



# OFFICE OF THE COUNTY SHERIFF

Montgomery County, Maryland

*Raymond M. Kight, Sheriff*



## GENERAL ORDERS/PERSONNEL PROCEDURES

<u>Subject:</u>	<u>Number:</u>	<u>Effective Date:</u>
Administrative and Suspension Hearing Boards	2.08	03/11/2008

Policy: It is the policy of the Sheriff's Office to provide fair and thorough *disciplinary* hearings in accordance with Maryland Code, Public Safety Article, § 3-101 through § 3-113, Law Enforcement Officers' Bill of Rights.

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### I. Definitions

- A. Administrative Leave - *Unearned paid leave granted to an employee for reasons determined to be in the best interest of the Sheriff's Office.*
- B. Emergency Suspension - An action by the Sheriff or his designee to temporarily relieve a deputy of *their* powers of arrest and use of issued equipment.
- C. Administrative Hearing Board - A board which is authorized by the Sheriff to hold a *disciplinary* hearing on a complaint against a *deputy* and consists of not less than three members, appointed by the Sheriff, pursuant to § 3-107, *Hearing by Hearing Board*.
- D. Summary Punishment - *Disciplinary action imposed for minor violations of Sheriff's Office rules and regulations when the facts that constitute the violation are not in dispute, the deputy waives the hearing provided for in § 3-107, Hearing by hearing board, and the deputy accepts the punishment imposed. Summary punishment may not exceed suspension of three (3) days without pay or a fine of \$150.*

### II. Applicability

- A. *This directive does not limit the authority of the Sheriff to regulate the competent and efficient operation and management of the Sheriff's Office by any reasonable means including transfer and reassignment if:*

- (1) *that action is not punitive in nature; and*
  - (2) *the Sheriff determines that action to be in the best interests of the internal management of the Montgomery County Sheriff's Office.*
- B. *This directive applies only to disciplinary proceedings against a non-probationary deputy sheriff or a deputy sheriff in probationary status on initial entry into the Montgomery County Sheriff's Office if an allegation of brutality in the execution of the deputy's duties is made.*

### III. Administrative Hearing Boards

#### A. Right to *a* Hearing Board

- (1) If the investigation or interrogation of a deputy results in *a* recommendation for:
  - (a) demotion;
  - (b) dismissal;
  - (c) transfer;
  - (d) loss of pay;
  - (e) reassignment; or
  - (f) similar action *that* is considered punitive; then
- (2) *the deputy* is entitled to a hearing on the issues by a hearing board before the *Sheriff's Office* takes *any disciplinary* action.
  - (a) *A deputy is not entitled to a hearing board if:*
    - (i) *the deputy has been convicted of a felony; or*
    - (ii) *the deputy waives the hearing in order to accept punishment.*

#### B. *Notice of a Hearing Board*

The *Sheriff's Office* will give *written* notice to the *deputy of the right* to a hearing board. The notice *will* state the *date*, time, place of the hearing and the issues involved.

C. Waiver of *a* Hearing Board

*A deputy may waive in writing any or all rights granted by Maryland Code, Public Safety Article, § 3-101 through § 3-113, Law Enforcement Officers' Bill of Rights. When a Deputy chooses to waive the hearing, the waiver will be documented and forwarded to the Sheriff prior to the hearing date. A waiver will result in a predetermined punitive action being taken.*

D. *Membership of the* Hearing Board

- (1) A hearing board will consist of *at least* three members *who*:
  - (a) *are appointed by the Sheriff and selected from within the Sheriff's Office; or*
  - (b) *are chosen from another law enforcement agency with the approval of the chief of the other agency; and*
  - (c) *have had no part in the investigation or interrogation of the deputy.*
- (2) *At least one member of the hearing board will be of the same rank as the deputy against whom the complaint is filed.*
- (3) *At least ten (10) days prior to a hearing board convening, the accused deputy or their counsel may challenge for cause any law enforcement officer selected to serve on the board. If the Chairperson of the board determines that cause for removal has been established, the challenged law enforcement officer will be removed and another law enforcement officer will be selected to serve on the board in accordance with this directive.*

E. General Duties and Responsibilities of the Hearing Board

*The hearing board, a quasi-judicial body convened at the direction of the Sheriff, conducts administrative hearings to consider disciplinary charges against non-probationary deputy sheriffs and probationary deputies charged with brutality. The board determines guilt or innocence on each charge. The Sheriff's Office is required to show by a preponderance of the evidence that the accused deputy is guilty of the violations alleged. A preponderance of the evidence means such evidence, when compared with that opposed to it, has force that is more convincing and produces in the fact finders mind a belief that it is more likely true than not true. If the evidence is evenly balanced on an issue, then the finding on that issue must be against the party who has the burden of proving it. The decision will be made upon the information admitted during the hearing. The rules of evidence in an administrative hearing allow relevant hearsay and other evidence to be introduced for probative value. The decision of the board is based on a simple majority vote. The board reports to the Sheriff a finding of fact concerning the charges and, in guilty findings, recommends a punishment for each charge.*

F. ***Chairperson*** of the Hearing Board - Duties and Authority

- (1) The Sheriff will appoint the hearing board ***Chairperson***. The ***Chairperson*** will contact the other board members prior to the hearing, inform them of the name of the accused ***deputy*** and the charge(s), and ensure they are familiar with their responsibilities as hearing board members. Additionally, the ***Chairperson*** will explicitly instruct the board members that all information obtained through their assignment as a board member be held strictly confidential. ***The Sheriff or hearing board may issue subpoenas to compel the attendance and testimony of witnesses and the production of books, papers, records, and documents as relevant or necessary.***
- (2) The ***Chairperson*** will preside over the board proceedings and decide any questions of procedure, relevancy, and ***admissibility*** of evidence. ***The Chairperson*** will rule on objections and all other related matters. ***The Chairperson will give effect to the rules of privilege recognized by law and will exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence.***

G. General Hearing Board Proceedings

- (1) ***Pretrial Procedure***
  - (a) ***The defense and prosecution will file:***
    - (i) ***requests for witness subpoenas in writing at least three (3) business days prior to the hearing date;***
    - (ii) ***any relevant preliminary motions in writing at least ten (10) days prior to the hearing date.***
- (2) Presentation of Evidence
  - (a) Sheriff's Office presentation.
  - (b) cross-examination by defense.
  - (c) examination by board.
  - (d) defense presentation.
  - (e) cross-examination by Sheriff's Office.
  - (f) examination by board.
  - (g) ***rebuttal by Sheriff's Office.***

- (3) Conclusion
  - (a) summation by Sheriff's Office.
  - (b) summation by defense.
  - (c) final rebuttal by Sheriff's Office.
- (4) Role of the Hearing Board
  - (a) Deliberation leading to findings of fact and recommendation(s) by the board will be done in closed session.
- (5) Degree of Proof
  - (a) The degree of proof necessary for a hearing board to make a finding of guilt is the "preponderance of the evidence." Preponderance of evidence denotes evidence which is of greater weight or more convincing than that which is offered in opposition to it; that is, evidence which as a whole shows that fact or causation sought to be proved is more probable than not.
- (6) Refusal to Testify
  - (a) Should a deputy disobey a direct order to testify specifically, directly, and narrowly to the facts, *they* may be subjected to disciplinary action.

#### H. *Disposition of Administrative Action*

- (1) A decision, order, or action taken as a result of *a* hearing *board* will be in writing and accompanied by the findings of fact. The findings will consist of a concise statement upon each *charge* in the case. A finding of not guilty terminates the action. **(52.2.8)**
- (2) If the hearing board *makes a* finding of guilt, *they* will:
  - (a) reconvene the hearing;
  - (b) consider the *deputy's* past job performance and other relevant information as factors before making its recommendation to the Sheriff; *and*
  - (c) receive *any mitigating* evidence *presented*.

- (d) recommend punishment it deems appropriate under the circumstances *for each charge*, including but not limited to:
  - (i) demotion;
  - (ii) dismissal;
  - (iii) transfer;
  - (iv) loss of pay;
  - (v) reassignment; or
  - (vi) other similar action *that is* considered punitive.
  
- (3) A copy of the decision or order, findings *of fact*, conclusions, *and* written recommendations for action, *will* be delivered or mailed promptly to the *deputy* or *their* attorney or representative of record and to the *Sheriff*.
  
- (4) Within 30 days *after* receipt of the hearing board's recommendations, the *Sheriff must* review the findings, conclusions, and recommendations of the hearing board and issue *a* final order. The recommendation *of a penalty by the hearing board is* not binding *on the Sheriff*. The *Sheriff will* consider the *deputy's* past job performance as a factor before imposing *a* penalty. The *Sheriff's* final order and decision is binding and may be appealed in accordance with § 3-109, *Judicial Review*. (26.1.6)
  
- (5) *The Sheriff* may increase the recommended penalty of the hearing board *only if the Sheriff* personally:
  - (a) reviews the entire record *of the proceedings* of the hearing board;
  - (b) *meets with the deputy and allows the deputy* to be heard *on the record*;
  - (c) *discloses and provides in writing to the law enforcement officer, at least ten (10) days before the meeting, any oral or written communication not included in the record of the hearing board on which the decision to consider increasing the penalty is wholly or partly based; and*
  - (d) states *on the record the substantial evidence relied on to support the* increase of the recommended penalty.

- (6) If the misconduct results in dismissal, the *Sheriff's final order* will *include* the following information:
- (a) a statement citing the reason for the dismissal; **(26.1.7.a)**
  - (b) the effective date of the dismissal; **(26.1.7.b)**
  - (c) the status of retirement and other employment benefits after dismissal. *This is confidential information under Maryland law and is provided to the deputy by the Montgomery County Office of Human Resources.* **(26.1.7.c)**

I. *Judicial Review*

*A decision made under § 3-108, Disposition of administrative action, may be appealed to the Circuit Court for Montgomery County in accordance with §3-109, Judicial review. A party aggrieved by a decision of the Circuit Court may appeal to the Court of Special Appeals.* **(26.1.6)**

IV. **Emergency Suspension Hearings**

A. Emergency Suspension *with pay*

- (1) *The Sheriff may impose an emergency suspension with pay if it appears that the action is in the best interest of the public and the Sheriff's Office. If the Sheriff or designee imposes a suspension, he will promptly notify the deputy in writing of that decision and inform the deputy of the right to a prompt hearing. If the deputy requests a hearing, one will be scheduled promptly. The deputy will be notified in writing of the date and time of the hearing.* **(52.2.7)**
- (2) *If the deputy is suspended with pay, the Sheriff may:*
- (a) *suspend the police powers of the deputy; and*
  - (b) *reassign the suspended deputy to restricted duties; pending*
    - (i) *a determination by a court with respect to a criminal violation; or*
    - (ii) *final determination by a hearing board with respect to a disciplinary violation.*

B. Emergency Suspension *without pay*

- (1) *If a deputy is charged with a felony, the Sheriff may impose an emergency suspension of police powers without pay.*
- (2) *A deputy who is suspended without pay under § 3-112. (c)(1), Emergency suspension, is entitled to a prompt hearing.*

C. Suspension Hearing

- (1) The purpose of *a* suspension hearing is to *receive information as to* whether the suspension of a deputy by the Sheriff or designee is reasonable under the circumstances.
  - (a) The Suspension Hearing *officer* does not *make* a finding of fact to the Sheriff, but *reviews information concerning* the reasonableness of the suspension;
  - (b) The *Suspension Hearing officer* recommends action on the issue of *continued* suspension.
- (2) The *Suspension Hearing Board* *may recommend that the deputy should be:*
  - (a) suspended with pay;
  - (b) suspended without pay;
  - (c) returned to full duty; *or*
  - (d) *reassigned to restricted duty and have their police powers suspended.*
- (3) The recommendations of the *suspension hearing officer* will be put in writing and forwarded to the Sheriff and the *deputy* within three (3) days of the hearing.
- (4) Upon receipt of the *suspension hearing officer's* recommendation, the Sheriff will review the recommendation and notify the *deputy* promptly in writing of *their* status.

V. CALEA Standards

26.1.6, 26.1.7.a, 26.1.7.b, 26.1.7.c, 52.2.7, 52.2.8

VI. Cancellation

This General Orders/Personnel Procedures cancels and replaces General Orders/Personnel Procedures 2.08, Effective Date *05/01/95*. *Shred replaced directive.*

AUTHORITY:

  
\_\_\_\_\_  
Raymond M Kight, Sheriff  
03/11/2008

**ADMINISTRATIVE HEARING BOARD**

Montgomery County Sheriff's Office

VS

Internal Affairs Case No.

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**SUMMONS**

TO:

Pursuant to Maryland Code, Public Safety Article, § 3-107, Hearing by Hearing Board, you are hereby summonsed to appear before the Administrative Hearing Board for the Montgomery County Sheriff's Office, 50 Maryland Ave., Rockville, Maryland 20850 on

the \_\_\_\_\_ day of \_\_\_\_\_, 2008 at \_\_\_\_\_ hours, and

testify on behalf of \_\_\_\_\_.

You should report to: \_\_\_\_\_

\_\_\_\_\_  
Chairman of the Hearing Board

\_\_\_\_\_  
Date

\_\_\_\_\_  
Served By

\_\_\_\_\_  
Date/Time

**ADMINISTRATIVE HEARING BOARD PROCEDURE**

(Recording System Activated)

This Administrative Hearing Board is hereby convened and called to order.

For the purpose of identification on the recording system, will the following parties identify themselves when called upon to do so;

- A. I am \_\_\_\_\_, Chairman of the Administrative Hearing Board.
- B. Will the next highest officer serving as an Administrative Hearing Board Member identify himself?
- C. Will the officer of equal rank serving as an Administrative Hearing Board member identify himself?
- D. Will the respondent's representative/attorney identify himself (if applicable)
- E. Will the respondent identify himself?
- F. Will the prosecutor identify himself?

I. **INTRODUCTORY STATEMENT BY THE CHAIRMAN OF THE ADMINISTRATIVE HEARING BOARD:**

Deputy \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, you received a notification of the administrative charges against you which constitute the issues to be heard by this Board, convened this \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ hours.

The purpose of this Administrative Hearing Board is to hear evidence and arguments concerning the charges that have been placed against you, to make a determination of facts, to recommend a course of disciplinary action if applicable, and to submit a written report, including findings of fact and recommendations, to the Sheriff who shall then determine the final action to be taken in this matter.

Pursuant to the provisions of the Law Enforcement Officer’s Bill of Rights, Maryland Code, Public Safety Article, Law Enforcement Officers' Bill of Rights, § 3-101 through 3-113, you have been charged with the violation(s) of rules, policies, or procedures.

**\*\*\* Note to Chairman: Read the charge (s) as specified in the letter of notification.**

Charge #1: \_\_\_\_\_  
\_\_\_\_\_

To wit: \_\_\_\_\_  
\_\_\_\_\_

Charge #2: \_\_\_\_\_  
\_\_\_\_\_

To wit: \_\_\_\_\_  
\_\_\_\_\_

Charge #3: \_\_\_\_\_  
\_\_\_\_\_

To wit: \_\_\_\_\_  
\_\_\_\_\_

Etc.

Deputy \_\_\_\_\_, you will be asked to either admit or deny the charges against you. If you admit those charges, you have a right to present any evidence and argument to this Board that you wish to be considered prior to the Board's consideration of a punishment recommendation.

If you deny the charges against you, this Board will hear evidence and arguments and determine whether or not the Sheriff's Office has proven the charges against you. If I/we find that the charges have not been sustained, I/we shall so advise the Sheriff. However, if I/we find that the charges are sustained, I/we will reconvene and receive evidence reference to your past performance as a Deputy Sheriff, prior to a decision on a recommendation as to disciplinary action.

You may also waive your right to be present at this hearing or to present evidence and arguments in your own behalf; however, whether you choose to be present or not, or whether you choose to offer any evidence and arguments or not, this Board will consider the charges against you as presented by the Sheriff's Office and will recommend a course of action to the Sheriff.

Q. Do you understand what has just been explained to you?

Q. Do you admit or deny the charges against you?

(Note: If the person charged stands mute, he or she shall be advised that silence will be considered a denial of the charges.)

**II. OATH TO WITNESSES:**

The chairman of the Hearing Board will administer the following oath prior to a witness testifying:

“Do you solemnly affirm and declare under the penalty of perjury that the testimony you shall give before this Hearing Board is the truth, the whole truth, and nothing but the truth.”

The witness will be requested to raise his/her right hand when the above oath is administered, and also he/she will be asked to respond, “I do” after said oath is read by the chairman.

**III. PRESENTATION OF EVIDENCE AND ARGUMENTS:**

1. Sheriff’s Office presents its case, subject to cross examination by deputy and Board.
2. Deputy presents his/her case, subject to cross examination by Sheriff’s Office and/or Board
3. Rebuttal by Sheriff’s Office, which may only address those matters raised by the deputy or the Board.
4. Surrebuttal by the deputy, which may only address those matters raised by the Sheriff’s Office or the Board during rebuttal.
5. Summation by Sheriff’s Office.
6. Summation by Deputy.
7. Final Summation by Sheriff’s Office.

Board adjourned at \_\_\_\_\_ hours for purpose of deliberation.

**IV. RECONVENING OF BOARD IF GUILT IS FOUND:**

If, after deliberation, there is finding of guilt, the Chairman will make the necessary verbal notifications as to time and date of the reconvening of the Board. After notification, the Chairman will cause the Board to reconvene on the record for the purpose of receiving evidence of the deputy's past job performance and other relevant information. The date, time, and purpose for the reconvened hearing will be explained on the tape prior to receiving information. After receiving the information, the hearing will be adjourned.

Board adjourned at \_\_\_\_\_ hours for purpose of deliberation.