

Discipline Process for Sworn Members

2.07.01 PURPOSE

The purpose of this order is to set forth the Department's disciplinary policies and procedures for sworn members (members) as established by the City Charter, San Francisco Administrative Code, and Department General Orders. The policies and procedures outlined below apply to disciplinary cases issued after the effective date of this General Order.

2.07.02 DEFINITIONS

- A. Disciplinary Action** – Any action that may lead to termination, suspension, or written reprimand.
1. Admonishment - An advisory, corrective, or instructional action that does not constitute formal discipline. It is a warning only but considered a step in the disciplinary process.
 2. Reprimand - Formal correspondence from the Chief of Police to the member that describes the misconduct and admonishes the member that repeat offenses may result in more severe disciplinary action. The lowest form of disciplinary action.
 3. Fine - A fine of an officer's salary not to exceed one month's pay for each sustained offense.
 4. Suspension - Compelled time off without pay. Not to exceed ninety (90) working days for each violation.
 5. Termination - Dismissal from the Department.
- B. Chief's Level Discipline** – Disciplinary action including written reprimand or suspension of ten (10) days or fewer.
- C. Commission Level Discipline** – Disciplinary action including suspension of eleven (11) days or more up to and including termination.
- D. Disciplinary Penalty and Referral Guidelines** – To ensure discipline is imposed in a fair, just, and equitable manner, disciplinary recommendations shall comply with procedures set forth in the *Disciplinary Penalty and Referral Guidelines* adopted by the Police Commission.
- E. Investigative Dispositions** – All investigations shall conclude with one of the following dispositions:
1. Improper Conduct - A preponderance of the evidence proves that the alleged conduct occurred and that the conduct violated department policy, procedures, applicable legal principles, or training.

2. Insufficient Evidence - The evidence fails to prove or disprove that the alleged conduct occurred.
3. Proper Conduct - The evidence proves that the alleged conduct occurred; however, the conduct was justified, lawful, and proper.
4. Policy Failure - The evidence proves that the alleged conduct occurred but was justified by department policy or procedures; however, the San Francisco Police Department (“SFPD”) or Department of Police Accountability (“DPA”) recommends that the policy or procedure be changed or modified.
5. Supervision Failure - The evidence proves that the alleged conduct occurred and was the result of inadequate supervision.
6. Training Failure - The evidence proves that the alleged conduct resulted from inadequate or inappropriate training.
7. Unfounded - The evidence proves that the conduct alleged did not occur or that the accused member was not involved.
8. Referral to Other Agency - The evidence proves that the alleged conduct did not involve a member of the Department or that the complaint raised issues, not within the scope of DPA or Internal Affairs Division (“IAD”). Referral to other agency allegations are not counted as complaints against members of the Department.
9. Withdrawal - The complainant failed to provide additional requested evidence, or the complainant requested a withdrawal of the complaint.
10. Mediated - The complainant and member agreed to mediation as a non-disciplinary resolution (DPA finding only).

F. Preponderance of the Evidence – The standard of proof in administrative investigations. Preponderance of the evidence means “more than fifty percent” or “more likely than not.”

G. Just Cause – Permanent members may only be disciplined for just cause, which means disciplinary action must be just and fair.

H. Progressive Discipline –The use of escalating penalties for policy violations is considered progressive discipline. Some disciplinary offenses are so serious that significant disciplinary sanctions, including termination, are justified for the first offense. The Department shall apply principles of progressive discipline consistent with the *Discipline Penalty and Referral Guidelines*.

I. Double Jeopardy – Members formally disciplined by the Chief of Police or Police Commission may not be subject to further disciplinary action for the same incident.

J. Statute of Limitations – The Department must notify a member by written notice of its intent to discipline within one year of the discovery of the misconduct as prescribed by law unless a tolling provision applies. The notice must be personally served on the member except where personal service is waived. This requirement applies to both Chief’s level and Commission level discipline.

- K. Probationary Reversion** – Members released during a promotive probationary period shall revert to a position in the class from which promoted. Where the release is predicated on grounds other than merit, the released member shall be entitled to Chief's Hearing.
- L. Command Staff Reversion** - Members of the Command Staff serve at the discretion of the Chief of Police. Members released from the Command Staff shall revert to a position in the class from which they were promoted. Where the release is predicated on punitive grounds, the released member shall be entitled to a Chief's Hearing.

2.07.03 CHIEF'S LEVEL DISCIPLINE PROCESS

- A. Notice** – To initiate Chief's level disciplinary action, IAD must issue a written notice to the member. The notice must include the basis of discipline, the policies violated, and the intended disciplinary action. IAD shall submit to the member a copy of all materials upon which the disciplinary action is based either with the notice or upon the member's request. The notice of discipline shall also include a date for a Chief's Hearing scheduled no earlier than sixty (60) calendar days.
- B. Written Response** – If a member does not submit a written response, the intended discipline shall be imposed. Where a member wishes to appeal, the member shall submit a written response refuting the recommended finding or disciplinary action refuting the allegation(s) or mitigating the penalty, whichever applies. The response shall be submitted no later than thirty (30) calendar days after service of the disciplinary notice. After reviewing the written response, the Chief of Police may opt for an immediate disposition if there is agreement with the member. If there is no agreement, the member's appeal will be heard at a Chief's Hearing.
- C. Chief's Hearing** – The purpose of the Chief's Hearing is to provide the member with an opportunity to respond to the charges and the intended discipline.

The hearing is presided over by a Hearing Officer designated by the Chief of Police. The Hearing Officer shall be a sworn member of the Department, holding the permanent rank of Commander or above, unless conflicts require an outside hearing officer. The Hearing Officer shall have no prior involvement in the disciplinary matter. The Hearing Officer shall consider the argument made by the member and make a written recommendation to the Chief of Police as to whether the disciplinary findings or recommendation are reasonable and should be imposed. The Chief of Police is not bound by the Hearing Officer's recommendation.

The hearing is informal and non-evidentiary. Witnesses are not called, and evidence is not taken subject to formal rules. The member is entitled to the representative of their choice. In addition, the member may make an audio recording of the proceeding.

The hearing shall take place no later than 180 calendar days after service of the disciplinary notice. Once the hearing date has been set, there shall be no continuances absent good cause. More than one continuance per side is not permitted absent an emergency. The 180 days shall be tolled if the appealing member is on a protected leave (such as, FMLA, military, or injury leaves). The Hearing Officer's written recommendation shall be submitted to the Chief of Police no longer than 90 days after the hearing date.

Failure to comply with these deadlines may subject the Hearing Officer to disciplinary action but shall have no bearing on the outcome of the appeal. The deadlines contained herein shall apply to members individually, even if multiple members in the same matter appeal.

D. Final Discipline – Should the Chief of Police decide to impose discipline following Chief's hearing IAD shall issue a written final notice within thirty (30) days of the Chief of Police's decision to the member.

E. Commission Appeal – A member may appeal a Chief's level suspension to the Police Commission. Members who wish to appeal to the Police Commission must notify the Police Commission Secretary in writing within ten (10) calendar days of receiving the final notice of discipline. Such appeals are subject to the Police Commission's *Procedural Rules Governing Trial of Disciplinary Cases*.

The appeal must be heard within thirty calendar days unless the member waives time.

F. Reprimand Appeal – The Police Commission lacks jurisdiction over appeals of written reprimands. Therefore, members seeking to appeal the imposition of a written reprimand shall notify IAD within ten (10) days of receipt of the reprimand. These appeals shall be governed by the *Letter of Agreement Between the San Francisco Police Department and the San Francisco Police Officers Association Regarding Administrative Appeals of Disciplinary Reprimands*.

G. DPA Notification – IAD shall send copies of all disciplinary and procedural letters and notices related to DPA cases to the DPA.

2.07.04 POLICE COMMISSION DISCIPLINE PROCESS

Notice - The Chief of Police or the Director of the Department of Police Accountability may file charges of misconduct against a member with the Police Commission. The charges must detail the basis of misconduct, the rules violated, and the recommended disciplinary action.

Following service on the member, IAD shall forward proofs of service to the Police Commission Secretary for filing. IAD shall also forward copies of signed proofs of service to DPA for cases investigated by that agency.

Following a hearing, the Commission may impose disciplinary action from reprimand through termination.

A. Hearing Procedure – Police Commission proceedings are governed by the *Police Commission's Procedural Rules Governing Trial of Disciplinary Cases*.

Police Commission Appeal - Members may appeal final discipline imposed by the Police Commission to an Administrative Law Judge ("ALJ") designated by the California Office of Administrative Hearings. Members must provide written notice to the Police Commission Secretary of their intent to appeal within thirty (30) calendar days from when both the Commission's determination to impose discipline and its findings of fact are served on the member by a superior officer. The rules of the appeal before the ALJ are governed by the Police Commission's *Rules for Administrative Appeals per Commission Resolution 19-15*.

2.07.05 SUSPENSION PENDING HEARING

A. Paid Administrative Leave – The Chief of Police may place a member on paid administrative leave for a period of up to thirty (30) days. This thirty-day period may be extended to sixty (60) days with the approval of the Director of Human Resources. The Chief of Police may place a member on paid administrative leave for any reason.

B. Unpaid Administrative Leave – In select circumstances, the Chief of Police may place a member on unpaid administrative leave. This unpaid leave is not subject to the thirty and sixty-day requirements in section A.

Members may only be placed on unpaid administrative leave for investigations involving misappropriation of public funds or property, misuse or destruction of public property, drug addiction or habitual intemperance, mistreatment of persons, immorality, acts which would constitute a felony or misdemeanor involving moral turpitude, or acts which present an immediate danger to the public health and safety.

C. Return to Duty Hearing – When a member is placed on unpaid administrative leave, they may request a return to duty hearing to be held within five (5) working days. The return to duty hearing is an informal hearing before a Hearing Officer appointed by the Chief of Police. The member is entitled to the representative of their choice during the meeting.

At the conclusion of the hearing, the Hearing Officer shall make a recommendation to the Chief of Police regarding whether the member should be returned to duty or should remain on unpaid leave. The Chief of Police is not bound by the Hearing Officer's recommendation.

2.07.06 PROBATIONARY MEMBERS

- A. No Cause Discipline** – Probationary members may be disciplined without cause.
- B. Interrogation Rights** – Probationary members shall be afforded the interrogation rights outlined in Department General Order 2.08 *Peace Officer Rights in Disciplinary Investigations*.
- C. Liberty Hearing** – Probationary members may not avail themselves of the disciplinary appeal procedures outlined above. However, where a probationary member is discharged for reasons that stigmatize the member's reputation or negatively impact future employment, the probationary member is entitled to a post-discharge "Liberty Hearing."

Liberty hearings are conducted in the same manner as Chief's Hearings. The issue at the hearing is whether the findings should remain sustained. Not at issue is whether the probationary member is entitled to reinstatement.

References:

DGO 2.08 – Peace Officer Rights in Disciplinary Investigations
DGO 2.04 – Complaints Against Officers
California Government Code 3304
San Francisco City Charter § A8.344
Procedural Rules Governing Trial of Disciplinary Cases
Police Commission Rules for Administrative Appeals
Letter of Agreement Between the San Francisco Police Department and the San Francisco Police Officers Association Regarding Administrative Appeals of Disciplinary Reprimands