

ADMINISTRATIVE AND SUSPENSION HEARING BOARDS

FUNCTION CODE: 301.C
EFFECTIVE DATE: 03-17-97

Contents:

- I. Policy
- II. Definitions
- III. Administrative Hearing Boards
- IV. Emergency Suspension Hearing Boards
- V. Proponent Unit
- VI. Cancellation

I. Policy - It is the policy of this department to provide fair and thorough hearings for those employees accused of misconduct in order to maintain an atmosphere of integrity and professionalism.

II. Definitions

- A. **Administrative Leave** - Leave with pay (non-punitive) as opposed to an action resulting in an employee being suspended (which is a punitive action and is without pay). Placing an employee on administrative leave is not disciplinary; however, some events require this action (Refer to DD 310).
- B. **Emergency Suspension** - An action by the Chief of Police, or designee, to temporarily relieve an officer of powers of arrest and use of police equipment, and to discontinue pay.

C. Traditional Administrative Hearing Board - *The Board will consist of three members. All members of the board are selected by the Chief of Police, with one member being of equal rank as that of the accused. The chairperson will be an executive officer appointed by the Chief of Police.*

D. Alternative Administrative Hearing Board - *The Board will consist of three members. The Chief of Police will appoint one member, as will the FOP. The third member, who will function as the chairperson, will be selected from a previously agreed upon panel of arbitrators. The Alternative Hearing Board process is*

not available in hearings stemming from summary punishment cases.

III. Administrative Hearing Boards

A. *"If the investigation or interrogation of a law enforcement officer results in the recommendation of some action, such as demotion, dismissal, transfer, loss of pay, reassignment, or similar action which would be considered a punitive measure, then, except as provided under subsection (c) of this section ("A law enforcement officer is not entitled to a hearing under this section if the law enforcement officer has been charged and convicted of a felony.") and except in the case of summary punishment or emergency suspension as allowed by Section 734A of this subtitle and before taking that action, the law enforcement agency shall give notice to the law enforcement officer that he is entitled to a hearing on the issues by a hearing board. The notice shall state the time and place of the hearing and the issues involved. An official record, including testimony and exhibits, shall be kept of the hearing." Article 27, Section 730 (a).*

B. The Administrative Hearing Board, convened by direction of the Chief of Police, conducts administrative hearings to hear charges against department personnel. It brings forth to the Chief of Police a finding of fact concerning the charges and, in sustained cases, recommends a course of action. It is the duty of the board to judge the validity of charges made against officers. The decision will be made upon the information contained in investigative reports, statements, documents, testimony of witnesses, and other appropriate evidence introduced during the hearing. The recommendation of the board is based on a simple majority vote. A hearing by the board is an administrative proceeding in which neither life nor liberty is placed in jeopardy. The rules of evidence applicable in

- a criminal trial need not be strictly followed; hearsay and other evidence may be introduced for probative value. However, a hearing by the board is a quasi-judicial proceeding; as such it should be conducted in adherence to appropriate guidelines. The proceeding will be conducted with a certain amount of informality; however, a set agenda and definite rules of procedure will be established and explained to all parties at the opening of the hearing.
- C. Upon completion of an investigation where an administrative charge has been sustained, a memorandum will be prepared and sent to the officer. That memorandum, bearing the signature of the Chief of Police, shall cite the charge(s) sustained, and the recommended punishment for each charge. Attached to that memorandum will be a *"Notice of Elective Hearing Board"* (Appendix A) informing the officer of hearing rights. The officer shall make a decision within 7 (seven) days as to acceptance or refusal of the offered punishment. If the officer declines the punishment, the type of hearing requested must be indicated. If an alternative hearing is requested, that request must be approved in writing by an authorized representative of the FOP and then forwarded to the Director, OIA. The selection form must be returned to the Director, OIA, within 7 (seven) days. Failure to return the memorandum within that time limit will result in the automatic setting of a traditional hearing board. A memorandum returned by the accused officer requesting an alternative board, but not bearing the signature of an authorized FOP representative, will result in a traditional hearing board being set. Once the accused officer has made a selection as to the type of hearing desired, that decision is irrevocable. When an officer chooses to waive the hearing, such waiver will be documented and forwarded to the Chief of Police prior to the hearing date. In consideration of the potential inconvenience to witnesses, it is required that this waiver be made in time to allow proper notification. A waiver will result in a predetermined punitive action being administered.
- D. Formation of a Traditional Administrative Hearing Board
1. The chairperson will be an executive officer appointed by the Chief of Police.
 2. The Director, OIA, will contact the applicable Bureau Chief. The Bureau Chief, or designee, will select the two remaining board members.
 3. The Bureau Chief, or designee, will make the individual selection based on the following guidelines:
 - a. The officer selected is regularly scheduled for daywork on the date the hearing is scheduled.
 - b. The officer selected is not assigned to the same geographic or functional unit as the accused officer.
 - c. The officer selected is not a close, personal friend of the accused officer or a relative.
 - d. The officer selected is not a former immediate supervisor or subordinate of the accused officer.
 4. The same guidelines will be followed for selection of the third board member who must be of the same rank as that of the accused officer.
 5. The accused officer or his counsel may challenge for cause any officer selected to serve on the board. If the Chairperson of the board determines that cause for removal has been established, the challenged officer will be removed and another officer will be selected to serve on the board in accordance with this Directive.
- E. *Formation of an Alternative Administrative Hearing Board*
1. *The board shall consist of three members: two law enforcement officers and a neutral chairperson. The Chairperson shall be chosen from a standing panel of arbitrators maintained for such purpose by the County and FOP Lodge 35. The Chairperson shall be selected to hear cases in rotation in the order their names appear. If the arbitrator slated to hear a case cannot hold the hearing within a reasonable*

- time, the next arbitrator shall be selected.*
2. *The chief shall appoint one law enforcement officer and the FOP Lodge 35 the other. These appointments shall be announced simultaneously, without undue delay. The law enforcement member appointed by FOP Lodge 35 shall be scheduled to daywork for the duration of the hearing board.*
 3. *No member of the hearing board shall in any way be involved in, or a witness to, any incidents which are the subject to the complaint before them.*
 4. *Except as provided in subsection 5, FOP Lodge 35's choice of a law enforcement member shall be any member of the bargaining unit; and the Chief's choice may be any law enforcement officer in the rank of sergeant or above. Therefore, it is not required that either law enforcement member be of the same rank as the accused officer.*
 5. *If the Chief of Police decides to select a law enforcement member from another law enforcement organization, the FOP Lodge 35 shall receive sufficient notice in time to select a law enforcement member from another law enforcement organization, if it so desires. FOP Lodge 35's choice of a law enforcement member shall be of a rank comparable to the ranks within the collective bargaining unit.*
 6. *Any controversy concerning the formation of an alternative hearing board may be submitted to the chairperson of the hearing board for their hearing and/or decision. Such decision of the chairperson shall be contested pursuant to LEOBOR Sections 732 or 734.*
- F. The Administrative Hearing Board Chairperson will contact the other board members prior to the hearing, inform them of the name of the accused officer 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 Chairperson will also issue witness summonses upon request by either party to the hearing (Appendix B). The Chairperson will preside over the board proceedings and decide any questions of procedure, acceptability, and relevancy of evidence. The Chairperson will rule on objections which are raised and all other related matters. The Chairperson will inquire into any discrepancies arising from any testimony, evidence or other facts presented at the hearing. If an issue is identified at the hearing which is unrelated to the issue(s) in question, and in the opinion of the board the new issue warrants formal attention, the board should so recommend in the memorandum they forward to the Chief of Police. They will not further consider such an issue in the deliberations at hand, but if the Chief concurs with such recommendation, the Chief may direct an investigation into the newly developed issue. The Administrative Hearing Board Chairperson will be responsible for apprising the Chief and the affected employee of the Board's findings, recommendations, and actual vote in writing. After deliberation by the Board on the issue(s) in question, the Chairperson and the board members shall reach a consensus as to the appropriate finding of fact for each issue. Included within such finding of fact will be a concise statement applicable to each issue. The discussion of each issue will include references to any testimony or evidence which were relied on for the decision. In the event a Board member dissents from any portion of the finding of fact or the recommendations for action, the Chairperson will note the fact in the report to the Chief. The dissenting member will also submit the rationale for such dissent, and this opinion will be included in the report to the Chief. In setting forth the duties of the Chairperson, it is to be understood that it is not feasible to enumerate all the decisions, rulings, and findings that the Chairperson may be called upon to make. The Chairperson will make the necessary rulings according to their knowledge and objectives, keeping in mind

- the relevancy of the issue at hand. In the event that an objection or Constitutional challenge to the introduction of certain evidence is made and the Chairperson decides to allow admission of the evidence, the Chairman should note the objection or challenge in the record and proceed with the testimony.
- G. General Administrative Hearing Board Order of Proceedings (Appendix C)
- Presentation of Department's case.
 - Cross-examination by defense.
 - Examination by Board.
 - Presentation of defense.
 - Cross-examination by Department.
 - Examination by Board.
 - Summation by Department.
 - Summation by defense.
 - Final rebuttal by Department.
- H. Role of the Administrative Hearing Board
- Examination of all witnesses who testify at the hearing.
 - Examination of all evidence presented at the hearing.
 - Examination of all officers who testify at the hearing.
 - Deliberation leading to findings of fact and recommendation(s) by the Board.
This will be done in closed session.
- I. 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. The trier of facts has to determine on which side of an issue the majority or "preponderance" of credible evidence falls.
- J. Should an officer disobey a direct order to testify specifically, directly, and narrowly to the facts, the officer may be subjected to disciplinary action for failing to obey a lawful and proper order.
- K. Hearing Board Results and Subsequent Action
- *"Any decision, order, or action taken as a result of the hearing shall be in writing and shall be accompanied by the findings of fact. The findings shall consist of a concise statement upon each issue in the case. A finding of not guilty terminates the action. ..."* Article 27, Section 731 (a). Findings should be made as a matter of principle. This is important for several reasons: the case may be subject to further review; findings apprise the parties of the basis for the decision, and finally, a statement of findings fosters the belief that matters were carefully considered. The members of the Board, during their deliberations, should consider the evidence related to each issue (charge) and come to a conclusion as to their validity.
 - *"... If a finding of guilt is made, the hearing board shall reconvene the hearing, receive evidence, and consider the law enforcement officer's past job performance and other relevant information as factors before making its recommendation to the chief. ..."* Article 27, Section 731 (a).
"... The hearing board may recommend punishment as it deems appropriate under the circumstances, including but not limited to demotion, dismissal, transfer, loss of pay, reassignment or other similar action which would be considered a punitive measure." Article 27, Section 731 (b).
 - *"... A copy of the decision or order and accompanying findings and conclusions, along with written recommendations for action, shall be delivered or mailed promptly to the law enforcement officer or to his attorney or representative of record and to the chief. ..."* Article 27, Section 731(a). The written recommendations will be completed by the Board and forwarded to the Chief of Police and the accused officer within 10 (ten) working days after the Board finally adjourns. An extension may be granted by the Chief upon request; the board will then notify the officer of that action.

- "... *The person who may take any disciplinary action following any hearing in which there is a finding of guilt, shall consider the law enforcement officer's past job performance as a factor before he imposes any penalty.*" Article 27, Section 731 (a).
- "*The written recommendations as to punishment are not binding upon the chief. Within 30 days of receipt of the hearing board's recommendations, the chief shall review the findings, conclusions and recommendations of the hearing board and then the chief shall issue a final order. The chief's final order and decision is binding and may be appealed in accordance with this subtitle. Before the chief may increase the recommended penalty of the hearing board, the chief personally shall: (1) Review the entire record of the hearing board proceedings; (2) Meet with the law enforcement officer and permit the law enforcement officer to be heard on the record; (3) Disclose and provide to the officer in writing at least 10 days prior to the meeting any oral or written communication not included in the hearing board record on which the decision to consider increasing the penalty is based, in whole or in part; and (4) State on the record the substantial evidence relied on to support the increase of the recommended penalty.*" Article 27, Section 731(c). (CALEA 26.1.6)
- "*Appeal from decisions rendered in accordance with Section 731 shall be taken to the circuit court for the county pursuant to Maryland Rule B2. Any party aggrieved by a decision of a court under this subtitle may appeal to the Court of Special Appeals.*" Article 27, Section 732. (CALEA 26.1.6)

IV. Emergency Suspension Hearing Boards

- A. Once an employee is placed on administrative leave and the Chief of Police is notified of the incident by the employee's Unit Commander,

the Chief, or designee, shall determine if an emergency suspension is warranted.

"Emergency suspension with pay may be imposed by the chief when it appears that the action is in the best interest of the public and the law enforcement agency. ... Any person so suspended shall be entitled to a prompt hearing." Article 27, Section 734 A(2). If the Chief, or designee, imposes suspension, they shall notify the employee promptly in writing of that decision and inform the employee that they are entitled to a prompt hearing. The Chief will ensure that a hearing is scheduled as soon as possible and that the employee is notified in writing of the date and time of that hearing. *An officer may waive in writing any or all rights provided in Sections 727 through 734 of the Annotated Code of Maryland.*

B. Suspension Hearing Board

1. The purpose of the suspension hearing is to determine whether the suspension of an officer by the Chief of Police, or designee, is reasonable under the circumstances. The procedures for the suspension hearing will follow that of the Administrative Hearing Board with the following exceptions:
 - a. The Suspension Hearing Board does not bring forth to the Chief a finding of fact, but merely examines the evidence to the point of determining the reasonableness of the suspension;
 - b. Since the board does not determine guilt or innocence, the "preponderance of the evidence" rule applies only to that amount of evidence necessary to determine the reasonableness of the suspension; and
 - c. The board does not recommend punishment, but merely recommends action on the issue of suspension.
2. The format to be followed can be found in Appendix D.
3. The hearing can make any of the following recommendations:
 - a. The officer be placed on administrative leave.

- b. The officer be suspended without pay.
 - c. The officer be returned to full duty.
 - d. The officer be assigned to administrative/ restricted duty.
4. The recommendations of the Board will be put in writing and forwarded to the Chief of Police and the employee within three (3) days of the hearing.
 5. Upon receipt of the Board's recommendation, the Chief shall review the recommendation and notify the officer promptly in writing of their status.

V. Proponent Unit
Office of Internal Affairs

VI. Cancellation
Department Directive 301.C,
dated 08-15-91.

Carol A. Mehrling

Carol A. Mehrling
Chief of Police