

Personnel Complaints

1003.1 PURPOSE AND SCOPE

This policy provides guidelines for the reporting, investigation and disposition of complaints regarding the conduct of members of the Lower Sioux Police Department (Minn. R. 6700.2200). This policy shall not apply to any questioning, counseling, instruction, informal verbal admonishment or other routine or unplanned contact of a member in the normal course of duty, by a supervisor or any other member, nor shall this policy apply to a criminal investigatio

It is imperative that the integrity of law enforcement agencies be guaranteed through the use of proper procedures to assure the prompt and thorough investigation of all complaints that allege misconduct by police officers.

To insure the integrity of the Lower Sioux Police Department and the individual employee, it is necessary to thoroughly investigate all reported and alleged misconduct, no matter what the source. This is necessary to protect the good names of innocent employees and to insure that employees who are found to have committed misconduct are dealt with appropriately.

1003.2 POLICY

It is the policy of the Lower Sioux Police Department that all allegations of employee misconduct or criticism of its services be acknowledged and addressed. To succeed in this endeavor, this Policy establishes a comprehensive departmental process to respond to complaints and concerns. Its purpose is to provide individuals with a fair and effective avenue to voice their legitimate grievances, yet to protect departmental employees from false charges of misconduct and wrongdoing.

1003.3 DEFINITIONS

CHIEF:The Chief of Police or the Chief's designee.

COMPLAINT: An allegation of misconduct against an employee of the Lower Sioux Police Department.

CONCERN: An inquiry or allegation regarding departmental policy, departmental procedure, or general performance matters.A concern does not include an allegation of misconduct.

CONTACT: A report by a reporter on the way police services were or were not provided by employees of the Lower Sioux Police Department or on the specific actions of an employee of the Lower Sioux Police Department

DISCIPLINARY ACTION: Oral reprimand, written reprimand, suspension, demotion or discharge.

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The term “disciplinary action”, however, does not include counseling, coaching and/or training provided by the police department or their designee’s in matters of performance, whether originating internally or externally, unless the documentation of that activity specifically states it is an oral or written reprimand.

EMPLOYEE:All voluntary and compensated personnel of the Lower Sioux Police Department.

FORMAL STATEMENT:

1. A recorded or stenographic transcription or signed statement of an employee’s response to questions,
2. Which is taken as part of an investigation; and
3. Where the formal statement may be used as evidence in a disciplinary proceeding against the employee being questioned.

MISCONDUCT : A violation of any agency policy and procedure governing conduct of agency members; the use of unnecessary or excessive force; the conviction of any criminal offense; abuse of authority; conduct which violates a person’s civil rights; abusive or insulting language or conduct which is derogatory of a person’s race, religion, sex, national origin or sexual preference; sexual harassment; and intimidation or retribution toward a complainant or witness involved in any complaint proceeding.

PERFORMANCE MATTER: Specific issues or methods related to the provision of police services by an employee of the Lower Sioux Police Department that are not classified as misconduct due to the following factors:

- The concern relates to a minor rule violation.
- The concern is likely to be resolved by training and counseling even if the alleged facts are true.
- There is no known pattern of similar conduct by the employee; and
- There is no evidence of bad faith or intent to do wrong.Minor issues such as attitude, demeanor, courtesy, tardiness, and attendance

SUPERVISORY FILE : That file used by an employee’s supervisor to record concerns, coaching, commendations, supervisory actions and responses to supervisory actions that will be reviewed in order to complete the employee’s annual review as distinguished from the employee’s personnel file.

1003.3.1 COMPLAINT FORMS

Personnel complaint forms will be maintained in a clearly visible location in the public area of the police facility and be accessible through the department website. Forms may also be available at other Tribal facilities.

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Personnel complaint forms in languages other than English may also be provided, as determined necessary or practicable.

1003.3.2 ACCEPTANCE

All complaints will be courteously accepted by any department member and promptly given to the appropriate supervisor. Although written complaints are preferred, a complaint may also be filed orally, either in person or by telephone. Such complaints will be directed to a supervisor. If a supervisor is not immediately available to take an oral complaint, the receiving member shall obtain contact information sufficient for the supervisor to contact the complainant. The supervisor, upon contact with the complainant, shall complete and submit a complaint form as appropriate.

Although not required, complainants should be encouraged to file complaints in person so that proper identification, signatures, photographs or physical evidence may be obtained as necessary.

1003.3.3 COMPLAINT COPIES

After a complaint is filed, the accepting member should sign the document, keep a copy for the department and provide a copy to the complainant.

1003.4 DOCUMENTATION

Supervisors shall ensure that all formal and informal complaints are documented on a complaint form. The supervisor shall ensure that the nature of the complaint is defined as clearly as possible.

All complaints and inquiries should also be documented in a log that records and tracks complaints. The log shall include the nature of the complaint and the actions taken to address the complaint. On an annual basis, the Department should audit the log and send an audit report to the Chief of Police or the authorized designee.

1003.5 ADMINISTRATIVE INVESTIGATIONS

Allegations of misconduct will be administratively investigated as follows (Minn. R. 6700.2200).

PROCEDURES:

Regardless of their nature, all Contacts will be documented and then sorted as a Complaint, Concern or Performance Matter. The subsequent procedure will depend on whether the contact is a Complaint, Concern, or Performance Matter.

Initiating a Contact

1. All Contacts should be documented on a Lower Sioux Police Department authorized Complaint Form and shall include the reporter's name, address, telephone number, the name, address and telephone numbers of any witnesses, and a brief description of the facts and circumstances.
2. The Complaint Form shall be forwarded to the Assistant Chief of the Lower Sioux Police Department. The Assistant Chief shall assign a case file number to every Complaint Form, and shall communicate that case file number to the appropriate supervisor. The Assistant Chief will also provide copies of this document to the following persons:

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- Chief.
 - The Supervisor of the affected employee(s).
3. The Supervisor who receives the Complaint Form; after consulting with the Assistant Chief, shall classify the Form as one of the following based on the definitions contained in this policy:
- Performance Matter
 - Complaint
 - Concern

Contacts classified as Performance Matters:

1. If the Contact is classified as a Performance Matter, the accused employee's supervisor receiving the Contact shall review the accused employee's supervisory file to see whether there is a pattern of similar performance matters, whether supervisory actions such as counseling, coaching and/or training and mentoring have been taken, and whether the officer or employee has responded positively to those supervisory actions.
2. If there is a pattern of similar performance matters in the employee's file, and/or repeated failure to respond appropriately to supervisory action, the contact shall be classified as a Complaint, and the Complaint procedures required by this Policy shall be followed.
3. If there is no pattern of similar performance matters in the employee's file, the supervisor shall discuss the incident with the employee(s) involved in the incident.
 - a. The Supervisor may contact the reporter, if necessary, to acquire a firm understanding of the alleged facts.
 - b. The focus of the discussion with the employee(s) involved will be to discuss alternatives, if any, that might have led to a more positive outcome.
 - c. The supervisor may choose to mentor or counsel the employee.
 - d. The supervisor may choose to complete a coaching form to discuss with the employee and consider assigning further training.
4. The supervisor shall record in the employee's supervisory file whatever supervisory action is taken and the employee's response to those actions.

No specific findings shall be recorded in the supervisory file relative to the Performance Matter.

The intent is to document meaningful discussion between supervisors and employees on how a given situation might have been handled differently, if appropriate.

5. Employees shall be notified of entries supervisors make in their supervisory file.
6. Employees shall have access to their individual supervisory files.
7. Supervisors who have a need to know will have access to individual supervisory files.

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8. The contents of an employee's supervisory file may be shown to the employee at the time of the employees' annual review at the employee's request.

9. Any on-going performance concerns that supervisors may have should be included in the employee's written annual evaluation.

Contacts classified as a Complaint:

1. When the Contact is classified as a Complaint, the Assistant Chief will arrange for investigative assignment and notifications as required under this Policy.

- When the Assistant Chief or their designee receives the Complaint, the Complaint shall be assigned for investigation.
- The individual assigned to investigate a Complaint shall conduct the investigation and make a report according to the requirements in this Policy.
- If the Complaint is alleged against the Assistant Chief, the Complaint shall be forwarded to the Chief for determination of who the investigator shall be. If the Complaint is against the Chief, the Assistant Chief shall consult with the Tribal Administrator or Tribal Attorney for determination of who the investigator shall be.

Employee Statements:

Employees shall not be subject to taking a formal statement until the following actions have been taken:

1. A signed Complaint Form has been accepted from a citizen alleging facts which, if proven true, would constitute a basis for disciplining the employee.

2. In certain instances, a Complaint signed by the Chief based on facts made known to the Chief, even where those facts are received from an anonymous source, shall serve as the required signed statement under the provision. In those instances, the Chief shall be deemed the complainant.

3. The employee has been given a summary of the allegations, which shall include a brief description of the events from which the Complaint arises, the facts giving rise to the alleged misconduct and the specific rule or regulation which may have been violated if the facts alleged are found to be accurate.

Employee Meeting

1. An employee shall be notified in writing of the time and place where a formal statement is to be taken. The written notice shall include notice of the provisions of sub-clause 2, 3 and 4 of this clause.

- Any such meeting shall be held during the employee's regularly scheduled shift, whenever possible.

2. The employee shall be entitled to have an attorney of the employee's choosing present during the meeting.

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- Where the employee has initially elected to appear without an attorney the employee may subsequently make a request for

such representation and the meeting shall be adjourned for a reasonable period of time to allow the employee to obtain the

presence of an attorney.

3 The meeting during which a Formal Statement is to be taken from an employee shall be recorded.

- The employee shall also be entitled to record the meeting, if the employee so elects.
- The employee shall be entitled to a copy of the recording of the meeting, if requested in writing.

4. The employee shall be advised that any admission made in the course of a Formal Statement may be used as a basis for discipline.

5. The employee shall be entitled to receive a copy of any Formal Statement made by the employee and shall initial the Formal Statement acknowledging that a copy has been received.

Contacts Classified as Concerns:

1. When the Contact is classified as a Concern, the Assistant Chief shall determine whether the Concern involves issues of broad departmental implications or isolated issues.

- Where the issues involved in a Concern are isolated to the unit over which the Supervisor has authority and control, the Supervisor may respond to the question..
- Where the issues involve a Concern that has broader department implications, the Assistant Chief will investigate and make recommendations to the Chief.

c. When investigated within the unit, the Concern and a copy of the report outlining the follow-up investigation and recommendation shall be referred to the Assistant Chief, who shall make recommendations and forward a copy to the Chief for review and determination.

d. The nature and scope of the investigation of a Concern and the resulting report shall be determined by the Supervisor and the Assistant Chief. *If at any time during the course of the investigation it becomes apparent that discipline of an employee may result, the Concern must be reclassified as a Complaint and the Complaint procedures must be followed.*

Notification to Reporter:

1. Performance Matter: Upon the determination that a Contact will be handled as a Performance Matter, the Assistant Chief shall notify the reporter in writing of receipt of the Performance Matter and the fact that it has been assigned to a supervisor for resolution.

2. Complaints: Upon the receipt of a Contact and determination that it will be handled as a Complaint, the Assistant Chief shall notify the reporter in writing of receipt of the Complaint, its impending investigation, the name of the individual in charge of the investigation, and outline the investigation process.

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3. Concerns: Upon the determination that the Contact will be handled as a Concern, the Assistant Chief shall notify the reporter in writing that the Contact has been classified as a Concern and that it has been referred to staff personnel for investigation or further development of the issues raised and definition of the appropriate policies and procedures of the Department.

COMPLAINT INVESTIGATIONS CONDUCTED:

The Assistant Chief or their designee shall determine who conducts an investigation, unless the complaint is alleged against the Chief or the Assistant Chief as noted above

1. Generally a supervisory employee, shall investigate all incidents or Complaints. The Assistant Chief may elect to conduct any investigation and need not designate a formal investigator for that purpose.

2. The Chief may determine that any Contact shall be dealt with as a Complaint and may determine the appropriate means of investigating such matters, including any of the following:

- Investigation by the Assistant Chief.
- Investigation by supervisory personnel; or
- Investigation by a designated person or a designated outside agency.

The Assistant Chief shall initiate a Complaint Investigation by:

1. Notifying the reporter
2. When necessary, forwarding the necessary documents to the supervisory member conducting the investigation or designated investigating body.
3. Notifying the employee(s) who are subject to the investigation of its existence and impending investigation.

This requirement may be waived if any such notification would jeopardize the conduct of the investigation; however, a notification must occur prior to the formal interview of any employee who is the subject of the investigation.

The notification to any employee(s) who is subject to an investigation shall include the following information

1. Notice of the investigation and the individual assigned to conduct the investigation.
2. Notice of the employee's right to representation in any interviews to be conducted as part of the investigation.
3. A reference to the Police Officer's Discipline Procedure Act concerning additional rights the employee might have in the investigation process.
4. The specific rule or regulation the employee's conduct may have violated if the alleged Complaint is sustained.

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5. A brief factual description of the details of the Complaint.
6. If the accused employee is a licensed peace officer, the notice shall contain the following advisories:
 - The employee shall be entitled to have an attorney of the employee's choosing present during the meeting in which a Formal Statement is taken. Where the employee has initially elected to appear without an attorney or union representative, the employee may subsequently make a request for such representation and the meeting shall be adjourned for a reasonable period of time to allow the employee to obtain the presence of an attorney or union representative.
 - The meeting during which a Formal Statement is to be taken from an employee shall be recorded. The employee shall also be entitled to record the meeting, if the employee so elects.
 - The employee shall be entitled to a copy of the tape recording of the meeting, if requested in writing.
 - The employee shall be advised that any admission made in the course of a Formal Statement may be used as evidence of misconduct or as a basis for discipline.

1003.5.1 ADMINISTRATIVE INVESTIGATION FORMAT

Formal investigations of personnel complaints shall be thorough, complete and essentially follow this format:

Introduction - Include the identity of the members, the identity of the assigned investigators, the initial date and source of the complaint.

Synopsis - Provide a brief summary of the facts giving rise to the investigation.

Summary - List the allegations separately, including applicable policy sections, with a brief summary of the evidence relevant to each allegation. A separate recommended finding should be provided for each allegation.

Evidence - Each allegation should be set forth with the details of the evidence applicable to each allegation provided, including comprehensive summaries of member and witness statements. Other evidence related to each allegation should also be detailed in this section.

Conclusion - A recommendation regarding further action or disposition should be provided.

Recommendations -

1003.5.2 DISPOSITIONS

Each personnel complaint shall be classified with one of the following dispositions:

Unfounded - When the investigation discloses that the alleged acts did not occur or did not involve department members. Complaints that are determined to be frivolous will fall within the classification of unfounded.

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Exonerated - When the investigation discloses that the alleged act occurred but that the act was justified, lawful and/or proper.

Not sustained - When the investigation discloses that there is insufficient evidence to sustain the complaint or fully exonerate the member.

Sustained - When the investigation discloses sufficient evidence to establish that the act occurred and that it constituted misconduct.

If an investigation discloses misconduct or improper job performance that was not alleged in the original complaint, the investigator shall take appropriate action with regard to any additional allegations.

The Chief of Police may authorize that any investigation be re-opened any time substantial new evidence is discovered concerning the complaint.

1003.5.3 COMPLETION OF INVESTIGATIONS

Every investigator or supervisor assigned to investigate a personnel complaint or other alleged misconduct shall proceed with due diligence in an effort to complete the investigation within one year from the date of discovery by an individual authorized to initiate an investigation.

1003.5.4 EXTERNAL INVESTIGATIONS

The Chief of Police may request that an outside agency conduct an investigation anytime the Chief of Police determines an external investigation is appropriate.

This department should not conduct an investigation when the Chief of Police is the subject of the complaint. An external investigation should be requested through the Tribal Council.

1003.5.5 NOTICE TO COMPLAINANT OF INVESTIGATION STATUS

The member conducting the investigation shall provide the complainant with periodic updates on the status of the investigation, as appropriate, and consistent with the provisions of the Minnesota Government Data Practices Act (Minn. Stat. § 13.43, Subd. 2; Minn. R. 6700.2200).

1003.6 ADMINISTRATIVE SEARCHES

Assigned lockers, storage spaces and other areas, including desks, offices and vehicles, may be searched as part of an administrative investigation upon a reasonable suspicion of misconduct.

Such areas may also be searched any time by a supervisor for non-investigative purposes, such as obtaining a needed report, radio or other document or equipment.

1003.7 ADMINISTRATIVE LEAVE

When a complaint of misconduct is of a serious nature, or when circumstances indicate that allowing the accused to continue to work would adversely affect the mission of the Department, the Chief of Police or the authorized designee may temporarily assign an accused employee to administrative leave. Any employee placed on administrative leave:

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- (a) May be required to relinquish any department badge, identification, assigned weapons and any other department equipment.
- (b) Shall be required to continue to comply with all policies and lawful orders of a supervisor.
- (c) May be temporarily reassigned to a different shift, generally a normal business-hours shift, during the investigation. The employee may be required to remain available for contact at all times during such shift, and will report as ordered.

1003.8 CRIMINAL INVESTIGATION

Where a member is accused of potential criminal conduct, a separate supervisor or investigator shall be assigned to investigate the criminal allegations apart from any administrative investigation. Any separate administrative investigation may parallel a criminal investigation.

The Chief of Police shall be notified as soon as practicable when a member is accused of criminal conduct. The Chief of Police may request a criminal investigation by an outside law enforcement agency.

A member accused of criminal conduct shall be provided with all rights afforded to a civilian. The member should not be administratively ordered to provide any information in the criminal investigation.

The Lower Sioux Police Department may release information concerning the arrest or detention of any member, including an officer, that has not led to a conviction. No disciplinary action should be taken until an independent administrative investigation is conducted.

The Chief of Police may postpone making a decision on an administrative investigation until any related criminal charges are resolved. The complainant and involved member should be informed of this decision.

1003.9 POST-ADMINISTRATIVE INVESTIGATION PROCEDURES

Upon completion of a formal investigation, an investigation report should be forwarded to the Chief of Police through the chain of command. Each level of command should review and include their comments in writing before forwarding the report. The Chief of Police may accept or modify any classification or recommendation for disciplinary action.

1003.9.1 DISCIPLINE

Disciplinary action may include, but is not limited to (Minn. R. 6700.2200):

- (a) Oral reprimand.
- (b) Written reprimand.
- (c) Suspension.
- (d) Demotion.
- (e) Discharge.

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1003.9.2 ASSISTANT CHIEF RESPONSIBILITIES

Upon receipt of any completed personnel investigation, the Chief of Police shall review the entire investigative file, the member's personnel file and any other relevant materials.

When forwarding any written recommendation to the Chief of Police, the investigating officer shall include all relevant materials supporting the recommendation. Actual copies of a member's existing personnel file need not be provided and may be incorporated by reference.

1003.9.3 CHIEF OF POLICE RESPONSIBILITIES

Upon receipt of any written recommendation for disciplinary action, the Chief of Police shall review the recommendation and all accompanying materials. The Chief of Police may modify any recommendation and/or may return the file to the Assistant Chief for further investigation or action.

Once the Chief of Police is satisfied that no further investigation or action is required by staff, the Chief of Police shall determine the amount of discipline, if any, that should be imposed. In the event disciplinary action is proposed, the Chief of Police shall provide the member with a written notice and the following:

- (a) Access to all of the materials considered by the Chief of Police in recommending the proposed discipline.
- (b) An opportunity to respond orally or in writing to the Chief of Police within five days of receiving the notice.
 - 1. Upon a showing of good cause by the member, the Chief of Police may grant a reasonable extension of time for the member to respond.
 - 2. If the member elects to respond orally, the presentation shall be recorded by the Department. Upon request, the member shall be provided with a copy of the recording.

Once the member has completed his/her response or if the member has elected to waive any such response, the Chief of Police shall consider all information received in regard to the recommended discipline. The Chief of Police shall render a timely written decision to the member and specify the grounds and reasons for discipline and the effective date of the discipline. Once the Chief of Police has issued a written decision, the discipline shall become effective.

1003.9.4 MINNESOTA POST INVESTIGATIONS

The Minnesota POST Board may require an administrative investigation based upon a complaint alleging a violation of a statute or rule that the board is empowered to enforce. Any such misconduct allegation or complaint assigned to this department shall be completed and a written summary submitted to the POST executive director within 30 days of the order for inquiry (Minn. Stat. § 214.10, Subd. 10).

1003.9.5 NOTICE OF FINAL DISPOSITION TO THE COMPLAINANT

The Chief of Police or the authorized designee shall ensure that the complainant is notified of the disposition (i.e., sustained, not sustained, exonerated, unfounded) of the complaint. Notice must be consistent with the provisions of the MGDP (Minn. Stat. § 13.43, Subd. 2; Minn. R. 6700.2200).

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1003.10 PRE-DISCIPLINE EMPLOYEE RESPONSE

The pre-discipline process is intended to provide the accused employee with an opportunity to present a written or oral response to the Chief of Police after having had an opportunity to review the supporting materials and prior to imposition of any recommended discipline. The employee shall consider the following:

- (a) The response is not intended to be an adversarial or formal hearing.
- (b) Although the employee may be represented by an uninvolved representative or legal counsel, the response is not designed to accommodate the presentation of testimony or witnesses.
- (c) The employee may suggest that further investigation could be conducted or the employee may offer any additional information or mitigating factors for the Chief of Police to consider.
- (d) In the event that the Chief of Police elects to cause further investigation to be conducted, the employee shall be provided with the results prior to the imposition of any discipline.
- (e) The employee may thereafter have the opportunity to further respond orally or in writing to the Chief of Police on the limited issues of information raised in any subsequent materials.

1003.11 RESIGNATIONS/RETIREMENTS PRIOR TO DISCIPLINE

In the event that a member tenders a written resignation or notice of retirement prior to the imposition of discipline, it shall be noted in the file. The tender of a resignation or retirement by itself shall not serve as grounds for the termination of any pending investigation or discipline.

1003.12 POST-DISCIPLINE APPEAL RIGHTS

Non-probationary employees have the right to appeal a suspension without pay, punitive transfer, demotion, reduction in pay or step, or termination from employment. The employee has the right to appeal using the procedures established by any collective bargaining agreement and/or personnel rules (Minn. R. 6700.2200).

Employees covered by the Veterans Preference Act are entitled to written notice of the right to request a hearing within 30 days of receipt of the notice of intent to terminate, suspend or demote. Failure to request the hearing in the time specified waives the right to the hearing and all other legal remedies. Any hearing shall be held in compliance with law (Minn. Stat. § 197.46).

1003.13 PROBATIONARY EMPLOYEES AND OTHER MEMBERS

At-will and probationary employees and members other than non-probationary employees may be disciplined and/or released from employment without adherence to any of the procedures set out in this policy, and without notice or cause at any time. These individuals are not entitled to any rights under this policy except for employees covered by the Veterans Preference Act (Minn. Stat. § 197.46). However, any of these individuals released for misconduct should be afforded an

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opportunity solely to clear their names through a liberty interest hearing, which shall be limited to a single appearance before the Chief of Police or the authorized designee (Minn. R. 6700.2200).

Any probationary period may be extended at the discretion of the Chief of Police in cases where the individual has been absent for more than a week or when additional time to review the individual is considered to be appropriate.

1003.14 RETENTION OF PERSONNEL INVESTIGATION FILES

All personnel complaints shall be maintained in accordance with the established records retention schedule and as described in the Personnel Records Policy.

1003.14.1 CONFIDENTIALITY OF PERSONNEL FILES

All active investigations of alleged misconduct and personnel complaints shall be considered confidential and maintained separately from peace officer personnel files. The contents of such files shall not be revealed to other than the involved member or authorized personnel, except pursuant to lawful process, such as Minn. R. 6700.2500. Data in closed files shall be treated as private or public data depending on whether discipline was imposed upon the member.

1003.14.2 LETTERS OF DISCIPLINE AND REPRIMANDS

Letters of discipline and reprimands may only be placed in a member's personnel file after they are received by the member (see generally Minn. Stat. § 626.89, Subd. 13).