

CHAPTER 6
COMPLAINT FINDINGS
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CHAPTER 6

COMPLAINT FINDINGS

1. INTRODUCTION. Each allegation of a complaint shall have a finding as defined below. This finding shall be based on a thorough and complete review of the facts of the complaint, and may also include opinions based on the investigator's judgment and experience. The investigation must demonstrate that a preponderance of the evidence clearly supports the finding. While "preponderance of the evidence" is a less rigorous standard than "beyond a reasonable doubt," the investigation should be able to lead a reasonable and prudent person to reach the same conclusions as the original investigator.

2. GENERAL.

a. Order of Findings. The five possible complaint allegation findings are listed below, in order of severity from highest to lowest. The order provided here matches the order listed on the CHP 240, *Complaint Investigation* face page.

- (1) Sustained.
- (2) Unintentional Error.
- (3) Undetermined/No Finding.
- (4) Departmental.
- (5) Exonerated.

b. Single Finding. Each allegation shall have only one finding, even if several instances of that specific allegation are alleged. That is, separate acts of the same alleged misconduct will be combined into a single allegation.

EXAMPLE: Officer Smith conducts a routine traffic stop and uses a voice-activated tape recorder to record the encounter. The citizen later files a complaint, stating that when Smith first contacted him, she insulted him by inquiring if this was his first time driving an automobile. The citizen also alleges that when Smith returned with the completed citation, she said, "I'll bet even an idiot like you can figure out what to do with this. While these are clearly two separate instances of alleged inappropriate verbal conduct, they both stem from the same overall incident. Therefore, the allegation of verbal discourtesy will be listed only once, and only one finding would apply.

c. Highest Finding. The finding for a combined allegation shall be the most severe finding from any one of the instances, based on the order of severity specified above.

EXAMPLE: The investigator, upon reviewing the tape recording of the above-described incident, determines Officer Smith did make the first derogatory comment, but the tape is too garbled to clearly understand the second conversation. Further, Smith categorically denies ever having called the citizen an 'idiot.' While the second instance may properly be considered as Undetermined/No Finding, the first instance of verbal discourtesy is Sustained. Therefore, the entire allegation must be Sustained, since this is a higher finding than Undetermined /No Finding.

d. Rescinded/Frivolous Complaints. By definition, these type of complaints will not have a finding as both are considered to be without merit. As such, do not indicate any finding for the allegations listed in a rescinded or frivolous complaint on the CHP 240.

3. EXAMPLES.

a. Caveat. The following examples are intended to be a reference guide, and are not meant to be interpreted as definitive. Since each investigation is unique, investigators, commanders, and reviewing officers must always apply their best judgment and sound logic to each case.

b. Sustained. The act (or omission) did occur, and it is deemed improper. The investigation should clearly articulate why the act is improper, e.g., violation of what specific departmental policy or local procedure, state law, etc.

EXAMPLE During a routine traffic stop, Officer Smith informs a citizen that he will not issue a citation if she will agree to go on a date with him. The citizen later files a complaint of sexual misconduct. While being questioned about the incident, Smith admits he did in fact attempt to foster a social relationship with the citizen, but denies any offer not to issue a citation as an inducement. Officer Smith did not issue a citation. This would be a Sustained allegation of inappropriate verbal sexual conduct.

EXAMPLE: Officer Smith is dispatched to the scene of a minor traffic collision between a vehicle and a signpost, but there is no one at the scene and Smith simply stores the vehicle. The vehicle driver/owner later files a complaint because no accident report was taken, and evidence supporting his contention he was run off the road by another vehicle has long since disappeared. This would be a Sustained allegation of failure to investigate.

c. Unintentional Error. The act (or omission) did occur, but as a result of an employee's *honest* mistake.

EXAMPLE: Officer Smith, new to the Area, mistakenly gives a motorist wrong directions to the freeway entrance. The citizen later complains that the officer's incompetence caused him to be late for an interview. Since it was not the intention of the officer to provide inaccurate information, the proper finding should be Unintentional Error.

EXAMPLE: Officer Smith, while completing arrest documentation for two suspects, misidentifies the ethnic origin of the complainant. The suspect later files a complaint, stating that if the officer can make such a simple mistake, then the balance of the report is also likely to be filled with errors. The investigator determines Smith had inadvertently confused the race of the two suspects in the arrest reports. Since there is no evidence this was done maliciously, a finding of Unintentional Error would be appropriate for the allegation of improper investigation.

Note that determining the exact concerns of the complainant is critical in determining the proper allegation and finding. In the above example, if the complainant had expressed a belief the officer's misidentification of his ethnicity was because of a racial bias, then a more appropriate finding would be to Exonerate the officer of the Category I allegation of discrimination.

d. Undetermined/No Finding. Used only when the evidence, or lack thereof, precludes the investigator from making a definitive judgment. This finding should be used only in cases where the investigator determines that insufficient evidence exists which would establish a preponderance (e.g. 51%) one way or the other.

EXAMPLE: A citizen files a complaint against Officer Smith for using an inappropriate hand gesture when the citizen inadvertently drove over some flares at an accident scene. When questioned, Smith does remember the driver, but denies making any such gesture. There are no witnesses. The investigator, lending equal credence to the officer and the citizen, and finding no reason to doubt the veracity of either, would justifiably come to a conclusion of Undetermined/ No Finding.

e. Departmental. Used when the employee's actions are fully in compliance with Department policy and/or procedure, but the policy or procedure itself is found to be erroneous or is the cause of the complainant's concerns. Departmental is also the only allowable finding for Departmental complaints.

EXAMPLE: A state-wide injunction is issued by a court to withhold enforcement of a certain section of the Vehicle Code. The following week, before the Department has a:, opportunity to implement the court order and notify all field commands, an officer issues a citation for that same violation. A complaint is filed, with the complainant demanding the officer be prosecuted for making a "false arrest." Since

the complaint arose from the Department's failure to implement the injunction in a more timely manner, and the officer's action were in compliance with the policy and/or procedures in effect at that time, the most appropriate finding is Departmental.

EXAMPLE: An officer issues a citation for failing to wear a vehicle occupant restraint. The citizen complains, stating that it is a waste of the Department's resources to enforce seat belt laws for adults. This is, by definition, a Departmental complaint, since the citizen is complaining about the Department's policy of enforcing occupant restraint laws. Therefore, the only finding allowed is Departmental. In addition, the officer who originally issued the citation would not be listed as the employee.

f. Exonerated. The employee did not commit the act (or omission), or did commit the act and it is deemed proper and/or within Department policy.

EXAMPLE: A citizen complains that it took over an hour before Officer Smith arrived to render assistance after their vehicle was reported disabled. The investigator, upon reviewing the dispatch records, determined Smith had been delayed by a report of an immediate traffic hazard and by assisting an officer who was arresting an uncooperative subject. These delays are reasonable, so Smith should be Exonerated of lack of assistance.

EXAMPLE: A citizen files a complaint against Officer Smith for handcuffing him after an arrest. The complainant states Smith was only attempting to harass and embarrass him. Since Smith was within policy by handcuffing a subject in custody, a finding of Exonerated is warranted.

Again, determining the exact nature of the complainant's allegations is critical. Given the above scenario, the citizen may be merely expressing concern with the Department's handcuffing policies, especially if the subject is not resistive or combative. If such were the case, this would be a Departmental complaint, and could be documented as an Other complaint.