the foregoing reasons, Plaintiffs meet their burden in establishing the above-referenced factors by clear and convincing evidence. Brown v. City of Paterson, 424 N.J. Super. 176, 183 (App. Div. 2012). As such, Plaintiffs respectfully request that the Court grant Plaintiffs’ injunctive relief discharging Defendants from command and control over the Paterson Police Department, with the exception of its internal affairs function, and transfer such authority back to Plaintiffs. A “greater harm would occur if a stay is not granted than if it were.” McNeil, 176 N.J. at 486 (LaVecchia, J., dissenting).

A Declaratory Judgment Restoring Full Command and Control of the City of Paterson Police Department from Defendants to Plaintiffs Should Be Entered

The Declaratory Judgments Act, N.J.S.A. 2A:16-51 et seq. authorizes courts to declare rights, status and other legal relations so as to afford litigants relief from uncertainty and insecurity. Chamber of Commerce v. State, 89 N.J. 131, 140 (1982). To maintain such an action, there must be a “justiciable controversy” between adverse parties and a plaintiff must have an interest in the suit. Id. Plaintiffs respectfully request that the Court adopt and incorporate the above arguments in support of interim injunctive relief as if fully set forth herein.

A “Justiciable Controversy” Clearly Exists

The first requirement to invoke the Court’s jurisdiction under the Declaratory Judgments Act – the existence of a “justiciable controversy” between adverse parties – is amply satisfied. A “justiciable controversy” exists when one party “definitely asserts legal rights and such rights are positively denied by the other party It is a real controversy, as opposed to one that is hypothetical or abstract.” O’Shea v. N.J. Schs. Constr. Corp., 388 N.J. Super. 312, 317 (App. Div. 2006).

As set forth above, Defendants have taken over wholesale operations of the City of Paterson Police Department, appointed an officer-in-charge and reassigned the duly appointed

police chief, Plaintiff Ribeiro. They have never provided a timeline for their cessation of command and control over the Department; never provided a transition plan for the transfer of control back to Defendants; and have failed to report at least monthly on the operations of the Paterson police force, as required by State law. Verified Complaint at ¶¶ 25-27; Exhibit G. In refusing to return control over the Paterson Police Department to Plaintiffs, they continue to usurp Plaintiffs' and the City of Paterson's statutory and constitutional rights. The Declaratory Judgments Act exists for this very reason – to provide “all individuals . . . with a forum to present bona fide legal issues to the court for resolution.” In re Fireman's Ass'n Oblig., 230 N.J. 258, 275 (2017). This matter is clearly appropriate for judicial review as no other remedy for Plaintiffs exist. See N.J. Citizen Action v. Riviera Motel Corp., 296 N.J. Super. 402, 411 (App. Div. 1997).

Plaintiffs Have a Clear Interest in this Suit

As described throughout this brief, Plaintiffs' interest in this suit is plainly apparent. New Jersey law clearly affords municipal governing bodies broad police powers to form and govern municipal police departments, and to issue any ordinances “necessary and proper” to ensure the safety and welfare of the municipality and its inhabitants. N.J.S.A. 40A:14-118, 40:41A-28 and 40:48-2. The duly appointed City of Paterson chief of police – here, Plaintiff Ribeiro – “shall be the head of the police force and shall be directly responsible to the appropriate authority for the efficiency and routine day to day operations” and “[a]dminister the department pursuant to policies established by the appropriate authority.” N.J.S.A. 40A:14-118; Exhibit C. Defendants' abrupt removal of Plaintiff Ribeiro from his office without warning stripped him of his statutory ability to perform his sworn duties and responsibilities, eviscerating the rights of the governing body that appointed him to this position. Additionally, Plaintiff Ribeiro's removal does not

relate to “incapacity, misconduct, or disobedience of rules and regulations.” See N.J.S.A. 40A:14-147. By removing him without proper cause, Defendants have violated the rights of Plaintiff Ribeiro and the municipality. N.J.S.A. 40A:14-147.

An “appropriate authority” includes, among other officers, Plaintiff Bulur, who has been appointed as the interim full-time director of public safety in the City of Paterson. N.J.S.A. 40A:14-118; Exhibit G. To date, Defendants have failed to issue or provide any such monthly report to Plaintiff Bulur as the appropriate authority – or anyone for that matter - since the commencement of Defendants’ March 2023 takeover of the Paterson Police Department. N.J.S.A. 40A:14-118(e); Exhibit G. Defendants appointed Abbassi, who has not even satisfied the basic state obligations to serve as a police officer in New Jersey, to run the day-to-day operations of the Paterson Police Department, in violation of N.J.S.A. 52:17B-66. Additionally, Defendants continue to use and occupy space within the City of Paterson Public Safety Department and Police Department without the consent of Plaintiffs or the City of Paterson. Verified Complaint at ¶¶ 71-78; Exhibit G.

The Faulkner Act intends to confer upon municipalities like the City of Paterson the “greatest possible powers of local self-government and home rule,” and this power must be “liberally construed” in favor of municipalities. N.J.S.A. 40:69A-30; N.J. Const. Art. 4, § VII, par. 11; see also Keuerleber, 260 N.J. Super. at 544. Paterson City administration appointed each Plaintiff to their respective positions with the full support of the Paterson governing body. As such, Plaintiffs, in their respective official capacities, have a significant interest on obtaining a judicial declaration as to the unlawfulness of Defendants’ continued command and control over the full operations of the Paterson Police Department.

CONCLUSION

For the foregoing reasons, the continued command and control of the City of Paterson Police Department, with the exception of its internal affairs function, violates the longstanding statutory and constitutional authority expressly reserved for the Plaintiffs and the City of Paterson. Plaintiffs respectfully seek an Order declaring that Defendants' continued command and control of the Paterson Police Department exceeds the bounds of their limited statutory authority, and directing Defendants to immediately relinquish and transfer full Departmental operations, with the exception of the internal affairs function, to Plaintiffs.

Dated: October 6, 2023

Respectfully submitted,

/s/ Christopher J. Gramiccioni
Christopher J. Gramiccioni, Esq. (0197620008)
KINGSTON COVENTRY LLC
1 Gatehall Drive, Suite 305
Parsippany, NJ 07054
(973) 370-2227



State of New Jersey

OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
PO BOX 080
TRENTON, NJ 08625-0080

PHILIP D. MURPHY
Governor

MATTHEW J. PLATKIN
Attorney General

SHEILA Y. OLIVER
Lt. Governor

March 27, 2023

Honorable André Sayegh
Mayor of the City of Paterson
155 Market Street
Paterson, New Jersey 07505
Via Electronic Mail

RE: Supersession of the Paterson Police Department

Dear Mayor Sayegh:

I write to provide you with notice that I am exercising the supersession authority of my position, and the Office of the Attorney General (“OAG”) has assumed responsibility for the day-to-day operations of the Paterson Police Department, inclusive of its Internal Affairs function. I have appointed Isa Abbassi to serve as the Officer-in-Charge (“OIC”) effective at a date to be determined in May of this year. Effective immediately, and until such time as OIC Abbassi assumes command of the police department, I have named Major Fred Fife of the New Jersey State Police as the Interim OIC. He and other members of the OAG staff will be temporarily assigned to Paterson to work with current members of the Paterson Police Department to ensure that there is a continuity of police services in the City.

The aforementioned action by this Office is necessitated by, among other things, the loss of faith in the leadership of the Department, longstanding fiscal challenges, and mounting public safety concerns in the City of Paterson. The authority for the Attorney General or a County Prosecutor to supersede a police department is derived from the Criminal Justice Act of 1970, *N.J.S.A. 52:17B-97 to -117*, and *N.J.S.A. 2A:158-4 and 5*. This authority is also consistent with both decades of practice by the Attorney General and County Prosecutors, as well as a substantial body of case law recognizing the Attorney General’s role in overseeing law enforcement agencies as the chief law enforcement officer in the State and the County Prosecutor as the chief law enforcement officer in the county. *See, e.g., State v. Winne*, 12 *N.J.* 152 (1953); *Williams v. Borough of Clayton*, 442 *N.J. Super.* 583 (App. Div. 2015); *Constantine v. Township of Bass River*, 406 *N.J. Super.* 305, 327 (App. Div. 2009); *State v. Ward*, 303 *N.J. Super.* 47, 52-58 (App.Div.1997); *State v. Downie*, 229 *N.J. Super.* 207, 209 n.1 (App.Div.1988), *aff’d*, 117 *N.J.* 450, *cert. denied*, 498 *U.S.* 819 (1990); *Kershenblatt v. Kozmor*, 264 *N.J. Super.* 432, 435-37 (Law Div. 1993).



ENCLOSURE 1

Please rest assured that this Office will do everything in its power to work with the Paterson Police Department to maintain professional and respectful police services to keep the residents of Paterson safe, and protect the rights of all those who enter your City.

This Office will look forward to your support and will be in contact with you, members of your administration, and other local leaders, in the coming days to address the many questions I anticipate you will have as we move forward.

Respectfully yours,

A handwritten signature in blue ink, appearing to read "M. J. Platkin", with a long horizontal flourish extending to the right.

Matthew J. Platkin
Attorney General

cc Chief Engelbert Ribeiro
Jerry Speziale, Director of Public Safety

Civil Case Information Statement

Case Details: PASSAIC | Civil Part Docket# L-002736-23

Case Caption: BULUR MIRZA VS NJ OFFICE OF ATTORNEY GENERAL

Case Initiation Date: 10/06/2023

Attorney Name: CHRISTOPHER JOHN GRAMICCIONI

Firm Name: KINGSTON COVENTRY LLC

Address: 1 GATEHALL DR STE 305

PARSIPPANY NJ 07054

Phone: 9733702227

Name of Party: PLAINTIFF : BULUR, MIRZA, M

Name of Defendant's Primary Insurance Company
(if known): None

Case Type: SUMMARY ACTION

Document Type: Verified Complaint

Jury Demand: NONE

Is this a professional malpractice case? NO

Related cases pending: NO

If yes, list docket numbers:

Do you anticipate adding any parties (arising out of same transaction or occurrence)? YES

Does this case involve claims related to COVID-19? NO

Are sexual abuse claims alleged by: MIRZA M BULUR? NO

Are sexual abuse claims alleged by: ENGELBERT RIBEIRO? NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? NO

If yes, is that relationship:

Does the statute governing this case provide for payment of fees by the losing party? NO

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:

Ongoing supersession by the State requires equitable relief in the form of this OSC seeking injunctive relief and declaratory judgment.

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

Please check off each applicable category: Putative Class Action? NO **Title 59?** NO **Consumer Fraud?** NO

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule* 1:38-7(b)

10/06/2023
Dated

/s/ CHRISTOPHER JOHN GRAMICCIONI
Signed

