

NIAGARA FALLS POLICE DEPARTMENT

GENERAL ORDER

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| EFFECTIVE DATE: 09/10/2014 | SUBJECT: Office of Professional Standards (OPS); Internal Investigations | Number 123.00 (NYSLEAP A-21-2; A-25-1; A-25-2; A-25-6; A-25-8) |
| RESCINDS: 09/05/2013 | | Number of pages 20 |

I. Purpose:

The purpose of this policy is to establish authority, duty, responsibilities and describe the investigative function of the Office of Professional Standards.

II. Policy:

It is the policy of the Niagara Falls Police Department to accept, review and investigate all complaints of employee misconduct from any person, representative, member of the department, or outside agency; whether filed in person, electronically or telephonically. The Office of Professional Standards is authorized by the Superintendent of Police to investigate all serious misconduct, Level 3 Use of Force incidents and any other incident as assigned by the Superintendent of Police, and maintain a database of all Use of Force incidents and reports of employee misconduct for statistical analysis.

Note: OPS is also responsible for implementation and record keeping for the non-disciplinary Risk Assessment System. (See General Order 123.20)

III. Authority:

- A. The Superintendent of Police is responsible to ensure all allegations of employee misconduct are properly investigated and shall assign all such investigations.
- B. The Commander of the Office of Professional Standards shall be appointed by the Superintendent of Police and shall report directly to the Superintendent of Police. The Commander shall hold the rank of Deputy Superintendent. Officers assigned to OPS shall also be appointed by the Superintendent and shall report directly to the OPS Commander.
- C. All members of the Office of Professional Standards have the authority to investigate any action or omission by any member of the Niagara Falls Police Department as directed by the Superintendent of Police, regardless of rank.

- D. OPS members have the authority to require any officer of the Department, regardless of rank or appointment, to make a full and complete disclosure pertaining to the commission of, or omission of, any act which might be in conflict with that officer's, or any other officer's duties and obligations as an officer of the Department.
- E. The OPS shall have the full authority to conduct an investigation without interference from any other employee of the Department.

IV. Duty:

- A. The primary duty of the Office of Professional Standards shall be to ensure the integrity of the Department. The OPS shall direct its efforts toward conducting an efficient, impartial, prompt, and complete investigation of allegations of misconduct by employees of the Department.
 - 1. OPS shall be responsible in the first instance for investigating all complaints containing allegations of serious misconduct, whether the complaint is made by the NFPD or a citizen, including complaints of excessive force, discriminatory law enforcement and corruption, in addition to any other types of alleged misconduct designated by the NFPD.
 - 2. Anonymous complaints, third person complaints, unsigned complaints, or complaints from citizens who wish their names to be held in confidence shall be accepted and investigated to the furthest extent possible, and NFPD Form 16B shall be generated in all such instances.

V. Definitions:

- A. Definitions:
 - 1. Citizen Complaint: An expression of discontent with the actions or services of the department and/or an employee, or an allegation of misconduct or wrongdoing; an allegation identifying conduct which, if sustained, would constitute a violation of a written directive, law, statute, etc.
 - 2. Complaint Investigation Form (NFPD Form 16B): A form utilized by the Niagara Falls Police Department for the purpose of collecting information from any person or member of the department regarding allegations of misconduct.
 - 3. Criminal Investigation: An investigation by a law enforcement agency into allegations of misconduct for the purpose of

determining if a criminal act had occurred as defined in Local, State or Federal Law.

4. Risk Assessment System: A time sensitive system designed to effectively organize critical performance and evaluation data in a format conducive to promptly identify early indicators of certain performance and/or stress related problems and to facilitate any necessary or appropriate follow-up activities.
5. Internal Investigation: A criminal or administrative investigation into allegations of employee misconduct.
6. Internal Investigation Function: The internal review and investigation of a complaint, allegation of violations of written directives, laws, statutes and allegations of misconduct. The Internal Investigation Function is commanded and coordinated by the OPS Commander and includes any supervisor when assigned to investigate or review an allegation. The Internal Investigation Function is a method of ensuring the professional integrity of the department and its employees.
7. Office of Professional Standards: An independent Unit of the Niagara Falls Police Department which reports directly to the Superintendent of Police. The primary duty of the Office of Professional Standards shall be to ensure the integrity of the Department by conducting efficient, impartial, prompt, and complete investigations of allegations of misconduct by employees and tracking and maintaining department records related to Use of Force and citizen complaints. OPS members will also review internal investigations conducted by non-OPS personnel.
8. Office of Professional Standards (OPS) Commander: A Deputy Superintendent appointed by the Superintendent of Police to oversee and conduct investigations of employee misconduct, maintain records of employee complaints (NFPD Form 16B), Use of Force Reports, and ensure data entry, statistical analysis and dissemination of this information. This Commander will also review and maintain oversight authority over internal investigations conducted by non-OPS personnel (such as when minor complaints are referred to the field for investigation).
9. Office of Professional Standards Staff: Employee(s) assigned by the Superintendent of Police to conduct investigations, take complaints and maintain records and data with regard to citizen complaints, Use of Force Reports, NFPD Form 16B, and the Risk Assessment System.

10. Service Complaint: A citizen complaint that pertains generally to services or policies of the department but which is not an allegation of misconduct against an employee. (i.e. slow response time, dissatisfaction with patrol methods)
11. Subject Employee: The employee under investigation for possible misconduct.
12. Use of Force Incident: Any incident involving an employee's use of physical force, on or off-duty, including any exertion of physical force and/or by the use of NFPD issued equipment, including impact weapons, chemical agents, electronic controlled weapons, firearms, and any other weapon issued by the NFPD.
 - a. Level Three Use of Force Incident:
 1. Any use of force resulting in death;
 2. Any critical firearm discharge regardless of injury;
 3. Any force which creates a substantial risk of causing death, including prohibited chokeholds per General Order A-20-1, Use of Force.
 4. Any force which causes serious physical injury.
 5. Any intentional impact weapon strike to the head.
 6. Any use of force investigation that is elevated to a Level 3 approved by a Supervisor.
13. Use of Force Report: A Niagara Falls Police Department report to be filled out and submitted by any employee within the parameters defined in G.O. A-20-7 and A-21-2.
14. Use of Force Supervisory Review Report: A NFPD Report to be filled out and submitted by responding supervisor to a use of force incident, pursuant to G.O A-20-7 and A-21-2.

VI. Responsibilities of the Office of Professional Standards:

A. Complaint Intake:

1. Members of the OPS may take an initial complaint of employee misconduct from any person either in person, telephonically or electronically. Members of the OPS may be referred complaints from police information desk, the Superintendent of Police, or any member of the Department.
 - a. If no OPS officer is immediately available, the initial complaint intake shall be handled by any shift supervisor at least one rank higher than the subject of the complaint.

- b. Any person who wishes to file a complaint shall be accommodated without delay and shall not be asked to return at a later time to file such complaint.
 - c. Complaints from citizens shall be taken in person, by telephone, by facsimile, by e-mail or through the NFPD website.
 - d. Third-party and anonymous complaints shall be accepted and investigated in the same manner as first-person complaints.
- 2. All complaints must be documented on a Complaint Investigation Form (NFPD Form 16B).
 - 3. All Form 16B Reports shall be immediately forwarded to the Superintendent of Police for follow up assignment.
 - a. The Superintendent of Police may refer minor complaints back to the subject employee's Shift or Division Commander for follow-up.
 - 1. The primary NFPD supervisor assigned to investigate such allegation must hold at least one rank above that of the employee the complaint is made against.
 - b. The Superintendent of Police shall assign OPS all investigations concerning allegations of serious misconduct, whether the complaint is made by the NFPD or a citizen, including complaints of excessive force, discriminatory law enforcement, and corruption, in addition to any other types of alleged misconduct designated by the NFPD.
 - c. The Superintendent of Police may assign internal investigations involving members of the Department to the OPS or any other investigative unit within the Department, or any appropriate outside law enforcement agency.
 - d. The Superintendent of Police shall notify the Niagara County District Attorney and/or the United States Attorney's Office with regard to any assistance with an internal investigation involving a member or members of the Department.

B. Notifications:

1. Notification of Citizen Complainant:
 - a. Upon case assignment by the Superintendent, the complainant shall be contacted by either OPS or the field supervisor responsible for conducting the investigation and informed that the case has been assigned.
 - b. If an investigation will not be completed within 30 days, the complainant shall be notified in writing by OPS or the field supervisor responsible for conducting the investigation.
 - c. Upon disposition, the complainant shall be notified in writing of the disposition by OPS and results of the investigation, the general reasons for the findings, and whether remedial actions were taken.

C. Investigative Function:

1. All citizen complaints shall be judged by the preponderance of evidence standard:
 - a. The standard of proof in internal investigations is “preponderance of evidence” rather than the criminal standard of “beyond a reasonable doubt.” The investigative findings are based on all available facts and evidence that is of greater weight or more persuasive than the evidence offered in opposition. Preponderance of the evidence has been described as a “slight tipping of the scales of justice” or “more than 50 percent” or “more likely than not.”
2. The Office of Professional Standards shall investigate:
 - a. All Level 3 Use of Force incidents,
 1. OPS shall be immediately notified and OPS members shall respond to the scene of all Level 3 incidents per General Order A-25-9.
 - b. All Level 2 Use of Force incidents assigned by the Superintendent of Police, and
 - c. All citizen, NFPD member or other external complaints assigned by the Superintendent of Police.

3. The Internal Investigation Function can be assigned to any member of OPS or other supervisory officer as designated by the Superintendent of Police.
4. All NFPD personnel named in a Form 16B (Citizen Complaint Investigation) including the subject employee(s), witnesses and supervisors, shall be individually interviewed about the incident as part of the Internal Investigation Function.
 - a. Every member of the Department shall be required to fully and truthfully disclose their actions and observations pertaining to the investigation.
5. OPS shall ensure that all NFPD supervisors present or called to the scene of an incident which resulted in the filing of a Form 16B shall submit a signed, detailed narrative (supplemental report) describing their handling of any matters during and after the incident and their observations of the complainant and accused officers; and any action taken by the supervisor.
6. OPS or any other NFPD employee assigned to performing the Internal Investigation Function shall interview all civilian witnesses regarding the incident to the extent practicable.
7. Non-Criminal Investigations: If the investigation is non-criminal in nature, members under investigation will be advised of that fact in an administrative advisement. The member will be interviewed after the administrative advisement (Garrity) is given (see Appendix A for Garrity details and waiver form). The member must answer questions even if the answers may result in departmental sanctions. Failure to do so shall result in departmental charges. Statements or other evidence directly obtained or provided by a member under investigation by OPS investigator after the administrative advisement cannot and will not be utilized in a criminal investigation.
8. Criminal Investigations: If the investigation is criminal in nature, the employee under investigation will not be advised of that until it has been determined that employee notification will not obstruct or impede the criminal investigation. The employee subject of a criminal investigation shall be handled no differently than a non-employee criminal investigation. Criminal investigations may be assigned to OPS, or any other investigative unit within the department. Criminal investigations may be conducted by, or with the assistance of an outside law enforcement agency, at the discretion of the Superintendent of Police.

- a. No member will be required to incriminate themselves in a criminal investigation. Statements made during a criminal investigation may be used in any subsequent administrative proceeding.
- b. If the alleged misconduct is criminal and not being handled directly by the Office of Professional Standards, OPS will monitor the progress and outcome of the investigation to determine if the alleged conduct involved is in violation of city or department rules, procedures, guidelines, regulations or General Orders.
- c. Lack of evidence substantiating a criminal charge will not automatically preclude disciplinary actions arising out of a subsequent OPS investigation into a possible violation of rules, procedures, guidelines, regulations or orders.

9. Parallel Investigations:

- a. Parallel investigations may be conducted if it is necessary to conduct criminal and internal investigations simultaneously.
- b. The OPS Commander shall maintain coordination between the criminal investigation and the internal investigation, and shall keep the Superintendent of Police informed of the progress of each investigation.

10. Representative at Interview:

- a. An employee will be permitted to have a union representative or attorney with them in the room during an administrative interview or hearing concerning allegations of misconduct by the employee. However, if the representative was involved in the incident, he/she shall not be permitted to attend the interview. The employee's representative is limited to acting as an observer of the interview, but may consult with the employee outside the interview room.
- b. During a criminal interview, only an attorney may advise and confer with the employee.

11. Special Examinations:

- a. An employee under investigation may request a breathalyzer, blood, urine, psychological, polygraph or medical examination

if it is believed that such an examination would be beneficial to his/her defense.

- b. An on-duty supervisor shall direct an employee to submit to a breath, blood or urine test when a level of inebriation or drug usage is suspected while on-duty.
 - c. Property belonging to the NFPD is subject to inspection where the employer has reasonable suspicion that evidence of work-related misconduct will be found therein. Property includes, but is not limited to, vehicles, desks, files, computers, and storage lockers.
- 12. The Deputy Superintendent/OPS shall conduct the initial Use of Force Supervisory Review and follow up investigation for any Use of Force incident or allegation of misconduct involving a Captain. The Deputy Superintendent/OPS shall complete and submit the necessary Use of Force Supervisory Review Reports and interview all witnesses within three business days of the incident.
- 13. OPS shall open an independent investigation of any incident where a Use of Force Report or Supervisory Review Report indicates a possible violation of NFPD policies, State or Federal law, or where use of force results in serious injury, unless otherwise directed by the Superintendent of Police
 - a. This investigation shall be conducted as if a NFPD Form 16B (Complaint Investigation Form) department initiated or citizen complaint had been filed regarding the incident.
- 14. OPS or any other employee responsible for conducting the Internal Investigation Function shall identify and resolve any inconsistencies between employee and witness statements by reference to physical evidence, use of follow-up interviews, and examination of other objective indicators and report them in writing as part of the investigative file.
- 15. Unless otherwise authorized by the Superintendent of Police, all investigative reports and recommendations handled by the Office of Professional Standards shall be delivered to the Superintendent no later than 30 days after assignment of the case to OPS.
 - a. Any disciplinary action shall be determined by the Superintendent of Police at that time.

16. In any instance where the investigating officer believes he/she will need to go beyond 30 days, a written request containing the reasons the extension is needed must be submitted to and approved by the Superintendent of Police. Proper notification shall also be made to the citizen complainant.

D. Data Entry and Tracking:

1. The OPS shall maintain a Use of Force Database to include:
 - a. The date of each use of force incident,
 - b. All officers involved in the use of force incident,
 - c. The name of the subject of the force,
 - d. The type of force used,
 - e. The supervisor who responded to the scene,
 - f. Any injuries that occurred,
 - g. Any arrests that occurred,
 - h. What charges were filed,
 - i. The race of the civilians involved, as observed by officers on the scene.
2. The OPS Commander shall enter this data or cause it to be entered by another OPS member.
3. The database shall be searchable and shall be capable of being sorted by officer, supervisor, shift or unit, and capable of statistical analysis according to the following criteria:
 - a. The number of incidents for each data category by individual officer and by all officers in a particular shift or unit,
 - b. Average level of activity for each data category by individual officer and by all officers in a particular shift or unit, and
 - c. Identification of patterns of activity for each data category by individual officer and by all officers in a particular shift or unit.

4. Monthly reports shall be generated from the Use of Force database describing and identifying individual and unit patterns according to the above criteria, which shall be circulated to the Superintendent of Police and all Shift and Division Commanders.
5. Use of Force Reports shall be reconciled with the Use of Force Database on a monthly basis to ensure all required reports have been submitted by officers and supervisors. The OPS Commander shall ensure that all Use of Force Reports have been completed as required.
6. Monthly and annual analysis of the Use of Force Database by OPS shall seek to identify trends in NFPD use of force, including Electronic Controlled Weapon use.
 - a. OPS shall categorize and analyze use of force data by individual officer, shift or unit, and analyze use of force data by individual officer, shift or unit, and by type of force used, to identify any trends.
 - b. Based on this analysis, OPS shall make recommendations to supervisors and the Superintendent of Police for actions to enable or encourage officers to modify or improve performance and/or prevent potential misconduct and inappropriate uses of force, including additional training, monitoring counseling, reassignment, and transfer of officers.
7. The OPS is responsible for reviewing Use of Force Reports on a daily basis and shall also review incident and arrest reports each day to ensure that Use of Force Reports have been submitted pursuant to NFPD policy.
 - a. As part of the review process, OPS members will identify any deficiencies contained in any Use of Force or Supervisory Review Reports and require supervisors to correct, or cause to be corrected, any deficiencies.
8. The OPS Commander shall release an annual report no later than January 31st of the following year listing the number of uses of forces, number of arrests, and number and bases of citizen complaints against each officer. The report shall be circulated to the Superintendent of Police and all supervisors.

E. Recordkeeping

1. The OPS shall maintain a central file of disciplinary investigations pursuant to the applicable document retention schedule of the Department and the City. The central file shall contain all complaints, final dispositions, supporting documents, and other investigative material pertaining to disciplinary cases. These records shall be kept confidential, safely secured, and shall be separate and apart from regularly maintained personnel files with allowable access limited to OPS members and the Superintendent of Police.
2. Records concerning violations of department standards of conduct shall be maintained in the employee's OPS file for the duration of the employee's career with the Niagara Falls Police Department.

VII. Disposition:

A. Disposition of an Internal Investigation/Complaint:

1. At the conclusion of an internal investigation, the Superintendent of Police shall give final approval of the case disposition as follows:
 - a. SUSTAINED: evidence sufficient to prove allegations.
 - b. NOT SUSTAINED: insufficient evidence to either prove or disprove allegations.
 - c. EXONERATED: incident occurred but was lawful and proper.
 - d. UNFOUNDED: the allegation did not occur.
 - e. POLICY FAILURE: incident occurred but no violation exists due to failure in policy.
2. In deciding the appropriate level of discipline for each officer who is the subject of a substantiated misconduct allegation, the Superintendent of Police shall refer to the NFPD Discipline Policy and Discipline Matrix pursuant to General Order A-14-4. The Superintendent shall consider the nature and scope of the misconduct and involved officer's history of misconduct investigations and discipline, consistent with New York State laws and relevant collective bargaining agreements.
3. Where an allegation is "not sustained", the Superintendent shall consider whether to require training, counseling, or other remedial

non-disciplinary measures for officers who are the subject of the investigation.

- a. Factors may include whether the officer or officers in question have been the subject of multiple complaints or have a higher incidence of use of force.

4. Following case disposition, the Superintendent of Police or designee shall notify the employee's Shift or Division Commander of his findings and provide the OPS with all pertinent documentation to be made part of the disciplinary file.

B. Discipline without Charges and Specifications

1. A supervisor may administer an oral reprimand of record for minor violations, as provided in the NFPD Discipline Policy.
2. The Superintendent of Police or designee may administer a written reprimand of record for minor violations within the scope of the discipline matrix.

C. Discipline with Charges and Specifications

1. When recommended disciplinary action may result in suspension, dismissal or demotion, a formal statement of charges and specifications shall be prepared by the Commanding Officer of OPS.
2. The formal statement shall include:
 - a. The particular rule(s) alleged to have been violated;
 - b. The dates and places where the alleged acts or omissions occurred;
 - c. A statement of the alleged acts or omissions.

- D. Procedures regarding the informal and formal hearings, as well as possible resulting penalties are stipulated in the NFPD Rules and Regulations and current collective bargaining agreements.

GARRITY PROVISIONS

A. INTRODUCTION

The purpose of this Directive is to provide guidelines to Niagara Falls Police Department (NFPD) investigators and supervisors when statements should be compelled from officers during Department Office of Professional Standards (OPS) investigations. An officer who is accused of misconduct may face two different kinds of investigative interviews. The first is during a criminal investigation; the second is during an administrative investigation. The interview of a police officer as either the subject or the witness during a criminal or administrative investigation represents a critical stage in the investigative process.

The NFPD's OPS is responsible for investigating possible criminal conduct by members of the agency. Serious allegations of misconduct against an officer may involve both a violation of a criminal statute and NFPD rules and regulations. As a result, a criminal, as well as an administrative investigation are necessary.

Investigators must be able to identify and distinguish between the appropriate procedures utilized during the interview process in either a criminal or an administrative investigation. The failure of the investigator to identify and apply the appropriate procedures can compromise and render evidence gathered as inadmissible during the interview process in a criminal investigation or needlessly complicate the interview process during an administrative one. Since the methods employed in a criminal investigation conflict with the methods used in an administrative investigation, the criminal investigation should be completed first, with the administrative investigation to follow. The conflict in investigative methods becomes most apparent during subject officer interviews. The subject officer has the right to remain silent during a criminal interview. On the other hand, the same officer must cooperate and answer questions posed by an investigator or supervisor during an administrative investigation. *Garrity v. New Jersey*, 385 U.S. 493 (1967).

Statements that are ordered as a result of Garrity are not admissible in a criminal prosecution but are admissible in an administrative one. However, it is important to note other officer's Garrity statements can be used as long as they are not subject to prosecution. The details of interviewing officers in internal investigations will be discussed in the following sections. The below outline provides an overview of that information.

Definitions

Subject Officer: An officer that is the focus of an investigation into potential

criminal conduct or violation(s) of department rules and regulations.

Witness Officer: An officer who personally sees or perceives anything regarding an incident under investigation and/or was present when the incident took place **and** who is not the subject of the incident under investigation.

Criminal Investigations

Officer is a Subject;

- a. He or she may give a voluntary statement,
- b. Statements shall not be compelled from suspect or defendant personnel and the provisions of Miranda shall apply (including in custody),
- c. OPS should refer and coordinate their investigation with the local District Attorney.
- d. OPS shall confer with the District Attorney's Office **prior** to administering Garrity Warnings.
- e. May require routine reports (e.g., case reports)

Officer is a Witness

- a. Has an obligation to cooperate honestly and truthfully,
- b. Statement **MAY** be compelled
- c. Complete the Administrative Interview Form
- d. May require routine reports (e.g. case reports)

Administrative Investigations

Officer Is Subject:

- a. Has an obligation to cooperate honestly and truthfully and their statement shall be compelled,
- b. If there is any use of force involved or the matter appears to involve criminality, contact the OPS Commander **prior** to conducting the interview,

Officer is a Witness:

- a. Has an obligation to cooperate honestly and truthfully and their statements shall be compelled,

- b. If there is any use of force involved or the matter appears to involve criminality, contact the OPS **prior** to conducting the interview,

Criminal Investigation

1. Officer is the Subject

- a. If an officer is subjected to custodial interrogation, the Miranda decision applies;
- b. An officer who is interviewed as a criminal suspect has an absolute right to invoke the constitutional right against self-incrimination. Supervisors and/or investigators **SHOULD NOT** compel any statement from any officer suspected of criminal conduct;
- c. When responding to the scene of officer involved incidents, a supervisor may ask preliminary questions (e.g., What happened? Is anyone injured? etc.). The purpose of preliminary questions are to enable members to take safety precautions, render necessary aid to citizens and officers (e.g., medical) and to ensure proper notifications are made (e.g., Communications, OPS, Homicide, etc.). However, once the investigation becomes criminal in nature, responding supervisors **SHOULD NOT** ask any further questions of any officer suspected of criminal conduct;
- d. If criminal conduct is suspected, the Desk Lieutenant shall contact OPS upon the request of the responding supervisor..
- e. Routine reports that are part of an officer's regular duties are not afforded Garrity protection. Supervisors should not have members suspected of misconduct prepare a special and/or separate report regarding the incident or a response to a complaint, other than those normally prepared (e.g., use of force, case or arrest report, etc.).

2. Officer is a Witness

- a. When interviewing officers as a witness, they must be advised that they are not the subject of the investigation at this time. If at any time an officer becomes a subject of the investigation, they shall be advised of that fact, and the appropriate procedures followed;
- b. Officers that are witnesses have an obligation to cooperate. Witness officers must truthfully answer all questions that are narrowly and directly related to the performance of their duty, unless the misconduct occurred off duty performance of duty does not apply;
- c. Performance of duty includes officers' actions, observations, knowledge, and any other factual information of which they may be aware, whether it concerns their own performance or that of other officers. A witness officer is required to complete routine and/or special reports;

d. If officers refuse to fully cooperate and provide a statement or a required report after being ordered to do so and followed-up with a written order, the investigator or supervisor shall inform them that their refusal may result in discipline up to and including dismissal from the department. If the officer still refuses the requesting investigator or supervisor shall initiate a misconduct investigation.

C. Administrative Investigation

1. Officer is the Subject

a. The Garrity decision established the principle that police officers who are interviewed in a disciplinary setting should be warned that they are under investigation for violation of departmental rules, that they are obligated to give statements for internal purposes, and that their answers may not be used against them in a criminal proceeding;

b. Police officers have an obligation to answer questions specifically, directly, and narrowly related to the performance of their official duties, unless the misconduct occurred off duty and performance of duty does not apply;

c. Prior to the commencement of any questioning, officers shall be advised that they are being questioned as the subject of an internal administrative investigation into possible violations of department rules and regulations;

1. If officers refuse to answer the investigator's or supervisor's questions they **SHOULD** be compelled to answer pursuant to their Garrity warnings

d. If officers refuse to cooperate and provide a statement or a required report after being ordered to do so, the investigator or supervisor shall inform them that their refusal may result in discipline up to and including dismissal from the department. If the officer still refuses the requesting investigator or supervisor shall initiate a misconduct investigation.

2. Officer is a Witness

a. When interviewing officers as a witness in an administrative investigation, they should be advised that they are not the subject of the investigation at this time;

b. Officers who are witnesses have an obligation to cooperate. They must truthfully answer all questions that are narrowly and directly related to the performance of their duty, unless the conduct occurred off duty performance of duty does not apply; however, the obligation to remain honest and truthful does apply;

c. If officers refuse to respond they **SHALL** be compelled to answer questions [e.g., advised of their Garrity rights];

d. If the officer still refuses to respond, or fails to respond to all questions completely and truthfully, the investigator or supervisor shall immediately initiate a misconduct investigation against the member for failure to obey a direct order. The member should be advised that disciplinary action (in addition to the underlying charge) may result in administrative sanction against them up to and including dismissal from the department.

D. Administration of Garrity

1. Should an investigation at any time uncover potential criminal conduct, the OPS with the knowledge of the Superintendent or designee, shall refer and coordinate their investigation with the District Attorney. The OPS shall confer with the District Attorney **prior** to administering Garrity Warnings to any member;

2. Garrity Warnings shall not be administered to any member (either subject or witness) unless one of the following criteria has been met: (1) until there is a declination of a prosecution by the District Attorney, (2) after the conclusion of a criminal trial or (3) unless the investigation shows no evidence of criminal misconduct;

3. In cases where the OPS has the exclusive investigative authority, only OPS members shall administer Garrity Warnings;

4. Garrity rights shall not apply to routine questions, arising out of routine daily activities at a precinct or command;

5. Any statement that is considered to have Garrity protection should be identified as such at the beginning of the recorded statement;

6. Garrity statements generated during administrative investigations should not be shown to other witnesses;

8. If Garrity statements of uncharged officers (witnesses) are turned over to the District Attorney they should be placed in an envelope and clearly marked "Garrity Statements" prior to being given to the prosecutor;

9. All Garrity statements should be segregated within investigative files by being placed in an envelope and clearly marked "Garrity Statements" or in the event of tape recorded statements by clearly labeling the tape as "Garrity Statement;"

10. The following warnings shall be given to a member who is compelled to give a statement under Garrity:

This questioning concerns administrative matters relating to the official business of the Niagara Falls Police Department. I am not questioning you for the purpose of instituting a criminal prosecution against you, or for the purpose of securing additional evidence

against you in any pending criminal action. During the course of this questioning, even if you disclose information which indicates you may be guilty of criminal conduct concerning this allegation, neither your self-incriminating statement nor its fruits will be used against you in a criminal proceeding.

Since this is an administrative matter within the Niagara Falls Police Department, you are required to answer all questions truthfully and completely or you may be subjected to administrative action.

Do you understand what I have just explained to you? Yes_____ No_____

Do you have any questions concerning what I have just explained to you?

Yes_____ No_____

Signature of
Member/Employee_____ Date_____

Signature of
Interviewer_____ Date_____

Signature of
Witness_____ Date_____

(Witness is optional but recommended)

E. Conclusion

It is important for all NFPD members to realize their professional, ethical and legal responsibilities toward the community they serve. **All members of the department have an obligation to report any misconduct committed by other members of the department that they may observe or comes to their attention.** All members of the department have an obligation to cooperate during internal investigations. If an officer makes a statement, either voluntarily or compelled pursuant to the Garrity v. New Jersey court decision, the officer has an obligation to be honest and truthful.

Garrity Warning for NFPD
Niagara Falls Police Department
Administrative Warning

Member/Employee: _____

Interviewer(s) _____

OPS Control Number: _____ Date _____

This questioning concerns administrative matters relating to the official business of the Niagara Falls Police Department. I am not questioning you for the purpose of instituting a criminal prosecution against you, or for the purpose of securing additional evidence against you in any pending criminal action. During the course of this questioning, even if you disclose information which indicates you may be guilty of criminal conduct concerning this allegation, neither your self-incriminating statement nor its fruits will be used against you in a criminal proceeding.

Since this is an administrative matter within the Niagara Falls Police Department, you are required to answer all questions truthfully and completely or you may be subjected to administrative action.

Do you understand what I have just explained to you? Yes _____ No _____

Do you have any questions concerning what I have just explained to you? Yes _____ No _____

Signature of
Member/Employee _____ Date _____

Signature of
Interviewer _____ Date _____

Signature of
Witness _____ Date _____