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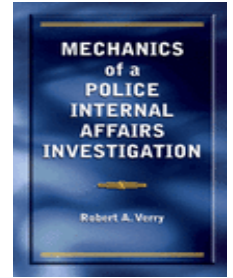
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SETTING THE RECORD STRAIGHT:

The 45-Day Rule Governs the Filing of a Complaint – Not the Completion of an Internal Affairs Investigation

By Dr. Robert A. Verry

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Updated from my article written on or before March 2009

Introduction: Correcting a Field-Wide Misconception

Throughout my career conducting impartial internal affairs investigations (every one of them involving an officer in uniform), no procedural misunderstanding has caused more damage to disciplinary proceedings than this: the entrenched, incorrect belief that an internal affairs investigation must be completed within 45 days. I encounter this error at every level of law enforcement. What troubles me most is not that rookie supervisors are confused; it is that battle-tested, skilled attorneys and senior-ranking command officials, some with decades of experience, remain absolutely convinced that the 45-day window is a completion deadline for the investigation itself. They are wrong. And that error has consequences.

The 45-day rule, codified at N.J.S.A. 40A:14-147, governs one thing and one thing only: the deadline by which a complaint charging a violation of a law enforcement unit's internal rules and regulations must be filed – measured from the date the filing authority obtained sufficient information to file. The statute imposes no deadline whatsoever on completing the underlying investigation. These are entirely distinct obligations, and conflating them has resulted in prematurely concluded investigations, incomplete evidentiary records, and disciplinary charges that collapse at hearing precisely because the investigation was artificially truncated to meet a deadline that does not exist in law.

I am, candidly, at a loss as to where this misinformation originates. It is not in the statute. It is not in the Attorney General's Internal Affairs Policy and Procedures (IAPP), November 2022 Edition. It is unsupported by any controlling appellate

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¹ I conduct all proofreading myself; therefore, I utilized OpenAI (comparable to Grammarly) for assistance with language, grammar, and punctuation refinement. Please excuse any inadvertent omissions, additions, or typographical errors that may remain.

authority. And yet it persists – to the detriment of officers, agencies, and the integrity of the disciplinary process itself. This article, grounded in the statute, the IAPP, and binding case law, is written to correct the record once and for all.

The Statutory Framework: N.J.S.A. 40A:14-147

Every New Jersey law enforcement disciplinary action begins with N.J.S.A. 40A:14-147. The statute must be read in full – not selectively. Pertinent portions are reproduced below:

Except as otherwise provided by law, no permanent member or officer of the police department or force shall be removed from his office, employment or position for political reasons or for any cause other than incapacity, misconduct, or disobedience of rules and regulations... nor shall such member or officer be suspended, removed, fined or reduced in rank from or in office, employment, or position therein, except for just cause as hereinbefore provided and then only upon a written complaint setting forth the charge or charges against such member or officer. The complaint shall be filed in the office of the body, officer or officers having charge of the department or force... and a copy shall be served upon the member or officer so charged, with notice of a designated hearing thereon by the proper authorities, which shall be not less than 10 nor more than 30 days from date of service of the complaint.

A complaint charging a violation of the internal rules and regulations established for the conduct of a law enforcement unit shall be filed no later than the 45th day after the date on which the person filing the complaint obtained sufficient information to file the matter upon which the complaint is based. The 45-day time limit shall not apply if an investigation of a law enforcement officer for a violation of the internal rules or regulations of the law enforcement unit is included directly or indirectly within a concurrent investigation of that officer for a violation of the criminal laws of this State. The 45-day limit shall begin on the day after the disposition of the criminal investigation. The 45-day requirement of this paragraph for the filing of a complaint against an officer shall not apply to a filing of a complaint by a private individual. [N.J.S.A. 40A:14-147]

A failure to comply with said provisions as to the service of the complaint and the time within which a complaint is to be filed shall require a dismissal of the complaint.

The operative phrase, “the 45th day after the date on which the person filing the complaint obtained sufficient information to file the matter,” is dispositive. The clock does not start when the complaint is received. It does not start when the investigation is opened. It starts when the filing authority, typically the chief of police under N.J.S.A. 40A:14-118, possesses sufficient information to act. The investigation is the mechanism by which sufficient information is developed. The statute does not cap the time that process may take.

Equally critical: the statute's failure-to-comply provision applies to two distinct requirements

- (1) service of the complaint upon the officer, and
- (2) the timeliness of filing.

These are separate obligations with separate consequences. Importantly, while filing is governed by the 45-day rule, there is no statutory deadline for serving filed charges on the officer. Service may appropriately be delayed, for example, when an officer is deployed on active military duty, without triggering dismissal of the complaint.

What the Attorney General's IAPP Actually Requires

The New Jersey Attorney General's Internal Affairs Policy and Procedures (IAPP), November 2022 Edition, is the governing policy authority for all law enforcement agencies in this State. It carries the force of law pursuant to N.J.S.A. 40A:14-181. See In re Attorney General Law Enforcement Directive Nos. 2020-5 and 2020-6, 246 N.J. 462 (2021). Compliance is mandatory; there are no exceptions.

What does the IAPP say about how long investigations may take? Far from imposing a 45-day completion deadline, the IAPP establishes a tiered notification framework that explicitly contemplates investigations lasting 180 days and beyond. IAPP Section 6.1.6 provides:

In the rare cases where the agency has not made a charging decision within 180 days of receiving a complaint, the agency must notify the County Prosecutor... The agency shall provide further notice to the County Prosecutor every additional 90 days that the investigation remains open (i.e., on or about the 270th and 360th days from the receipt of the complaint). [IAPP, Nov. 2022, § 6.1.6]

The IAPP's Figure 1 chart (reproduced below in relevant part) makes this framework unmistakably clear. Investigations are not required to conclude by day 45. The only obligation at day 45 is that the law enforcement executive be made aware of the matter's status. Filing charges within 45 days, the IAPP acknowledges, will "in many instances" be possible, but it expressly anticipates cases where it is not.

Days from Receipt of Complaint	IAPP Characterization	Required Action
1 to 44 days	Routine	None – resolved in ordinary course
45 days	More complex	Law enforcement executive notified
90 days	More complex	Law enforcement executive notified
135 days	More complex	Law enforcement executive notified

180 days	Rare cases	County Prosecutor AND law enforcement executive notified
225 days	Rare cases	Law enforcement executive notified
270 days	Rare cases	County Prosecutor AND law enforcement executive notified
360 days+	Rare cases	County Prosecutor AND law enforcement executive notified

Source: IAPP, November 2022, Figure 1 (§ 6.1.6) – Attorney General, State of New Jersey.

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

And at Section 6.1.9: “When an agency can conduct an internal affairs investigation and file disciplinary charges within 45 days of the receipt of a complaint, the 45-day rule does not become an issue. In many instances this will be possible. However, if an agency cannot do so, the burden is on the investigator and ultimately the agency to identify the point at which 'sufficient information' was developed to initiate disciplinary action.” (IAPP, § 6.1.9.) The IAPP's use of the phrase “if an agency cannot do so” is an unambiguous acknowledgment that investigations routinely – and lawfully – extend beyond 45 days.

“Sufficient Information”: When Does the Clock Actually Start?

The 45-day clock is triggered by a single event: the filing authority, per the statute, obtaining sufficient information to file. The statute uses the phrase “the person,” not “the agency” or “any member of the agency.” That person is, in virtually every case, the chief of police who, under N.J.S.A. 40A:14-118, serves as the disciplinarian of the law enforcement agency. Some agencies designate the appointing authority, clerk, or other appropriate authority to sign charges; regardless of who signs, the signer must be consistent, and the 45-day clock runs from that person's receipt of sufficient information.

What constitutes “sufficient information” is not defined in the statute. The answer, as a practical matter, is found in the IAPP. All allegations of officer misconduct must be investigated “thoroughly and objectively” to their “logical conclusion.” (IAPP, Requirement #4.) A thorough investigation requires the assigned investigator to:

- Gather all relevant evidence – firearms; policies; photographs; patrol logs; videos; clothing; biological samples; cell phone records; audio and video

recordings; hospital records; court transcripts; MDT logs; and any other material bearing on the allegation;

- Examine all relevant reports generated by the agency and related entities;
- Review all relevant documents, including prior disciplinary history where applicable;
- Interview all civilian and sworn witnesses, with each executing a Witness Acknowledgment Form (IAPP, Appendix G); and
- Conduct an investigatory interview of the subject officer – as the final step, under most circumstances – with execution of an Administrative Investigation Form (IAPP, Appendix H).

Only after the investigator has completed this process and submitted a final report to the chief does the chief have sufficient information. At that point – and not a moment before – the 45-day clock begins. The IAPP reinforces this at Section 6.1.10: “[I]t is important that there is no unreasonable delay between the conclusion of the investigation by the assigned investigator and the decision to file charges by the person who has that responsibility.” (IAPP, § 6.1.10.) The operative risk is bureaucratic delay after the investigation is complete – not the duration of a thorough investigation that is still ongoing.

A critical outcome: an investigator does not investigate the subject officer. The investigator examines the allegation, policies, evidence, reports, documents, and statements to determine the truth wherever it leads. Often, a thorough investigation reveals that the real cause of alleged misconduct was a poorly written policy, inadequate training, deficient supervision, or a hiring failure. A rushed investigation misses these findings. A rushed investigation that misses these findings fails the agency, the officer, and the public.

The Two Statutory Exceptions to the 45-Day Rule

N.J.S.A. 40A:14-147 carves out two distinct circumstances in which the 45-day filing requirement does not apply to internal rules and regulations charges. Both have significant practical implications.

A. Concurrent Criminal Investigation

The 45-day deadline is suspended – automatically and entirely – when an investigation for rules and regulations violations is included “directly or indirectly within a concurrent investigation of that officer for a violation of the criminal laws of this State.” N.J.S.A. 40A:14-147. The IAPP confirms this at Section 6.1.8: “[C]ommencing a criminal investigation into the subject matter of an internal affairs complaint will suspend the 45-day rule pending the disposition of that investigation.” (IAPP, § 6.1.8.)

When a preliminary investigation reveals the possibility of criminal conduct by a subject officer, the receiving internal affairs investigator must immediately notify the County Prosecutor. (IAPP, Requirement #6; IAPP, § 6.3.2.) No further

investigative action, including interviewing the officer or filing charges, may be taken until the Prosecutor so directs. The internal affairs investigation is halted. The 45-day clock does not run during this period.

Several procedural paths may follow. The Prosecutor may investigate independently, investigate concurrently with the department, present the matter to the grand jury, file criminal charges, or issue a Declination Letter. The critical question for the 45-day clock is whether the investigation was concurrent:

- If the Prosecutor investigated independently (non-concurrent): the 45-day clock for rules and regulations charges does not start until the chief receives sufficient information following the department's own subsequent IA investigation – not upon receipt of the Declination Letter.
- If the Prosecutor and the department's IA investigators worked concurrently: the 45-day clock starts the day after the disposition of the criminal investigation, not when the agency receives notice. See Albert Alston v. City of East Orange, ESX-L-9535-05 (Law Div. 2005) (“the 45-day period begins to run the day after the disposition of the criminal investigation, not when the law enforcement agency receives actual notice.”).

The Alston principle has critical practical implications. If a grand jury no-bills criminal charges on January 25th, the 45-day period begins January 26th, regardless of when the Prosecutor notifies the department. An agency that starts its clock on the date of notification, rather than the date of disposition, may unknowingly allow valid charges to lapse. The IAPP therefore requires the IA function to maintain regular contact with the Prosecutor throughout any criminal investigation and to document precisely the date of disposition. (IAPP, § 6.1.8.)

The IAPP's bifurcated investigation framework in Section 8.1 is designed precisely to address this risk. When conducted properly, a bifurcated investigation allows both criminal and administrative investigations to proceed simultaneously. Upon disposition of the criminal matter, the administrative investigation is substantially complete, and the agency faces no difficulty complying with the 45-day rule. (IAPP, § 8.1.5.)

B. Complaints Filed by Private Individuals

The 45-day filing requirement does not apply to “a filing of a complaint by a private individual.” N.J.S.A. 40A:14-147. When a member of the public reports officer misconduct – regardless of when the underlying incident occurred – internal affairs is required to open an active investigation. There is no time bar on when a private citizen may come forward. The IAPP is equally direct: “members of the public are not required to make their complaint within 45 days of the incident.” (IAPP, § 6.1.7.) Once the complaint is received, however, the 45-day rule attaches to the filing of internal rules and regulations charges once sufficient information has been developed.

A Point Widely Missed: The 45-Day Rule Applies Only to Rules and Regulations Violations

Perhaps the single most underappreciated dimension of the 45-day rule is its limited scope. The rule applies exclusively to violations of a police department's internal rules and regulations. It does not apply to:

- Charges filed under N.J.S.A. 40A:14-147 – Statutory Misconduct. *See Appeal of Tuch*, 159 N.J. Super. 219 (App. Div. 1978); *Asbury Park v. Civil Service Dep't*, 17 N.J. 419 (1955).
- Charges filed under N.J.A.C. 4A:2-2.3 et seq. – Civil Service General Causes.

This distinction provides agencies with a critically important procedural safeguard. By including statutory misconduct and general causes charges alongside – or in lieu of – rules and regulations charges, an agency can insulate its disciplinary action from dismissal on 45-day grounds even in cases where the rules and regulations charges may be technically time-barred. This is not gamesmanship – it is sound, lawful practice that experienced IA practitioners utilize routinely. Before filing any charges, an agency must consult with competent labor counsel who specializes in police disciplinary matters.

Four Applied Scenarios: Seeing the Rule in Practice

The following scenarios – drawn from the kinds of fact patterns I have encountered throughout my career illustrate the proper application of the 45-day rule. They demonstrate, concretely and unambiguously, that the 45-day window is a filing deadline measured from sufficient information, not a completion deadline for the investigation.

Scenario 1 – Straightforward Internal Investigation: On January 1st, Internal Affairs receives an allegation that an officer is sleeping on duty. Because notification would compromise the investigation, the subject officer is not notified. (IAPP, Requirement #3.) Over the next two weeks, investigators conduct surveillance, gather evidence, interview witnesses, and interview the subject officer. On January 15th, the process is complete. On January 16th, the investigator submits her final report to the chief. The chief now has sufficient information. The 45-day clock begins January 16th. Filing deadline: on or before March 2nd. ⇒ The investigation took 15 days. The chief then had 45 days to file. The two periods are distinct and sequential.

Scenario 2 – Investigation Returned for Supplemental Evidence: Same facts as Scenario 1. On January 17th, the chief returns the report, requesting that Mobile Data Terminal logs be reviewed. Because the chief determined on January 17th that she lacked sufficient information, the clock did not start that day. On January 20th, the supplemented report is returned to the chief. The 45-day clock begins January 20th. Filing deadline: on or before March 5th.

⇒ This scenario underscores that the clock can lawfully be tolled when the chief, in good faith, requires additional investigation — provided the return is documented and not bureaucratic delay.

Scenario 3 — Non-Concurrent Criminal Investigation: On January 1st, Internal Affairs receives an allegation of theft by an officer. Internal Affairs immediately notifies the County Prosecutor, who assumes the investigation without departmental assistance — this is not a concurrent investigation. On June 1st, the Prosecutor issues a Declination Letter. Because the investigation was not concurrent, the 45-day clock does not start on June 1st. Instead, the department now opens its own IA investigation. Two weeks later, on June 15th, the investigator completes her report and delivers it to the chief on June 16th. The 45-day clock begins June 16th. Filing deadline: on or before July 30th. ⇒ Total elapsed time from original complaint to filing deadline: approximately seven months — entirely consistent with statute and IAPP.

Scenario 4 — Concurrent Criminal and Internal Affairs Investigation: Same facts as Scenario 3, except that the County Prosecutor and the department's IA investigators work concurrently. On June 1st, the Prosecutor delivers a Declination Letter. Because the investigation was concurrent, N.J.S.A. 40A:14-147 applies: the 45-day clock begins June 2nd — the day after disposition. Filing deadline: on or before July 16th. ⇒ This is precisely the scenario the IAPP's bifurcated investigation protocol is designed to facilitate: concurrent investigations allow both tracks to be substantially complete upon criminal disposition, enabling compliance with the 45-day rule. (IAPP, § 8.1.5.)

The 10-30 Day Rule and the Local Disciplinary Hearing

Once disciplinary charges are filed and served on the officer, the statutory clock shifts. The officer has a right to a hearing “not less than 10 nor more than 30 days from the date of service of the complaint.” N.J.S.A. 40A:14-147. Failure to hold the hearing within the 30-day window, absent a waiver or recognized exception, requires dismissal of the complaint. *See Ressel v. Costello*, 79 N.J. Super. 149 (App. Div. 1963); *In re Frey*, 160 N.J. Super. 140 (App. Div. 1978); *Herzog v. Twp. of Fairfield*, 349 N.J. Super. 602 (App. Div. 2002). Accordingly, agencies should retain an independent hearing officer and labor counsel before service of charges, in anticipation of the hearing proceeding under the 10-30 day rule.

Although N.J.S.A. 40A:14-147 permits a charged officer to waive the local disciplinary hearing and appeal directly to the Civil Service Commission (N.J.A.C. 4A:2-2.8) or to court (N.J.S.A. 40A:14-150), experienced practitioners rarely do so, and for good reason:

- Waiver activates the penalty immediately – termination, demotion, or suspension takes effect upon filing of the Final Notice of Disciplinary Action;
- The local hearing creates a record and locks in witness testimony;
- It affords the opportunity to directly link evidence to each charge;
- It allows the defense to expose investigative flaws that cannot otherwise be remedied; and
- It provides an impartial, independent hearing officer who gives both the officer and the agency a neutral analysis of the case. *See Ferrari v. Melleby*, 134 N.J. Super. 583 (App. Div. 1975); *Grasso v. Borough of Glassboro*, 205 N.J. Super. 18 (App. Div. 1985).

Defense counsel regularly exploits procedural errors rather than contesting the merits of disciplinary charges. A violation of the 45-day rule is among the most commonly raised prehearing motions. *See, e.g., O'Rourke v. City of Lambertville*, 405 N.J. Super. 8, 19 (App. Div. 2008), *certif. denied*, 198 N.J. 311 (2009). Agencies that rush investigations to meet a fictional deadline, or that misapply the 45-day rule as a completion deadline, hand defense counsel an unnecessary and entirely avoidable procedural weapon.

Footnote: It is important for the public agency to retain a truly impartial hearing officer. If the officer is found not guilty, charges are dismissed, or prosecution is terminated, the agency may be responsible for the officer's legal defense costs. N.J.S.A. 40A:14-155.

Just Cause, Permanent Members, and the Disciplinary Framework

All disciplinary charges under N.J.S.A. 40A:14-147 must be supported by “just cause,” defined in Black’s Law Dictionary (6th ed. 1998) as “[l]egitimate cause; legal or lawful grounds for action; such reasons will suffice in law to justify the action taken.” Just cause is assessed through the seven-factor framework established in *Enterprise Wire Co. & Enterprise Independent Union*, 46 LA 359 (1966):

1. Reasonable Rule or Order
2. Notice
3. Sufficient Investigation
4. Fair Investigation
5. Proof
6. Equal Treatment
7. Appropriate Penalty²

Factor three – Sufficient Investigation – deserves emphasis in this context. A rushed investigation compressed into an artificial timeline is not a sufficient

² I present a seminar on “Just Cause.”

investigation. An agency that truncates its investigative process to meet a deadline that does not legally exist may find that its charges cannot survive just cause scrutiny on the merits, independent of any procedural 45-day challenge. The statute's protections apply to permanent members and officers – regularly sworn officers not on probation. N.J.S.A. 40A:14-147. They do not apply to specials, crossing guards, fire police, or part-time officers, although some of these personnel may have protections under collective negotiation agreements. Probationary officers present distinct considerations; agencies should consult labor counsel before filing charges against any probationary officer.

Upon service of the disciplinary complaint, the charged officer should be given five calendar days to advise the agency in writing whether he or she: (1) pleads guilty; (2) pleads guilty with an explanation; or (3) pleads not guilty and requests a local disciplinary hearing.

Footnote: The Preliminary Notice of Disciplinary Charges (civil service) or Notice and Charging Form (non-civil service) should include an exact hearing date consistent with the 10-30 day rule. Designating "TBA" on the notice is inadvisable and should be avoided.

Conclusion: The Error That Must Stop

The misconception that internal affairs investigations must be completed within 45 days is not a harmless misunderstanding. It is a misreading of the law that distorts investigations, degrades evidentiary records, and produces disciplinary proceedings that fail, not because the underlying conduct was not serious, but because the agency rushed its process to comply with a requirement that does not exist.

To be unambiguous: N.J.S.A. 40A:14-147 requires that a complaint charging a violation of internal rules and regulations be filed no later than the 45th day after the filing authority obtains sufficient information to file. The investigation necessary to develop that sufficient information has no statutory completion deadline. The IAPP confirms this at every relevant section. The case law supports it. The text of the statute itself compels it.

Every fact pattern is unique and must be evaluated individually. Every case requires careful, documented chronology. Every filing decision should be made in consultation with qualified labor counsel. But the foundational principle does not vary: a thorough, objective, impartial internal affairs investigation, conducted without artificial time pressure from a rule misread as a completion deadline, is the standard the law demands and the standard every New Jersey law enforcement agency is obligated to meet.