



CITY OF FAIRFAX POLICE DEPARTMENT

GENERAL ORDER

Subject CORRECTIVE COUNSELING AND DISCIPLINE	Number 1-9
Effective Date September 2, 2014	Rescinds General Order 1-9, dated 04-07-14
Accreditation Standards Fifth Edition 26.1.2, 26.1.4, 26.1.6, 26.1.7, 26.1.8, 52.2.7	Authority Colonel Carl R. Pardiny Chief of Police

PURPOSE:

The purpose of this General Order is to establish a comprehensive discipline policy and related procedures for the City of Fairfax Police Department.

POLICY:

It is the policy of the City of Fairfax Police Department to administer discipline in a fair, timely and consistent manner.

DISCUSSION:

Discipline is an important function of command. Accountability must be maintained at all levels of supervision and ultimate responsibility for the fair administration of discipline rests with the Chief of Police. Corrective Counseling seeks to improve performance in a positive and constructive manner before serious violations of policy occur and negative discipline becomes necessary.

PROCEDURE:

I. CORRECTIVE COUNSELING

Counseling is an extension of the training process as it applies to a supervisor's daily responsibility of providing guidance and direction. Corrective Counseling may be undertaken by a supervisor or command officer in response to minor policy infractions or in an effort to improve performance. Corrective Counseling is not a form of punishment and will not be considered formal disciplinary action for the purpose of an employee's service record. All counseling is documented on a PD-135, Supervisor's Report of Counseling. The supervisor has discretion of filing the report at either the section or division level. The employee will be provided with a copy of the PD-135 if requested. If Corrective Counseling results from findings and recommendations of an administrative investigation, the PD-135 will be documented and included in the A.I. case file.

II. DISCIPLINE

A. Oral Reprimand

1. An Oral Reprimand serves as a verbal admonishment and notifies the member that performance or behavior must be improved. Supervisors and commanders give Oral Reprimands when counseling has failed to produce the desired changes in performance or conduct, or when the undesirable conduct is such that counseling is not deemed appropriate. An Oral Reprimand defines the areas in which improvement is required and informs the employee that failure to improve will result in more serious disciplinary action.
2. The supervisor shall complete a PD-134A Supervisor's Report of Discipline/A.I. Short Form to document the investigation and conduct or performance warranting improvement. The details of the Oral Reprimand will be included in a memorandum entitled "Oral Reprimand." If the employee

disputes the facts of the incident, an administrative investigation report must be completed in accordance with the City of Fairfax Handbook for Administrative Investigations. The PD-134A and/or the administrative investigation report are forwarded through the chain of command to the Professional Standards Division Commander. A copy of the Oral Reprimand memorandum remains in the employee's Division file for two years.

B. Written Reprimand

1. A Written Reprimand is a permanent record that a member's conduct or performance did not conform to the standards established by department policy, procedures or regulations. A Written Reprimand may be issued by a supervisor or any commanding officer.
2. Written Reprimands shall be issued in memorandum form and should contain the following:
 - a. The date, time, location, persons involved and circumstances related to the conduct giving rise to the reprimand.
 - b. The specific rule, regulation, policy, procedure or directive that was violated.
 - c. Specific directions concerning what must be done to correct the situation.
3. The incident or behavior leading to a Written Reprimand must be documented via an administrative investigation. If the facts of the incident are undisputed by the member, the supervisor may use the PD-134A Supervisor's Report of Discipline/A.I. Short Form to document the administrative investigation. If the facts are disputed, an administrative investigation report must be completed in accordance with the City of Fairfax Handbook for Administrative Investigations.
4. The administrative investigation report and the Written Reprimand are forwarded to the Office of the Chief of Police for retention. A copy of the Written Reprimand is sent to the Personnel Office and a copy is placed in the employee's administrative file in the Police Department.
5. An employee may appeal a Written Reprimand to the Chief of Police within five (5) calendar days of receipt. A notice of appeal must be in writing. The Chief will hear the appeal and determine a final disposition within 10 calendar days.

C. Disciplinary Reimbursement

1. Disciplinary reimbursement may be imposed in the following cases:
 - a. Negligence which results in lost or damaged City property, excluding damage to City vehicles as a result of a preventable accident. In the absence of reasonable evidence to the contrary any loss or damage to city property will be presumed to have resulted from negligence.
 - b. Negligence which results in lost or damaged property belonging to a citizen which comes into an employee's possession.
 - c. Vehicle impoundment whenever the originating officer is found to have violated department General Orders resulting in liability to the City of Fairfax.
 - d. Photo Red Light summonses, whenever the employee operating a department vehicle is found to have violated department General Orders resulting in liability to the City.
2. Disciplinary reimbursement shall be imposed in concert with other disciplinary action.
3. For the purpose of assessing appropriate and consistent discipline, the following formulas will be applied when assessing disciplinary reimbursement:
 - a. Value of item lost/damaged less than \$50.00: Disciplinary reimbursement will not be sought for personally issued equipment that can be easily lost (ex. collar brass, tie bars, whistles) or for personally issued uniform components (ex. ball caps, ties, gloves) if the replacement cost of the equipment or uniform component is less than \$50.00. Division commanders may recommend an exception in cases where the member has repeatedly lost equipment or uniform components and previous disciplinary efforts to improve the member's care of City-issued property has not been

successful. Disciplinary reimbursement for any other lost/damaged property under \$50.00 may be recommended by the Division Commander or imposed by the Chief of Police.

- b. Value of item lost/damaged, or of accrued towing and/or storage fees greater than \$50.00: \$50.00, plus ten percent (10%) of the value of fees in excess of \$50.00.
- c. Photo Red Light summonses: Full reimbursement of the statutory civil fine assessed against the City by the issuing jurisdiction.
- d. Unless specifically approved by the Chief of Police, disciplinary reimbursement shall be limited to a maximum of \$500.00.

D. Relief from Duty

1. Any superior officer is authorized to order and cause the immediate relief from duty (with pay) of any member whose continued presence on the job is deemed to be a substantial and immediate threat to the welfare of the City of Fairfax Police Department or to the public. Instances where relief from duty may be used include, but are not limited to:
 - a. Reporting for duty in an unfit condition.
 - b. Unauthorized absence from assigned work location or refusal to work.
 - c. Insubordination.
 - d. Criminal offenses committed on or off duty.
 - e. Suspected or observed brutality or intentional use of excessive force.
 - f. Falsifying any statement or record.
 - g. Intentionally abusing, destroying, damaging, stealing or defacing property, tools or equipment publicly or privately owned.
2. When relieving an officer of duty the supervisor should be accompanied by a second supervisor who will serve as a witness.
3. As soon as practical following a relief from duty, it is the responsibility of the superior officer to:
 - a. Cause an immediate notification of the Chief of Police and appropriate Division Commander.
 - b. Take immediate possession of the relieved officer's badge, I.D. card and service weapon. Account for these items on Relief from Duty Memorandum (Attachment D).
 - c. Advise the relieved officer via memorandum (Attachment D) that due to the relief action, all police powers and authority are suspended until such time a determination is made regarding their return to duty. The relieved officer is advised to report to the office of the Chief of Police on the morning of the next business day to await further instructions.
 - d. Prepare a written report of the facts leading to the decision to relieve from duty and submit it to the Chief of Police.
4. The Chief of Police determines the member's duty status on the next business day and decides when/if to reinstate the member's police powers.

E. Suspension Without Pay

The Chief of Police may impose a suspension without pay up to ten (10) days. Suspensions exceeding ten (10) days must be approved by the City Manager or his designee. A member may request a voluntary reduction of leave in lieu of suspension (not to exceed ten days) which must be accompanied by a waiver of rights under the Fair Labor Standards Act. The Chief may approve or deny the request without explanation and the decision is not subject to appeal.

F. Demotion

The Chief of Police may recommend a demotion, which must be approved by the City Manager. A demotion may cause a reduction in salary of five (5) or ten (10) percent or as deemed appropriate by the City Manager or his designee.

G. Dismissal

The Chief of Police may recommend dismissal from the police department, which must be approved by the City Manager or his designee.

III. IMPOSITION OF DISCIPLINE

A. Notice of Proposed Discipline

1. Supervisors should confer with their division commander regarding the appropriate level of discipline to be imposed prior to taking disciplinary action. This is done to ensure the consistent application of discipline to all employees.
2. No written notice is required prior to imposing an Oral or Written Reprimand.
3. Disciplinary action greater than a Written Reprimand for unsatisfactory work performance as defined in General Order 2-1, Section C5, Unsatisfactory Performance, may not be imposed unless an employee has first received written notice of the unsatisfactory performance and the actions required to achieve satisfactory performance. (For example, a prior Corrective Counseling or reprimand would satisfy this requirement.) If the employee's unsatisfactory performance continues, the Notice of Proposed Discipline required by this section would constitute the second written notice of intent to impose disciplinary action as required by Section 66-16, paragraph (d) of the City Code.
4. Prior to the imposition of disciplinary action greater than a Written Reprimand, the Chief of Police or his designee shall provide an employee with a memorandum containing a Notice of Proposed Discipline. The Notice of Proposed Discipline contains the following information:
 - a. The specific charge(s), the basis thereof, the recommended disciplinary action, and the Chief's intention to impose the discipline unless evidence to the contrary or in mitigation of the penalty is presented within five (5) calendar days.
 - b. That the member has the opportunity to respond orally and in writing to the charges within five (5) calendar days.
 - c. That the member may be assisted by legal counsel at his or her own expense.
 - d. That if the proposed discipline is imposed the member will have the right to appeal that decision as provided by Chapter 66 of the City Code.
5. Within five (5) calendar days after making a written or oral response to the charges, or within ten (10) calendar days from receipt of the Notification of Proposed Discipline, the member shall be provided written notification from the Chief of Police of his final decision regarding the proposed. The memorandum shall advise the employee of their rights to appeal the decision as provided by Chapter 66 of the City Code.

B. Procedural Guarantees

Procedural guarantees are afforded to full and part time non-probationary members for any negative discipline greater than a Written Reprimand as provided by Chapter 66 of the City Code. Sworn officers may elect to use Section 66-14 (Procedural Guarantees for Law Enforcement Officers) or Section 66-16 (Discipline and Grievances) of the Code of the City of Fairfax, but not both. Civilian employees must use Section 66-16 (Discipline and Grievances) of the Code of the City of Fairfax.

C. Hearing Panels

1. The purpose of these procedures is to provide an equitable and orderly process for the conduct of hearings as required by Law Enforcement Procedural guarantees involving City of Fairfax police officers.
2. The hearing shall be conducted by a panel comprised of one member from within the Department selected by the officer, one member appointed by the Chief of Police from within the Department of at least equal rank with the officer but no more than two (2) ranks above the officer, and a third member from within the Department to be selected by the other two (2) members of the panel. In the event that the two (2) members cannot agree upon their selection of a third member for the panel, the Chief Judge of the Circuit Court of Fairfax County shall choose the third member.
3. The panel member appointed by the Chief of Police shall chair the Hearing Panel.

4. Responsibilities of the Hearing Panel chair:
 - a. Control the conduct of the hearing.
 - b. Rule on witnesses and objections. The Chairman shall consult with the other panel members prior to ruling on witnesses or objections unless the decision is obvious and there is no objection from the other panel members as to the ruling. In the event of a split of opinion among the panel members, the majority rules.
 - c. Forward in writing the recommendations of the hearing panel and the reasons therefore to the officer and the Chief of Police within seventy-two (72) hours of the conclusion of the hearing.

5. Responsibilities of all Hearing Panel Members:
 - a. Be present during the entire hearing.
 - b. Vigorously pursue and determine the truth of the matter under consideration.
 - c. Deliberate and vote on the findings.
 - d. Deliberate and vote on the penalty to be recommended if charges are sustained.

6. Hearing Panel Procedures
 - a. The Chief of Police shall designate a command level officer as Hearing Panel Coordinator to facilitate preparations for the Hearing Panel and who shall also serve as an impartial assistant and advisor to the Panel on procedural issues only. The Hearing Panel Coordinator will not participate in the Panel deliberations, offer any opinions on the merits of the case or assist in the writing of the Panel report.
 - b. The Chief of Police shall establish the time, date and location of the hearing, consistent with the requirements of City Code, and send written notice to the officer that is the subject of the charge, all witnesses vital to the hearing and appropriate agency representatives.
 - c. All Hearing Panels are closed to the public, members of the department and the media. Cameras and recording equipment, other than that which is authorized by the Department, will not be permitted in the hearing room.
 - d. The City may be represented by legal counsel or other person designated by the Chief of Police. Both the employee and Department (hereafter, the parties) may have the assistance of no more than two persons (in addition to counsel) during the hearing. Parties shall be given broad discretion to select those two persons (assistant to counsel, investigators, spouse, etc.). At the beginning of the hearing, both parties shall identify to the panel those persons present under the authority of this section. Should either party object to the presence of any person, other than those expressly authorized by this policy, the panel shall resolve the dispute by majority vote. As a matter of policy, the Department shall be entitled to the presence and assistance of the lead investigator in the case (as one of the two persons authorized), and that person may not be excluded by the panel.
 - e. Prior to the hearing, the accused employee and each panel member will be provided a copy of the administrative investigation report on which the Department has based the disciplinary action(s). If the accused employee or counsel desires additional books, records, papers or documents which are available only through the Department, a request must be made in writing at the earliest opportunity and no later than 3 business days prior to the commencement of the hearing.
 - f. Both parties shall provide the Hearing Panel Coordinator with a copy of all documents and exhibits, and a list of witnesses, intended to be introduced during the Panel Hearing. Such material shall be provided no later than three business days prior to the commencement of the hearing. The Hearing Panel Coordinator shall provide each party with a copy of the documents and a witness list submitted by the opposing party.
 - g. An oath shall be administered by a notary public to all persons who will testify at the hearing. A record of the proceedings will be made at the expense of the Department. Any transcripts are the property of the Department, but the employee may obtain a copy at their expense.
 - h. The panel shall first receive evidence and testimony from the Police Department, and then from the officer. The panel members, the Police Department and the officer shall be afforded the opportunity to examine and cross-examine witnesses.
 - i. Witnesses may be excused by agreement of all parties.

- j. Panels may direct any member of the Department to appear before the Panel to give testimony or produce evidence. In addition, Hearing Panels may issue administrative subpoenas directing witnesses to appear and testify or to produce records and documents pertaining to the case. If it becomes evident during the hearing process that a witness or document is necessary for the proper adjudication of the case, the Panel should exercise its authority and direct that the witness or document is produced.
- k. In the event that a witness refuses or fails to appear, the Panel may issue a formal subpoena through the Circuit Court of Fairfax County, as provided by Virginia Code 2.1-116.5. The staff of the Deputy Chief of Police Hearing Panel Coordinator will assist in this matter.
- l. The hearing panel shall rule on the admissibility of the evidence. This is not a criminal proceeding and the technical rules relating to evidence and witnesses do not apply.

The Chief of Police may establish additional procedures, not in conflict with state or city law, for the purpose of facilitating a fair and orderly panel hearing and providing procedural guidance to participants and panel members. Any such procedures shall be applicable to a pending hearing panel provided such additional procedures were provided to the appellant officer within 72 hours of receipt of the appeal in the Office of the Chief of Police.

Colonel Carl R. Pardiny / Chief of Police

[Attachment A PD-134A Supervisor's Report of Discipline/A.I. Short Form](#)

[Attachment B PD-135 Corrective Counseling Form](#)

[Attachment C Complaint Investigation Flow Chart](#)

[Attachment D Sample Relief from Duty Memorandum](#)

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