

**City of San Diego  
Police Department**



**DISCIPLINE MANUAL**  
**For Sworn Personnel**

June 2019

## **PREAMBLE**

Chief David Nisleit and the San Diego Police Department are committed to a system of discipline that is fair, consistent and expeditious. To that end, this Discipline Manual was developed with input from all levels in the organization. The purpose of the Discipline Manual is to provide guidelines to those in the Department who are responsible for imposing discipline. Nothing in these guidelines is intended to create, expand, or diminish any management or employee rights as provided for by state or federal law, the Memorandum of Understanding (MOU), the City of San Diego Personnel Manual or City Administrative Regulations. To the extent that a conflict arises with respect to these guidelines, it should be resolved in favor of existing law, MOU, or current City or Department policy and procedure.

# The San Diego Police Department's Vision, Values & Mission

**VISION:** The San Diego Police Department strives to advance the highest levels of public safety, trust, and professionalism by strengthening community partnerships through fair and impartial policing while fostering employee enrichment and growth to ensure we remain America's Finest police department.

## VALUES:

- **Human Life**

Our efforts will be oriented toward the goal of protecting human life and ensuring everyone has the opportunity to thrive.

- **Partnerships**

We will work collaboratively with our community to resolve challenges, protect individual rights, and promote prosperity.

- **Employee Enrichment**

We will provide for the professional development and wellness of our employees through access to ongoing training and a robust employee wellness program. Through these commitments we will continually advance the professional knowledge, personal growth and career longevity of our employees.

- **Innovation**

We are committed to leading the law enforcement community through innovative practices in order to maintain our position at the forefront of policing.

- **Integrity**

Our actions will be guided by the highest level of virtue and ethical practice through open communication and transparency.

- **Diversity**

We embrace and appreciate the unique experiences and backgrounds that provide strength and unity to our organization.

- **Compassion**

We will strive to show genuine concern for one another in both our interactions with the community and within our organization. We recognize that the complexities of life compel us to do nothing less.

- **Courageous Justice**

We will be undeterred in our pursuit of fairness, peace, and a genuine well-being for all people.

**MISSION:** Maintain public safety by providing the highest quality police services to all of our communities.

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**I. General Information**

**A. Purpose**

1. Employees of the San Diego Police Department perform a wide range of duties requiring a variety of skills and abilities. Their work is of great importance and is highly valued by the community and the Department.
2. To guide employees as they carry out their responsibilities, the Department has established standards for employee conduct and performance. The Department expects all employees to meet these standards, thereby enhancing the professionalism of the Department and creating a work environment that stands as a source of pride to the members of this Department and to the community.
3. Discipline is defined as teaching and/or learning. The San Diego Police Department recognizes that discipline takes on several meanings, including positive, corrective and punitive action.
4. The positive side of discipline reinforces recognition and rewards to motivate, direct and influence police officers of the San Diego Police Department. Positive discipline, correctly administered, should never be underestimated as a source of reducing misconduct and performance-related problems.
5. When an employee fails to meet the standards of performance or conduct, it is the responsibility of supervisors and managers to respond by imposing appropriate discipline. The primary objective of discipline is to strengthen the Department and build morale by:
  - a. Reinforcing the values and expectations of the Department.
  - b. Putting employees on notice when their performance needs improvement or behavior needs correction.
  - c. Assisting employees in their efforts to improve performance or correct behavior.
  - d. When necessary, removing employees whose performance is incompetent, or who engage in grossly negligent or willful or repeated misconduct.
6. This manual applies exclusively to sworn police officers of the San Diego Police Department. For discipline related guidance involving civilian employees, refer to the City of San Diego [Dimensions in Discipline Manual](#).

## **Section I. General Information: Types of Discipline**

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### **B. Types of Discipline**

1. Positive Recognition.
  - a. Recognition and rewards are an important factor in maintaining employee satisfaction and Department morale. Rewards should be used to recognize those employees who perform at an exceptional level or who consistently achieve high standards. Rewards can be given to individual officers or groups. Recognition and rewards create a positive influence on the entire organization. Several rewards and forms of recognition are available. See [Department Procedure 5.17](#).
    - i. Supervisor's Commendations.
    - ii. Commanding Officer Citations.
    - iii. Service Awards.
    - iv. Discretionary Leave.
    - v. Employee of the Month programs.
    - vi. Employee of the Shift programs.
    - vii. Exceptional Merit Pay Step Increases.
    - viii. Positive Employee Performance Reports.
  - b. [Section II](#), Positive Recognition, of this manual contains detailed procedures for identifying and documenting outstanding conduct by sworn employees. Some examples are:
    - i. Setting a positive example.
    - ii. Focusing on positive behavior.
    - iii. Providing consistent feedback.
    - iv. Identifying appropriate rewards.
2. Misconduct-Related Discipline.
  - a. Misconduct-related problems stem from negligent or intentional employee violations of City and/or Department policy. Behavior amounting to misconduct can be a single event or repeated incidents, with the severity of the discipline based on the gravity of the misconduct. [Section III](#), Misconduct Related Discipline, of this manual contains procedures for identifying, documenting and addressing misconduct by sworn employees, and factors to consider when determining proper discipline that is fair, equitable and consistent with the [Goals and Objectives](#) of the San Diego Police Department.
  - b. Supervisors and Commanding Officers should consider the progressive discipline approach; however, it is not necessary to begin discipline at the lowest level. Misconduct should generally be addressed by:
    - i. Verbal/Notes of Counseling.

## **Section I. General Information: Types of Discipline**

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- ii. Written Warnings.
  - iii. Reprimands.
  - iv. Disciplinary Transfers.
  - v. Suspensions.
  - vi. Demotions.
  - vii. Terminations.
3. Performance-Related Discipline.
- a. [Section IV](#), Performance Related Discipline, contains detailed procedures for identifying, documenting and correcting performance deficiencies of sworn personnel. Included are procedures and factors to consider for determining proper corrective measures, which are designed to correct or modify performance in a progressive, fair and consistent manner.
  - b. Performance deficiencies should generally be addressed in progressive steps:
    - i. Verbal/Notes of Counseling.
    - ii. Written Warnings.
    - iii. Employee Performance Reports.
    - iv. Supplemental Performance Reports.
    - v. Performance Development Plans.
  - c. If the progressive steps listed above are unsuccessful, then other steps should be taken:
    - i. Reduction in Compensation.
    - ii. Demotion.
    - iii. Termination.

### **C. Progressive Discipline - Severity Commensurate With Offense**

- 1. Progressive Discipline is a fundamental objective in determining the appropriate level or severity of discipline. Corrective action taken for a first offense will generally be less severe than that taken for a subsequent offense. This does not mean that all discipline must follow a prescribed pattern.
- 2. The appropriate disciplinary action for a given offense will be determined by a supervisor or Commanding Officer after considering all relevant factors:
  - i. The nature and severity of the offense.
  - ii. The history of the employee.
  - iii. Consistency with similar disciplinary actions.
  - iv. Any mitigating or aggravating circumstances.
  - v. The effect on the organization.
  - vi. The impact on the community.

## **Section I. General Information: Discipline & Investigation Timeline/Employee Representation**

3. [Section III.E.1.](#), Determining Appropriate Level of Discipline, provides general guidelines for evaluating the circumstances and factors to determine the appropriate level of discipline for various types of misconduct.

### **D. Discipline and Investigation Timeline**

#### 1. Discipline.

- a. One year statute of limitations.

No punitive action, nor denial of promotion on grounds other than merit, shall be undertaken for any act, omission, or other allegation of misconduct, if the investigation of the allegation and notification of the proposed discipline is not completed within one year of the agency's discovery. [Government Code Section 3304.](#)

- b. Exceptions to the one year period are outlined in the Peace Officer's Bill of Rights (POBR). [Government Code 3304 \(d\) \(2\).](#)

#### 2. Investigations.

- a. Category I investigations to be completed by Internal Affairs (IA) within 90 days.
- b. Category II investigations to be completed by the command within 60 days of the assignment of the complaint for investigation.
- c. Formal internal investigations conducted by the command should be completed within 60 days, barring extenuating circumstances.
- d. Refer to [Department Procedure 1.10](#) for more information.

### **E. Employee Representation**

The California Government Code, City of [San Diego Personnel Manual](#), City of [San Diego Civil Service Rules](#), and the [MOU](#) between the City and the San Diego Police Officers' Association (SDPOA) provide that when an officer is under investigation and subject to interrogation by his or her commanding officer that could lead to punitive action, sworn members of the Department have the right to have a representative present during any interview and at all appeal hearings.

#### 1. When the right applies.

- a. The right to representation does not apply to any communication to an officer in the normal course of duty when receiving counseling, instruction or informal verbal admonishment by routine or unplanned contact with a supervisor. See [Government Code Section 3303\(i\)](#), and [Section I.H.](#), Responsibilities for Discipline Matrices, of this manual.

## **Section I. General Information: Authority to Effect Discipline**

- b. An inquiry into a specific event may be necessary to determine if a formal interview is merited. If it is determined a formal interview is necessary, the officer will be afforded the right to representation.
  - c. Sworn members are entitled to have a representative present during discussion of any document which is to be made part of the employee's permanent records and/or which may be used as a basis for subsequent discipline.
2. Who can be a Representative.
    - a. Sworn members may not request representation by more than one City employee and/or one non-City employee.
    - b. Sworn members are entitled to select a representative **and** an attorney to represent them. They may not select a representative who is a subject or witness in the matter under investigation.
    - c. A non-supervisory subject employee may select a supervisory employee as a representative, but the supervisory employee may not be in the direct chain of command as the subject employee.
  3. Function of the Representative.

During the interview process, the representative will be allowed to ask questions and clarify issues, but may not unduly disrupt the investigative interview.

### **F. Authority to Effect Discipline**

All supervisors should take immediate corrective action if they observe employee misconduct.

#### 1. Immediate Supervisor.

An officer's immediate supervisor may discipline the officer through a Note of Counseling or Written Warning, with a second level supervisor's approval.

#### 2. Commanding Officer.

A Commanding Officer may approve discipline up to a Written Warning without further review.

#### 3. Formal Review Process.

When a Commanding Officer determines the appropriate disciplinary action should be a Reprimand or higher, the discipline must be approved through the formal discipline review process. [Section III](#), Misconduct Related Discipline, and [Section IV](#), Performance Related Discipline, provide a detailed overview of the formal review process.

**G. Due Process Rights: Appeals, Hearings and Skelly Meetings**

Sworn employees have various due process rights during the disciplinary process. [Civil Service Rules](#), the [MOU](#), and/or the [Peace Officers Bill of Rights](#) guarantee certain rights prior to the imposition of serious discipline. The process, whether it is an appeal, a hearing, or a Skelly Meeting, is influenced by the level of discipline and the impact it has on the employee's constitutional rights. Refer to [Section I.H.](#), Responsibilities for Discipline Matrices, for notification, representation, and appeal rights associated with each type of discipline.

1. Types of Appeals, Hearings and Meetings.

**a. Captain's Appeal.**

- i. A Captain's Appeal is an impartial hearing, held by a Captain who did not have a role in the original decision to discipline the employee.
- ii. A Captain may hear an appeal when the discipline includes a Note of Counseling or a Written Warning. This is an evidentiary hearing.
- iii. The Captain's Appeal may also be utilized to appeal any document containing negative comments about the employee when the document is to be placed in the employee's personnel file. This is an informal hearing.
- iv. A Captain's Appeal falls under the general category of an Intra-Department Appeal.

**b. Skelly Meeting.**

- i. A Skelly Meeting is an informal meeting intended to provide an opportunity for an employee who has been served with an advance notice of serious discipline (e.g., Suspension, Demotion, Reduction in Compensation or Termination) to respond to the allegations set forth in the advance notice.
- ii. The purpose of the meeting is to minimize the risk of error in the initial decision to discipline.
- iii. The Skelly Meeting occurs after the Advance Notice of Adverse Action is served, prior to imposing the discipline.
- iv. The Skelly Meeting is conducted by the Commanding Officer recommending the discipline.

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**Section I. General Information: Due Process Rights: Appeals Hearings & Skelly Meetings**

- v. Although probationary employees are not entitled to a Skelly Meeting, they are entitled to a Chief's Appeal.
- vi. A Skelly Meeting falls under the general category of an Intra-Department Appeal.

**c. Chief's Appeal.**

- i. A Chief's Appeal is an appeal heard by the Chief of Police, though generally delegated to an Assistant Chief. The Chief's Appeal process is available to all employees without regard to permanent or probationary status. This is an evidentiary hearing.
- ii. During a Chief's Appeal, the subject officer has the right to offer verbal and written evidence, and may call witnesses.
- iii. The officer may present evidence, cross-examine witnesses, and require the attendance of any witnesses who are city employees.
- iv. A representative from the investigating command, including Internal Affairs (IA) or Equal Employment Opportunity (EEO), may be present at the hearing to support the finding(s) and/or discipline.
- v. A Chief's Appeal falls under the general category of an Intra-Department Appeal.

**d. Mayoral Appeal.**

- i. The Mayoral Appeal is an appeal before the Mayor or his/her designee (usually Labor Relations).
- ii. The Mayor will only review appeals of Reprimands or Reductions in Compensation affecting permanent employees.
- iii. Probationary employees are not entitled to appeal any matter to the Mayor.
- iv. The Mayoral Appeal does not provide for testimony or the presentation of evidence. The appeal process consists solely of a review of the written record and/or audio-recording(s) developed at prior steps of the appeal.



**Section I. General Information: Due Process Rights: Appeals Hearings & Skelly Meetings**

**e. Probationary Employee Post-Separation Hearing.**

- i. After the Department separates a probationary employee, the Department will provide one informal, non-evidentiary post-separation hearing.
- ii. The hearing officer will be an Assistant Chief or his/her designee.
- iii. The Department will serve the decision within seven (7) calendar days. There is no appeal from the Department's decision at this hearing, and the Department's decision is not subject to the Grievance Procedure.
- iv. A Probationary Employee Post-Separation Hearing falls under the general category of an Intra-Department Appeal.

**f. Civil Service Commission.**

- i. The Civil Service Commission Appeal is an appeal before a Civil Service Commissioner, who acts as a judge. This is an evidentiary hearing.
- ii. The [Civil Service Commission](#) reviews Suspensions, Demotions and Terminations, including Disciplinary Transfers associated with a Suspension or Demotion.
- iii. The Civil Service Commission allows testimony and admission of evidence.
- iv. The Civil Service Commission will not hear appeals from probationary employees.

**2. Level of Appeal Rights.**

- a. A Reprimand or Reduction in Compensation may be appealed to the Mayor after the Chief's Appeal.
- b. A Suspension, Demotion or Termination may be appealed to the Civil Service Commission within five (5) calendar days of receipt of discipline.
- c. A Disciplinary Transfer that has taken place in conjunction with a Suspension or Demotion may also be appealed to the Civil Service Commission in conjunction with the appeal of that Suspension or Demotion.

**Section I. General Information: Due Process Rights: Appeals Hearings & Skelly Meetings**

3. Intra-Department Appeal Process in general.
  - a. An Intra-Department Appeal is the general term used to describe a meeting or hearing that is heard by the Department before the final discipline is imposed. A Captain's Appeal, Skelly Meeting, Probationary Employee Post-Separation Hearing, and Chief's Appeal all fall under the broad category of an Intra-Department Appeals. Appeals to the Mayor or Civil Service Commission are outside of the Department.
  - b. Per the [MOU](#) between the City and the SDPOA, the Intra-Department Appeals process shall be available to officers of all ranks having permanent status.
  - c. All requested Intra-Departmental Appeals must be directed to the Office of the Chief of Police within ten (10) working days of receiving the discipline, or Advance Notice of Adverse Action.
  - d. Permanent sworn members entitled to appeal to the Mayor or Civil Service Commission shall retain such right notwithstanding the use of Intra-Department Appeal procedures, and may elect either or both procedures without prejudice to the other.
  - e. Depending on the level of the discipline, any member of the Department at the rank of Captain or above may be appointed as a hearing officer for purposes of the internal appeals process.
  - f. All Intra-Departmental Appeals should be audio-recorded and held in a manner as to permit transcription if necessary. At the expense of the subject officer and with appropriate notice, a certified court reporter may be used to record the proceedings.
  - g. An appeal is an impartial review of a decision to impose discipline.
  - h. A hearing officer is assigned to review the decision and ensure that the discipline was appropriate and supported by facts.
  - i. In each case, the hearing officer will be neutral and objective.
  - j. If during any Intra-Department Appeal new evidence is presented by the subject employee, the action may be returned to the investigating command for further investigation.
    - i. This decision will be made on a case-by-case basis, at the discretion of the hearing officer.
    - ii. The hearing officer's decision will be based on the totality of the new information, combined with the impact it has on the overall case.

**Section I. General Information: Due Process Rights: Appeals Hearings & Skelly Meetings/Responsibilities for Discipline Matrices**

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- k. At the conclusion of the hearing, the hearing officer will deliver the decision in writing within a reasonable amount of time, based on the circumstances of the case, not to exceed 60 calendar days.
  
- l. The following types of discipline are subject to the Intra-Department Appeals process:
  - i. Supplemental Performance Report.
  - ii. Note of Counseling.
  - iii. Written Warning.
  - iv. Reprimand.
  - v. Disciplinary Transfer (punitive).
  - vi. Suspension.
  - vii. Reduction in Compensation (as defined in [Index Code L-2](#) of the Personnel Manual).
  - viii. Demotion (in rank or classification).
  - ix. Dismissal/Termination.
  - x. Probationary Failure.
  
- m. [Section III](#), Misconduct Related Discipline, and [Section IV](#), Performance Related Discipline, respectively, specifically outline the employee appeals process as it relates to misconduct and performance-related issues.

**H. Responsibilities for Discipline Matrices**

The following matrices show the conducting authority, notifications, representation rights and appeal rights attached to different types of discipline and other actions.

**Section I. General Information: Responsibility for Discipline Matrices**

**1. Discipline Type/Notification/Appeal Matrix**

<b>Discipline Type</b>	<b>Conducting Authority</b>	<b>Employee Representation Rights?</b>	<b>Advance Notice of Adverse Action?</b>	<b>Skelly Meeting Rights?</b>	<b>Appeal Rights</b>
<b>Supplemental Performance Report</b>	<b>Immediate Supervisor</b>	<b>Yes*</b>	<b>Yes, Notice of Right to Representation form.</b>	<b>No</b>	<b>Yes, Intra-Department only (Assistant Chief).</b>
<b>Verbal Counseling or Warning</b>	<b>Immediate Supervisor</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>
<b>Note of Counseling</b>	<b>Immediate Supervisor</b>	<b>Yes *</b>	<b>No</b>	<b>No</b>	<b>Yes, Intra-Department only (Commanding Officer).</b>
<b>Written Warning</b>	<b>Immediate supervisor or higher</b>	<b>Yes *</b>	<b>No</b>	<b>No</b>	<b>Yes, Intra-Department only (Commanding Officer).</b>
<b>Reprimand</b>	<b>Commanding Officer or higher</b>	<b>Yes *</b>	<b>No</b>	<b>No</b>	<b>Yes, Intra-Department (Assistant Chief) and Mayor.</b>
<b>Disciplinary Transfer with Reprimand</b>	<b>Commanding Officer or higher</b>	<b>Yes *</b>	<b>No</b>	<b>No</b>	<b>Yes, Intra-Department (Assistant Chief) and Mayor.</b>
<b>Suspension</b>	<b>Chief of Police</b>	<b>Yes *</b>	<b>Yes, in writing, detailing effective date, purpose and appeal rights.</b>	<b>Yes</b>	<b>Yes, Intra-Department (Assistant Chief) and Civil Service.</b>
<b>Reduction in Compensation</b>	<b>Chief of Police</b>	<b>Yes *</b>	<b>Yes, in writing, detailing the effective date, purpose and appeal rights.</b>	<b>Yes</b>	<b>Yes, Intra-Department (Assistant Chief) and Mayor.</b>
<b>Demotion</b>	<b>Chief of Police</b>	<b>Yes *</b>	<b>Yes, in writing, detailing the effective date, purpose and appeal rights.</b>	<b>Yes</b>	<b>Yes, Intra-Department (Assistant Chief) and Civil Service.</b>

**Section I. General Information: Responsibility for Discipline Matrices**

Discipline Type	Conducting Authority	Employee Representation Rights?	Advance Notice of Adverse Action?	Skelly Meeting Rights?	Appeal Rights
Disciplinary Transfer with Demotion, Reduction in Compensation or Suspension	Chief of Police	Yes *	Yes, in writing, detailing the effective date, purpose and appeal rights.	Yes	Yes, Intra-Department (Assistant Chief) and Civil Service. (Mayoral Appeal if with Reduction in Compensation).
Probationary Failure (Misconduct)	Chief of Police	Yes *	No. *However, employee is notified of Probationary Failure by their Command.	No	Yes, Intra-Department only (Assistant Chief).
Termination of Permanent Employee	Chief of Police	Yes *	Yes, in writing.	Yes	Yes, Intra-Department (Assistant Chief) and Civil Service.

\* Allow reasonable time for officer to arrange representation (3 working days is customary)

**2. Other Non-Disciplinary Actions Matrix**

Action Type	Conducting Authority	Employee Representation Rights?	Advance Notice of Adverse Action?	Skelly Meeting Rights?	Appeal Rights
Probationary Failure (Incompetence)	Chief of Police	Yes*	No. *However, employee is notified of Probationary Failure by their Command.	No	Yes, Intra- Department only (Assistant Chief).
Immediate Suspension for Remainder of Work Day	Chief of Police or any Designated Supervisor	No	Yes, but only if the situation permits.	No	No
Suspension Pending Investigation	Chief of Police	No	Yes, but only if the situation permits.	No	No, unless the Suspension has exceeded 30 days, or if the investigation results in further discipline.
Non-Disciplinary Transfer <a href="#">DP 5.07</a>	Commanding Officer or higher	No	No	No	No

\* Allow reasonable time for officer to arrange representation (3 working days is customary)

## **Section I. General Information: Personnel Files**

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### **I. Personnel Files**

1. Divisional and Department Human Resource personnel files.
  - a. Divisional personnel file: a working file for the short-term retention of informal documents pertaining to an employee's performance including commendations from citizens. The Divisional personnel file is kept at the division where the employee is assigned.
  - b. Department Human Resource personnel file: a permanent repository for the retention of all formal and/or official documents pertaining to an employee's job performance and/or employment history. The Department personnel file is kept in Police Human Resources.
2. Retention of Discipline.
  - a. Discipline packages shall be retained in the employee's Divisional and/or Department Human Resource personnel file.
  - b. A discipline package includes all documents in support of the discipline (i.e. the Disciplinary Package Checklist, Advance Notice, the written results of a Skelly meeting or other appeal, Final Notice, etc.).
  - c. Discipline shall be retained as follows:
    - i. Note of Counseling: Two (2) years in Divisional file, and then destroyed. The Note of Counseling will be unsealed for the first year and shall be sealed the second year.
    - ii. Written Warning: Two (2) year in Divisional file, and then destroyed. The Written Warning will be unsealed for the first year and shall be sealed the second year.
    - iii. Reprimand with or without a Disciplinary Transfer: Two (2) years in Department Human Resource personnel file and then may be sealed.
    - iv. Suspension, Demotion or Reduction in Compensation: Five (5) years in Department Human Resource personnel file and then may be sealed.
  - d. Formal reprimands (discipline) without further penalty more than two (2) years old, and those with additional penalty more than five (5) years old, will not be considered for purposes of disciplinary actions except when such reprimands show patterns of misconduct as defined in Department Rules and Regulations and Department Instructions.

## Section I. General Information: Personnel Files

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### 3. Retention of Investigations.

#### a. IA investigations.

Supporting investigative documentation maintained in IA is destroyed after five (5) years from the date of the completed investigation.

#### b. EEO investigations.

Supporting investigative documentation from EEO investigations is maintained by the EEO Unit.

#### c. Command investigations.

##### i. For Written Warnings and Notes of Counseling:

- (a) The investigation is filed in the employee's Divisional file.
- (b) The investigation package shall include all supporting documentation and audio/video tapes or CD's.
- (c) The investigation must be retained in the Divisional file for a total of two years pursuant to [Government Code 34090](#).
- (d) In no case may the investigation be retained longer than two years and six months from the date that the incident for which the investigation took place came to the attention of the Department.
- (e) The investigation will be unsealed for the first year and shall be sealed the second year from the date the investigation was completed.
- (f) Once sealed, a purge date shall be clearly printed on the outside of the sealed envelope.
- (g) Once the purge date is reached, the investigation and accompanying items will be shredded/destroyed.

##### ii. For Reprimands, Suspensions, Demotions, Reductions in Compensation and Terminations:

**Section I. General Information: Personnel Files**

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- (a) The investigation is filed in the employee's permanent Department Human Resource personnel file.
  - (b) The investigation may be sealed, along with the related Adverse Action, after two years and six months from the date that the incident for which the investigation took place came to the attention of the Department.
  - (c) The investigation package shall include all supporting documentation and audio/video tapes or CD's.
- iii. No discipline imposed.

After the investigation, if it is decided not to impose any discipline:

- (a) Command investigations.
  - (1) The sealed investigation is filed in the employee's Divisional file.
  - (2) The investigation package shall include all supporting documentation and audio/video tapes or CD's.
  - (3) The investigation must be retained in the Divisional file for a total of two years pursuant to [Government Code 34090](#).
  - (4) In no case may the investigation be retained longer than two years and six months from the date that the incident for which the investigation took place came to the attention of the Department.
  - (5) A purge date shall be clearly printed on the outside of the sealed envelope.
  - (6) Once the purge date is reached, the investigation and accompanying items will be shredded/destroyed.
- (b) IA investigations.

Supporting investigative documentation maintained in IA is destroyed after five (5) years from the date of the completed investigation.





**Section I. General Information: Personnel Files**

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- (c) EEO investigations.

Supporting investigative documentation from EEO investigations is maintained by the EEO Unit.

- (d) If the imposed discipline is subsequently overturned in its entirety, then the related investigation has the same retention as above.

4. Sealed Documents.

a. For Warnings and Notes of Counseling:

- i. The discipline and investigation will be unsealed for the first year and shall be sealed the second year from the date the investigation was completed.
- ii. Once sealed, a purge date shall be clearly printed on the outside of the sealed envelope.

b. For Reprimands, Suspensions, Demotions, Reductions in Compensation and Terminations:

- i. Reprimand with or without a Disciplinary Transfer may be sealed after two years.
- ii. Suspensions, Demotions and Reductions in Compensation may be sealed after five years. Terminations may not be sealed.
- iii. Request to seal:
  - (a) An officer may request discipline to be sealed.
  - (b) All officers shall have the right to review their Divisional and Department Human Resource personnel files and identify all discipline related documents.
  - (c) Upon concurrence of the Commanding Officer for a Divisional file, or the Department Senior Human Resources Analyst for the Department file, that such documents have been appropriately identified, they will be placed in an envelope, sealed and initialed by the officer.
  - (d) The envelope will be placed in the officer's Divisional or Department Human Resource personnel file as appropriate and will be opened by Police Human Resources or Police Legal only in the

**Section I. General Information: Personnel Files/Employee Assistance Resources**

event the officer is the subject of future discipline, litigation or by judicial order.

- (e) Sealed documents may not be removed from the employee's permanent Police Human Resources file.

5. Rebuttals and Negative Comments.

- a. An employee has a right to file a rebuttal against any negative comment placed in the employee's personnel file.
- b. When an employee receives any discipline or any other document which contains comments adverse to the employee's interest, the supervisor and employee shall both sign the document.
  - i. The employee's signature represents acknowledgement of the adverse document, but does not necessarily express agreement.
  - ii. Should the employee refuse to sign the document, the supervisor should add a notation that the employee refuses to sign the document.
- c. The supervisor should advise the employee that he/she has 30 calendar days to file a written response to the document or adverse comment.
- d. The supervisor should file the document in the employee's personnel file together with any response from the employee as expeditiously as possible.

**J. Employee Assistance Resources**

1. Confidential Counseling.

The Department provides free, voluntary, confidential counseling and crisis intervention for all employees and their families through a private contract for [psychological services](#). Supervisors should remind employees of the availability of this service whenever it appears the employee might be having difficulty coping with work or personal issues.

A supervisor may formally refer an employee to the Employee Assistance Program for performance related issues. For a detailed outline of this procedure, refer to City of San Diego [Administrative Regulation 4.5](#).

2. Medical Assistance and Wellness Units.

The Department's Medical Assistance and Wellness Units are available to advise supervisors about these services.

**K. Probationary Employees**

1. If misconduct is alleged against a probationary employee, an investigation into the allegations shall be conducted. Investigations into misconduct of a probationary employee must be as thorough and complete as those conducted on permanent employees. [Section IV.J.4.](#), Probationary Failure, describes this process.
2. Probationary employees do not have the same Intra-Department Appeal rights as permanent employees. Probationary employees are not entitled to Advance Notice or a Skelly Meeting, and have no appeal rights to the Mayor or Civil Service Commission.
3. Since the probationary period is considered part of the testing process, employees who fail probation and who must leave City employment are not considered Terminated. Therefore, documentation on probationary employees should refer to probation failure, not Termination.
4. Probationary employees will be provided one informal, non-evidentiary post-separation hearing, to be conducted by an Assistant Chief or his/her designee. The Department will serve the decision within seven (7) calendar days. There is no appeal from the Department's decision at this hearing, and the Department's decision is not subject to the Grievance Procedure.

**II. Positive Recognition**

Positive discipline is providing an atmosphere for employees to understand what is expected and required of them, while fostering an environment for success. Discipline does not always include responding to negative behavior, but often includes reinforcing good behavior. This section discusses the positive aspects of discipline, in the form of Positive Recognition.

**A. Setting the Example**

1. The actions, language and mannerisms of supervisors within the San Diego Police Department is critical to the organization's overall effectiveness.
  - a. Supervisors set the example for subordinate employees to follow.
  - b. Supervisors by their very nature are considered "Management" and therefore, their misconduct may severely undermine the credibility of the entire organization.
2. It is critical for supervisors to support and follow Department Policies and Procedures. When subordinate employees observe a supervisor violating

## **Section II. Positive Recognition: Setting the Example/Focus on the Positive**

or failing to support a policy or procedure, the value of the policy or procedure is compromised.

3. If a policy or procedure appears overly cumbersome, or interferes with the operation of the Department, the supervisor should bring it to the attention of the next level supervisor.
  - a. Supervisors are encouraged to openly discuss employee suggestions, but should support the operations of the Department.
  - b. Supervisors should always show support for the Department's [Goals and Objectives](#) statement.

### **B. Focus on the Positive**

1. Discussions about integrity often focus on wrongdoing and negative behavior regarding members of the Department. When compared to the amount of calls for service responded to by the San Diego Police Department, complaints of misconduct remain extremely low. Therefore, there is a strong need to reinforce the significant positive efforts set forth by members of the San Diego Police Department.
2. Police officers are faced with making moral and ethical decisions every day. Considering the amount of calls for service, citizen contacts and arrests made each year, very few allegations of misconduct are made against San Diego Police Officers.
3. Supervisors should encourage their subordinate employees to take pride in their achievements and feel good about supporting the Department. This sense of pride becomes a driving force toward building a stronger organization while providing ongoing maintenance to the integrity of the Department.

### **C. Recognition and Rewards**

1. Identifying outstanding or exemplary performance.
  - a. Supervisors are encouraged to report any noteworthy incidents that may merit recognition and should recommend the specific class of award. The supervisor should gather as much supporting information as possible to present to the Commanding Officer.
  - b. If the proposed award includes a potential Service Award, all supporting documentation must be reviewed by the Service Awards Committee prior to approval. If the committee decides the performance does not meet the criteria for the Service Award, the proposed award will be referred back to the Commanding Officer for a Commanding Officer's Citation, if appropriate.
2. Citizen's Commendation.

## **Section II. Positive Recognition: Recognition & Rewards**

### **Section III. Misconduct Related Discipline: Misconduct Reported, Discovered, Suspected or Observed**

A Citizen's Commendation is a correspondence to the department (letters, emails, phone calls) from a citizen(s) when the citizen feels an employee(s) deserves recognition. The employee's supervisor shall provide all positive community feedback to the officer on all occasions when the officer(s) has received a commendation for engaging the community.

3. [Supervisor's Commendation.](#)

A Supervisor's Commendation is a memorandum prepared by the employee's immediate supervisor and addressed to the Commanding Officer. The memorandum should specifically identify an act or incident where the employee performed at an exemplary level.

4. [Commanding Officer's Citation.](#)

A Commanding Officer's Citation is a formal commendation used to identify outstanding or exemplary service. The Citation consists of a certificate outlining the specific act(s) or incident(s). A Commanding Officer's Citation is awarded by the officer's Commanding Officer or a Chief.

5. [Service Awards.](#)

The purpose of the Service Awards Program is to give recognition to those Department members who have displayed heroic, meritorious and/or outstanding service. A detailed description of each award is outlined in [Department Procedure 5.17](#). Recommendations for Service Awards must be reviewed by the Service Awards Committee. Service Awards include:

- a. Medal for Valor.
- b. Meritorious Service Award.
- c. Lifesaving Medal.
- d. Purple Heart.
- e. Lifesaving Citation.
- f. Exceptional Performance Citation.

6. Discretionary Leave.

- a. When an employee has shown exceptional dedication or has performed exceptionally during the course of duty, the employee's supervisor may recommend that the employee be granted discretionary leave. Such leave with pay can amount to a total of three consecutive days off. Discretionary days off may be granted more than once during a fiscal year.
- b. Discretionary leave should be granted in conjunction with another form of commendation, such as a Commanding Officer's Citation,

**Section II. Positive Recognition: Recognition & Rewards**

**Section III. Misconduct Related Discipline: Misconduct Reported, Discovered, Suspected or Observed**

Supplemental Performance Report or Supervisor's Commendation. The Commendation or Supplemental Report must specify why the discretionary leave is recommended. [Department Procedure 5.18](#) specifically details the procedure for discretionary leave.

7. Employee of the Month Programs.

- a. Employee of the Month recognition programs shall be used at individual commands. The purpose of the program is to identify and recognize those employees who continually perform at an Above Standard level. The Employee of the Month is selected by the Commanding Officer of each Division.
- b. Immediate supervisors elect the candidates by preparing a memorandum regarding a specific employee's contribution and performance. The Commanding Officer reviews the memorandums and makes the selection. The selected employee's photograph is hung within the division, accompanied by the supporting memorandum. The selected employee may receive a discretionary day off.

8. Employee of the Shift.

- a. The SDPOA sponsors the Officer of the Shift recognition program. The purpose of the program is to identify and recognize those employees who continually perform at an above standard level.
- b. One officer from each Division is selected at the conclusion of each shift. The officer will be selected by his/her immediate supervisor. Supervisors wishing to elect a candidate must submit a memorandum to the Commanding Officer specifically detailing the officer's contributions and/or exemplary performance. The Commanding Officer will select the Officer of the Shift and forward the name to the SDPOA. The selected employee will receive recognition at an Awards Ceremony.

9. [Exceptional Merit Step Increase](#).

An Exceptional Merit Pay Increase may be used to move an employee up one step in their specific pay classification. This form of recognition should be used to reward exemplary performance by employees performing above the standards for their position, who are currently below "E" Step. [City Personnel Manual H-8](#) provides additional detail.

**III. Misconduct Related Discipline**

**A. Misconduct Reported, Discovered, Suspected or Observed**

### **Section III. Misconduct Related Discipline: Misconduct Reported, Discovered, Suspected or Observed**

1. Misconduct is when an officer does not follow Department policies, procedures or orders. Misconduct does not include performance issues. For performance related issues, see [Section IV](#), Performance Related Discipline.
2. Suspected or alleged misconduct can come to the attention of the immediate supervisor in a number of ways, including:
  - a. Direct, personal observation.
  - b. A report from another department employee.
  - c. Another law enforcement or government agency.
  - d. A citizen's complaint.
    - i. Section [832.5 P.C.](#) requires each department or agency in the State of California that employs peace officers to have in place an established procedure for investigating citizens' complaints.
    - ii. [Department Procedure 1.10](#), Citizen Complaints, Officer Involved Shootings, In-Custody Deaths; Receipt, Investigation and Routing, outlines reception of complaints. Citizens, as well as employees, may file complaints with any supervisor or directly with IA.
  - e. Department members alleging violations of [Equal Employment Opportunity](#) (EEO) may file directly with the Equal Employment Opportunity Unit, the [City Equal Employment Investigative Office](#), the [California Department of Fair Employment and Housing](#), or the [Federal Equal Employment Opportunity Commission](#).
3. All supervisors who become aware of misconduct are required to take immediate corrective action to stop observed or alleged misconduct. Once the misconduct is stopped, the supervisors should conduct an assessment and evaluate the incident.

#### **B. Supervisor's Initial Assessment and Proper Notifications**

When a supervisor becomes aware of alleged misconduct, the supervisor will evaluate the initial allegation and determine a course of action.

1. Minor offenses.
  - a. If the misconduct involves a first-time minor offense, then Verbal Counseling may be most appropriate.



### **Section III. Misconduct Related Discipline: Supervisor's Initial Assessment & Proper Notifications**

- b. Prior to Verbally Counseling the employee, the supervisor should review the employee's personnel file to determine whether similar conduct has occurred which could warrant more serious discipline.
- c. If Verbal Counseling is to be used, it should be immediate.
- d. The Verbal Counseling should occur in person, in private, in a constructive and problem solving manner consistent with the [Goals and Objectives](#) of the Department.
- e. No notes or written record shall be created.
- f. The counseled employee has no right to representation. See [Section I.H.](#), Responsibilities for Discipline Matrices.
- g. Documenting Verbal Counseling in performance evaluation.

Do not document Verbal Counseling in employee's performance evaluation unless necessary to document a pattern of conduct. Many times Verbal Counseling will be sufficient to correct the minor offense. The evaluating supervisor should use discretion when deciding to document the underlying performance that resulted in the Verbal Counseling.

- 2. More serious offenses.
  - a. If the misconduct is more serious, the supervisor should notify the Chain of Command starting with the second level supervisor.
  - b. The second level supervisor will evaluate the circumstances and provide direction to the immediate supervisor.
  - c. The second level supervisor shall notify the Commanding Officer of the alleged misconduct.
  - d. The Commanding Officer shall determine how to proceed.
- 3. Citizen's Complaint.
  - a. If a citizen's complaint is taken, the receiving supervisor must document the complaint on a Citizen's Complaint Form (CCF).

Note: Supervisors must be careful to distinguish between an instance where a citizen is asking for clarification of a policy or procedure and an instance where a citizen is desirous of lodging a formal complaint. A thorough explanation of a procedure or legal issue may resolve the situation. However, supervisors should not dissuade citizens from lodging a complaint or refuse to accept a complaint.

### **Section III. Misconduct Related Discipline: Supervisor's Initial Assessment & Proper Notifications**

- b. The CCF is routed to the second level supervisor for review, then to the Commanding Officer.
  - c. The Commanding Officer will initial the CCF and route it to IA for review and assignment.
4. EEO Complaint.
- a. All allegations of violations of [Department Procedure 5.03](#), Equal Employment Opportunity, must be documented on an [EEO Control Form](#) to determine if the incident may be handled informally.
  - b. The investigating supervisor must contact the EEO Unit to determine if the subject officer has displayed similar conduct in the past.
  - c. The EEO Unit will only consider documented past behavior of a similar conduct when determining how a complaint should be resolved.

#### **C. Determining the Investigative Unit.**

The severity of the misconduct and type of violation will be evaluated to determine the appropriate investigating unit.

##### 1. Citizen Complaints.

When received, all citizen complaints should be reviewed by IA or the Command to determine course of action.

##### 2. Category I allegations.

IA is responsible for conducting personnel investigations into the conduct of officers in Category I allegations. Category I complaints include: force allegations, arrest allegations, criminal conduct allegations, discrimination allegations, and racial or ethnic slur allegations.

##### 3. Category II allegations.

IA will review Category II complaints and they will generally be routed to the subject officer's command for investigation. Category II complaints include: service, courtesy, procedure and conduct allegations.

##### 4. Criminal Conduct allegations.

PSU is responsible for conducting administrative personnel investigations involving allegations of criminal conduct regarding members of the Department.

### **Section III. Misconduct Related Discipline: Determining the Investigative Unit**

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5. EEO allegations.
  - a. The EEO Unit is responsible for conducting personnel investigations involving allegations of discrimination and sexual harassment among Department employees.
  - b. EEO cases of less severity may be investigated by the command.
6. Other.
  - a. If the alleged misconduct was discovered by some means other than a citizen's complaint, the Commanding Officer will evaluate the information and determine if a formal investigation is warranted.
  - b. The Commanding Officer may confer with IA or EEO to provide direction and/or determine the appropriate investigative unit.
  - c. If the Commanding Officer determines a formal command level investigation is appropriate, the immediate supervisor will usually be assigned to conduct the investigation.
  - d. When Category I or criminal conduct allegations arise, the Commanding Officer should confer with their Assistant Chief and the Executive Assistant Chief to determine the appropriate response.
  - e. If during investigations of Category II complaints, a Category I violation is discovered, the investigating supervisor will confer with the second level supervisor and Commanding Officer. The IA Lieutenant will be contacted for direction.

#### **D. Investigations by the Command**

Investigations into misconduct must be conducted, concluded and the findings reported to the Commanding Officer.

1. Investigation Conducted.
  - a. Select investigator.

If the investigation is routed to, or begins internally within the command, the Commanding Officer will determine the appropriate investigator.
  - b. Resources.

### **Section III. Misconduct Related Discipline: Investigations by the Command**

Once assigned to conduct the investigation, the investigator should utilize one or more of the following resources as a guide:

- i. San Diego Police [Department Procedure 1.10](#), Citizen Complaints, Officer Involved Shootings, In-Custody Deaths; Receipt, Investigation and Routing. The [CCF Investigative Report](#) format is located on the Department's LAN system. The [IA Operations Manual](#) is located on the Department's LAN system in the Resource Library.
  - ii. All EEO violations must be documented on an [EEO Control Form](#), which is routed to the EEO Unit for retention. The [EEO Operations Manual](#) is located on the Department's LAN system in the Resource Library.
  - iii. A [Supervisor's Investigative Report](#) template is located on the Department's LAN system.
  - iv. California [Government Code Sections 3300-3311](#) comprise a statutory Bill of Rights applicable to peace officers in California. The Bill of Rights governs the following areas specific to matters involving discipline of peace officers:
    - (a) Procedures for disciplinary interviews.
    - (b) Notice and nature of the interview.
    - (c) Length of interview.
    - (d) How the interview is conducted.
    - (e) Access to notes and recordings.
    - (f) Administrative versus criminal investigations.
    - (g) Right to representation.
    - (h) Advance notice of negative material placed in file.
    - (i) Right to respond to negative material.
    - (j) Polygraph examinations.
- c. Category II Citizen's Complaint.
- i. All supervisors should ensure proper steps have been completed before proceeding with a Citizen's Complaint investigation.
    - (a) A case number has been assigned by IA.
    - (b) The Commanding Officer has reviewed the CCF.
  - ii. These steps may not be necessary when the investigation is requested by a Commanding Officer or higher.
- d. Internal Investigations.

### **Section III. Misconduct Related Discipline: Investigations by the Command**

- i. Internal Investigations may originate from a variety of sources, including:
  - (a) Direct observation by a supervisor.
  - (b) Reports from other law enforcement agencies.
  - (c) Reports from other department employees.
  - (d) Investigations undertaken at the discretion of the Chief of Police or the Executive Assistant Chief.
- ii. If, during the Internal Investigation, EEO, Category I, or criminal conduct is discovered, the investigating supervisor should immediately notify a second level supervisor, who will advise the Commanding Officer and notify the appropriate unit.
- iii. Internal Investigations conducted by the command will be processed and investigated in the same manner and format as citizens' complaints.
- iv. Internal Investigations are not subject to review by the [Citizens' Review Board on Police Practices](#) (CRB).
- e. Investigative steps.

Once the above requirements are met, the investigating supervisor should consider the following investigative steps. This list is not all inclusive, nor will every step be appropriate in every case:

- i. Obtain incident history(ies).
- ii. Obtain journal copies.
- iii. Audit and print MDT messaging.
- iv. Obtain relevant reports.
- v. Obtain Communications tapes/vehicle location history.
- vi. Obtain copy of property impound tag(s)/log(s).
- vii. Obtain copy of arrest log(s).
- viii. Examine physical location of incident(s).
- ix. Photograph and/or diagram scene(s).
- x. Locate possible video/audio surveillance (businesses, residences, internet, etc.).
- xi. Examine physical evidence.
- xii. Interview complainant (If CCF).
- xiii. Interview all witnesses - pre/post-admonishment, as appropriate.
- xiv. Interview subject officer(s).
  - (a) Three day notice prior to interview.
  - (b) Pre/post-admonishment required.
  - (c) Subject officer entitled to representation.

### Section III. Misconduct Related Discipline: Investigations by the Command

xv. Review personnel files for previous, similar discipline.

f. Format.

The investigation should follow the prescribed format for [IA](#), [EEO](#) or [Supervisor's Investigation](#) templates located on the Department's LAN system.

g. Interviews.

i. Supervisors shall audio-record all formal interviews.

ii. Questions should be prepared prior to the interview. The questions should be narrowly scoped to the allegation(s) and/or incident(s).

iii. Sworn subject and/or witness officers may not refuse to be audio-recorded. Citizen witnesses and civilian employee witnesses represented by the [Municipal Employees Association](#) (MEA) may refuse to be audio-recorded.

iv. All written notes related to the investigation shall be maintained with the investigation file.

2. Conclusions Developed.

a. Supporting information and documents.

i. An investigator's primary responsibility is to obtain all of the information pertinent to the alleged misconduct. The investigation can only be complete when there are no further worthwhile avenues of inquiry.

ii. Supporting documentation such as Department Policy and Procedures, Civil Service Rules, Administrative Regulations and case law should be cited.

b. Findings.

A final disposition, or "Finding," must be rendered based on the facts of the investigation. The investigation must present clear findings as to whether the allegations occurred. The possible dispositions and their definitions are as follows:

i. Sustained: All or part of the alleged conduct occurred. The alleged conduct was improper and in violation of existing law, policy, rule, etc.

ii. Not Sustained: There was not enough evidence to clearly prove or disprove the alleged conduct.

### Section III. Misconduct Related Discipline: Investigations by the Command

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- iii. Unfounded: The alleged conduct did not occur.
- iv. Exonerated: The alleged conduct occurred, but was legal, justified and proper.
- v. Complainant not Cooperative: This conclusion is reached if you cannot locate the complainant for an interview, or if the complainant refuses to cooperate with the investigation, and the complainant is necessary to conduct the investigation. In those instances when the complainant cannot be located, the investigator must exhaust all reasonable options for locating the complainant. If this disposition is rendered, it is important that all investigative steps be thoroughly documented.
- vi. Other Findings: A violation of a policy or procedure, which is not listed in the initial allegation.

3. Finding(s) Reported to Commanding Officer.

a. Initial review.

The second level supervisor must initially review personnel investigations conducted by the command.

b. Final review.

The investigation will then be forwarded to the Commanding Officer. The Commanding Officer reviews the completed investigation and findings to ensure completeness, fairness and objectivity.

c. Citizen's Complaints.

i. If the investigation was the result of a citizen's complaint, the Commanding Officer forwards the original investigation to the IA Lieutenant for review.

ii. Once reviewed by IA, the investigation is returned to the command to identify the appropriate discipline.

iii. If the citizen's complaint was investigated by IA, the purpose of the administrative investigation at the command is to determine the appropriate level of discipline, not to re-investigate the IA findings.

d. Discipline imposed.

### **Section III. Misconduct Related Discipline: Investigations by the Command**

If the investigation began within the command, or another investigating unit (IA or EEO), the Commanding Officer may impose appropriate discipline using the guidelines outlined in [Section III.E.1.](#), Determining Appropriate Level of Discipline.

- e. No discipline imposed.
  - i. When an investigation finding does not include imposing discipline, the Commanding Officer must allow the interrogated subject officer to review and sign the completed investigation.
  - ii. Upon request, the interrogated subject officer must be provided with a copy of the investigation after the investigation has been completed.
  - iii. For purposes of this section, when no discipline is contemplated as a result of the investigation, the investigation shall be considered completed when the investigation report has been approved by the investigating officer's supervisor and has been received by the Commanding Officer.
  - iv. For the retention period of the investigation see [Section I.I.](#), Personnel Files.
- f. Investigation completed.

When discipline is contemplated as a result of sustained findings in the investigation, the investigation shall be considered completed when the Commanding Officer notifies the subject officer of contemplated discipline.
- g. EEO and IA investigations with sustained findings.
  - i. All completed EEO and IA investigations with sustained findings must be reviewed by a Police Legal Advisor, Executive Assistant Chief and the Chief of Police.
  - ii. If appropriate, the CRB may also review the investigation.
  - iii. When the review process is complete, the investigation and finding(s) will be presented to the Commanding Officer for review.

#### 4. Temporary Transfers and Suspension Pending Investigation.

Circumstances may necessitate a transfer or a suspension pending an investigation. This may occur prior to an investigation or during an investigation.



### **Section III. Misconduct Related Discipline: Investigations by the Command**

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- a. Temporary Transfer Pending Investigation.
  - i. Officers who are the subject of misconduct allegations may be subject to transfer by the Commanding Officer pending the outcome of an investigation. Generally, officers will not be transferred prior to the imposition of discipline, if any, resulting from an investigation. However, circumstances may necessitate a transfer at an earlier point.
  - ii. When determining whether to transfer a subject officer pending investigation, the Commanding Officer should consider the following:
    - (a) Potential for employee conflict if the subject remains within the same unit or command (e.g. EEO allegation).
    - (b) Potential liability to the City if continued public contact is allowed.
    - (c) Egregiousness of the alleged conduct.
    - (d) Unit safety.
    - (e) Investigative confidentiality.
- b. Suspensions Pending Investigation.
  - i. The Chief of Police or designee shall have the power to immediately suspend an employee if it is deemed necessary in order to maintain the safety of the community or the reputation, morale and harmony of the Department. Such suspensions may be made for the purposes of:
    - (a) Immediate removal when the employee's continued presence at the work site could have detrimental consequences.
      - (1) Such suspensions shall be limited to the remainder of the regularly scheduled workday.
      - (2) Employee representation is not required when immediate removal is affected.
    - (b) Non-disciplinary removal pending investigation into charges of misconduct against the employee. The investigation shall be conducted as quickly and thoroughly as possible.

### **Section III. Misconduct Related Discipline: Investigations by the Command**

- (1) Suspensions pending an investigation are not subject to appeal before the Civil Service Commission.
  - (2) If the charges against the employee are substantiated by the investigation, appropriate disciplinary action may be taken. When taking disciplinary action, the Commanding Officer shall consider the term of suspension already served pending investigation.
  - (3) If the charges are not proven by the investigation, the employee must be returned to his/her previous work assignment absent aggravating and/or mitigating circumstances.
- ii. Any suspension order made under this authority shall be in writing and shall be handed to the employee immediately. If applicable, the order shall specify the exact number of un-worked hours remaining in the workday after the suspension.
  - iii. The [City of San Diego Personnel Manual, Section L-2](#), should be referred to for use as a guide when conducting a suspension pending an investigation.
  - iv. Officers who are removed from the normal duties of the job during an investigation shall not be so removed for longer than 30 calendar days, except where the business necessities of the Department require the removal from duties to extend beyond 30 calendar days. Under circumstances of such an extension, the involved officer shall have the right to a hearing before an Assistant Chief concerning the business necessities alleged and shall have the opportunity to argue and present evidence to contradict those business necessities.
  - v. When an officer is suspended for any period of time, the Chief of Police must [revoke the officer's police powers](#) and the Commanding Officer must collect the officer's badge(s), Department firearm and identification card.

### **Section III. Misconduct Related Discipline: Determining Appropriate Level of Discipline**

#### **E. Discipline for Misconduct**

##### 1. Determining Appropriate Level of Discipline.

###### a. Discipline should be progressive.

The philosophy of the Department is to use progressive discipline when appropriate. This means the corrective action taken for a first offense will generally be less severe than that taken for a subsequent offense. The following guidelines are provided as a framework which is recognized as being fair, firm and consistent. It provides supervisory or management personnel with a starting point to consider the appropriate level of discipline. Discipline decisions will be based on the guidelines contained in this manual and will incorporate the “Goal 3” concept as articulated in the Department’s [Goals and Objectives](#) statement.

###### b. What factors to consider.

When determining appropriate discipline for violations not covered below, the following factors should be considered:

- i. The seriousness of the offense.
- ii. Recency and frequency of prior poor conduct, misbehavior or poor performance, which is similar in nature.
- iii. Was the behavior or performance deliberate or negligent?
- iv. What effect did the behavior have on the public, other employees or the Department?
- v. Did the behavior cause danger to the employee, other employees or the public?
- vi. Was the employee’s ability to perform the job affected?
- vii. Were other employees involved?
- viii. How does this discipline compare to the discipline imposed against the other employees involved?
- ix. Constitutional/MOU guarantees.
- x. Post-incident rehabilitation efforts.
- xi. Nexus of conduct to employment.

###### c. Misconduct Related Discipline Matrix.

The purpose of having the matrix is to give general discipline guidelines to promote fairness and consistency throughout the Department, while creating a standardized discipline response.

**Section III. Misconduct Related Discipline: Determining Appropriate Level of Discipline**

**Misconduct Related Discipline Matrix**

These guidelines should be followed. However, Commanding Officers shall consider mitigating or aggravating circumstances of the instant case and previous discipline, in determining whether a lower or higher level of discipline is more appropriate than that called for in these guidelines (Isolated one time incident versus multiple violations).

Deviations from the guidelines must be thoroughly documented and approved by the Assistant Chief of the command.

**NEW**

Misconduct Type	1 <sup>st</sup> Offense	2 <sup>nd</sup> Offense	3 <sup>rd</sup> Offense	4 <sup>th</sup> Offense
Tardiness Minor Grooming Violations Minor Uniform Violations Failure to Answer Radio Lacking All Equipment Discourteous Remarks (Not profanity or violation of EEO) Minor Traffic Infractions	Verbal Counseling (With no pattern or history of misconduct)	Note of Counseling	Written Warning	
Minor Policy Violation (With Previous Verbal Counseling or Note of Counseling) Misuse of Department Equipment (Including Non-EEO MCT/CAD messages) Unintentional Discharge of a Taser (No injury) Improper Impounds Discourtesy Unauthorized Outside Employment	Written Warning	Reprimand		
Missed Court	Written Warning	Reprimand (IF within two (2) years of first missed Court)	Suspension (IF within three (3) years of first missed Court)	
Missed Department Proficiency and/or Training Shoot (Missed Dept. Qualification Shoot must be made up)	Written Warning	Reprimand (IF within two (2) years of first missed Shoot)	Suspension (IF within three (3) years of first missed Shoot)	
Police Equipment Collisions (See <a href="#">DP 1.14</a> & <a href="#">AR 75.12</a> for definitions of Collision categories and time frames for progressive discipline. Discipline at right is for <u>CATEGORY 1 PREVENTABLE Collisions</u> only)	Written Warning  OR  Two (2) hour Driver Training Class through Fleet Safety Sergeant	Reprimand  OR  Written Warning (IF attended two (2) hour Driver Training Class for first Collision)	Suspension  OR  Reprimand (IF attended two (2) hour Driver Training Class for first Collision)	Termination  OR  Suspension (IF attended two (2) hour Driver Training Class for first Collision)
Unintentional Discharge of a Firearm, including less lethal Munitions (On or Off-Duty)	Two (2) Day Suspension	Four (4) Day Suspension	Termination (IF within three (3) years of the first offense)	

**Section III. Misconduct Related Discipline: Determining Appropriate Level of Discipline**

Misconduct Type	1 <sup>st</sup> Offense	2 <sup>nd</sup> Offense	3 <sup>rd</sup> Offense	4 <sup>th</sup> Offense
<b>Driving While Under the Influence (DUI – Alcohol/Prescription Medications)</b>	<p>Termination</p> <p>OR</p> <p>Four (4) Day Suspension with a Last Chance Agreement for five (5) years</p> <p>Any aggravating circumstances (DUI in a City vehicle, resistive behavior during arrest, collision with injuries, etc., may result in a more severe response)</p> <p>*Valid CDL required to return to work</p>	<p>Termination (However, possible mitigating factor if the 1<sup>st</sup> Offense was more than ten (10) years prior to the 2<sup>nd</sup> Offense)</p> <p>*Valid CDL required to return to work</p>	Termination	
<b>Accessing Criminal History for Personal Use (Criminal Conduct)</b>	Reprimand, Up to Termination	Suspension, Up to Termination	Termination	
<b>Violation of AXON Body Worn Camera Procedures (<a href="#">DP 1.49</a>)</b>	Written Warning, Up to Termination	Reprimand, Up to Termination	Suspension, Up to Termination	Termination
<b>Violating Established Informant Procedures</b>	Reprimand, Up to Termination	Suspension, Up to Termination	Termination	
<b>Sustained Excessive Force (Low Level/Non-Injury to Suspect)</b>	Reprimand, Up to Termination	Suspension, Up to Termination	Termination	
<b>Violation of Search and Seizure Procedures</b>	Reprimand, Up to Termination	Suspension, Up to Termination	Termination	
<b>Threats in the Workplace Violation (<a href="#">AR 97.10</a>)</b>	Written Warning, Up to Termination	Suspension, Up to Termination	Termination	
<b>Violation of EEO Procedures</b>	Written Warning, Up to Termination	Suspension, Up to Termination	Termination	
<b>Criminal Conviction of Offenses Involving Moral Turpitude, Theft, Aggravated Assault, etc.</b>	Suspension, Up to Termination	Termination		

**Section III. Misconduct Related Discipline: Determining Appropriate Level of Discipline**

Misconduct Type	1 <sup>st</sup> Offense	2 <sup>nd</sup> Offense	3 <sup>rd</sup> Offense	4 <sup>th</sup> Offense
Unbecoming Conduct Policy ( <a href="#">DP 9.06</a> ) which may also include Obedience to Laws Policy ( <a href="#">DP 9.03</a> ) (e.g.: Minor Offenses Involving Parking Violations, Traffic Infractions, etc.)	Verbal Warning, Up to Suspension	Reprimand, Up to Termination		
Unbecoming Conduct Policy ( <a href="#">DP 9.06</a> ) and Obedience to Laws Policy ( <a href="#">DP 9.03</a> ) (e.g.: Offenses Involving Moral Turpitude, Theft, Aggravated Assault, etc.)	Suspension, Up to Termination	Termination		
Loss of Ability to Perform Functions of an Employee's Position Through Misconduct (e.g.: Right to Possess Firearm, <a href="#">Government Code 1031</a> , etc.)	Termination			
Untruthfulness (e.g.: Falsification of any Official Document or Report)	Termination			
Unjustifiable Missed Random Drug Test (RDT) <a href="#">SDPOA MOU Article 57</a>	Reprimand & Scheduled for RDT on their next working day after the missed test	Termination (IF within two (2) years of 1 <sup>st</sup> missed test. AFTER two (2) years of 1 <sup>st</sup> missed test, Reprimand)	Termination	
Illegal Drug Use (Including Positive RDT for Non-Prescribed Medication)	Reprimand, Up to Termination	Termination		
RDT Alcohol Result of 0.02% or Above	Termination  OR  Reprimand, Mandatory (FOCUS) Referral & Last Chance Agreement for five (5) years	Termination		
Refusal to Comply with RDT	Termination			

**Section III. Misconduct Related Discipline: Verbal Counseling/Note of Counseling/Written Warning**

2. Levels of Progressive Discipline Addressing Misconduct.

**a. Verbal Counseling.**

Verbal Counseling is generally used to address specific, non-misconduct, employee performance issues; however, very minor instances of misconduct, which do not appear to be part of a pattern or history of misbehavior, may be addressed through Verbal Counseling (or a Note of Counseling). See [Section III.B.1.](#), Supervisor's Initial Assessment and Proper Notifications, Minor Offenses.

**b. Note of Counseling.**

A Note of Counseling may be used, but only for a very minor instance of misconduct. It is usually used for performance related discipline. See [Section IV.F.3.](#), Performance Related Discipline, Note of Counseling, and [Section III.B.1.](#), Supervisor's Initial Assessment and Proper Notifications, Minor Offenses.

**c. Written Warning.**

i. General.

- (a) The first step in progressive discipline for misconduct should be a Written Warning.
- (b) A Written Warning is less serious than a Reprimand.
- (c) A Written Warning should be limited to a specific incident or aspect of employee misconduct.
- (d) The Written Warning must identify the specific misconduct and warn of more serious discipline for failing to improve.

ii. Preparing the Written Warning.

- (a) A Written Warning may or may not require a supervisor's investigation depending on the circumstances of the employee's misconduct.
- (b) If the immediate supervisor determines a Written Warning is the appropriate form of discipline, the second level supervisor will be notified for concurrence.
- (c) If the second level supervisor concurs that a Written Warning is the appropriate discipline, the Written

### **Section III. Misconduct Related Discipline: Written Warning**

Warning may be served to the subject officer, with Commanding Officer approval.

- (d) Written Warnings are imposed with the approval of the Commanding Officer and, therefore, do not require higher approval.
- iii. Serving the Written Warning.
- (a) A Written Warning requires advance notice to the subject officer, but oral notice is sufficient.
  - (b) There is no right to a Skelly Meeting.
  - (c) The immediate supervisor should schedule a time to meet with the subject employee to serve the Written Warning.
  - (d) The immediate supervisor must allow ample time for representation if requested by the subject employee (if no prior interview with the subject officer as part of an investigation).
- iv. After the Written Warning is Served.
- (a) If the employee accepts the discipline.
    - (1) The right to appeal is waived.
    - (2) The Written Warning is placed in the subject officer's divisional file for up to one year.
    - (3) The subject officer has the right to attach a rebuttal to the Written Warning.
      - (i) The rebuttal must be submitted within 30 calendar days.
      - (ii) The rebuttal will remain attached until the discipline is removed.
  - (b) If the employee challenges the discipline.
    - (1) He or she has a right to an Intra-Department Appeal.
    - (2) The appeal must be directed to the Chief's Office within ten (10) working days of receiving the Written Warning.



### **Section III. Misconduct Related Discipline: Written Warning**

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- v. Intra-Department Appeal Hearing regarding a Written Warning.
  - (a) General information regarding the hearing.
    - (1) This is an evidentiary hearing.
    - (2) The command has the burden of proof at the hearing. The command must present through testimony and exhibits, enough evidence to support its claim.
    - (3) The standard of proof is by a preponderance of the evidence, which is described as just enough evidence to make it “more likely than not” that what the command seeks to prove is true.
    - (4) As in Civil Service Commission appeal hearings, the burden cannot be met by uncorroborated hearsay evidence.
    - (5) Pre-recorded and summarized interviews of witness statements will be considered substantial evidence and may be accepted into evidence.
  - (b) The Appeal Hearing Officer.
    - (1) The Appeal Hearing Officer for a Written Warning will be a Commanding Officer.
    - (2) If the employee’s Commanding Officer had a role in the original decision to discipline, another Commanding Officer must serve as the Hearing Officer.
    - (3) The Hearing Officer may read investigative reports and supporting documents to properly prepare and budget appropriate time for the hearing. However, to ensure neutrality of the hearing, the Hearing Officer may not consider the investigative reports or supporting documents unless they are introduced and accepted into evidence during the course of the hearing.
    - (4) The Hearing Officer may uphold, modify, or overturn the Written Warning.

**Section III. Misconduct Related Discipline: Written Warning**

(5) The decision of the Hearing Officer is final.

(c) Conducting the Appeal Hearing.

(1) The command may be represented at the hearing by the Commanding Officer or the Commanding Officer's designee (e.g., Lieutenant or Sergeant).

(2) The hearing officer will swear in each witness prior to his or her testifying.

(i) Each Department employee witness, prior to testifying, will be admonished by the hearing officer regarding his/her obligation under the Department's policies and procedures, to testify truthfully.

(ii) The hearing officer will admonish each non-employee witness, prior to his or her testifying, of the obligation to be truthful.

(3) The command representative will present evidence on behalf of the command and may call witnesses in furtherance of meeting its burden of proof.

(4) At the conclusion of the presentation of the command's evidence, the subject officer or his/her representative may present evidence in response to the evidence presented by the command, or the allegations set forth in the written discipline.

(5) If the subject officer presents evidence, the command's representative may present rebuttal evidence.

(6) Both the command representative and the subject officer (or the subject officer's representative) will have an opportunity to make a closing statement in support of their respective positions, with the command representative having both the first and last opportunity.

### Section III. Misconduct Related Discipline: Written Warning

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vi. After the Appeal Hearing.

a. Written statement of decision.

- (1) At the conclusion of the hearing, and after consideration of the evidence presented, the hearing officer issues a written statement of decision.
- (2) The statement of decision will say whether the discipline is being upheld, modified, or overturned.
- (3) The statement of decision will separately address each allegation presented, including:
  - (i) Analyses of the evidence regarding the original sustained findings.
  - (ii) Specific findings of facts relevant to, or underlying, the allegations.
  - (iii) Conclusions regarding each allegation (e.g., upholding, overturning, or modifying the original findings).
  - (iv) In cases in which the level of discipline is contested, an analysis of this issue and a statement of decision with respect to the level of discipline imposed (e.g., whether the level will be upheld or increased).
- (4) The decision should be delivered to the employee within a reasonable amount of time, based on the circumstances of the case, not to exceed 60 calendar days.

b. Discipline upheld.

The discipline package and investigation are retained per [Section I.I.](#), Personnel Files.

c. Discipline increased.

The employee may be entitled to further appeal rights commensurate with the recommended increased discipline. The command must contact a Police Legal Advisor for assistance.

### **Section III. Misconduct Related Discipline: Written Warning**

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d. Discipline overturned.

(1) The discipline package and investigation are retained per [Section I.I.](#), Personnel Files.

(2) A Written Warning is the lowest form of written discipline for misconduct and cannot be further reduced, in writing; however, a verbal warning may be appropriate.

vii. [Templates.](#)

**d. Reprimands.**

i. General.

(a) A Reprimand is a more serious disciplinary action than a Written Warning.

(b) A Reprimand must be issued in writing.

(c) The Reprimand must specifically identify the misconduct and explain the potential for further discipline unless there is immediate improvement.

(d) Reprimands are imposed with the approval of a Commanding Officer or higher.

ii. Preparing the Reprimand.

(a) A Reprimand generally requires a supervisor's investigation depending on the circumstances of the subject employee's misconduct.

(b) The Commanding Officer (or designee) prepares the Reprimand.

iii. Routing Reprimand for Review and Approval.

(a) Once the appropriate discipline (Reprimand) has been decided upon by the command, the discipline package must be routed for review and approval.

(b) The [Disciplinary Package Checklist](#) is the coversheet on the discipline package and accompanies the package as it is routed.

(c) Discipline Packages must be sealed, hand-delivered and shall not be sent via inter-office mail.

### Section III. Misconduct Related Discipline: Reprimands

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- (d) The routing ensures that the package is complete, lawful, within policy, fair, and consistent with the Department's [Goals and Objectives](#) statement.
  - (e) Each reviewer signs and dates the Disciplinary Package Checklist after his or her review is complete.
- iv. Disciplinary Package Checklist.

#### Steps in the Disciplinary Review and Routing Process (Steps 1-6 on the [Disciplinary Package Checklist](#))

- (a) Prepared By: Once the appropriate discipline is determined by the command, the preparing supervisor signs, ensuring that the package is complete. The discipline package must include all attachments listed in the investigation during the entire routing process.
- (b) Concurrence of Second Level: The second level supervisor signs, ensuring that the package is complete, and hand-delivers the package to his/her Commanding Officer.
- (c) Approved by Commanding Officer: The Commanding Officer signs and approves submitting the package to Police Human Resources.
- (d) Police Human Resources Review: The Human Resources Analyst reviews the package to ensure proper format, correct violations and proper notifications are included. Police Human Resources will also ensure all MOU issues are addressed and all attachments are included. Police Human Resources will review and advise the Commanding Officer if the suggested discipline is not consistent with past discipline of similar circumstances. After the Human Resources review, the discipline package is hand-carried to police legal.
- (e) Police Legal Advisor Review: The Legal Advisor reviews the package to ensure all legal requirements have been met. The Police Legal Advisor, where appropriate, is responsible for contacting Labor Relations. After a legal advisor completes the review and approves the package, it is returned to the Commanding Officer.

### **Section III. Misconduct Related Discipline: Reprimands**

- (f) Date Returned to Commanding Officer: The package is returned to the Commanding Officer for service of the Reprimand.
  - (g) Reprimand – Date Served: Enter the date the Reprimand is served.
- v. Corrections or Changes to Discipline Package during the Routing Process.
- (a) Minor Corrections.
    - (1) Minor corrections are those corrections that do not influence the finding(s) or discipline recommendation(s) of the case.
    - (2) If a reviewer determines that minor corrections need to be made, the package may be sent on to the next reviewer for further review prior to being returned to the Commanding Officer.
    - (3) If the discipline package is returned to the Commanding Officer for minor changes, the package is returned directly to the reviewer who requested the change(s) to complete the review process.
  - (b) Major Changes.
    - (1) A major change is one that changes the recommended level of discipline or finding(s).
    - (2) If a reviewer determines the level of discipline should be changed, the package is returned to the Commanding Officer.
    - (3) After the Commanding Officer makes the requested change(s), the package is routed again from the beginning using the same Disciplinary Package Checklist.
    - (4) During the second review process, each reviewer initials and dates to the right of his or her original signature.

### **Section III. Misconduct Related Discipline: Reprimands**

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- vi. Serving the Notice of Reprimand.
  - (a) Once the disciplinary review process is completed, the discipline package is returned to the Commanding Officer to issue the Notice of Reprimand.
  - (b) A Notice of Reprimand requires advance notice to the subject officer, but oral notice is sufficient.
  - (c) There is no right to a Skelly Meeting.
  - (d) The Reprimand may be served immediately. Employee representation is not required when the Reprimand is served.
  - (e) The Commanding Officer schedules a meeting with subject employee to serve the Reprimand.
  - (f) The employee reads and signs the Reprimand. If the employee refuses to sign, the Commanding Officer shall note on the document “employee refused to sign.”
  - (g) The original Reprimand and copies of all attachments will be provided to the subject employee.
  - (h) The command keeps a signed copy of the Reprimand (or unsigned with proper notation to that effect) and all original attached documents.
  - (i) The discipline package with all accompanying documents, audio/video recordings and CD’s are hand-carried to Police Human Resources to be filed in the employee’s permanent file.
  
- vii. After the Notice of Reprimand is Served.
  - (a) If the employee accepts the discipline, the Reprimand will be placed in the subject employee’s divisional and Police Human Resources file and the investigation is retained per [Section I.I.](#), Personnel Files.
  - (b) If the employee challenges the discipline, he or she has a right to an Intra-Department Appeal.

### **Section III. Misconduct Related Discipline: Reprimands**

- (c) If the employee wishes to appeal the discipline, the appeal must be directed to the Chief's Office within ten (10) working days of receiving the Reprimand.
- viii. Intra-Department Appeal Hearing regarding Reprimands.
- (a) General information regarding the hearing.
    - (1) This is an evidentiary hearing.
    - (2) The command has the burden of proof at the hearing. The command must present through testimony and exhibits, enough evidence to support its claim.
    - (3) The standard of proof is by a preponderance of the evidence, which is described as just enough evidence to make it "more likely than not" that what the command seeks to prove is true.
    - (4) As in Civil Service Commission appeal hearings, the burden cannot be met by uncorroborated hearsay evidence. Pre-recorded and summarized interviews of witness statements will be considered substantial evidence and may be accepted into evidence.
  - (b) The Appeal Hearing Officer.
    - (1) The Appeal Hearing Officer for a Reprimand will be an Assistant Chief not in the disciplined officer's chain of command.
    - (2) The Hearing Officer may read investigative reports and supporting documents to properly prepare and budget appropriate time for the hearing. However, to ensure neutrality of the hearing, the Hearing Officer may not consider the investigative reports or supporting documents unless they are introduced and accepted into evidence during the course of the hearing.
  - (c) Conducting the Appeal Hearing.
    - (1) The command may be represented at the hearing by the Commanding Officer or the



### **Section III. Misconduct Related Discipline: Reprimands**

Commanding Officer's designee (e.g., Lieutenant or Sergeant).

- (2) The hearing officer will swear in each witness prior to his or her testifying.
  - (i) Each Department employee witness, prior to testifying, will be admonished by the hearing officer regarding his/her obligation under the Department's policies and procedures, to testify truthfully.
  - (ii) The hearing officer will admonish each non-employee witness, prior to his or her testifying, of the obligation to be truthful.
- (3) The command representative will present evidence on behalf of the command and may call witnesses in furtherance of meeting its burden of proof.
- (4) At the conclusion of the presentation of the command's evidence, the subject officer or his/her representative may present evidence in response to the evidence presented by the command, or the allegations set forth in the written discipline.
- (5) If the subject officer presents evidence, the command's representative may present rebuttal evidence.
- (6) Both the command representative and the subject officer (or the subject officer's representative) will have an opportunity to make a closing statement in support of their respective positions, with the command representative having both the first and last opportunity.

ix. After the Appeal Hearing.

(a) Written statement of decision.

- (1) At the conclusion of the hearing, and after consideration of the evidence presented, the hearing officer will issue a written statement of decision.

### Section III. Misconduct Related Discipline: Reprimands

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- (2) The statement of decision will say whether the discipline is being upheld, modified, or overturned.
  - (3) The statement of decision will separately address each allegation presented, including:
    - (i) Analyses of the evidence regarding the original sustained findings.
    - (ii) Specific findings of facts relevant to, or underlying, the allegations.
    - (iii) Conclusions regarding each allegation (e.g., upholding, overturning, or modifying the original findings).
    - (iv) In cases in which the level of discipline is contested, an analysis of this issue and a statement of decision with respect to the level of discipline imposed (e.g., whether the level will be upheld, increased, or decreased).
  - (4) The decision should be delivered to the employee within a reasonable amount of time, based on the circumstances of the case, not to exceed 60 calendar days.
- (b) Discipline upheld.
- If the discipline is upheld, the discipline package and investigation are retained per [Section I.I.](#), Personnel Files.
- (c) Discipline increased.
- The employee may be entitled to further appeal rights commensurate with the recommended increased discipline. The command should contact a Police Legal Advisor for assistance.
- (d) Discipline is decreased.
- If discipline is decreased to a Note of Counseling or a Written Warning, the command follows the procedure for the modified discipline outlined in [Section III.E.2.b.](#), Note of Counseling, and [Section](#)

### **Section III. Misconduct Related Discipline: Reprimands**

[III.E.2.c.](#), Written Warning. There are no further appeals.

- (e) Discipline overturned.

In instances where the discipline has been overturned in its entirety, the discipline package and investigation are retained per [Section I.I.](#), Personnel Files.

- x. Appeal of Reprimand to Mayor.

- (a) A permanent employee may appeal a Reprimand to the Mayor or his/her designee (usually Labor Relations).

- (1) If the employee wishes to appeal the discipline, the appeal must be directed to the Mayor within ten (10) working days of receiving the Reprimand.

- (2) The Mayoral Appeal review process does not provide for testimony, but consists solely of a review of the written record and/or audio-recording(s) developed at prior steps of the appeal.

- (b) The Mayor or designee will issue a finding within 30 working days of receipt of the full and entire appeal package.

- xi. [Templates.](#)

#### **e. Suspensions.**

- i. General.

- (a) A Suspension is a more serious disciplinary action than a Reprimand.

- (b) A Notice of Suspension must be issued in writing, and is served after written Advance Notice of Adverse Action is given to the subject employee (Unless immediately suspended by the Chief of Police, see ii.(c), below).

- (c) A Suspension is imposed with the approval of the Chief of Police.

### Section III. Misconduct Related Discipline: Suspensions

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- ii. Preparing the Advance Notice of Adverse Action.
  - (a) A Suspension requires a supervisor's investigation.
  - (b) The Commanding Officer or designee prepares the Advance Notice document.
  - (c) Exception to Advance Notice: The Chief of Police or his/her designee shall have the authority to immediately suspend an employee, without representation, if it is deemed necessary in order to maintain the safety of the community or the reputation, morale and harmony of the organization as outlined in [Section III.D.4.](#), Temporary Transfers and Suspension Pending Investigation.
  - (d) The Notice documents (Advance Notice of Adverse Action and Notice of Suspension) must specifically identify the misconduct and explain the potential for Demotion or Termination if the conduct is not immediately improved.
  - (e) All Suspensions must include the specific number of hours in the employee's Suspension, considering employee's work hours (e.g., ten-hour versus eight-hour days).
  - (f) When a Suspension is appropriate, the following should be used as a guide in determining the number of working days for which the subject employee will be suspended:
    - (1) Two Days: Misconduct violations of Department Policies and/or Procedures involving negligence.
    - (2) Four or More Days: Intentional misconduct of an egregious or gross nature. (If the subject officer is assigned to a five-day workweek, the discipline should be five days.)
    - (3) Sixteen or More Days: May be appropriate in lieu of Termination, if employee has long tenure of unblemished service, or other mitigating circumstances are fully documented.

### **Section III. Misconduct Related Discipline: Suspensions**

- iii. Routing the Discipline Package for Review and Approval.
  - (a) Once the appropriate discipline (Suspension) has been decided upon by the command, the discipline package must be routed for review and approval.
  - (b) The [Disciplinary Package Checklist](#) is the coversheet on the discipline package and accompanies the package as it is routed.
  - (c) Discipline Packages must be sealed, hand-delivered and shall not be sent via inter-office mail.
  - (d) The routing ensures that the package is complete, lawful, within policy, fair, and consistent with the Department's [Goals and Objectives](#) statement.
  - (e) Each reviewer signs and dates the Disciplinary Package Checklist after his or her review is complete.
- iv. Disciplinary Package Checklist.

**Steps 1-6 in the Disciplinary Review and Routing Process ([Disciplinary Package Checklist](#)) are completed prior to the service of the Advance Notice of Adverse Action. Steps 8-11 on the Checklist are completed during and after the Skelly Meeting and/or Chief's Appeal, or the waiver of appeal rights by the subject employee. Steps 12-16 on the Checklist are completed during the routing of the Final Notice of Discipline.**

- (a) Prepared By: Once the appropriate discipline is determined by the command, the preparing supervisor signs, ensuring that the package is complete. The discipline package must include all attachments listed in the investigation during the entire routing process.
- (b) Concurrence of Second Level: The second level supervisor signs, ensuring that the package is complete, and hand-delivers the package to his/her Commanding Officer.
- (c) Approved by Commanding Officer: The Commanding Officer signs and approves submitting the package to Police Human Resources.
- (d) Police Human Resources Review: The Human Resources Analyst reviews the package to ensure

### Section III. Misconduct Related Discipline: Suspensions

proper format, correct violations and proper notifications are included. Police Human Resources will also ensure all MOU issues are addressed and all attachments are included. Police Human Resources will review and advise the Commanding Officer if the suggested discipline is not consistent with past discipline of similar circumstances. After the Human Resources review, the discipline package is hand-carried to Police Legal.

- (e) Police Legal Advisor Review: The Legal Advisor reviews the package to ensure all legal requirements have been met. The Police Legal Advisor, where appropriate, is responsible for contacting Labor Relations. After a legal advisor completes the review and approves the package, it is returned to the Commanding Officer.
- (f) Date Returned to Commanding Officer: The package is returned to the Commanding Officer for service of the Advance Notice of Adverse Action (Suspension).
- (g) Advance Notice of Adverse Action: Date Advance Notice of Adverse Action is served on subject employee.

**NOTE: Steps 8-11 on the Checklist are completed during and after the Skelly Meeting and/or Chief's Appeal, or the waiver of appeal rights by the subject employee.**

- (h) Results of Skelly Meeting and Notice of Department Appeals Rights, including date served.
- (i) Approved by Assistant Chief: The Assistant Chief of the subject officer's command must approve all recommendations for formal discipline.
- (j) Appeal Filed: If an appeal is filed, include the date filed.
- (k) Department Appeal results. Must include the date of the hearing and the findings.

**NOTE: Steps 12-16 on the Checklist are completed during the routing of the Final Notice of Discipline.**

### Section III. Misconduct Related Discipline: Suspensions

- (l) Police Human Resources review of the final Notice. Must include the date reviewed.
  - (m) Police Legal Advisor review of the final Notice. Must include the date reviewed.
  - (n) Approval of Executive Assistant Chief: The Executive Assistant Chief must approve all discipline, including a Reprimand or higher. This review is to ensure consistency, fairness and appropriateness of proposed discipline.
  - (o) Approved by Chief of Police: The Chief of Police will review all formal EEO and IA investigations resulting in a sustained finding and any discipline resulting from a Category I citizen complaint. Furthermore, the Chief will review all “Not Within Policy” officer-involved shootings.
  - (p) Final Notice - Date Served: Date the Final Notice of Suspension was served on the subject employee.
- v. Corrections or Changes to Discipline Package during the Routing Process.
- (a) Minor Corrections.
    - (1) Minor corrections are those corrections that do not influence the finding(s) or discipline recommendation(s) of the case.
    - (2) If a reviewer determines that minor corrections need to be made (e.g.: punctuation, spelling, etc.), the package may be sent on to the next reviewer for further review, prior to being returned to the Commanding Officer.
    - (3) If the discipline package is returned to the Commanding Officer for minor changes, the package is returned directly to the reviewer who requested the change(s) to complete the review process.
  - (b) Major Changes.
    - (1) A major change is substantive and changes the recommended level of discipline or finding(s).

### **Section III. Misconduct Related Discipline: Suspensions**

- (2) If a reviewer determines the level of discipline or finding(s) should be changed, the package is returned to the Commanding Officer.
  - (3) After the Commanding Officer makes the requested change(s), the package is routed again from the beginning using the same Disciplinary Package Checklist.
  - (4) During the second review process, each reviewer initials and dates to the right of his or her original signature.
- vi. Serving the Advance Notice of Adverse Action Document.
- (a) Once the steps 1-6 of the disciplinary review process are completed, the discipline package is returned to the Commanding Officer to issue the Advance Notice of Adverse Action.
  - (b) The Advance Notice of Adverse Action is provided to the subject employee facing discipline of Suspension.
  - (c) The Advance Notice of Adverse Action notifies the subject employee of the pending recommended discipline.
  - (d) The Commanding Officer schedules a meeting with the subject employee to serve the Advance Notice of Adverse Action document.
  - (e) The Advance Notice of Adverse Action may be served immediately. Employee representation is not required when the Advance Notice of Adverse Action is served.
  - (f) The employee reads and signs the Advance Notice. If the employee refuses to sign, the Commanding Officer shall note "Employee refused to sign."
  - (g) The employee receives the original of the Advance Notice of Adverse Action.
    - (1) Copies of attachments may be given upon request of the subject employee.



### **Section III. Misconduct Related Discipline: Suspensions**

- (2) An IA report may be reviewed upon a request to the IA Unit.
    - (3) An EEO report may be reviewed upon a request to the EEO Unit.
  - (h) The command keeps a copy of the signed Advance Notice of Adverse Action and all original attachments.
- vii. After Advance Notice of Adverse Action is Served.
  - (a) If the employee accepts the discipline.
    - (1) The Skelly Meeting and Chief's Appeal are waived.
    - (2) The final Notice of Discipline is prepared by the Commanding Officer or designee.
    - (3) The final Notice of Discipline includes documentation that the subject employee has waived their appeal rights.
    - (4) The routing and review of the discipline package continues beginning with Step 8 on the Disciplinary Package Checklist and continues through Step 16. The discipline package must include all attachments listed in the investigation and the Advance Notice of Adverse Action during the routing process.
  - (b) If the employee challenges the recommended discipline.
    - (1) A permanent employee has a right to a Skelly Meeting and a Chief's Appeal.
    - (2) The request for a Skelly Meeting must be made to the Commanding Officer either orally or in writing, by a date and time specified by the Commanding Officer.
    - (3) An employee may waive a Skelly Meeting, but still request a Chief's Appeal.
    - (4) A request for a Chief's Appeal must be in writing and must be directed to the Chief's Office within ten (10) working days of

### Section III. Misconduct Related Discipline: Suspensions

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receiving the Advance Notice of Adverse Action.

viii. The Skelly Meeting.

(a) General information regarding the Skelly Meeting.

- (1) A Skelly Meeting occurs after an employee receives Advance Notice of recommended discipline, and prior to imposing the recommended discipline.
- (2) The purpose of a Skelly Meeting is to minimize the risk of error in the initial decision to discipline.
- (3) Probationary employees are not entitled to a Skelly Meeting, but they may be entitled to a Chief's Appeal.

(b) Conducting the Skelly Meeting.

- (1) A Skelly Meeting is an informal meeting.
- (2) The Commanding Officer meets with the subject employee and his/her representative.
- (3) The Skelly Meeting is the subject employee's opportunity to respond to the allegations set forth in the Advance Notice of Adverse Action document.
- (4) The Commanding Officer may uphold, modify, or overturn the recommended discipline.

ix. After the Skelly Meeting.

- (a) The Commanding Officer completes the memorandum of decision ([Notice of Departmental Appeal Rights](#)).
- (b) The decision should be delivered to the employee within a reasonable amount of time, based on the circumstances of the case, not to exceed fourteen (14) calendar days.
- (c) The memorandum of decision will say whether discipline is upheld, modified or overturned.

### **Section III. Misconduct Related Discipline: Suspensions**

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- (1) Discipline upheld.
  - (i) If the employee accepts the discipline.
    - (aa) The Chief's Appeal is waived.
    - (bb) The final Notice of Discipline is prepared by the Commanding Officer or designee.
    - (cc) The final Notice of Discipline includes documentation that the subject has waived their Chief's Appeal rights.
    - (dd) The routing and review of the discipline package continues beginning with Step 8 on the Disciplinary Package Checklist and continues through Step 16. The discipline package must include all attachments listed in the investigation and the Advance Notice of Adverse Action during the routing process.
  - (ii) If the employee challenges the discipline, the subject employee may continue the appeal to the Chief of Police.
- (2) Discipline increased.

The employee may be entitled to further appeal rights commensurate with the recommended increased discipline. The command should contact a Police Legal Advisor for assistance.
- (3) Discipline decreased.
  - (i) If the recommended discipline is decreased to a Note of Counseling or a Written Warning, the Command follows the procedure for the

### Section III. Misconduct Related Discipline: Suspensions

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modified discipline outlined in [Section III.E.2.b.](#), Note of Counseling, and [Section III.E.2.c.](#), Written Warning. There are no further appeals.

- (ii) If the recommended discipline is decreased to a Reprimand, refer to the procedure outlined in [Section III.E.2.d.](#), Reprimand.

- (4) Discipline overturned.

If the Commanding Officer overturns the proposed discipline, the Final Notice of Discipline is not prepared. The discipline package and investigation are retained per [Section I.I.](#), Personnel Files.

- x. Intra-Department Appeal Hearing regarding Suspension.

- (a) General information regarding the appeal hearing.

- (1) This is an evidentiary hearing.

- (2) The command has the burden of proof at the hearing. The command must present through testimony and exhibits, enough evidence to support its claim.

- (3) The standard of proof is by a preponderance of the evidence, which is described as just enough evidence to make it “more likely than not” that what the command seeks to prove is true.

- (4) As in Civil Service Commission appeal hearings, the burden cannot be met by uncorroborated hearsay evidence. Pre-recorded and summarized interviews of witness statements will be considered substantial evidence and may be accepted into evidence.

- (b) The Appeal Hearing Officer.

- (1) The Appeal Hearing Officer for a Suspension will be an Assistant Chief not in the disciplined officer’s chain of command.

### **Section III. Misconduct Related Discipline: Suspensions**

- (2) The Hearing Officer may read investigative reports and supporting documents to properly prepare and budget appropriate time for the hearing. However, to ensure neutrality of the hearing, the Hearing Officer may not consider the investigative reports or supporting documents unless they are introduced and accepted into evidence during the course of the hearing.
- (c) Conducting the Appeal Hearing
- (1) The command may be represented at the hearing by the Commanding Officer or the Commanding Officer's designee (e.g., Lieutenant or Sergeant).
  - (2) The hearing officer will swear in each witness prior to his or her testifying.
    - (i) Each Department employee witness, prior to testifying, will be admonished by the hearing officer regarding his/her obligation under the Department's policies and procedures, to testify truthfully.
    - (ii) The hearing officer will admonish each non-employee witness, prior to his or her testifying, of the obligation to be truthful.
  - (3) The command representative will present evidence on behalf of the command and may call witnesses in furtherance of meeting its burden of proof.
  - (4) At the conclusion of the presentation of the command's evidence, the subject officer or his/her representative may present evidence in response to the evidence presented by the command, or the allegations set forth in the written discipline.
  - (5) If the subject officer presents evidence, the command's representative may present rebuttal evidence.
  - (6) Both the command representative and the subject officer (or the subject officer's

### Section III. Misconduct Related Discipline: Suspensions

representative) will have an opportunity to make a closing statement in support of their respective positions, with the command representative having both the first and last opportunity.

- xi. After the Appeal Hearing.
  - (a) Written statement of decision.
    - (1) At the conclusion of the hearing, and after consideration of the evidence presented, the hearing officer will issue a written statement of decision.
    - (2) The decision should be delivered to the employee within a reasonable amount of time, based on the circumstances of the case, not to exceed 60 calendar days.
    - (3) The statement of decision will separately address each allegation presented, including:
      - (i) Analyses of the evidence regarding the original sustained findings.
      - (ii) Specific findings of facts relevant to, or underlying, the allegations.
      - (iii) Conclusions regarding each allegation (e.g., upholding, or modifying the original findings).
      - (iv) In cases in which the level of discipline is contested, an analysis of this issue and a statement of decision with respect to the level of discipline imposed (e.g., whether the level will be upheld, increased, or decreased).
  - (b) Discipline upheld.
    - (1) If the discipline is upheld, the final Notice of Discipline is prepared by the Commanding Officer or designee.
    - (2) The final Notice of Discipline includes documentation that the subject has had their Intra-Departmental Appeal Hearing and

### Section III. Misconduct Related Discipline: Suspensions

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Skelly Meeting with the results of the hearing and meeting.

- (3) The routing and review of the discipline package continues beginning with Step 8 on the Disciplinary Package Checklist and continues through Step 16. The discipline package must include all attachments listed in the investigation and the Advance Notice of Adverse Action during the routing process.

- (c) Discipline increased.

The employee may be entitled to further appeal rights commensurate with the recommended increased discipline. The command should contact a Police Legal Advisor for assistance.

- (d) Discipline decreased.

- (1) The original Advance Notice of Adverse Action is retained in the discipline package.

- (2) A Final Notice of Discipline is prepared:

- (i) If decreased to a Note of Counseling or a Written Warning, the command follows the procedure for the modified discipline as outlined in [Section III.E.2.b.](#), Note of Counseling and [Section III.E.2.c.](#), Written Warning. There are no further appeals.
- (ii) If decreased to a Reprimand, the command follows the procedure for the modified discipline as outlined in [Section III.E.2.d.](#), Reprimand. The employee may request a Mayoral Appeal as outlined in [Section III.E.2.d.](#)

- (e) Discipline overturned.

If the discipline has been overturned in its entirety, the discipline package and investigation are retained per [Section I.I.](#), Personnel Files.

### **Section III. Misconduct Related Discipline: Suspensions**

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- xii. Serving the Final Notice of Discipline.
  - (a) Once the disciplinary review process is completed, the discipline package is returned to the Commanding Officer to issue the Final Notice of Suspension.
  - (b) The Notice of Suspension may be served immediately. Employee representation is not required when the Notice of Suspension is served.
  - (c) The Commanding Officer schedules a meeting with subject employee to serve the Notice of Suspension.
  - (d) The employee reads and signs the Notice of Suspension. If the employee refuses to sign, the Commanding Officer shall note on the document “employee refused to sign.”
  - (e) The original Notice of Suspension will be provided to the subject employee.
  - (f) The command keeps a signed copy of the Notice of Suspension (or unsigned with proper notation to that effect) and all original attached documents.
  - (g) A copy of the Notice of Suspension is placed in the employee’s divisional file.
  - (h) The Commanding Officer gives [Notification to Payroll](#) of the Suspension by the end of the next business day.
  - (i) The discipline package and investigation are retained per [Section I.I.](#), Personnel Files.
- xiii. Civil Service Commission Appeal.
  - (a) A permanent employee has a right to a Civil Service Appeal for disciplinary actions including Demotion, Suspension or Termination and accompanying Disciplinary Transfers.
  - (b) An employee who wishes to appeal to the Civil Service Commission must submit the appeal in writing to the City’s Personnel Director’s Office within five (5) calendar days of receiving the Notice of Suspension.



### **Section III. Misconduct Related Discipline: Suspensions**

- (c) The Civil Service Commission may affirm the discipline. If affirmed, the Civil Service Commission finding is filed in the employee's permanent Police Human Resources file.
- (d) The Civil Service Commission may modify the discipline. If modified, the discipline is returned to the Department for modification.
- (e) The Civil Service Commission may overturn the discipline. If overturned, the Civil Service Commission's written decision shall be maintained in the subject officer's personnel file.

xiv. [Templates.](#)

**f. Demotion.**

i. General.

- (a) A Demotion is a more serious disciplinary action than a Suspension.
- (b) A disciplinary Demotion is a reduction of an employee from a higher to a lower paying classification.
- (c) Probationary employees may be Demoted. The probationary employee will be allowed Intra-Department Appeal, but may not appeal to the Civil Service Commission.
- (d) A Notice of Demotion must be issued in writing, after written Advance Notice of Adverse Action is served upon the subject employee.
- (e) A Demotion is imposed with the approval of the Chief of Police.

ii. Preparing the Advance Notice of Adverse Action.

- (a) A Demotion requires a supervisor's investigation.
- (b) The Commanding Officer or designee prepares the Advance Notice document.
- (c) The Notice documents (Advance Notice of Adverse Action and Notice of Demotion) must specifically identify the purpose of Demotion and explain the

### Section III. Misconduct Related Discipline: Demotion

potential for Termination unless there is immediate improvement.

- iii. Routing the Discipline Package for Review and Approval.
  - (a) Once the appropriate discipline (Suspension, Reduction in Compensation, Demotion or Termination) has been decided upon by the command, the discipline package must be routed for review and approval.
  - (b) The [Disciplinary Package Checklist](#) is the coversheet on the discipline package and accompanies the package as it is routed.
  - (c) Discipline Packages must be sealed, hand-delivered and shall not be sent via inter-office mail.
  - (d) The routing ensures that the package is complete, lawful, within policy, fair, and consistent with the Department's [Goals and Objectives](#) statement.
  - (e) Each reviewer signs and dates the Disciplinary Package Checklist after his or her review is complete.
- iv. Disciplinary Package Checklist.

**Steps 1-6 in the Disciplinary Review and Routing Process ([Disciplinary Package Checklist](#)) are completed prior to the service of the Advance Notice of Adverse Action. Steps 8-11 on the Checklist are completed during the Skelly Meeting and/or Chief's Appeal, or the waiver of appeal rights by the subject employee. Steps 12-16 on the Checklist are completed during the routing of the Final Notice of Discipline.**

- (a) Prepared By: Once the appropriate discipline is determined by the command, the preparing supervisor signs, ensuring that the package is complete. The discipline package must include all attachments listed in the investigation during the entire routing process.
- (b) Concurrence of Second Level: The second level supervisor signs, ensuring that the package is complete, and hand-delivers the package to his/her Commanding Officer.

### Section III. Misconduct Related Discipline: Demotion

- (c) Approved by Commanding Officer: The Commanding Officer signs and approves submitting the package to Police Human Resources.
- (d) Police Human Resources Review: The Human Resources Analyst reviews the package to ensure proper format, correct violations and proper notifications are included. Police Human Resources will also ensure all MOU issues are addressed and all attachments are included. Police Human Resources will review and advise the Commanding Officer if the suggested discipline is not consistent with past discipline of similar circumstances. After the Human Resources review, the discipline package is hand-carried to Police Legal.
- (e) Police Legal Advisor Review: The Legal Advisor reviews the package to ensure all legal requirements have been met. The Police Legal Advisor, where appropriate, is responsible for contacting Labor Relations. After a legal advisor completes the review and approves the package, it is returned to the Commanding Officer.
- (f) Date Returned to Commanding Officer: The package is returned to the Commanding Officer for service of the Advance Notice of Adverse Action (Demotion).
- (g) Advance Notice of Adverse Action: Date Advance Notice of Adverse Action is served on subject employee.

**NOTE: Steps 8-11 on the Checklist are completed during the Skelly Meeting and/or Chief's Appeal, or the waiver of appeal rights by the subject employee.**

- (h) Results of Skelly Meeting and Notice of Department Appeals Rights, including date served.
- (i) Approved by Assistant Chief: The Assistant Chief of the subject officer's command must approve all recommendations for formal discipline.
- (j) Appeal Filed: If an appeal is filed, include the date filed.
- (k) Department Appeal results. Must include the date of the hearing and the findings.

### Section III. Misconduct Related Discipline: Demotion

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**NOTE: Steps 12-16 on the Checklist are completed during the routing of the Final Notice of Discipline.**

- (l) Police Human Resources review of the final Notice. Must include the date reviewed.
  - (m) Police Legal Advisor review of the final Notice. Must include the date reviewed.
  - (n) Approval of Executive Assistant Chief: The Executive Assistant Chief must approve all discipline, including a Reprimand or higher. This review is to ensure consistency, fairness and appropriateness of proposed discipline.
  - (o) Approved by Chief of Police: The Chief of Police will review all formal EEO and IA investigations resulting in a sustained finding and any discipline resulting from a Category I citizen complaint. Furthermore, the Chief will review all “Not Within Policy” officer-involved shootings.
  - (p) Final Notice - Date Served: Date the Final Notice of Demotion was served on the subject employee.
- v. Corrections or Changes to Discipline Package during the Routing Process.
- (a) Minor Corrections.
    - (1) Minor corrections are those corrections that do not influence the finding(s) or discipline recommendation(s) of the case.
    - (2) If a reviewer determines that minor corrections need to be made (e.g.: punctuation, spelling, etc.), the package may be sent on to the next reviewer for further review, prior to being returned to the Commanding Officer.
    - (3) If the discipline package is returned to the Commanding Officer for minor changes, the package is returned directly to the reviewer who requested the change(s) to complete the review process.
  - (b) Major Changes.

### **Section III. Misconduct Related Discipline: Demotion**

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- (1) A major change is substantive and changes the recommended level of discipline or finding(s).
  - (2) If a reviewer determines the level of discipline or finding(s) should be changed, the package is returned to the Commanding Officer.
  - (3) After the Commanding Officer makes the requested change(s), the package is routed again from the beginning using the same Disciplinary Package Checklist.
  - (4) During the second review process, each reviewer initials and dates to the right of his or her original signature.
- vi. Serving the Advance Notice of Adverse Action Document.
- (a) Once the steps 1-6 of the disciplinary review process are completed, the discipline package is returned to the Commanding Officer to issue the Advance Notice of Adverse Action.
  - (b) The Advance Notice of Adverse Action is provided to the subject employee facing discipline of Demotion.
  - (c) The Advance Notice of Adverse Action notifies the subject employee of the pending recommended discipline.
  - (d) The Commanding Officer schedules a meeting with the subject employee to serve the Advance Notice of Adverse Action document.
  - (e) The Advance Notice of Adverse Action may be served immediately. Employee representation is not required when the Advance Notice of Adverse Action is served.
  - (f) The employee reads and signs the Advance Notice. If the employee refuses to sign, the Commanding Officer shall note "Employee refused to sign."
  - (g) The employee receives the original of the Advance Notice of Adverse Action.

### **Section III. Misconduct Related Discipline: Demotion**

- (1) Copies of attachments may be given upon request of the subject employee.
  - (2) An IA report may be reviewed upon a request to the IA Unit.
  - (3) An EEO report may be reviewed upon a request to the EEO Unit.
  - (h) The command keeps a copy of the signed Advance Notice of Adverse Action and all original attachments.
- vii. After Advance Notice of Adverse Action is Served.
- (a) If the employee accepts the discipline.
    - (1) The Skelly Meeting and Chief's Appeal are waived.
    - (2) The final Notice of Discipline is prepared by the Commanding Officer or designee.
    - (3) The final Notice of Discipline includes documentation that the subject employee has waived their appeal rights.
    - (4) The routing and review of the discipline package continues beginning with Step 8 on the Disciplinary Package Checklist and continues through Step 16. The discipline package must include all attachments listed in the investigation and the Advance Notice of Adverse Action during the routing process.
  - (b) If the employee challenges the recommended discipline.
    - (1) A permanent employee has a right to a Skelly Meeting and a Chief's Appeal.
    - (2) The request for a Skelly Meeting must be made to the Commanding Officer either orally or in writing, by a date and time specified by the Commanding Officer.
    - (3) An employee may waive a Skelly Meeting, but still request a Chief's Appeal.

### **Section III. Misconduct Related Discipline: Demotion**

- (4) A request for a Chief's Appeal must be in writing and must be directed to the Chief's Office within ten (10) working days of receiving the Advance Notice of Adverse Action.
  
- viii. The Skelly Meeting.
  - (a) General information regarding the Skelly Meeting.
    - (1) A Skelly Meeting occurs after an employee receives Advance Notice of recommended discipline, and prior to imposing the recommended discipline.
    - (2) The purpose of a Skelly Meeting is to minimize the risk of error in the initial decision to discipline.
    - (3) Probationary employees are not entitled to a Skelly Meeting, but they may be entitled to a Chief's Appeal.
  - (b) Conducting the Skelly Meeting.
    - (1) A Skelly Meeting is an informal meeting.
    - (2) The Commanding Officer meets with the subject employee and his/her representative.
    - (3) The Skelly Meeting is the subject employee's opportunity to respond to the allegations set forth in the Advance Notice of Adverse Action document.
    - (4) The Commanding Officer may uphold, modify, or overturn the recommended discipline.
  
- ix. After the Skelly Meeting.
  - (a) The Commanding Officer completes the memorandum of decision ([Notice of Departmental Appeal Rights](#)).
  - (b) The decision should be delivered to the employee within a reasonable amount of time, based on the circumstances of the case, not to exceed fourteen (14) calendar days.

### **Section III. Misconduct Related Discipline: Demotion**

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(c) The memorandum of decision will say whether discipline is upheld, modified or overturned.

(1) Discipline upheld.

(i) If the employee accepts the discipline.

(aa) The Chief's Appeal is waived.

(bb) The final Notice of Discipline is prepared by the Commanding Officer or designee.

(cc) The final Notice of Discipline includes documentation that the subject has waived their Chief's Appeal rights.

(dd) The routing and review of the discipline package continues beginning with Step 8 on the Disciplinary Package Checklist and continues through Step 16. The discipline package must include all attachments listed in the investigation and the Advance Notice of Adverse Action during the routing process.

(ii) If the employee challenges the discipline, the subject employee may continue the appeal to the Chief of Police.

(2) Discipline increased.

The employee may be entitled to further appeal rights commensurate with the recommended increased discipline. The command should contact a Police Legal Advisor for assistance.

(3) Discipline decreased.



### Section III. Misconduct Related Discipline: Demotion

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- (i) If the recommended discipline is decreased to a Note of Counseling or a Written Warning, the Command follows the procedure for the modified discipline outlined in [Section III.E.2.b.](#), Note of Counseling, and [Section III.E.2.c.](#), Written Warning. There are no further appeals.
- (ii) If the recommended discipline is decreased to a Reprimand, refer to the procedure outlined in [Section III.E.2.d.](#), Reprimand.
- (iii) If the recommended discipline is decreased to a Suspension, refer to the procedure [Section III.E.2.e.](#), Suspension.

(4) Discipline overturned.

If the Commanding Officer overturns the proposed discipline, the Final Notice of Discipline is not prepared. The discipline package and investigation are retained per [Section I.I.](#), Personnel Files.

x. Intra-Department Appeal Hearing regarding Demotion.

(a) General information regarding the appeal hearing.

- (1) This is an evidentiary hearing.
- (2) The command has the burden of proof at the hearing. The command must present through testimony and exhibits, enough evidence to support its claim.
- (3) The standard of proof is by a preponderance of the evidence, which is described as just enough evidence to make it “more likely than not” that what the command seeks to prove is true.
- (4) As in Civil Service Commission appeal hearings, the burden cannot be met by uncorroborated hearsay evidence. Pre-recorded and summarized interviews of witness statements will be considered

### **Section III. Misconduct Related Discipline: Demotion**

substantial evidence and may be accepted into evidence.

- (b) The Appeal Hearing Officer.
  - (1) The Appeal Hearing Officer for a Demotion will be an Assistant Chief not in the disciplined officer's chain of command.
  - (2) The Hearing Officer may read investigative reports and supporting documents to properly prepare and budget appropriate time for the hearing. However, to ensure neutrality of the hearing, the Hearing Officer may not consider the investigative reports or supporting documents unless they are introduced and accepted into evidence during the course of the hearing.
- (c) Conducting the Appeal Hearing.
  - (1) The command may be represented at the hearing by the Commanding Officer or the Commanding Officer's designee (e.g., Lieutenant or Sergeant).
  - (2) The hearing officer will swear in each witness prior to his or her testifying.
    - (i) Each Department employee witness, prior to testifying, will be admonished by the hearing officer regarding his/her obligation under the Department's policies and procedures, to testify truthfully.
    - (ii) The hearing officer will admonish each non-employee witness, prior to his or her testifying, of the obligation to be truthful.
  - (3) The command representative will present evidence on behalf of the command and may call witnesses in furtherance of meeting its burden of proof.
  - (4) At the conclusion of the presentation of the command's evidence, the subject officer or his/her representative may present evidence in response to the evidence presented by the

### **Section III. Misconduct Related Discipline: Demotion**

command, or the allegations set forth in the written discipline.

- (5) If the subject officer presents evidence, the command's representative may present rebuttal evidence.
- (6) Both the command representative and the subject officer (or the subject officer's representative) will have an opportunity to make a closing statement in support of their respective positions, with the command representative having both the first and last opportunity.

xi. After the Appeal Hearing.

(a) Written statement of decision.

- (1) At the conclusion of the hearing, and after consideration of the evidence presented, the hearing officer will issue a written statement of decision.
- (2) The decision should be delivered to the employee within a reasonable amount of time, based on the circumstances of the case, not to exceed 60 calendar days.
- (3) The statement of decision will separately address each allegation presented, including:
  - (i) Analyses of the evidence regarding the original sustained findings.
  - (ii) Specific findings of facts relevant to, or underlying, the allegations.
  - (iii) Conclusions regarding each allegation (e.g., upholding, or modifying the original findings).
  - (iv) In cases in which the level of discipline is contested, an analysis of this issue and a statement of decision with respect to the level of discipline imposed (e.g., whether the level will be upheld, increased, or decreased).

(b) Discipline upheld.

### Section III. Misconduct Related Discipline: Demotion

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- (1) If the discipline is upheld, the final Notice of Discipline is prepared by the Commanding Officer or designee.
  - (2) The final Notice of Discipline includes documentation that the subject has had their Intra-Departmental Appeal Hearing and Skelly Meeting with the results of the hearing and meeting.
  - (3) The routing and review of the discipline package continues beginning with Step 8 on the Disciplinary Package Checklist and continues through Step 16. The discipline package must include all attachments listed in the investigation and the Advance Notice of Adverse Action during the routing process.
- (c) Discipline increased.

The employee may be entitled to further appeal rights commensurate with the recommended increased discipline. The command should contact a Police Legal Advisor for assistance.

- (d) Discipline decreased.
- (1) The original Advance Notice of Adverse Action is retained in the discipline package.
  - (2) A Final Notice of Discipline is prepared.
    - (i) If the discipline is decreased to a Note of Counseling or a Written Warning, the Command follows the procedure for the modified discipline outlined in [Section III.E.2.b.](#), Note of Counseling, and [Section III.E.2.c.](#), Written Warning. There are no further appeals.
    - (ii) If the discipline is decreased to a Reprimand, refer to the procedure outlined in [Section III.E.2.d.](#), Reprimand. If decreased to a Reprimand, the employee may request a Mayoral Appeal outlined in [Section III.E.2.d.](#)

### Section III. Misconduct Related Discipline: Demotion

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- (iii) If the recommended discipline is decreased to a Suspension, refer to the procedure [Section III.E.2.e.](#), Suspension.

- (e) Discipline overturned.

If the Commanding Officer overturns the proposed discipline, the Final Notice of Discipline is not prepared. The discipline package and investigation are retained per [Section I.I.](#), Personnel Files.

- xii. Serving the Final Notice of Discipline.

- (a) Once the disciplinary review process is completed, the discipline package is returned to the Commanding Officer to issue the Final Notice of Demotion.

- (b) The Notice of Demotion may be served immediately. Employee representation is not required when the Notice of Demotion is served.

- (c) The Commanding Officer schedules a meeting with subject employee to serve the Notice of Demotion.

- (d) The employee reads and signs the Notice of Demotion. If the employee refuses to sign, the Commanding Officer shall note on the document “employee refused to sign.”

- (e) The original Notice of Demotion will be provided to the subject employee.

- (f) The command keeps a signed copy of the Notice of Demotion (or unsigned with proper notation to that effect) and all original attached documents.

- (g) A copy of the Notice of Demotion is placed in the employee’s divisional file.

- (h) The discipline package and investigation are retained per [Section I.I.](#), Personnel Files.

- xiii. Civil Service Commission Appeal.

- (a) A permanent employee has a right to a Civil Service Appeal for disciplinary actions including Demotion,

### **Section III. Misconduct Related Discipline: Demotion**

Suspension or Termination and accompanying Disciplinary Transfers.

- (b) An employee who wishes to appeal to the Civil Service Commission must submit the appeal in writing to the City's Personnel Director's Office within five (5) calendar days of receiving the Notice of Demotion.
- (c) The Civil Service Commission may affirm the discipline. If affirmed, the Civil Service Commission finding is filed in the employee's permanent Police Human Resources file.
- (d) The Civil Service Commission may modify the discipline. If modified, the discipline is returned to the Department for modification.
- (e) The Civil Service Commission may overturn the discipline. If overturned, the Civil Service Commission's written decision shall be maintained in the subject officer's personnel file.

xiv. [Templates.](#)

#### **g. Disciplinary Transfer.**

i. General.

- (a) A Disciplinary Transfer is a punitive transfer of an officer from one assignment to another.
- (b) A Disciplinary Transfer is always in conjunction with a Reprimand, Suspension, or Demotion.
- (c) A Disciplinary Transfer must be issued in writing by the Commanding Officer in conjunction with a Reprimand; and the Chief of Police in conjunction with a Suspension or Demotion.
- (d) Disciplinary Transfers in Relation to Other Actions.
  - (1) A Disciplinary Transfer should not be confused with a management decision to transfer an officer for the good of the organization, which is at the Chief's discretion and authorized per [Department Procedure 5.07](#) and [Article 9 of the MOU](#).

### **Section III. Misconduct Related Discipline: Disciplinary Transfer**

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- (2) Transfer Pending Investigation: For information on transfers pending investigation, see [Section III.D.4.a.](#), “Temporary Transfer Pending Investigation.”
  - (e) Preparing Disciplinary Transfer documents.
    - (1) A Disciplinary Transfer must specifically identify the purpose of the transfer and explain the potential for Termination unless there is immediate improvement.
    - (2) [Templates.](#)
- ii. Disciplinary Transfer with a Reprimand.
  - (a) In general.
    - (1) Reasonable notice prior to the effective date of transfer is required, oral notice is sufficient.
    - (2) There is no right to a Skelly Meeting.
    - (3) The subject officer has a right to a Chief’s Appeal.
    - (4) The Disciplinary Transfer should not be effective until all appeal rights are exhausted.
  - (b) Follow [Section III.E.2.d.](#), Reprimand, on the discipline process start to finish.
- iii. Disciplinary Transfer with a Suspension or Demotion.
  - (a) In general.
    - (1) Advance Notice is required in writing.
    - (2) The subject officer has a right to a Skelly Meeting.
    - (3) The subject officer has a right to a Chief’s Appeal.
    - (4) The Disciplinary Transfer, and Suspension or Demotion, should not be effective until all appeal rights are exhausted.

### **Section III. Misconduct Related Discipline: Disciplinary Transfer**

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- (b) Follow [Section III.E.2.e.](#), Suspension, or [Section III.E.2.f.](#), Demotion, on the discipline process start to finish.
- (c) Notification to Payroll.

If the Disciplinary Transfer is accompanied by a Suspension, the Commanding Officer gives [Notification to Payroll](#) of the Suspension by the end of the next business day. If the Disciplinary Transfer is accompanied by a Demotion, the notification to Payroll is done by Police Human Resources after they receive the discipline package from the Commanding Officer.

#### **h. Termination.**

- i. General.
  - (a) Termination is the most serious and severe disciplinary action.
  - (b) Termination must be issued in writing, after written Advance Notice of Termination has been served on the subject officer.
  - (c) Termination is imposed with the approval of the Chief of Police. The Termination must specifically identify the reason(s) for the Termination.
- ii. Preparing the Advance Notice of Adverse Action.
  - (a) A Termination requires a supervisor's investigation.
  - (b) The Commanding Officer or designee prepares the Advance Notice document.
  - (c) The Notice documents (Advance Notice of Adverse Action and Notice of Termination) must specifically identify the reason(s) for the Termination.
- iii. Routing the Discipline Package for Review and Approval.
  - (a) Once the appropriate discipline (Termination) has been decided upon by the command, the discipline package must be routed for review and approval.



### **Section III. Misconduct Related Discipline: Termination**

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- (b) The [Disciplinary Package Checklist](#) is the coversheet on the discipline package and accompanies the package as it is routed.
  - (c) Discipline Packages must be sealed, hand-delivered and shall not be sent via inter-office mail.
  - (d) The routing ensures that the package is complete, lawful, within policy, fair, and consistent with the Department's [Goals and Objectives](#) statement.
  - (e) Each reviewer signs and dates the Disciplinary Package Checklist after his or her review is complete.
- iv. Disciplinary Package Checklist.

**Steps 1-6 in the Disciplinary Review and Routing Process ([Disciplinary Package Checklist](#)) are completed prior to the service of the Advance Notice of Adverse Action. Steps 8-11 on the Checklist are completed during the Skelly Meeting and/or Chief's Appeal, or the waiver of appeal rights by the subject employee. Steps 12-16 on the Checklist are completed during the routing of the Final Notice of Discipline.**

- (a) Prepared By: Once the appropriate discipline is determined by the command, the preparing supervisor signs, ensuring that the package is complete. The discipline package must include all attachments listed in the investigation during the entire routing process.
- (b) Concurrence of Second Level: The second level supervisor signs, ensuring that the package is complete, and hand-delivers the package to his/her Commanding Officer.
- (c) Approved by Commanding Officer: The Commanding Officer signs and approves submitting the package to Police Human Resources.
- (d) Police Human Resources Review: The Human Resources Analyst reviews the package to ensure proper format, correct violations and proper notifications are included. Police Human Resources will also ensure all MOU issues are addressed and all attachments are included. Police Human Resources will review and advise the Commanding Officer if the suggested discipline is not consistent

### Section III. Misconduct Related Discipline: Termination

with past discipline of similar circumstances. After the Human Resources review, the discipline package is hand-carried to Police Legal.

- (e) Police Legal Advisor Review: The Legal Advisor reviews the package to ensure all legal requirements have been met. The Police Legal Advisor, where appropriate, is responsible for contacting Labor Relations. After a legal advisor completes the review and approves the package, it is returned to the Commanding Officer.
- (f) Date Returned to Commanding Officer: The package is returned to the Commanding Officer for service of the Advance Notice of Adverse Action (Termination).
- (g) Advance Notice of Adverse Action: Date Advance Notice of Adverse Action is served on subject employee.

**NOTE: Steps 8-11 on the Checklist are completed during the Skelly Meeting and/or Chief's Appeal, or the waiver of appeal rights by the subject employee.**

- (h) Results of Skelly Meeting and Notice of Department Appeals Rights, including date served.
- (i) Approved by Assistant Chief: The Assistant Chief of the subject officer's command must approve all recommendations for formal discipline.
- (j) Appeal Filed: If an appeal is filed, include the date filed.
- (k) Department Appeal results. Must include the date of the hearing and the findings.

**NOTE: Steps 12-16 on the Checklist are completed during the routing of the Final Notice of Discipline.**

- (l) Police Human Resources review of the final Notice. Must include the date reviewed.
- (m) Police Legal Advisor review of the final Notice. Must include the date reviewed.

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- (n) Approval of Executive Assistant Chief: The Executive Assistant Chief must approve all discipline, including a Reprimand or higher. This review is to ensure consistency, fairness and appropriateness of proposed discipline.
  - (o) Approved by Chief of Police: The Chief of Police will review all formal EEO and IA investigations resulting in a sustained finding and any discipline resulting from a Category I citizen complaint. Furthermore, the Chief will review all “Not Within Policy” officer-involved shootings.
  - (p) Final Notice - Date Served: Date the Final Notice of Termination was served on the subject employee.
- v. Corrections or Changes to Discipline Package during the Routing Process.
- (a) Minor Corrections.
    - (1) Minor corrections are those corrections that do not influence the finding(s) or discipline recommendation(s) of the case.
    - (2) If a reviewer determines that minor corrections need to be made (e.g.: punctuation, spelling, etc.), the package may be sent on to the next reviewer for further review, prior to being returned to the Commanding Officer.
    - (3) If the discipline package is returned to the Commanding Officer for minor changes, the package is returned directly to the reviewer who requested the change(s) to complete the review process.
  - (b) Major Changes.
    - (1) A major change is substantive and changes the recommended level of discipline or finding(s).
    - (2) If a reviewer determines the level of discipline or finding(s) should be changed, the package is returned to the Commanding Officer.

### **Section III. Misconduct Related Discipline: Termination**

- (3) After the Commanding Officer makes the requested change(s), the package is routed again from the beginning using the same Disciplinary Package Checklist.
  - (4) During the second review process, each reviewer initials and dates to the right of his or her original signature.
- vi. Serving the Advance Notice of Adverse Action Document.
- (a) Once the steps 1-6 of the disciplinary review process are completed, the discipline package is returned to the Commanding Officer to issue the Advance Notice of Adverse Action.
  - (b) The Advance Notice of Adverse Action is provided to the subject employee facing discipline of Termination.
  - (c) The Advance Notice of Adverse Action notifies the subject employee of the pending recommended discipline.
  - (d) The Commanding Officer schedules a meeting with the subject employee to serve the Advance Notice of Adverse Action document.
  - (e) The Advance Notice of Adverse Action may be served immediately. Employee representation is not required when the Advance Notice of Adverse Action is served.
  - (f) The employee reads and signs the Advance Notice. If the employee refuses to sign, the Commanding Officer shall note "Employee refused to sign."
  - (g) The employee receives the original of the Advance Notice of Adverse Action.
    - (1) Copies of attachments may be given upon request of the subject employee.
    - (2) An IA report may be reviewed upon a request to the IA Unit.
    - (3) An EEO report may be reviewed upon a request to the EEO Unit.

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- (h) The command keeps a copy of the signed Advance Notice of Adverse Action and all original attachments.
- vii. After Advance Notice of Adverse Action is Served.
  - (a) If the employee accepts the discipline.
    - (1) The Skelly Meeting and Chief's Appeal are waived.
    - (2) The final Notice of Discipline is prepared by the Commanding Officer or designee.
    - (3) The final Notice of Discipline includes documentation that the subject employee has waived their appeal rights.
    - (4) The routing and review of the discipline package continues beginning with Step 8 on the Disciplinary Package Checklist and continues through Step 16. The discipline package must include all attachments listed in the investigation and the Advance Notice of Adverse Action during the routing process.
  - (b) If the employee challenges the recommended discipline.
    - (1) A permanent employee has a right to a Skelly Meeting and a Chief's Appeal.
    - (2) The request for a Skelly Meeting must be made to the Commanding Officer either orally or in writing, by a date and time specified by the Commanding Officer.
    - (3) An employee may waive a Skelly Meeting, but still request a Chief's Appeal.
    - (4) A request for a Chief's Appeal must be in writing and must be directed to the Chief's Office within ten (10) working days of receiving the Advance Notice of Adverse Action.
- viii. The Skelly Meeting.
  - (a) General information regarding the Skelly Meeting.

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- (1) A Skelly Meeting occurs after an employee receives Advance Notice of recommended discipline, and prior to imposing the recommended discipline.
  - (2) The purpose of a Skelly Meeting is to minimize the risk of error in the initial decision to discipline.
  - (3) Probationary employees are not entitled to a Skelly Meeting, but they may be entitled to a Chief's Appeal.
- (b) Conducting the Skelly Meeting.
- (1) A Skelly Meeting is an informal meeting.
  - (2) The Commanding Officer meets with the subject employee and his/her representative.
  - (3) The Skelly Meeting is the subject employee's opportunity to respond to the allegations set forth in the Advance Notice of Adverse Action document.
  - (4) The Commanding Officer may uphold, modify, or overturn the recommended discipline.
- ix. After the Skelly Meeting.
- (a) The Commanding Officer completes the memorandum of decision ([Notice of Departmental Appeal Rights](#)).
  - (b) The decision should be delivered to the employee within a reasonable amount of time, based on the circumstances of the case, not to exceed fourteen (14) calendar days.
  - (c) The memorandum of decision will say whether discipline is upheld, modified or overturned.
    - (1) Discipline upheld.
      - (i) The employee accepts the discipline.
        - (aa) The Chief's Appeal is waived.

### Section III. Misconduct Related Discipline: Termination

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- (bb) The final Notice of Discipline is prepared by the Commanding Officer or designee.
  - (cc) The final Notice of Discipline includes documentation that the subject has waived their Chief's Appeal rights.
  - (dd) The routing and review of the discipline package continues beginning with Step 8 on the Disciplinary Package Checklist and continues through Step 16. The discipline package must include all attachments listed in the investigation and the Advance Notice of Adverse Action during the routing process.
- (ii) If the employee challenges the discipline, the subject employee may continue the appeal to the Chief of Police.
- (2) Discipline decreased.
- (i) If the recommended discipline is decreased to a Note of Counseling or Written Warning, the Command follows the procedure for the modified discipline outlined in [Section III.E.2.b.](#), Note of Counseling, and [Section III.E.2.c.](#), Written Warning. There are no further appeals.
  - (ii) If the recommended discipline is decreased to a Reprimand, refer to the procedure outlined in [Section III.E.2.d.](#), Reprimand.
  - (iii) If the recommended discipline is decreased to a Suspension, refer to the procedure outlined in [Section III.E.2.e.](#), Suspension.

### Section III. Misconduct Related Discipline: Termination

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(iv) If the recommended discipline is decreased to a Demotion, refer to the procedure outlined in [Section III.E.2.f.](#), Demotion.

(3) Discipline overturned.

If the Commanding Officer overturns the proposed discipline, the Final Notice of Discipline is not prepared. The investigation is retained per [Section I.I.](#), Personnel Files.

x. Intra-Department Appeal Hearing regarding Termination.

(a) General information regarding the appeal hearing.

(1) This is an evidentiary hearing.

(2) The command has the burden of proof at the hearing. The command must present through testimony and exhibits, enough evidence to support its claim.

(3) The standard of proof is by a preponderance of the evidence, which is described as just enough evidence to make it “more likely than not” that what the command seeks to prove is true.

(4) As in Civil Service Commission appeal hearings, the burden cannot be met by uncorroborated hearsay evidence. Pre-recorded and summarized interviews of witness statements will be considered substantial evidence and may be accepted into evidence.

(b) The Appeal Hearing Officer.

(1) The Appeal Hearing Officer for a Termination will be an Assistant Chief not in the disciplined officer’s chain of command.

(2) The Hearing Officer may read investigative reports and supporting documents to properly prepare and budget appropriate time for the hearing. However, to ensure



### **Section III. Misconduct Related Discipline: Termination**

neutrality of the hearing, the Hearing Officer may not consider the investigative reports or supporting documents unless they are introduced and accepted into evidence during the course of the hearing.

- (c) Conducting the Appeal Hearing.
  - (1) The command may be represented at the hearing by the Commanding Officer or the Commanding Officer's designee (e.g., Lieutenant or Sergeant).
  - (2) The hearing officer will swear in each witness prior to his or her testifying.
    - (i) Each Department employee witness, prior to testifying, will be admonished by the hearing officer regarding his/her obligation under the Department's policies and procedures, to testify truthfully.
    - (ii) The hearing officer will admonish each non-employee witness, prior to his or her testifying, of the obligation to be truthful.
  - (3) The command representative will present evidence on behalf of the command and may call witnesses in furtherance of meeting its burden of proof.
  - (4) At the conclusion of the presentation of the command's evidence, the subject officer or his/her representative may present evidence in response to the evidence presented by the command, or the allegations set forth in the written discipline.
  - (5) If the subject officer presents evidence, the command's representative may present rebuttal evidence.
  - (6) Both the command representative and the subject officer (or the subject officer's representative) will have an opportunity to make a closing statement in support of their respective positions, with the command

### **Section III. Misconduct Related Discipline: Termination**

representative having both the first and last opportunity.

- xi. After the Appeal Hearing.
  - (a) Written statement of decision.
    - (1) At the conclusion of the hearing, and after consideration of the evidence presented, the hearing officer will issue a written statement of decision.
    - (2) The decision should be delivered to the employee within a reasonable amount of time, based on the circumstances of the case, not to exceed 60 calendar days.
    - (3) The statement of decision will separately address each allegation presented, including:
      - (i) Analyses of the evidence regarding the original sustained findings.
      - (ii) Specific findings of facts relevant to, or underlying, the allegations.
      - (iii) Conclusions regarding each allegation (e.g., upholding, or modifying the original findings).
      - (iv) In cases in which the level of discipline is contested, an analysis of this issue and a statement of decision with respect to the level of discipline imposed (e.g., whether the level will be upheld or decreased).
  - (b) Discipline upheld.
    - (1) If the discipline is upheld, the final Notice of Discipline is prepared by the Commanding Officer or designee.
    - (2) The final Notice of Discipline includes documentation that the subject has had their Intra-Departmental Appeal Hearing and Skelly Meeting with the results of the hearing and meeting.

### Section III. Misconduct Related Discipline: Termination

- (3) The routing and review of the discipline package continues beginning with Step 8 on the Disciplinary Package Checklist and continues through Step 16. The discipline package must include all attachments listed in the investigation and the Advance Notice of Adverse Action during the routing process.
- (c) Discipline decreased.
- (1) The original Advance Notice of Adverse Action is retained in the discipline package.
  - (2) A Final Notice of Discipline is prepared:
    - (i) If the recommended discipline is decreased to a Note of Counseling or Written Warning, the Command follows the procedure for the modified discipline outlined in [Section III.E.2.b.](#), Note of Counseling, and [Section III.E.2.c.](#), Written Warning. There are no further appeals.
    - (ii) If the recommended discipline is decreased to a Reprimand, refer to the procedure outlined in [Section III.E.2.d.](#), Reprimand.
    - (iii) If the recommended discipline is decreased to a Suspension, refer to the procedure outlined in [Section III.E.2.e.](#), Suspension.
    - (iv) If the recommended discipline is decreased to a Demotion, refer to the procedure outlined in [Section III.E.2.f.](#), Demotion.
- (d) Discipline overturned.

If the discipline has been overturned in its entirety, the discipline package and investigation are retained per [Section I.I.](#), Personnel Files.

### **Section III. Misconduct Related Discipline: Termination**

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- xii. Serving the Final Notice of Discipline.
  - (a) Once the disciplinary review process is completed, the discipline package is returned to the Commanding Officer to issue the Final Notice of Termination.
  - (b) The Notice of Termination may be served immediately. Employee representation is not required when the Notice of Termination is served.
  - (c) The Commanding Officer schedules a meeting with subject employee to serve the Notice of Termination.
  - (d) The employee reads and signs the Notice of Termination. If the employee refuses to sign, the Commanding Officer shall note on the document “employee refused to sign.”
  - (e) The original Notice of Termination will be provided to the subject employee.
  - (f) The command keeps a signed copy of the Notice of Termination (or unsigned with proper notation to that effect) and all original attached documents.
  - (g) A copy of the Notice of Termination is placed in the employee’s divisional file.
  - (h) The investigation is retained per [Section I.I.](#), Personnel Files.
  
- xiii. Civil Service Commission Appeal.
  - (a) A permanent employee has a right to a Civil Service Appeal for disciplinary actions including Demotion, Suspension or Termination and accompanying Disciplinary Transfers.
  - (b) An employee who wishes to appeal to the Civil Service Commission must submit the appeal in writing to the City’s Personnel Director’s Office within five (5) calendar days of receiving the Notice of Termination.
  - (c) The Civil Service Commission may affirm the discipline. If affirmed, the Civil Service Commission finding is filed in the employee’s permanent Police Human Resources file.

### Section III. Misconduct Related Discipline: Termination

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- (d) The Civil Service Commission may modify the discipline. If modified, the discipline is returned to the Department for modification.
- (e) The Civil Service Commission may overturn the discipline. If overturned, the Civil Service Commission's written decision shall be maintained in the subject officer's personnel file.

xiv. [Templates.](#)

3. Untruthfulness

Untruthfulness occurs when an employee willfully states as true any material matter, which he or she knows to be false, with a deliberate intent to deceive. ([Department Policy 9.29](#) Truthfulness)

- a. A material matter is defined as any matter relating to the operations of the Department.
- b. Upon a finding of untruthfulness that significantly affects Department operations and causes Department management to lose confidence in the officer's ability to be truthful in the future, or loss of public trust, or loss of credibility in court, the recommendation shall be Termination.

4. Outside Employment

[Department Procedure 5.12](#) allows Commanding Officers the ability to deny or revoke outside employment when such employment detrimentally affects the employee's job performance and/or discredits the employee or the Department.

- a. The Chief of Police (or designee) may revoke an approval of outside employment at any time.
  - i. The employee must be provided with a notice in writing of such revocation, including the specific reasons and effective dates.
  - ii. The employee may request an appeal to the Chief of Police within ten (10) working days of receipt of such notice.
- b. If a sworn employee appeals the outside employment revocation, the employee may continue working the outside employment until the appeal is heard, unless emergency or aggravated circumstances are identified.

### **Section III. Misconduct Related Discipline: Untruthfulness/Outside Employment**

- c. In an effort to maintain consistency, the following shall be considered when revoking outside employment based on employee misconduct:
    - i. Did the misconduct arise from the outside employment?
    - ii. Will outside employment perpetuate or possibly lead to future misconduct?
  - d. If outside employment is revoked and the affected employee appeals the revocation, a hearing will be held by an Assistant Chief.
    - i. This is not an evidentiary hearing. This is an informal hearing similar to a Skelly Meeting.
    - ii. The decision of the Assistant Chief will be final.
5. Removal from Special Assignments or Eligibility Lists
- a. When preparing discipline, Commanding Officers should consider the employee's current specialized assignment and/or placement on any eligibility list (e.g., F.T.O., Bike Team, Beach Team, etc.). If appropriate, the proposed discipline should specifically address removal from the assignment or the eligibility list. Removal from a special assignment is a Disciplinary Transfer.
  - b. Prior to removal from an eligibility list, the candidate will be afforded an opportunity to meet with the Chief or his/her designee. The purpose of the meeting is for the candidate to present information as to why the removal should not be approved. Candidates removed from the eligibility list will be required to reapply when applications are again accepted.
  - c. In cases of discipline, the candidate's Commanding Officer may make a recommendation that the candidate be temporarily removed from an eligibility list depending on the nature of the offense. If the Chief or his/her designee agrees, the candidate will be reinstated to the eligibility list at the conclusion of the agreed upon time period. The Chief retains the right to remove candidates from, or reinstate them to, the eligibility list regardless of the Commanding Officer's recommendation.
6. Last Chance Agreements
- a. Offered in Lieu of More Serious Discipline
- A Last Chance Agreement in conjunction with a recommended level of discipline may be offered to officers in lieu of a recommendation for more serious discipline. For example, in lieu

#### Section IV. Performance Related Discipline: Employee Performance Review Program

of termination, an employee may be offered a four-day suspension with a Last Chance Agreement.

b. Advance Notice of Last Chance Agreement

When the circumstances warrant giving an officer a last chance, the Advance Notice of Adverse Action should be prepared with the Last Chance Agreement. The “Subject” of the Advance Notice should indicate the recommended (lower) level of discipline and Last Chance Agreement. For example, “Suspension and Last Chance Agreement.” The body of the Advance Notice document should give the subject officer notice that the recommended discipline (Suspension) and Last Chance Agreement is in lieu of a recommendation for a more severe level of discipline (Termination). For example, “This recommendation for Suspension and a Last Chance Agreement is in lieu of Termination.”

c. Last Chance Agreement Accepted

The Last Chance Agreement is served upon the subject officer at the same time he or she is served with the Advance Notice. If the subject Officer accepts the recommended discipline, he/she signs the Last Chance Agreement and returns the document to his/her Commanding Officer within the time period indicated in the Advance Notice document or at the Skelly Meeting, if one is conducted.

When the Last Chance Agreement is returned to the Commanding Officer, the Final Notice document is prepared. The body of the Final Notice should indicate that the Advance Notice was served on a particular date, and the Last Chance Agreement was agreed to and returned.

d. Last Chance Agreement Not Accepted

If an Officer is served with Advance Notice with a Last Chance Agreement and chooses not to accept the Last Chance Agreement, the Command prepares an *Amended* Advance Notice document. The Subject of the Amended Advance Notice should indicate the recommended (higher) level of discipline. For example, “Termination.” The body of the *Amended* Advance Notice document should indicate that the original Advance Notice was for a lower level of discipline (Suspension) with a Last Chance Agreement, which was declined. For example, “This Advance Notice is amended from a recommendation for Suspension with a Last Chance Agreement, which you declined.”

**Section IV. Performance Related Discipline: When to Use a Performance Plan/Decision to take Disciplinary Action/ Deficient Performance Reported, Discovered, Suspected or Observed**

e. Last Chance Agreement with Reprimand

If a Last Chance Agreement is offered with a Reprimand, in lieu of termination, then advance notice is not required; however, the subject officer is required to accept and sign the Last Chance Agreement at the time the Reprimand is served. If the subject officer declines to sign the Last Chance Agreement, then the Reprimand and Last Chance Agreement should not be served and, instead, the Command prepares an Advance Notice of Termination. The Advance Notice of Termination should state that a Reprimand with a Last Chance Agreement was offered and declined. For example, "This Advance Notice was prepared after you declined to accept a Reprimand with a Last Chance Agreement."

**IV. Performance Related Discipline**

**A. Employee Performance Review Program.**

The foundation for disciplinary action resulting from poor job performance is the Employee Performance Review Program. For more information see the [City of San Diego Personnel Manual, Section G7A.](#)

1. The Employee Performance Review Program provides an opportunity to document the area(s) of poor job performance and to discuss them with the employee. It is comprised of the following elements:
  - a. The Performance Plan sets the standards and expectations for the employee.
  - b. The Supervisor-Employee Conference/Overall Performance Report form is used to document an employee's actual performance compared to job criteria at regularly scheduled intervals.
  - c. The Supplemental Performance Report is used to document exceptionally good or exceptionally poor work performance between regular evaluations.
  - d. The Performance Development Plan provides concrete steps for the employee to follow in order to improve deficient performance.

**B. When to use a Performance Plan.**

Performance related problems are generally related to standards contained in the Performance Plan. Discipline is appropriate for:

1. Failure to meet minimum job standards.
2. Inadequate quality or quantity of work by an employee.



**Section IV. Performance Related Discipline: When to Use a Performance Plan/Decision to take Disciplinary Action/ Deficient Performance Reported, Discovered, Suspected or Observed**

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3. Excessive unscheduled leave ([SDPOA MOU Article 18](#), [Personnel Manual](#)).
4. Failure to follow directions from a supervisor.
5. Job mistakes.

**C. Decision to take disciplinary action.**

The decision that an employee's work performance is unsatisfactory and requires disciplinary action should be made only after:

1. The immediate supervisor is certain that the employee knows what level of performance is expected, via the signed Employee Performance Plan.
2. The employee has been given the requisite training and sufficient opportunity to meet the expected level of performance.

**D. Deficient Performance Reported, Discovered, Suspected or Observed.**

1. Deficient performance can come to the attention of the immediate supervisor in a number of ways, including:
  - a. Personal observation.
  - b. Report from another department employee.
  - c. Citizen complaint.
  - d. Another law enforcement or government agency.
2. If the immediate supervisor observes deficient performance:
  - a. The employee should be notified immediately.
  - b. The employee should be directed to correct the deficiency.
3. A report of deficient performance should be evaluated prior to addressing the allegation.
4. A citizen's complaint should be reviewed to determine whether the performance issue involved misconduct. If misconduct is identified, the investigation should be conducted as outlined in [Section III](#), Misconduct Related Discipline.

**E. Assessment and Determination of Appropriate Action.**

#### **Section IV. Performance Related Discipline: Verbal Counseling/Additional Training**

1. When a supervisor becomes aware of deficient performance the supervisor will make an initial assessment.
  - a. If unfamiliar with the employee's history the immediate supervisor should review the employee's personnel file and past Employee Performance Reports for any similar performance issues.
  - b. If past performance issues were documented, determine what corrective measures were taken and what discipline was imposed.
2. Discipline for minor failures to meet an established standard usually begins with a Verbal Counseling. The majority of employees respond to Verbal Counseling and no further disciplinary correction is required.
3. When the supervisor believes more serious discipline is warranted, the supervisor should immediately notify the next level supervisor and Commanding Officer.
4. The Commanding Officer, in conjunction with the second level supervisor and the immediate supervisor, will determine the appropriate course of action to correct the performance deficiency. When determining the appropriate course of action, consideration should be given to the following:
  - a. Expected skill level of the officer (e.g., length of service).
  - b. Previous training and knowledge.
  - c. Expectations were clearly identified and understood.
  - d. Performance history.
  - e. Willingness to correct deficient performance.

#### **F. Tools for Correcting Performance Deficiencies.**

##### **1. Verbal Counseling.**

- a. Verbal Counseling should be the first step in correcting deficient or incompetent performance.
- b. Verbal Counseling is generally used to address specific, non-misconduct, employee performance issues.
- c. Verbal Counseling may be both a training and a disciplinary tool.
- d. Verbal Counseling should be used to assist employees in improving their performance by advising them of both positive and negative performance.
- e. No notes or written record shall be created.

**Section IV. Performance Related Discipline: Verbal Counseling/Additional Training**

- f. The counseling should occur in person, in private, in a constructive problem-solving manner consistent with the [Goals and Objectives](#) Statement of the Department.
- g. Supervisors should remind employees of the availability of the following City services whenever it appears the employee might be facing difficult work related or personal issues:
  - i. The Department's psychological services.
  - ii. The Department's Wellness and Medical Assistance Units are available to advise employees and supervisors about these services.

**2. Additional Training.**

- a. Supervisors are encouraged to provide regular, ongoing training to subordinate employees.
- b. The purpose of additional training is to provide the deficient officer with skills necessary to perform a specific aspect of the job function.
- c. Additional training should not be used to support anticipated discipline. Training is a tool to assist an employee to improve.
- d. Types of Additional Training.
  - i. Informal Training.
    - (a) Includes providing direction to the deficient officer.
    - (b) Individual training for a specific task that can be administered by the immediate supervisor or other department resources.
  - ii. Formal Training.
    - (a) City of San Diego training courses, offered through Risk Management, Human Resources, or the City's Equal Employment Investigations Office.
    - (b) MENU Training, offered through In-Service Training at the Regional Academy.
    - (c) Peace Officer's Standards and Training (POST) courses specifically related to the deficiency or work function.

**Section IV. Performance Related Discipline: Additional Training/Note of Counseling**

- (d) Other classroom training sponsored by a recognized training group or entity.
- (e) Seminars related to a work function.
- e. All additional training, and the purpose for such training, should be documented in the employee's Supervisor-Employee Conference/Overall Performance Report or Supplemental Performance Report.
- f. If additional training does not correct the performance deficiency, or the employee refuses additional training and the performance remains below standard, a Note of Counseling should be the next step in the progressive discipline process.

**3. Note of Counseling.**

- a. When to Use a Note of Counseling.
  - i. A Note of Counseling is documented counseling between a supervisor and a subordinate regarding a specific problem with the employee's performance.
  - ii. A Note of Counseling may also be used for a very minor instance of misconduct. See [Section III.E.2.b.](#), Misconduct Related Discipline, Note of Counseling.
- b. Preparing the Note of Counseling.
  - i. A Note of Counseling may or may not require a supervisor's investigation depending on the circumstances of the employee's misconduct.
  - ii. If the immediate supervisor determines a Note of Counseling is the appropriate form of discipline, the second level supervisor will be notified for concurrence.
  - iii. If the second level supervisor concurs that a Note of Counseling is the appropriate discipline, the Note of Counseling may be served to the subject officer.
  - iv. Notes of Counseling are imposed with the approval of the Commanding Officer and, therefore, do not require higher approval.
- c. Serving the Note of Counseling.
  - i. A Note of Counseling requires advance notice to the subject officer, but oral notice is sufficient.

**Section IV. Performance Related Discipline: Written Warning/Supplemental Performance Report**

- ii. There is no right to a Skelly Meeting.
  - iii. The immediate supervisor should schedule a time to meet with the subject employee to serve the Note of Counseling.
  - iv. The immediate supervisor must allow ample time for representation if requested by the subject employee (if no prior interview with the subject officer as part of an investigation).
- d. After the Note of Counseling is Served.
- i. If the employee accepts the discipline.
    - (a) The right to appeal is waived.
    - (b) The Note of Counseling is placed in the subject officer's divisional file for up to one year.
    - (c) The subject officer has the right to attach a rebuttal to the Note of Counseling.
      - (1) The rebuttal must be submitted within 30 calendar days.
      - (2) The rebuttal will remain attached until the discipline is removed.
  - ii. If the employee challenges the discipline.
    - (a) He or she has a right to an Intra-Department Appeal.
    - (b) The appeal must be directed to the Chief's Office within ten (10) working days of receiving the Note of Counseling.
- e. Intra-Department Appeal Hearing regarding a Note of Counseling.
- i. General information regarding the hearing.
    - (a) This is an evidentiary hearing.
    - (b) The command has the burden of proof at the hearing. The command must present through testimony and exhibits, enough evidence to support its claim.
    - (c) The standard of proof is by a preponderance of the evidence, which is described as just enough

**Section IV. Performance Related Discipline: Written Warning/Supplemental Performance Report**

evidence to make it “more likely than not” that what the command seeks to prove is true.

- (d) As in Civil Service Commission appeal hearings, the burden cannot be met by uncorroborated hearsay evidence.
  - (e) Pre-recorded and summarized interviews of witness statements will be considered substantial evidence and may be accepted into evidence.
- ii. The Appeal Hearing Officer.
- (a) The Appeal Hearing Officer for a Note of Counseling will be a Commanding Officer.
  - (b) If the employee’s Commanding Officer had a role in the original decision to discipline, another Commanding Officer must serve as the Hearing Officer.
  - (c) The Hearing Officer may read investigative reports and supporting documents to properly prepare and budget appropriate time for the hearing. However, to ensure neutrality of the hearing, the Hearing Officer may not consider the investigative reports or supporting documents unless they are introduced and accepted into evidence during the course of the hearing.
  - (d) The Hearing Officer may uphold, modify, or overturn the Note of Counseling.
  - (e) The decision of the Hearing Officer is final.
- iii. Conducting the Appeal Hearing.
- (a) The command may be represented at the hearing by the Commanding Officer or the Commanding Officer’s designee (e.g., Lieutenant or Sergeant).
  - (b) The hearing officer will swear in each witness prior to his or her testifying.
    - (1) Each Department employee witness, prior to testifying, will be admonished by the hearing officer regarding his/her obligation under the Department’s policies and procedures, to testify truthfully.

**Section IV. Performance Related Discipline: Written Warning/Supplemental Performance Report**

- (2) The hearing officer will admonish each non-employee witness, prior to his or her testifying, of the obligation to be truthful.
  - (c) The command representative will present evidence on behalf of the command and may call witnesses in furtherance of meeting its burden of proof.
  - (d) At the conclusion of the presentation of the command's evidence, the subject officer or his/her representative may present evidence in response to the evidence presented by the command, or the allegations set forth in the written discipline.
  - (e) If the subject officer presents evidence, the command's representative may present rebuttal evidence.
  - (f) Both the command representative and the subject officer (or the subject officer's representative) will have an opportunity to make a closing statement in support of their respective positions, with the command representative having both the first and last opportunity.
- f. After the Appeal Hearing.
- i. Written statement of decision.
    - (a) At the conclusion of the hearing, and after consideration of the evidence presented, the hearing officer issues a written statement of decision.
    - (b) The statement of decision will say whether the discipline is being upheld, modified, or overturned.
    - (c) The statement of decision will separately address each allegation presented, including:
      - (1) Analyses of the evidence regarding the original sustained findings.
      - (2) Specific findings of facts relevant to, or underlying, the allegations.
      - (3) Conclusions regarding each allegation (e.g., upholding, overturning, or modifying the original findings).

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(4) In cases in which the level of discipline is contested, an analysis of this issue and a statement of decision with respect to the level of discipline imposed (e.g., whether the level will be upheld or increased).

(d) The decision should be delivered to the employee within a reasonable amount of time, based on the circumstances of the case, not to exceed 60 calendar days.

ii. Discipline upheld.

The discipline package and the investigation are retained per [Section I.I.](#), Personnel Files.

iii. Discipline increased.

The employee may be entitled to further appeal rights commensurate with the recommended increased discipline. The command must contact a Police Legal Advisor for assistance.

iv. Discipline overturned.

(a) The discipline package and investigation are retained per [Section I.I.](#), Personnel Files.

(b) A Note of Counseling is the lowest form of written documentation for performance related issues and cannot be further reduced, in writing; however, verbal counseling may be appropriate.

g. [Templates.](#)

**4. Written Warning.**

a. General.

i. The next step in progressive discipline for poor performance should be a Written Warning.

ii. A Written Warning is more serious than a Note of Counseling.

iii. A Written Warning should be limited to a specific problem with the employee's performance.



#### **Section IV. Performance Related Discipline: Written Warning/Supplemental Performance Report**

- iv. The Written Warning must identify the specific problem with the employee's performance and warn of more serious discipline for failing to improve.
- v. A Written Warning is the lowest form of written discipline for poor performance and cannot be further reduced.
- b. Follow [Section III.E.2.c.](#), Written Warning, on the discipline process from start to finish.

#### **5. Supplemental Performance Report.**

- a. General.
  - i. A Supplemental Performance Report provides supervisors with a tool to evaluate an employee's performance between rating periods.
  - ii. A Supplemental Performance Report should not be used to discipline an employee for misconduct. For misconduct related issues, see [Section III](#), Misconduct Related Discipline.
  - iii. Supplemental Performance Reports are prepared on a [Supplemental Performance Report](#) form.
  - iv. A [Performance Development Plan](#) must also be completed and served on the employee at the same time as the Supplemental Performance Report. The Performance Development Plan is discussed in [Section IV.F.6](#).
  - v. Supervisors complete a Supplemental Performance Report to make an official record of employee performance that has improved or deteriorated significantly from the previous Employee Performance Report.
- b. If a Note of Counseling or a Written Warning does not correct the deficient performance, the immediate supervisor should document the deficient behavior in a Supplemental Performance Report.
- c. The most difficult and important part of the Supplemental Performance Report is the narrative.
- d. Writing the Supplemental Performance Report.
  - i. Cite specific examples of performance to support the poor performance.
  - ii. Clearly identify behaviors and results, not personality traits.

#### **Section IV. Performance Related Discipline: Supplemental Performance Report**

- (a) Some raters have a tendency to give subjective opinions of the employee's "attitude" rather than describe performance.
  - (b) If an employee has a deficiency, the behaviors that lead the rater to form the opinion should be described in detail. (When a rater feels an employee has "good" or "bad" behavior, there are specific reasons for the opinion.)
  - (c) Poor performance issues should have already been discussed with the employee before the end of the rating period and should not surface as a result of the evaluation.
- iii. Clearly describe negative behaviors.
- (a) When these problems become major as the employee fails to develop, it is difficult to document exactly what was meant by vague references to deficiencies stated in earlier Employee Performance Reports. (This tends to discredit the rater, not the employee.)
  - (b) The employee needs to know what behaviors are unacceptable so he/she has an opportunity to modify the behavior.
    - (1) If an employee consistently produces less work in a shift than expected, it must be articulated.
    - (2) If an employee is continually late, explain in detail, using plain words.
- e. Serving the Supplemental Performance Report.
- i. A Supplemental Performance Report may be served on the subject officer with the approval of the Commanding Officer. No other approval is necessary.
  - ii. Employees are entitled to appropriate notice.
  - iii. Employees are entitled to representation when served with a Supplemental Performance Report.
  - iv. The subject employee must be placed on a Performance Development Plan to correct the performance deficiencies.

#### **Section IV. Performance Related Discipline: Supplemental Performance Report**

- f. If the employee accepts the discipline, the Supplemental Performance Report will be placed in the subject employee's Divisional and Department Human Resource personnel file.
- g. If the employee challenges the discipline, he or she has a right to an Intra-Department Appeal.
- h. If the employee wishes to appeal the discipline, the appeal must be directed to the Chief's Office within ten (10) working days of receiving the Supplemental Performance Report.
- i. Intra-Department Appeal Hearing regarding Supplemental Performance Reports.
  - i. General information regarding the hearing.
    - (a) This is an evidentiary hearing.
    - (b) The command has the burden of proof at the hearing. The command must present through testimony and exhibits, enough evidence to support its claim.
    - (c) The standard of proof is by a preponderance of the evidence, which is described as just enough evidence to make it "more likely than not" that what the command seeks to prove is true.
    - (d) As in Civil Service Commission appeal hearings, the burden cannot be met by uncorroborated hearsay evidence. Pre-recorded and summarized interviews of witness statements will be considered substantial evidence and may be accepted into evidence.
  - ii. The Appeal Hearing Officer.
    - (a) The Appeal Hearing Officer for a Supplemental Performance Report will be an Assistant Chief not in the disciplined officer's chain of command.
    - (b) The Hearing Officer may read investigative reports and supporting documents to properly prepare and budget appropriate time for the hearing. However, to ensure neutrality of the hearing, the Hearing Officer may not consider the investigative reports or supporting documents unless they are introduced and accepted into evidence during the course of the hearing.

**Section IV. Performance Related Discipline: Supplemental Performance Report**

- iii. Conducting the Appeal Hearing.
  - (a) The command may be represented at the hearing by the Commanding Officer or the Commanding Officer's designee (e.g., Lieutenant or Sergeant).
  - (b) The hearing officer will swear in each witness prior to his or her testifying.
    - (1) Each Department employee witness, prior to testifying, will be admonished by the hearing officer regarding his/her obligation under the Department's policies and procedures, to testify truthfully.
    - (2) The hearing officer will admonish each non-employee witness, prior to his or her testifying, of the obligation to be truthful.
  - (c) The command representative will present evidence on behalf of the command and may call witnesses in furtherance of meeting its burden of proof.
  - (d) At the conclusion of the presentation of the command's evidence, the subject officer or his/her representative may present evidence in response to the evidence presented by the command, or the allegations set forth in the written discipline.
  - (e) If the subject officer presents evidence, the command's representative may present rebuttal evidence.
  - (f) Both the command representative and the subject officer (or the subject officer's representative) will have an opportunity to make a closing statement in support of their respective positions, with the command representative having both the first and last opportunity.
- iv. After the Appeal Hearing.
  - (a) Written statement of decision.
    - (1) At the conclusion of the hearing, and after consideration of the evidence presented, the hearing officer will issue a written statement of decision.

**Section IV. Performance Related Discipline: Supplemental Performance Report**

- (2) The statement of decision will say whether the discipline is being upheld, modified, or overturned.
  - (3) The statement of decision will separately address each allegation presented, including:
    - (i) Analyses of the evidence regarding the original sustained findings.
    - (ii) Specific findings of facts relevant to, or underlying, the allegations.
    - (iii) Conclusions regarding each allegation (e.g., upholding, overturning, or modifying the original findings).
    - (iv) In cases in which the level of discipline is contested, an analysis of this issue and a statement of decision with respect to the level of discipline imposed (e.g., whether the level will be upheld, modified, or overturned).
  - (4) The decision should be delivered to the employee within a reasonable amount of time, not to exceed 60 calendar days.
- j. Supplemental Performance Report upheld, modified or overturned.
- i. If the Supplemental Performance Report is upheld.

A copy of the Supplemental Performance Report will be placed in the subject employee's divisional and Police Human Resources file.
  - ii. If modified, the report is returned to the command for modification.
    - (a) Modification may mean changing the Supplemental Performance Report to a Supervisor/Employee Conference.
    - (b) Modification may mean changing/deleting comments within the Supplemental Performance Report.
  - iii. If overturned, the Supplemental Performance Report is either:

#### **Section IV. Performance Related Discipline: Supplemental Performance Report**

- (a) Destroyed, if the Supplemental Performance Report was issued between the employee's regularly scheduled rating period dates.
  - (b) Changed to reflect that the employee satisfactorily completed the Performance Development Plan.
  - (c) The employee is served with their regularly scheduled Supervisor-Employee Conference/Overall Performance Report.
  - (d) The employee will be provided with an updated copy of the evaluation.
- iv. The decision of the hearing officer is final.
- k. The subject officer maintains the right to attach a rebuttal to the evaluation within 30 calendar days. The rebuttal will remain attached to the evaluation indefinitely.

#### **6. Performance Development Plan.**

- a. When an employee's work performance is exceptionally poor in one or more particular area(s), the employee will be required to improve performance.
  - i. The [Performance Development Plan](#) is designed to provide the employee with the direction to raise his/her level of performance.
  - ii. A Performance Development Plan should not be used to discipline an employee for misconduct. For misconduct related issues, see [Section III](#), Misconduct Related Discipline.
- b. The employee is entitled to representation when served with a Performance Development Plan.
- c. Employees receiving a Supplemental Performance Report must be placed on a Performance Development Plan.
  - i. The Performance Development Plan is a tool available to supervisors to guide, train, and develop employees.
  - ii. It is a contract describing expected future performance and outlining a means for correcting the deficiency.
- d. Record the specific performance area(s) requiring improvement on the Performance Development Plan.

#### **Section IV. Performance Related Discipline: Performance Development Plan**

- e. Supervisors should attempt to determine the cause(s) of performance problems in order to develop appropriate Development Plans.
  - i. Inadequate performance may indicate that the employee lacks basic ability, job knowledge, motivation or skills.
  - ii. Unclear expectations or poorly communicated Department priorities could contribute to poor performance.
  - iii. Job related conditions that might contribute to performance problems include faulty equipment, distractions, or other factors.
- f. Record plans to improve performance on the Performance Development Plan. Activities that might be recommended include:
  - i. Special assignments and remedial training.
  - ii. Job-related college or training classes.
  - iii. Counseling to improve behavior and/or interpersonal skills.
- g. When discussing the Performance Development Plan with the employee:
  - i. The supervisor should inform the employee that performance improvement will be reviewed within an established time period.
  - ii. The time period is written on the bottom of the Performance Development section.
- h. The Performance Development Plan can be set up for review in 30, 60, or 90 days. It is imperative that the immediate supervisor and subject employee regularly refer to and discuss the Performance Development Plan to identify progress or continued poor performance.
- i. Performance Development Plan Review.
  - i. Before meeting with the employee.
    - (a) At least two weeks prior to the end of the Performance Development Plan's review period, the first level supervisor should review the Plan.

**Section IV. Performance Related Discipline: Performance Development Plan**

- (b) The supervisor should note on the bottom portion of the Performance Development Plan what areas have improved and what areas have not improved.
  - (c) The supervisor will meet with the reviewer, usually the next level supervisor, and have the Performance Development Plan approved.
- ii. Meeting with the employee.
  - (a) At the end of the Performance Development Plan review period, the Supervisor should contact the employee and schedule a meeting. The employee has a right to representation during the review meeting.
  - (b) The supervisor and employee are to review the Performance Development Plan together.
  - (c) The supervisor must explain any observations made during the Plan's review period, be it improvement in behavior or continued performance issues. It is important to describe specific instances of poor performance.
  - (d) The supervisor must complete the bottom portion of the Performance Development Plan, specifically indicating whether the employee's performance has improved sufficiently, and if not, what areas have not improved. The Supplemental Performance Report form may be used to document this discussion.
  - (e) At the end of the meeting, both the supervisor and employee sign the plan. A copy is provided to the employee and a second copy is maintained in the employee's divisional file for one year. The original copy of the Performance Development Plan and Supplemental Performance Report (if it was used to record the outcome of the Performance Development Plan) is permanently maintained in the employee's Department Human Resources personnel file.
- iii. If the employee's performance has improved.
  - (a) If the employee's performance has improved to an acceptable level, then no further action is required.



**Section IV. Performance Related Discipline: Performance Development Plan**

- (b) If the employee's regularly scheduled Supervisor-Employee Conference/Overall Performance Report was delayed due to the Performance Development Plan, then a Supervisor-Employee Conference/Overall Performance Report must be completed to cover the time frame outside the Performance Development Plan.
  
- iv. If the employee's performance has not improved.
  - (a) If the employee's performance has still not improved to an acceptable level, but it is appropriate to retain the employee.
    - (1) The supervisor must prepare a new Performance Development Plan clearly articulating the continued deficient performance, identifying the performance expected and suggesting corrective measures. It must make reference to the previous Performance Development Plan.
    - (2) The supervisor and employee discuss the new plan and both sign it. The employee is provided with a copy of the new plan.
  - (b) If it is not appropriate to retain the employee.
    - (1) If the employee's performance is still exceptionally poor, the supervisor must detail this on the original form, clearly articulating why the performance remains deficient.
    - (2) The supervisor should inform the employee that because of the lack of improvement an investigation will be conducted and then end the meeting.
    - (3) [Section IV.H.](#), Performance Issues Investigated, details how to proceed with the investigation and possible transfer of the employee pending the outcome of the investigation.
  
- j. An employee may appeal the failure to successfully complete a Performance Development Plan or Supplemental Performance Report to an Assistant Chief ([Section IV.F.5.i.](#), Intra-Department Appeal Hearing regarding Supplemental Performance Report.)

**Section IV. Performance Related Discipline: Career Enhancement Plan**

**Section IV. Performance Related Discipline: Performance Evaluations Containing Negative Comments**

**7. Career Enhancement Plan.**

Performance Development Plans ([Career Enhancement Plan](#)) may also be used for career development to provide guidance and assistance to employees whose work performance is exceptionally good and who strive to further develop their expertise.

- a. The supervisor should consider the overall level of development and progress of an employee in his/her job or career ladder. Suggested areas for an employee's development should be recorded in the Performance Description section of the Career Enhancement Plan.
- b. The supervisor should discuss the employee's interests and goals for growth and development with him/her. Suggested activities and actions that may be taken by an employee to assist in his/her growth and development should be recorded in the Career Enhancement Plan section of the form.
- c. The Follow-Up Review signatures are not required in the case of a Career Development Plan, though follow-up is necessary.

**G. Performance evaluations containing Negative Comments.**

1. Any officer who has material negative to his/her employment relationship or a Supervisor-Employee Conference/Overall Performance Report containing negative comments placed in his/her personnel file may appeal the placement of such material to a Captain.
2. The negative comment may be appealed within ten (10) working days of receipt. The appeal must be sent to the Office of the Chief of Police.
3. The appeal will be heard by a ranking officer of not less than the rank of Captain, who is not the subject officer's Commanding Officer.
4. This is not an evidentiary hearing. This is an informal hearing similar to a Skelly Meeting.
5. The hearing officer may uphold, modify or overturn the negative comment. The decision of the hearing officer is final.
  - a. If upheld, the negative comment remains in the document and the document is maintained in the subject officer's Divisional and Department Human Resource personnel file.
  - b. If modified, the document will be returned to the first level supervisor for modification. Modification may mean changing or deleting comments within the document.

#### **Section IV. Performance Related Discipline: Performance Issues Investigated**

- c. If overturned, the negative comment is removed from the document. The employee will be provided with an updated copy of the document.
6. The subject officer maintains the right to attach a rebuttal to the evaluation within 30 days. The rebuttal will remain attached to the evaluation indefinitely.

#### **H. Performance Issues Investigated.**

1. Supervisor's Investigation.
  - a. The most critical aspect of any disciplinary process is the supervisor's investigation.
  - b. Any disciplinary action contemplated must be supported by the facts found during the investigation.
  - c. If it appears the employee's performance included misconduct, the supervisor should consult with the next level supervisor or Commanding Officer before proceeding. Usually performance related issues and misconduct are not addressed together in the same manner. However, at this stage, where performance has not improved and there is also misconduct, the employee may be disciplined for both at the same time.
  - d. The supervisor's investigation should identify, in detail, the facts indicating incompetence or deficient performance and describe the documentation relied upon.
  - e. If the investigation is based on a history of poor performance, each incident should be described in detail.
  - f. The investigation should clearly identify the appropriate Department Policy(s), Personnel Regulation(s) or Civil Service Rule(s) violated.
2. Resources.
  - a. The [California Government Code, Sections 3300-3311](#), provides a statutory Bill of Rights to peace officers in California. The Bill of Rights governs the following areas specific to matters involving discipline of peace officers:
    - i. Procedures for disciplinary interviews.
    - ii. Notice and nature of the interview.
    - iii. Length of interview.
    - iv. How the interview is conducted.
    - v. Access to notes and recordings.
    - vi. Administrative versus criminal investigations.

#### **Section IV. Performance Related Discipline: Performance Issues Investigated**

- vii. Right to representation.
  - viii. Advanced notice of negative material placed in file.
  - ix. Right to respond to negative material.
  - x. Polygraph examinations.
- b. Other supervisors, second level supervisors and Commanding Officers should be utilized as resources when questions arise.
- c. Investigations involving performance issues are almost exclusively investigated by the subject officer's command.
3. Investigation Approach and Admonishment.
- a. All personnel investigations should be completed in a detailed, efficient and timely manner.
- i. [Government Code Section 3304 \(d\)](#) provides that no punitive action, nor denial of promotion on grounds other than merit, shall be undertaken for any act, omission, or other allegation of misconduct if the investigation of the allegation is not completed within one year of the agency's discovery (with some exceptions).
  - ii. In the event discipline shall be imposed, the agency shall notify the subject officer of the proposed discipline within that year.
- b. Investigating supervisors should consider the following investigative steps. This list is not all-inclusive, nor will every step be appropriate in every case.
- i. Obtain incident history(ies).
  - ii. Obtain journal copies.
  - iii. Audit and print MDT messaging.
  - iv. Obtain relevant reports.
  - v. Obtain Communications tapes/vehicle location history.
  - vi. Obtain copy of property impound tag(s)/log(s).
  - vii. Obtain copy of arrest log(s).
  - viii. Examine physical location of incident(s).
  - ix. Photograph and/or Diagram scene(s).
  - x. Locate possible video/audio surveillance (businesses, residences, internet, etc.).
  - xi. Examine physical evidence.
  - xii. Interview all witnesses (Pre/post admonishment, as appropriate).
  - xiii. Interview subject officer.
    - (a) Three day notice prior to interview.
    - (b) Pre/post admonishment required.
    - (c) Subject officer entitled to representation.

**Section IV. Performance Related Discipline: Performance Issues Investigated**

- xiv. Review Supervisor-Employee Conference/Overall Performance Report(s), Supplemental Performance Report(s), and Performance Development Plan(s).
- c. A systematic approach is necessary to ensure a thorough and complete investigation.
  - i. Questions should be prepared prior to the interview.
  - ii. Questions should be narrowly scoped to address the deficient performance identified.
- d. Supervisors shall audio-record interviews, unless the interview relates to performance issues for which undocumented or documented counseling is the contemplated response.
  - i. Sworn subject and/or witness officers may not refuse to be audio-recorded.
  - ii. Citizen witnesses and civilian employees represented by MEA may refuse to be audio-recorded.
- 4. Pattern of Poor or Incompetent Performance.

The following documents are critical for portraying a pattern of deficient conduct:

- a. Current and past Employee Performance Reports.
  - b. Performance Development Plans.
  - c. Supplemental Performance Reports.
  - d. Notes of Counseling.
  - e. Documented discipline resulting from misconduct.
  - f. Past observed performance.
  - g. Work history.
- 5. Considerations for transferring the subject officer during/pending an investigation.
    - a. Officers who display gross deficient performance or incompetence are subject to transfer pending the outcome of an investigation.
      - i. A Commanding Officer or higher may transfer a sworn officer from his/her normal duties pending the outcome of an investigation.
      - ii. Generally, officers will not be transferred during the appeal process.
    - b. When electing to transfer a subject officer, the Commanding Officer should consider the following:

**Section IV. Performance Related Discipline: Commanding Officer Determines Appropriate Level of Discipline**

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- i. Level of incompetence.
- ii. Potential liability to the City if continued public contact is allowed.
- iii. Egregiousness of the alleged conduct.
- iv. Unit safety.
- v. Investigative confidentiality.

**I. Commanding Officer Determines Appropriate Level of Discipline.**

1. Level of discipline.

If the previously described methods of correcting performance issues prove to be unsuccessful, it may be necessary to continue with formal disciplinary action. Formal discipline for incompetent performance includes:

- a. Reduction in Compensation.
- b. Demotion.
- c. Termination.

Note: Suspension is not used to correct performance issues and is not a solution if performance cannot be improved.

2. Factors to consider.

- a. Once the investigation is completed, appropriate discipline must be determined. After reviewing the investigation, the Commanding Officer should meet with the subject officer's immediate and second level supervisors. The following factors should be considered prior to determining discipline:

- i. Is there a pattern of poor performance?
- ii. Was the employee given ample opportunity to correct deficient performance?
- iii. Was the deficient performance deliberate?
- iv. What effect did the deficient performance have on the public, other employees or the Department?
- v. Did the deficient performance cause danger to the employee, other employees or the public?
- vi. To what extent was the employee's ability to perform the job affected?
- vii. Is the recommended discipline consistent with similar cases of poor performance?

- b. Outside employment and special assignments.

#### **Section IV. Performance Related Discipline: Reduction in Compensation**

All Commanding Officers should consider restricting outside employment and removal from any special assignments or eligibility lists when determining the appropriate discipline.

- c. Investigative statements.

When determining discipline resulting from a sustained finding that relied on subject officer or witness statements, the Commanding Officer should request copies of the audio-recordings of critical statements for review.

#### **J. Discipline Resulting from Deficient or Incompetent Performance.**

##### **1. Reduction in Compensation.**

- a. General.

- i. The Chief of Police may reduce the compensation of any employee within the salary range of that employee's current classification.
- ii. The compensation of such employees may be reduced a maximum of two steps within the salary range of the employee's current classification.
- iii. Such [Reduction in Compensation](#) may be put into effect upon a determination that the employee's performance has not met the standards established for the employee's classification and/or position.

- b. Removal from an assignment.

- i. Removal from an assignment in which the officer receives additional compensation not based on employee classification, shall not be considered a Reduction in Compensation for purposes of this section.
- ii. Such a reassignment resulting in a reduction in pay may, depending on the specific circumstances, constitute punitive action.
- iii. Contact a Police Legal Advisor should you need clarification.

- c. When a Reduction in Compensation is Appropriate.

- i. If an employee receives a "Below Standard" Performance Evaluation during the most recent rating period, a Reduction in Compensation may be considered.

**Section IV. Performance Related Discipline: Reduction in Compensation**

- ii. A detailed investigation must conclude that the employee's performance has not met the standards established for the employee's classification.
- d. The Reduction in Compensation may be in effect for a maximum of six (6) months.
  - i. At the end of 90 days, the employee's job performance must be re-evaluated by the Commanding Officer.
    - (a) If the employee's performance has improved to a competent level, the employee shall be reinstated to the previous salary step in job classification.
    - (b) If the employee's performance is still unsatisfactory, the Reduction in Compensation will continue.
  - ii. At the end of six (6) months, the employee's job performance must be re-evaluated again by the Commanding Officer.
    - (a) If the employee's performance has improved to a competent level, the employee shall be reinstated to the previous salary step in job classification.
    - (b) If the employee's performance has not improved to a competent level, other disciplinary action should be pursued.
- e. Preparing the Advance Notice of Adverse Action.
  - i. A Reduction in Compensation requires a supervisor's investigation.
  - ii. The Commanding Officer or designee prepares the Advance Notice document.
  - iii. The Notice documents (Advance Notice of Adverse Action and Notice of [Reduction in Compensation](#)) must specifically identify the deficient performance with respect to expectations and standards, and explain the potential for Demotion or Termination if the employee's performance is not immediately improved to an acceptable level commensurate with the classification and/or position.
- f. Routing the Discipline Package for Review and Approval.
  - i. Once the appropriate discipline (Reduction in Compensation) has been decided upon by the command,



#### **Section IV. Performance Related Discipline: Reduction in Compensation**

the discipline package must be routed for review and approval.

- ii. The [Disciplinary Package Checklist](#) is the coversheet on the discipline package and accompanies the package as it is routed.
  - iii. Discipline Packages must be sealed, hand-delivered and shall not be sent via inter-office mail.
  - iv. The routing ensures that the package is complete, lawful, within policy, fair, and consistent with the Department's [Goals and Objectives](#) statement.
  - v. Each reviewer signs and dates the Disciplinary Package Checklist after his or her review is complete.
- g. Disciplinary Package Checklist.

**Steps 1-6 in the Disciplinary Review and Routing Process ([Disciplinary Package Checklist](#)) are completed prior to the service of the Advance Notice of Adverse Action. Steps 8-11 on the Checklist are completed during the Skelly Meeting and/or Chief's Appeal, or the waiver of appeal rights by the subject employee. Steps 12-16 on the Checklist are completed during the routing of the Final Notice of Discipline.**

- i. Prepared By: Once the appropriate discipline is determined by the command, the preparing supervisor signs, ensuring that the package is complete. The discipline package must include all attachments listed in the investigation during the entire routing process.
- ii. Concurrence of Second Level: The second level supervisor signs, ensuring that the package is complete, and hand-delivers the package to his/her Commanding Officer.
- iii. Approved by Commanding Officer: The Commanding Officer signs and approves submitting the package to Police Human Resources.
- iv. Police Human Resources Review: The Human Resources Analyst reviews the package to ensure proper format, correct violations and proper notifications are included. Police Human Resources will also ensure all MOU issues are addressed and all attachments are included. Police Human Resources will review and advise the Commanding Officer if the suggested discipline is not consistent with past discipline of similar circumstances. After the Human

#### **Section IV. Performance Related Discipline: Reduction in Compensation**

Resources review, the discipline package is hand-carried to Police Legal.

- v. Police Legal Advisor Review: The Legal Advisor reviews the package to ensure all legal requirements have been met. The Police Legal Advisor, where appropriate, is responsible for contacting Labor Relations. After a legal advisor completes the review and approves the package, it is returned to the Commanding Officer.
- vi. Date Returned to Commanding Officer: The package is returned to the Commanding Officer for service of the Advance Notice of Adverse Action (Reduction in Compensation).
- vii. Advance Notice of Adverse Action: Date Advance Notice of Adverse Action is served on subject employee.

**NOTE: Steps 8-11 on the Checklist are completed during and after the Skelly Meeting and/or Chief's Appeal, or the waiver of appeal rights by the subject employee.**

- viii. Results of Skelly Meeting and Notice of Department Appeals Rights, including date served.
- ix. Approved by Assistant Chief: The Assistant Chief of the subject officer's command must approve all recommendations for formal discipline.
- x. Appeal Filed: If an appeal is filed, include the date filed.
- xi. Department Appeal results. Must include the date of the hearing and the findings.

**NOTE: Steps 11-16 on the Checklist are completed during the routing of the Final Notice of Discipline.**

- xii. Police Human Resources review of the final Notice. Must include the date reviewed.
- xiii. Police Legal Advisor review of the final Notice. Must include the date reviewed.
- xiv. Approval of Executive Assistant Chief: The Executive Assistant Chief must approve all discipline, including a Reprimand or higher. This review is to ensure consistency, fairness and appropriateness of proposed discipline.

#### **Section IV. Performance Related Discipline: Reduction in Compensation**

- xv. Approved by Chief of Police: The Chief of Police will review all formal EEO and IA investigations resulting in a sustained finding and any discipline resulting from a Category I citizen complaint. Furthermore, the Chief will review all “Not Within Policy” officer-involved shootings.
  - xvi. Final Notice - Date Served: Date the Final Notice of Suspension was served on the subject employee.
- h. Corrections or Changes to Discipline Package during the Routing Process.
- i. Minor Corrections.
    - (a) Minor corrections are those corrections that do not influence the finding(s) or discipline recommendation(s) of the case.
    - (b) If a reviewer determines that minor corrections need to be made (e.g.: punctuation, spelling, etc.), the package may be sent on to the next reviewer for further review, prior to being returned to the Commanding Officer.
    - (c) If the discipline package is returned to the Commanding Officer for minor changes, the package is returned directly to the reviewer who requested the change(s) to complete the review process.
  - ii. Major Changes.
    - (a) A major change is substantive and changes the recommended level of discipline or finding(s).
    - (b) If a reviewer determines the level of discipline or finding(s) should be changed, the package is returned to the Commanding Officer.
    - (c) After the Commanding Officer makes the requested change(s), the package is routed again from the beginning using the same Disciplinary Package Checklist.
    - (d) During the second review process, each reviewer initials and dates to the right of his or her original signature.
- i. Serving the Advance Notice of Adverse Action Document.

**Section IV. Performance Related Discipline: Reduction in Compensation**

- i. Once the steps 1-6 of the disciplinary review process are completed, the discipline package is returned to the Commanding Officer to issue the Advance Notice of Adverse Action.
- ii. The Advance Notice of Adverse Action is provided to the subject employee facing discipline of Reduction in Compensation.
- iii. The Advance Notice of Adverse Action notifies the subject employee of the pending recommended discipline.
- iv. The Commanding Officer schedules a meeting with the subject employee to serve the Advance Notice of Adverse Action document.
- v. The Advance Notice of Adverse Action may be served immediately. Employee representation is not required when the Advance Notice of Adverse Action is served.
- vi. The employee reads and signs the Advance Notice. If the employee refuses to sign, the Commanding Officer shall note "Employee refused to sign."
- vii. The employee receives the original of the Advance Notice of Adverse Action.
  - (a) Copies of attachments may be given upon request of the subject employee.
  - (b) An IA report may be reviewed upon a request to the IA Unit.
  - (c) An EEO report may be reviewed upon a request to the EEO Unit.
- viii. The command keeps a copy of the signed Advance Notice of Adverse Action and all original attachments.
- j. After Advance Notice of Adverse Action is Served.
  - i. If the employee accepts the discipline.
    - (a) The Skelly Meeting and Chief's Appeal are waived.
    - (b) The final Notice of Discipline (Reduction in Compensation) is prepared by the Commanding Officer or designee.

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- (c) The final Notice of Discipline includes documentation that the subject employee has waived their appeal rights.
    - (d) The routing and review of the discipline package continues beginning with Step 8 on the Disciplinary Package Checklist and continues through Step 16. The discipline package must include all attachments listed in the investigation and the Advance Notice of Adverse Action during the routing process.
  - ii. If the employee challenges the recommended discipline.
    - (a) A permanent employee has a right to a Skelly Meeting and a Chief's Appeal.
    - (b) The request for a Skelly Meeting must be made to the Commanding Officer either orally or in writing, by a date and time specified by the Commanding Officer.
    - (c) An employee may waive a Skelly Meeting, but still request a Chief's Appeal.
    - (d) A request for a Chief's Appeal must be in writing and must be directed to the Chief's Office within ten (10) working days of receiving the Advance Notice of Adverse Action.
- k. The Skelly Meeting.
  - i. General information regarding the Skelly Meeting.
    - (a) A Skelly Meeting occurs after an employee receives Advance Notice of recommended discipline, and prior to imposing the recommended discipline.
    - (b) The purpose of a Skelly Meeting is to minimize the risk of error in the initial decision to discipline.
    - (c) Probationary employees are not entitled to a Skelly Meeting, but they may be entitled to a Chief's Appeal.
  - ii. Conducting the Skelly Meeting.
    - (a) A Skelly Meeting is an informal meeting.
    - (b) The Commanding Officer meets with the subject employee and his/her representative.

#### **Section IV. Performance Related Discipline: Reduction in Compensation**

- (c) The Skelly Meeting is the subject employee's opportunity to respond to the allegations set forth in the Advance Notice of Adverse Action document.
  - (d) The Commanding Officer may uphold, modify, or overturn the recommended discipline.
1. After the Skelly Meeting.
- i. The Commanding Officer completes the memorandum of decision ([Notice of Departmental Appeal Rights](#)).
  - ii. The decision should be delivered to the employee within a reasonable amount of time, based on the circumstances of the case, not to exceed fourteen (14) calendar days.
  - iii. The memorandum of decision will say whether discipline is upheld, modified or overturned.
    - (a) Discipline upheld.
      - (1) If the employee accepts the discipline.
        - (i) The Chief's Appeal is waived.
        - (ii) The final Notice of Discipline is prepared by the Commanding Officer or designee.
        - (iii) The final Notice of Discipline includes documentation that the subject has waived their Chief's Appeal rights.
        - (iv) The routing and review of the discipline package continues beginning with Step 8 on the Disciplinary Package Checklist and continues through Step 16. The discipline package must include all attachments listed in the investigation and the Advance Notice of Adverse Action during the routing process.
      - (2) If the employee challenges the discipline, the subject employee may continue the appeal to the Chief of Police.

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- (b) Discipline increased.

The employee may be entitled to further appeal rights commensurate with the recommended increased discipline. The command must contact a Police Legal Advisor for assistance.

- (c) Discipline decreased.

If the recommended discipline is decreased to a Note of Counseling or a Written Warning, the Command follows the procedure for the modified discipline outlined in [Section IV.F.3.](#), Note of Counseling, and [Section IV.F.4.](#), Written Warning. There are no further appeals.

- (d) Discipline overturned.

If the Commanding Officer overturns the proposed discipline, the Final Notice of Discipline is not prepared. The investigation is retained per [Section I.I.](#), Personnel Files.

- m. Intra-Department Appeal Hearing regarding Reduction in Compensation.

- i. General information regarding the Appeal Hearing.

- (a) This is an evidentiary hearing.

- (b) The command has the burden of proof at the hearing. The command must present through testimony and exhibits, enough evidence to support its claim.

- (c) The standard of proof is by a preponderance of the evidence, which is described as just enough evidence to make it “more likely than not” that what the command seeks to prove is true.

- (d) As in Civil Service Commission appeal hearings, the burden cannot be met by uncorroborated hearsay evidence. Pre-recorded and summarized interviews of witness statements will be considered substantial evidence and may be accepted into evidence.

- ii. The Appeal Hearing Officer.

**Section IV. Performance Related Discipline: Reduction in Compensation**

- (a) The Appeal Hearing Officer for a Reduction in Compensation will be an Assistant Chief **not** in the disciplined officer's chain of command.
  - (b) The Hearing Officer may read investigative reports and supporting documents to properly prepare and budget appropriate time for the hearing. However, to ensure neutrality of the hearing, the Hearing Officer may not consider the investigative reports or supporting documents unless they are introduced and accepted into evidence during the course of the hearing.
- iii. Conducting the Appeal Hearing.
- (a) The command may be represented at the hearing by the Commanding Officer or the Commanding Officer's designee (e.g., Lieutenant or Sergeant).
  - (b) The hearing officer will swear in each witness prior to his or her testifying.
    - (1) Each Department employee witness, prior to testifying, will be admonished by the hearing officer regarding his/her obligation under the Department's policies and procedures, to testify truthfully.
    - (2) The hearing officer will admonish each non-employee witness, prior to his or her testifying, of the obligation to be truthful.
  - (c) The command representative will present evidence on behalf of the command and may call witnesses in furtherance of meeting its burden of proof.
  - (d) At the conclusion of the presentation of the command's evidence, the subject officer or his/her representative may present evidence in response to the evidence presented by the command, or the allegations set forth in the written discipline.
  - (e) If the subject officer presents evidence, the command's representative may present rebuttal evidence.
  - (f) Both the command representative and the subject officer (or the subject officer's representative) will have an opportunity to make a closing statement in support of their respective positions, with the



**Section IV. Performance Related Discipline: Reduction in Compensation**

command representative having both the first and last opportunity.

- n. After the Appeal Hearing.
  - i. Written statement of decision.
    - (a) At the conclusion of the hearing, and after consideration of the evidence presented, the hearing officer will issue a written statement of decision.
    - (b) The decision should be delivered to the employee within a reasonable amount of time, based on the circumstances of the case, not to exceed 60 calendar days.
    - (c) The statement of decision will separately address each allegation presented, including:
      - (1) Analyses of the evidence regarding the original sustained findings.
      - (2) Specific findings of facts relevant to, or underlying, the allegations.
      - (3) Conclusions regarding each allegation (e.g., upholding, or modifying the original findings).
      - (4) In cases in which the level of discipline is contested, an analysis of this issue and a statement of decision with respect to the level of discipline imposed (e.g., whether the level will be upheld, increased, or decreased).
  - ii. Discipline upheld.
    - (a) If the discipline is upheld, the final Notice of Discipline (Reduction in Compensation) is prepared by the Commanding Officer or designee.
    - (b) The final Notice of Discipline includes documentation that the subject has had their Intra-Departmental Appeal Hearing and Skelly Meeting with the results of the hearing and meeting.
    - (c) The routing and review of the discipline package continues beginning with Step 8 on the Disciplinary Package Checklist and continues through Step 16.

#### **Section IV. Performance Related Discipline: Reduction in Compensation**

The discipline package must include all attachments listed in the investigation and the Advance Notice of Adverse Action during the routing process.

iii. Discipline increased.

The employee may be entitled to further appeal rights commensurate with the recommended increased discipline. The command should contact a Police Legal Advisor for assistance.

iv. Discipline decreased.

(a) The original Advance Notice of Adverse Action is retained in the discipline package.

(b) A Final Notice of Discipline is prepared:

(i) If decreased to a Note of Counseling or a Written Warning, the command follows the procedure for the modified discipline as outlined in [Section IV.F.3.](#), Note of Counseling, and [Section IV.F.4.](#), Written Warning.

(ii) There are no further appeals.

v. Discipline overturned.

If the discipline has been overturned in its entirety, the Final Notice of Discipline is not prepared. The investigation is retained per [Section I.I.](#), Personnel Files.

o. Serving the Final Notice of Discipline.

i. Once the disciplinary review process is completed, the discipline package is returned to the Commanding Officer to issue the Final Notice of Reduction in Compensation.

ii. The Notice of Reduction in Compensation may be served immediately. Employee representation is not required when the Notice of Reduction in Compensation is served.

iii. The Commanding Officer schedules a meeting with subject employee to serve the Notice of Reduction in Compensation.

iv. The employee reads and signs the Notice of Reduction in Compensation. If the employee refuses to sign, the

#### **Section IV. Performance Related Discipline: Reduction in Compensation**

Commanding Officer shall note on the document  
“employee refused to sign.”

- v. The original Notice of Reduction in Compensation will be provided to the subject employee.
  - vi. The command keeps a signed copy of the Notice of Reduction in Compensation (or unsigned with proper notation to that effect) and all original attached documents.
  - vii. A copy of the Notice of Reduction in Compensation is placed in the employee’s divisional file.
  - viii. The investigation will be retained per [Section I.I.](#), Personnel Files.
- p. Appeal of Reduction in Compensation to Mayor.
- i. A permanent employee may appeal a Reduction in Compensation to the Mayor or his/her designee (usually Labor Relations).
    - (a) If the employee wishes to appeal the discipline, the appeal must be directed to the Mayor within ten (10) working days of receiving the Reduction in Compensation.
    - (b) The Mayoral Appeal review process does not provide for testimony, but consists solely of a review of the written record and/or audio-recording(s) developed at prior steps of the appeal.
  - ii. The Mayor or designee will issue a finding within 30 working days of receipt of the full and entire appeal package.
- q. Civil Service Commission Appeal.
- i. A permanent employee has a right to a Civil Service Appeal for disciplinary actions including a Reduction in Compensation.
  - ii. An employee who wishes to appeal to the Civil Service Commission must submit the appeal in writing to the City’s Personnel Director’s Office within five (5) calendar days of receiving the Notice of Reduction in Compensation.
  - iii. The Civil Service Commission may affirm the discipline. If affirmed, the Civil Service Commission finding is filed in the employee’s permanent Police Human Resources file.

## **Section IV. Performance Related Discipline: Demotion**

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- iv. The Civil Service Commission may modify the discipline. If modified, the discipline is returned to the Department for modification.
- v. The Civil Service Commission may overturn the discipline. If overturned, the Civil Service Commission's written decision shall be maintained in the subject officer's personnel file.
- r. [Templates.](#)

### **2. Demotion.**

- a. Guidelines for Performance Based Demotion.
  - i. Employee must have been proven to have failed to perform at a competent level in the current classification. The poor performance must be supported by detailed documentation.
  - ii. The detailed documentation must conclude that the employee is not performing at the level established for the employee's specific classification.
- b. General.
  - i. A Demotion is a more serious disciplinary action than a Reduction in Compensation.
  - ii. A disciplinary Demotion is a reduction of an employee from a higher to a lower paying classification.
  - iii. Probationary employees may be Demoted. The probationary employee will be allowed Intra-Department Appeal, but may not appeal to the Civil Service Commission.
  - iv. A Notice of Demotion must be issued in writing, after written Advance Notice of Adverse Action is served upon the subject employee.
  - v. A Demotion is imposed with the approval of the Chief of Police.
- c. Follow [Section III.E.2.f.](#), Demotion, on the discipline process start to finish.
- d. [Templates.](#)

## **Section IV. Performance Related Discipline: Termination**

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### **3. Termination.**

- a. General.
  - i. Termination is the most serious and severe disciplinary action.
  - ii. Termination should be imposed when circumstances indicate less severe discipline or guidance will not correct the employee's incompetence.
    - (a) The employee must have proven to have failed to perform at a competent level or displayed a history of incompetent performance. The Termination must be supported by detailed documentation clearly identifying the incompetence.
    - (b) The detailed documentation must conclude that the employee's performance is exceptionally poor compared to the standards established for the employee's classification. The documentation must be specific and clearly identify a specific incident or pattern of incompetence.
  - iii. A probationary employee who fails probation shall be deemed as a "Probationary Failure." The probationary employee does not have appeal rights to the Civil Service Commission. See [Section IV.J.4.](#), Probationary Failure.
  - iv. Termination must be issued in writing, after written Advance Notice of Termination has been served on the subject officer.
  - v. Termination is imposed with the approval of the Chief of Police. The Termination must specifically identify the reason(s) for the Termination.
- b. Follow [Section III.E 2 h.](#), Termination, on the discipline process start to finish.
- c. [Templates.](#)

### **4. Probationary Failure.**

- a. Probationary employees do not have the same Intra-Department Appeal rights as permanent employees. Probationary employees do not have an appeal right to the Mayor or Civil Service Commission.

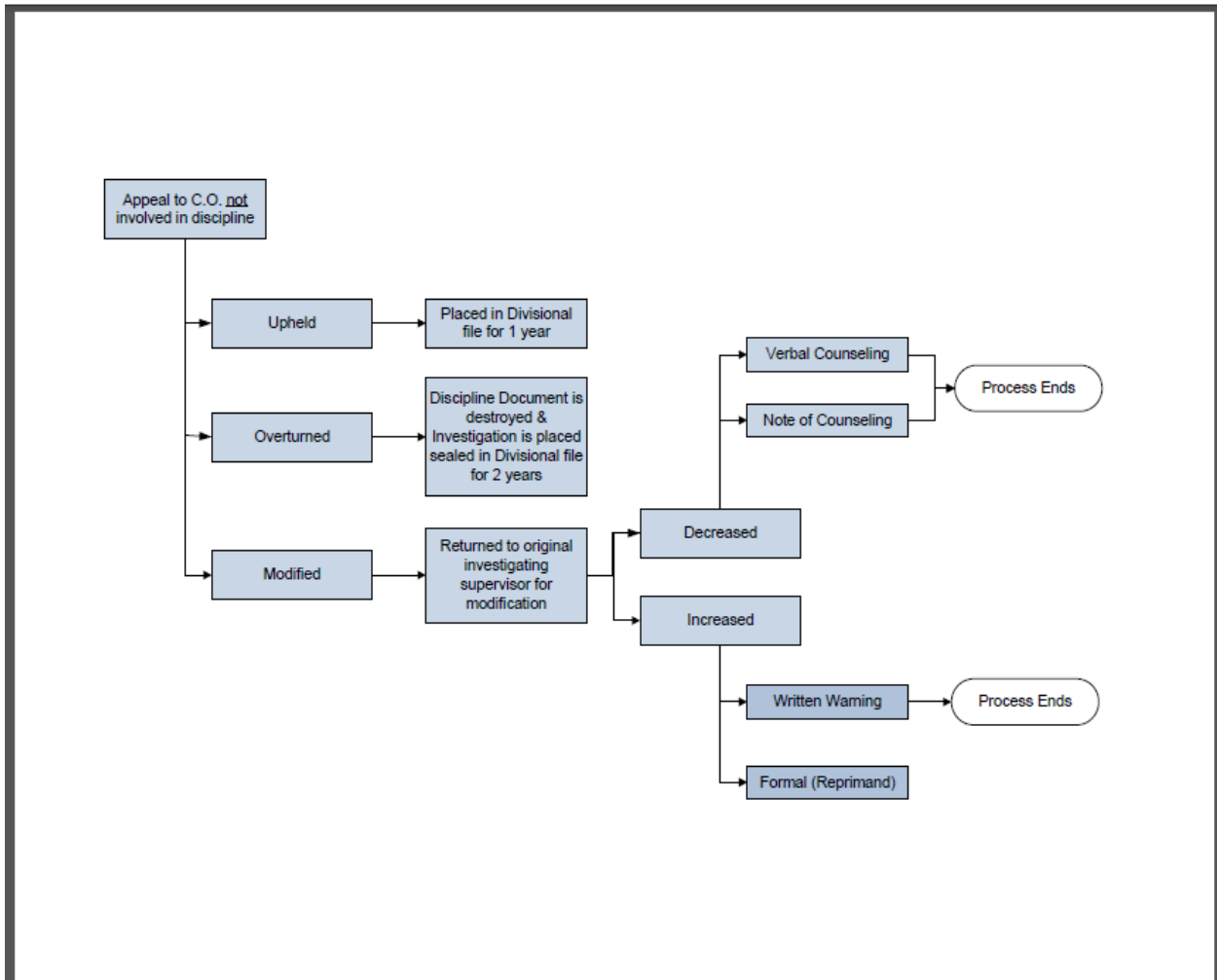
#### **Section IV. Performance Related Discipline: Probationary Failure**

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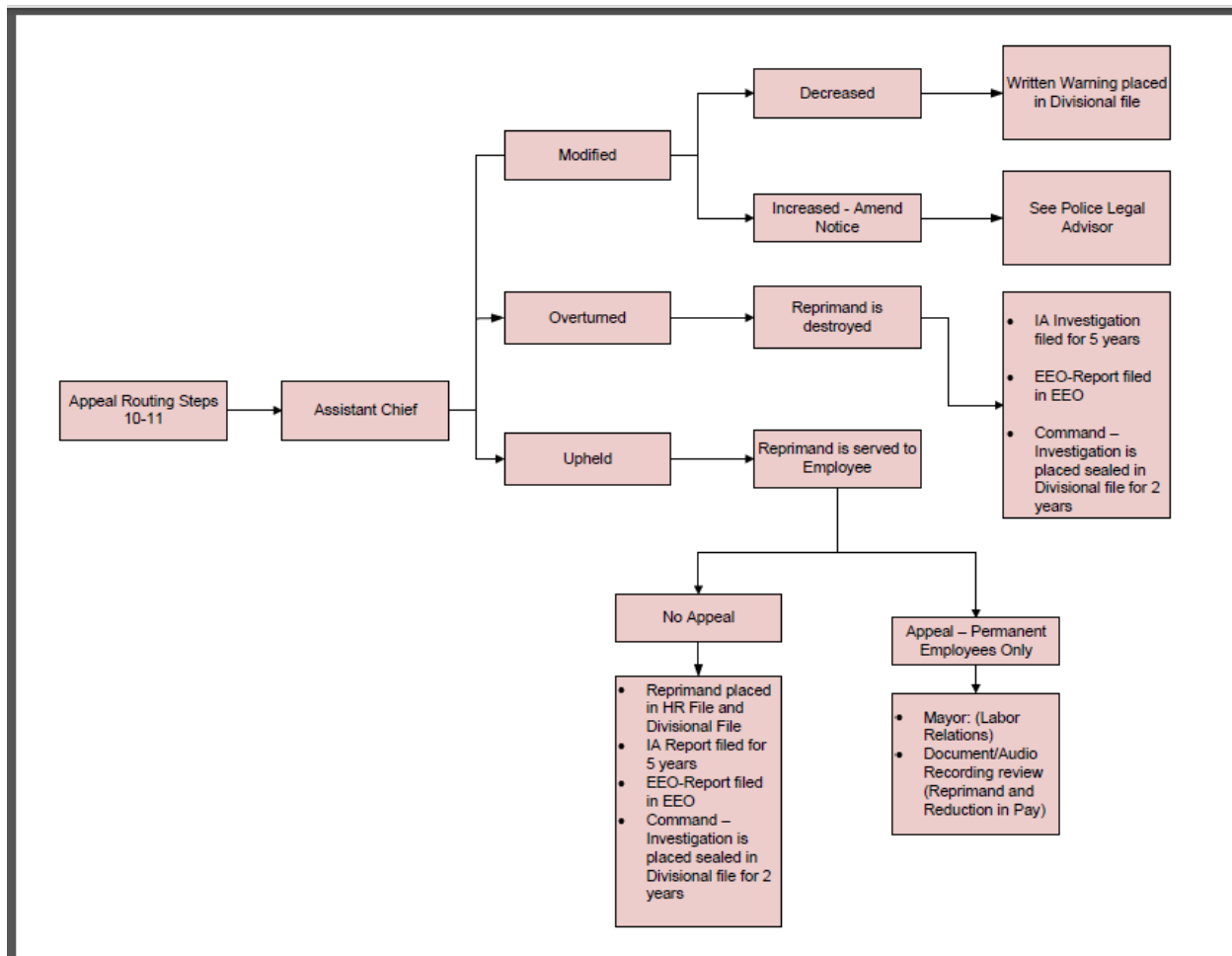
- b. Since the probationary period is considered part of the testing process, employees who fail probation and must leave City employment, are not considered Terminated. Therefore, documentation on probationary employees should refer to Probation Failure, not Termination.
- c. Probationary periods may be extended by the City Personnel Director at the request of the Chief of Police, but only under certain circumstances, such as extended military or industrial leave, etc. These extended periods of absence are covered in greater detail in the [Personnel Manual Index Code G-2](#). Contact Police Human Resources for assistance with this process.
- d. The probationary period should be viewed as a significant portion of the testing process. Therefore, it is important for each Commanding Officer to provide the new employee with a Performance Plan for their classification, and the training and opportunities necessary to succeed. It is equally important to limit the evaluation of a new employee to those skills, abilities, and requirements that are critical to performance.
  - i. The employee must have proven to have failed to perform at a competent level, or displayed a history of poor performance or incompetence.
  - ii. Detailed documentation must conclude that the employee's performance does not meet the standards established for the employee's classification.
  - iii. The employee should be provided with prior notice of the Probationary Failure. Advance Notice is not required, oral notice is sufficient.
  - iv. The Probationary Failure must be reviewed via the chain of command. ([Probationary Failure Routing Slip](#).)
  - v. Probationary employees have a right to a Liberty Interest Hearing, also known as a "Name Clearing" Hearing, if the probationary failure is based on a finding of misconduct that would be harmful to the officer's reputation or includes issues involving integrity. The purpose of the hearing is to allow the probationary employee to refute the allegations in an effort to "clear" his/her name. The Chief's Appeal Hearing would also serve as the Liberty Interest Hearing, an additional or separate hearing is not necessary.
  - vi. Refer to [Section I.G.1.e.](#), Probationary Employee Post-Separation Hearing, and [Section I.K.](#), Probationary Employees, for more information.

# APPENDICES

## Captain's Appeal Flow Chart Example

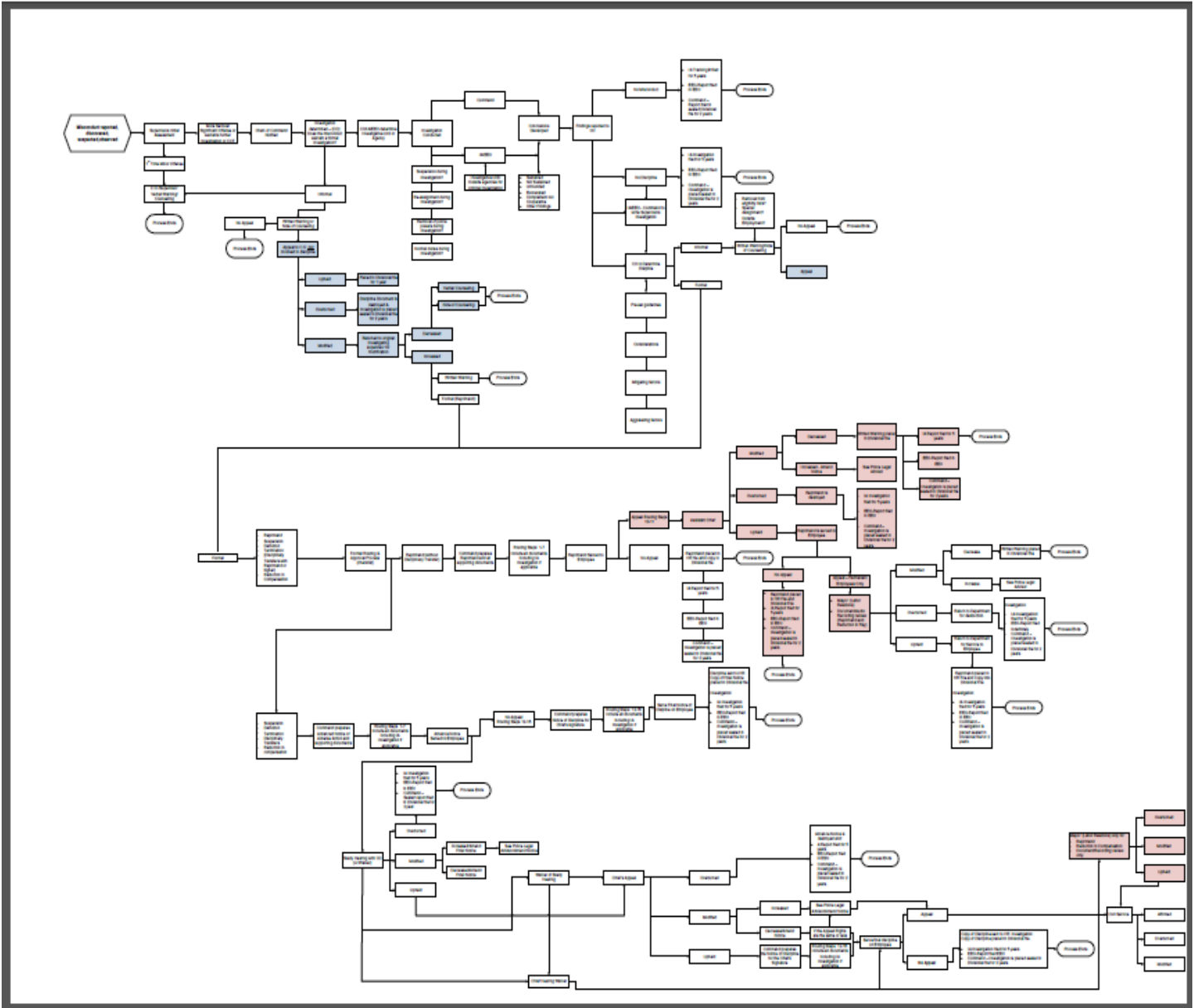


## Chief's Appeal Flow Chart Example





# Discipline Process Flow Chart



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