

**ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE**

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GORDON J. MACDONALD  
ATTORNEY GENERAL



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TO: All Law Enforcement Agencies

FROM: Gordon J. MacDonald 

DATE: January 30, 2019

RE: Public Integrity Matters

In order to provide guidance to the public and to law enforcement, I am issuing this updated statement of the policies and procedures that have been and will continue to be followed by this office in handling matters involving allegations of criminal misconduct committed by public officials.

The intention of this policy is to faithfully discharge this office's duty to ensure integrity in state, county, and municipal government while also recognizing the appropriate role of the County Attorneys, state and local police, and other law enforcement agencies in this area. *See generally* RSA 7:6.

Accordingly, this policy assigns primary responsibility for the investigation of criminal complaints involving state officials to the Attorney General's Office. *See* RSA 21-M:8, II(a) & (d) (statutory duties of the criminal bureau include investigating and prosecuting major crimes and such other criminal matters as the attorney general shall determine). Matters involving county or municipal officials will be handled by the appropriate county or municipal law enforcement agency, except in unusual circumstances as described in the policy.

Consistent with this policy, allegations of criminal misconduct by a state official should be reported to the Chief of the Criminal Justice Bureau of this office at (603) 271-3671.

Reports of criminal misconduct by county or municipal government officials, including county or municipal law enforcement officers, should be reported to the County Attorney with jurisdiction. If the County Attorney believes that his or her office has an actual conflict of interest, the County Attorney shall make arrangements to refer the matter to another County Attorney.

If the County Attorney with jurisdiction believes that involvement of this office may be required to: (1) avoid an actual conflict of interest or other appearance of impropriety; or (2) to serve an important state interest that might not be adequately protected if the matter is handled

locally, then the County Attorney shall refer the matter to the Chief of the Criminal Justice Bureau. Those reports will be reviewed and handled according to the procedures set forth in this policy.

This policy ensures that the Attorney General's Office will take whatever action is required to assist county or municipal law enforcement agencies in any case and to provide assurance to the public that investigations involving public officials are handled appropriately.<sup>1</sup> This policy also strives to promote communication between local agencies and this office regarding public integrity matters.

The attached policy supersedes the June 3, 1998, law enforcement memorandum on the same subject.

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<sup>1</sup> Relatedly, RSA 631:4-a, which criminalizes harm or threats to sitting members of the legislature, executive councilors, past or present governors, members of the judiciary, or members of their immediate families—mandates that violations of the statute be prosecuted by the Attorney General's Office. Please report suspected violations of RSA 631:4-a, to the Chief of the Criminal Justice Bureau, at (603) 271-3671.

**ATTORNEY GENERAL'S OFFICE**  
**PUBLIC INTEGRITY INVESTIGATIONS POLICIES & PROCEDURES**

**I. STATEMENT OF GENERAL POLICY**

The Criminal Justice Bureau the Attorney General's Office ("AGO") will investigate allegations of criminal misconduct by state officials and seek to vindicate the public's interest in honest government. The AGO will also, in certain circumstances, investigate and prosecute allegations of criminal misconduct by county or municipal officials. As provided in Section III, *infra*, the criminal misconduct must typically bear a connection to the official's performance of his or her official responsibilities.

Consistent with this policy, the AGO will respond to complaints of criminal misconduct by public officials according to the following guidelines and procedures.

**II. PROCEDURES FOR HANDLING COMPLAINTS**

**A. Form and Receipt of Complaints.** Complaints should be submitted in writing to the:

Criminal Justice Bureau  
Attorney General's Office  
33 Capitol Street  
Concord, NH 03301

Inquiries may also be made by telephone or in person, but it shall be the general policy of the AGO not to commence an investigation or other action except upon receipt of a written complaint. The complaint should set forth all of the facts which the complainant believes warrant the commencement of a criminal investigation. Complaints which do not provide sufficient factual information may be returned to the complainant without further review by the AGO.

All complaints should include the complainant's name, address, and telephone number. Anonymous complaints generally will not be reviewed. However, upon request, a complainant's identity may be kept confidential if practicable, bearing in mind that such confidentiality may impede or foreclose the AGO's ability to investigate or take other action on the complaint.

Upon receipt by the AGO, complaints shall be logged in by the name of the complainant and the official (or, where the official is not names, the official's agency). If the complaint alleges conduct by a county or municipal government official, the AGO will refer the complainant to the County Attorney or other appropriate law enforcement agency having jurisdiction. *See* Section III, *infra*.

**B. Preliminary Review.** All complaints shall be subject to preliminary review to determine whether they satisfy the criteria for investigation or other action by the AGO. This preliminary review shall be conducted by an attorney within the Criminal Justice Bureau, or by an investigator in consultation with an attorney. The preliminary review shall be based upon the

content of the complaint itself, together with any other information supplied to the AGO by the complainant, and may also include such other preliminary factual inquiry as is deemed appropriate.

If, upon preliminary review, it appears that the complaint does not allege criminal misconduct or otherwise meet the criteria for investigation or other action by the AGO (as set forth in Section III, *infra*), the complainant shall be so notified in writing. In such cases, the AGO may refer the matter to another governmental agency for appropriate action. If the complaint satisfies the standard for investigation or other action by the AGO, the complainant will be so notified in writing.

**C. Investigation or Other AGO Action.** If a complaint alleges criminal misconduct and satisfies the criteria for investigation, the AGO will: (1) investigate the matter itself; (2) supervise or assist a state, county or municipal law enforcement agency in investigating the matter; or (3) take any other action that is appropriate to the needs of the particular case.

**D. Disposition.** Upon completion of an investigation or other action on a matter, the AGO will: (1) prosecute the matter; (2) refer the matter to the appropriate County Attorney's Office for prosecution; (3) decline prosecution, but refer the matter to the appropriate law enforcement or other governmental agency for possible administrative action; (4) decline prosecution, but issue a report setting forth its investigative findings; or (5) decline prosecution and close the matter without further action. If the AGO declines prosecution with a report or without further action, the complainant will be so notified in writing.

### III. CRITERIA FOR INVESTIGATION IN PARTICULAR CASES

**A. State Government Officials.** The AGO will review any complaint of criminal misconduct by a state official if it is related to his or her official duties. The AGO will investigate such complaints where: (1) it appears upon review of the complaint that there is a sufficient basis to commence an investigation; and (2) the alleged criminal misconduct is related to the official's performance of his or her official duties (*i.e.*, was committed in the course of those duties, or is of such a nature as to reasonably call into question the integrity of the official's governmental function).

**B. Judicial Officers.** The AGO will review complaints of criminal misconduct by a judge if it is related to his or her official duties, and will investigate such complaints where it appears upon review of the complaint that there is a sufficient basis to do so. Complaints that do not allege criminal misconduct, or which do not appear to set forth a sufficient basis for investigation, shall be referred to the Judicial Conduct Committee if warranted.

The AGO will review complaints of criminal misconduct by other officers of the judicial branch of state government, and will investigate such complaints where: (1) it appears upon review of the complaint that there is a sufficient basis to commence an investigation; and (2) the alleged criminal misconduct is related to the officer's performance of his or her official duties (*i.e.*, was committed in the course of those duties, or is of such a nature as to reasonably call into question the integrity of the official's governmental function).

**C. County and Municipal Officials.** Complaints of criminal misconduct by county or municipal government officials are most appropriately reviewed and investigated by county or municipal law enforcement agencies. Complaints of this type that are addressed in the first instance to the AGO will therefore ordinarily be referred to the appropriate county or municipal law enforcement agency (*e.g.*, county attorney, local police department, city or town counsel, etc.).

Should the appropriate county or municipal law enforcement agency have an actual conflict of interest the agency with jurisdiction shall make arrangements to refer the matter to another law enforcement agency for investigation. Should the County Attorney with jurisdiction have an actual conflict of interest, the County Attorney shall make arrangements to refer the matter to another County Attorney.<sup>1</sup>

The AGO may exercise its authority to act in matters of this type in the first instance, but only where it determines that such action is necessary: (1) to avoid an actual conflict of interest or other appearance of impropriety<sup>2</sup>; or (2) to serve an important State interest that might not be adequately protected if the matter is handled locally by the agency with jurisdiction or an agency handling the matter as a conflict referral. Whether such a State interest exists will be determined on a case-by-case basis from the facts and circumstances of a particular case. Such an interest may be present, for example, where the cases involves criminal misconduct in more than one county; presents a unique or complex legal issue that is likely to be appealed in the event of a conviction; or presents criminal conduct of such magnitude or complexity that the expenditure of State resources is warranted.

The AGO's decision as to whether to act in such matters in the first instance will be made, whenever possible, in consultation with the appropriate county or municipal authorities. Where the AGO decides to take such action, it may: (1) investigate the matter itself; (2) supervise or assist a state or local agency in investigating the matter; or (3) take any other action that is appropriate to the needs of the particular case.

**D. Law Enforcement Officers.**

1. State Law Enforcement Officers. The AGO will review a complaint of criminal misconduct by a State law enforcement officer or other State law enforcement official if it is related to his or her official duties. Where it appears upon review of the complaint that there is a sufficient basis for investigation, the AGO will: (1) investigate the matter itself; (2) supervise or assist a state or local agency in investigating the matter; or (3) take any other action that is appropriate to the needs of the particular case.

2. County and Municipal Law Enforcement Officers. Complaints of criminal misconduct by county or municipal law enforcement officers are usually most appropriately

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<sup>1</sup> An actual conflict of interest does not arise merely because the county or municipal official is one whom with the county or municipal agency has worked.

<sup>2</sup> An actual conflict of interest does not arise merely because the county or municipal official is one whom with the county or municipal agency has worked.

reviewed and investigated by county and municipal authorities. Complaints of this type that are addressed in the first instance to the AGO will therefore ordinarily be referred to the appropriate county or municipal law enforcement agency (e.g., county attorney, local police chief, board of selectmen, city or town counsel, etc.).

Should the appropriate county or municipal law enforcement agency have an actual conflict of interest the agency with jurisdiction shall make arrangements to refer the matter to another law enforcement agency for investigation. Should the County Attorney with jurisdiction have an actual conflict of interest, the County Attorney shall make arrangements to refer the matter to another County Attorney.<sup>3</sup>

The AGO may exercise its authority to act in matters of this type in the first instance, but only where it determines that such action is necessary: (1) to avoid an actual conflict of interest or other appearance of impropriety<sup>4</sup>; or (2) to serve an important State interest that might not be adequately protected if the matter is handled locally. Whether such a State interest exists will be determined on a case-by-case basis from the facts and circumstances of a particular case. Such an interest may be present, for example, where the cases involves criminal misconduct in more than one county; presents a unique or complex legal issue that is likely to be appealed in the event of a conviction; or presents criminal conduct of such magnitude or complexity that the expenditure of State resources is warranted.

The AGO's decision as to whether to act in such matters in the first instance will be made, whenever possible, in consultation with the appropriate county or municipal authorities. Where the AGO decides to take such action, it may: (1) investigate the matter itself; (2) supervise or assist a state or local agency in investigating the matter; or (3) take any other action that is appropriate to the needs of the particular case.

3. Notification to Other Prosecuting Agencies. In any case in which the AGO determines that a law enforcement officer has engaged in criminal misconduct or any other misconduct that would be required to be disclosed to a criminal accused under *State v. Laurie*, 139 N.H. 325 (1995) and its progeny, the AGO shall notify the head of that officer's law enforcement agency, the appropriate County Attorney's Office, and any other prosecuting agency that may be affected.

#### **IV. PURPOSE AND EFFECT OF POLICY STATEMENT**

The purpose of this statement is to facilitate the effective handling of public integrity matters by the AGO, and to provide general guidance to the public and to government agencies in dealing with the AGO. This statement is subject to change, and is not intended to confer any rights, privileges, or benefits upon any person or entity.

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<sup>3</sup> An actual conflict of interest does not arise merely because the county or municipal official is one whom with the county or municipal agency has worked.

<sup>4</sup> An actual conflict of interest does not arise merely because the county or municipal official is one whom with the county or municipal agency has worked.