

DISCIPLINARY PROCESS FOR CIVILIANS, POLICE OFFICER CANDIDATES, AND PROBATIONARY OFFICERS

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I. Purpose

This directive sets forth policy and procedure regarding the investigation/disciplinary process for non-sworn employees and probationary police officers of the Police Department. Any procedure or situation not addressed in this directive should be resolved by referring to the County Personnel Regulations. Any procedure set forth herein which conflicts with the County Personnel Regulations will be resolved in favor of the County Personnel Regulations or collective bargaining agreement, whichever is applicable. (CALEA 26.1.3.D, 26.1.4)

II. Authority in Discipline Matters

- A. The Chief of Police has authority for all disciplinary action involving non-sworn department personnel (Personnel Regulations, Section 27.5).

- B. In disciplinary matters, Police Officer Candidates and probationary police officers (except for those charged with brutality) will be treated as civilian employees.

III. Definitions

- A. Minor Complaints of Misconduct - include those allegations which, if sustained, would be appropriately disciplined through the use of the Supervisor's Remedial Action Form.
- B. Serious Allegations of Misconduct - include among other acts, complaints which allege racial prejudice, misappropriation of monies, untruthful statements, and allegations of alcohol or unlawful drug use.
- C. Due Process - the right of an employee to be afforded those procedural and substantive protections established by applicable provisions of the Charter, Merit System Law, regulations or administrative procedures in any matter affecting terms or conditions of employment (Personnel Regulations, Section 3.2).
- D. Grievance - a formal written complaint by an employee arising out of a misunderstanding or disagreement between a merit system employee and supervisor, which expresses the employee's dissatisfaction concerning a term or condition of employment or treatment by management, supervisors, or other employees (Personnel Regulations, Section 28.2).
- E. Appeal - the written request of an employee for review by the Merit Board of an administrative decision on a grievance, disciplinary action, or other personnel action which adversely affects employment or opportunity for employment or promotion for which appeal privileges are provided

(Personnel Regulations, Section 29.1). For members of MCGEO, Local 400, an appeal is in accordance with the terms of the collective bargaining agreement.

IV. Filing of a Complaint (CALEA 26.1.4, 26.1.8, 52.2.2)

A citizen desiring to complain about an employee of the Department, either in person or by telephone, will be referred to the on-duty supervisor or officer-in-charge of the respective district or functional unit. For both minor and serious cases of misconduct, complaints will be handled as detailed in Function Code 301, Section IV.

V. Investigation of a Complaint

- A. Prior to any interview of an employee under investigation, the employee shall be advised of the nature of the investigation. Such notification may be verbal in nature.
- B. Representation during Interview - At the request of an employee under investigation, he/she shall have the right to be represented by counsel or any other responsible representative of his/her choice who may be present during any interview. Under provisions of the negotiated contract between MCGEO, Local 400 and the Montgomery County Government, an employee under investigation shall be afforded at least 60 minutes to arrange for representation.
- C. Record of Interview - Upon completion of the investigation, and upon request of the employee under investigation or his counsel, a copy of the transcript of the tape recorded interview (if one has been made) shall be made available to the employee.
- D. Use of MCP #50 - Interrogation Rights & Waiver Form - If the employee being interviewed is under arrest or is likely to be placed under arrest as a result of an interview, he shall be completely informed of his Miranda rights prior to the commencement of the interview.
- E. Time, Place and Manner of Interviews

- 1. Any interview shall take place either at the office of the command of the investigator or at the office of the police unit in which the incident allegedly occurred, as designated by the investigator, unless otherwise waived by the employee, or at any other reasonable and appropriate place.
- 2. Any interview shall be conducted at a reasonable hour, preferably at a time when the employee is on duty, unless the seriousness of the investigation is of such a degree that an immediate interview is required.
- 3. Interview sessions shall be for reasonable periods and shall be timed to allow for any personal necessities and rest periods as are reasonably necessary.

F. Required Interrogations and Tests

- 1. Employees under investigation may be compelled to submit to Blood Alcohol Tests, blood, breath, or urine tests for controlled dangerous substances (Personnel Regulations, Section 5.12) where there is reasonable suspicion of alcohol or unlawful drug use, or interrogations which specifically relate to the subject matter of the investigation.

2. All urinalysis testing will be coordinated through the Office of Internal Affairs. Supervisors are instructed to contact the on-call officer from the Office of Internal Affairs after normal work hours.

VI. Notification of a Complaint

- A. Whenever a Statement of Charges (Appendix A) is executed, it will serve as written notification of the investigation.
- B. The Chief of Police, or his designee must give the employee a copy of the charges and provide a minimum of five (5) workdays to respond. Disciplinary actions affected by this requirement include written reprimands, within-grade reductions, suspensions, demotions, and dismissals.
- C. When the employee involved is a unit member of MCGEO, Local 400, SLT/OPT:
 1. The Department will provide the union any written statements (citizen complaints, employee observations) in the possession of the Department and used in connection with an adverse action taken against a bargaining unit employee. These statements will be sanitized (name, address, phone number deleted) to protect privacy rights in accordance with the law.
 2. The written statements referred to in Subsection 1 will be provided to the union when the employee receives the Statement of Charges.
 3. The Department is under no obligation to permit the employee or union to interview the author of the statement. If the statement is used as evidence on appeal, the employee or union will have the opportunity to examine the witness.

VII. Disposition

- A. An investigation shall result in no punitive action where the employee's conduct was exonerated or when there is not substantial evidence of misconduct found. In such cases, employees will be furnished a copy of any reply to a complainant or, if there is none, they will be provided a written notification of the investigative outcome. In such cases where complaints are determined to be unfounded or found to be without merit by the Merit Board, the records of the case will be processed in accordance with Administrative Procedure 4-8, Review of Employee Personnel Records. (CALEA 52.2.2)
- B. Oral admonishments and written reprimands may be given at the discretion of the Chief of Police. In all cases, the employee should be told why their conduct is inappropriate, what needs to be done to change, and what action will occur if changes are not made. Signed notice of disciplinary action for within-grade reduction, suspension, demotion, or dismissal must be received by the Personnel Office for review and approved by the CAO prior to the employee being advised of any action.
- C. In cases of within-grade reduction, demotion, suspension, and dismissal, the Chief of Police must provide written notice of such action at least five (5) days prior to the effective date of the action. Exceptions to this requirement are theft and serious violations which pose a health or safety risk (Personnel Regulations, Section 27.4/MCGEO Contract).
- D. Summary of Steps in Procedure
 1. Department
 - a. Prepares Statement of Charges; gives employee opportunity to respond (Appendix A).
 - b. Prepares notification document (Appendix B) and Personnel Action Form (PAF) for proposed disciplinary action.
 - c. Sends notification document, statement of charges, supporting documentation, and Personnel Action Form to the Personnel

Director's office. The normal processing time is five workdays; the action date should be established accordingly.

- d. Documentation must be submitted in duplicate to the Personnel Office.
- e. For employees who are members of MCGEO, Local 400, the following shall apply regarding written notices to the employee from the employer pertaining to Disciplinary Action, Termination, RIF Notices, Demotions, Promotion or Reduction-In-Salary. In all instances the notices to employees identified above shall contain the following language at the bottom of the last page of the document:

NOTICE TO BARGAINING UNIT EMPLOYEES

You are entitled to be represented in this matter by Montgomery County Government Employees Organization, UFCW Local 400, AFL-CIO (Union). If you wish a copy of this document sent to the union, indicate by checking the appropriate space below:

___ I do wish the union to receive this document ___ I do not wish the union to receive this document

Employee's Signature

Date

- 2. Personnel Office
 - a. Personnel Office and County Attorney's Office review notification document for approval.
 - b. Returns employee and Department copies.

- E. Employee Relations will coordinate and review all disciplinary actions with the County Attorney's Office rather than the Department directly contacting the latter.

VIII. Grievances

A grievance may be filed if an employee believes he has been adversely affected by an alleged:

- A. Violation, misinterpretation or improper application of established law, rules, regulations, procedures or policies.
- B. Improper or unfair act by a supervisor or other employee, which may include coercion, restraint, reprisal, harassment, or intimidation.
- C. Improper, inequitable or unfair act in the administration of the merit system, which may include promotional opportunities, selection for training, duty assignments, work schedules, evaluation of work performance, transfers, and reduction in force.
- D. Improper, inequitable or unfair application of the compensation policy and employee benefits, which may include salary, pay differentials, awards, overtime pay, leave, insurance, retirement and holidays.
- E. Disciplinary action, which includes written reprimands and within-grade reductions (Personnel Regulations, Section 28.2/MCGEO Contract).

IX. Appeals (CALEA 26.1.6)

- A. An employee shall have the right of appeal before the Merit Board from a demotion, suspension, dismissal, involuntary resignation, written reprimand, or within-grade reduction (Personnel Regulations, Sections 27.6 and 29.2). An employee has ten (10) workdays from receipt of a written decision of the CAO or notice of a disciplinary action to note an appeal in writing with the Merit Board (Personnel Regulations, Section 29.4).
- B. For additional steps in the appeal process, refer to the Personnel Regulations, Section 29, entitled "Appeals and Hearings."
- C. Employees who are members of MCGEO, Local 400 may choose to appeal in accordance with the terms of the collective bargaining agreement and waive their right to

appeal to the Montgomery County Merit System Protection Board.

X. Scope of the Law (CALEA 26.1.8)

A member, upon written request, may have any internal affairs record of a formal complaint made against him/her expunged from any file if:

- A. The law enforcement agency investigating the complaint has exonerated the member of all charges in the complaint, or determined that the charges were unsustainable, unfounded *or a policy failure*; and
- B. Three (3) years have passed since the findings by the law enforcement agency.
- C. For Department, unit and supervisors personnel files, copies of reprimands and disciplinary actions shall be maintained for five (5) years only.
- D. For members of MCGEO, Local 400, all reprimands contained in central personnel files shall become null and void after a period of two (2) years.

XI. Procedures for Expungement (CALEA 26.1.8)

- A. OIA investigative files shall be available for expungement provided:
 - 1. Three (3) years have elapsed since the investigative report was approved by the Chief of Police and;
 -  The OIA investigation resulted in a finding of not sustained, exonerated, unfounded, *policy failure* or,
 -  A sustained finding was overturned in any subsequent hearing.
 - 2. Investigative OIA files which resulted in a sustained finding and discipline was subsequently administered shall not be available for expungement.
- B. If a member wishes to have his/her OIA record(s) expunged, he/she must forward a memorandum (original and one copy) directly to the Director, O.I.A., requesting the

expungement. Members shall first call O.I.A. to obtain their case number(s) and then forward the memorandum in the format shown in Appendix D.

- C. If the requirements for expungement are met, the Director, O.I.A., will:
 - 1. Expunge the file.
 - 2. Notify the member within thirty (30) days by returning directly the copy of his/her memorandum marked with the date the expungement was completed.
- D. If the expungement requirements are not met, the Director, O.I.A., will:
 - 1. Notify the member by returning the copy of his memorandum within thirty (30) days and indicating the expungement request will not be granted.
 - 2. List on the memorandum the reasons for the expungement request denial.
- E. In both situations, the original of the expungement request (with the action taken indicated on it) will be placed in the case file at O.I.A.
- F. The method of expungement will be destruction (shredding) except in the following circumstances:
 - 1. The file contains names of two or more accused members and charges against one or more of the members were sustained. The entire file will then be placed in limited access. Any reference to those members who were exonerated, or who had charges placed that were unfounded or not sustained, will be obliterated (marked over).
 - 2. Entries in the O.I.A. log will be obliterated.

XII. Proponent Unit: Office of Internal Affairs

XIII. Cancellation

This directive cancels Department Directive 86-12, Function Code 301.F and Headquarters Memoranda 86-43 and 90-55.

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Colonel Clarence Edwards
Chief of Police