



# ADMINISTRATIVE HEARING BOARDS

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### **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. ADMINISTRATIVE HEARING BOARDS**

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

*If a police officer does not accept the Chief's offer of discipline, then the matter will be referred to a Hearing Board. At least 30 days before a Hearing Board proceeding begins, the police officer will be:*

- 1. Provided a copy of the investigatory record;*
- 2. Notified of the charges against the police officer; and*
- 3. Notified of the disciplinary action being recommended*

*An officer must execute a confidentiality statement with the Department not to disclose any material contained in the investigatory file and exculpatory information for any purpose other than to defend the accused officer. The Department may exclude from the above exculpatory information provided to the accused officer the identity of confidential sources, non-exculpatory information, and recommendations as to charges, disposition, or punishment.*

An official record, including testimony and exhibits, shall be kept of the hearing.

#### **B. Board Composition**

*An Administrative Hearing Board will be composed of (1) an actively serving or retired administrative law judge or retired judge of the District Court or Circuit Court, appointed by the County Executive, (2) a civilian, who is not a member of the Administrative Charging Committee, appointed by the Anne Arundel County Police Accountability Board, and (3) a police officer of equal rank to the accused officer appointed by the Chief of Police.*

#### **C. General Duties and Responsibilities of the Administrative Hearing Board**

The Administrative Hearing Board, convened by direction of the Chief of Police, conducts administrative hearings to hear the charges against Department personnel and brings forth to the Chief of Police a finding of fact concerning the charges and, in sustained cases, recommends a course of action.

*Prior to the hearing, the Administrative Hearing Board will only receive a list of charges/specifications from the Police Department in cases involving internal administrative complaints, and from the Administrative Charging Committee (ACC) in cases involving members of the public (findings and recommendations of the ACC will not be made available to the members of the Administrative Hearing Board prior to the hearing).*

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 adhered to; 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 the parties at the opening of the hearing.

*In connection with a disciplinary hearing, the 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. The subpoenas may be served without cost in accordance with Maryland Rules that relate to the service of process issued by the court. Each party may request the chief or Hearing Board to issue a subpoena or order. In case of disobedience or refusal to obey a subpoena served, the Hearing Board may apply to the circuit court of the county where the subpoenaed party resides or conducts business, for an order to compel the attendance and testimony of the witness or the production of the books, papers, records, and documents.*

*The proceedings of the Hearing Board will be open to the public, except to protect a victim's identity; the personal privacy of an individual; a child witness; medical records; the identity of a confidential source; an investigation technique or procedure; or the life or physical security of an individual. A complainant has the right to be notified of the Hearing Board hearing, except as provided above, the right to attend the Hearing Board hearing.*

#### **D. Chairman of the Administrative Hearing Board – Duties and Authority**

The Chairman 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 Chairman will explicitly instruct the board members that all information obtained through their assignment as a board member be held strictly confidential. The Chairman will also issue witness summonses upon request by either party to the hearing.

The Chairman will preside over the board proceedings and decide any questions of procedure, acceptability and relevancy of evidence. He/she will rule on objections which are raised and all other related matters. The Chairman 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 new issue warrants formal attention, the board should so recommend in the memorandum they forward to the Chief. They will not further consider such an issue in the deliberations at hand, but if the Chief concurs with such recommendation, he/she may direct an investigation into the newly developed issue.

The Administrative Hearing Board Chairman will be responsible for apprising the Chief and the affected employee of the board's **findings and determination of punishment** and actual vote in writing **within 45 days of the hearing**. After deliberation by the board on the issue (s) in question, the Chairman shall reach a consensus of the board members 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 **determination of punishment**, the Chairman 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 Chairman, it is to be understood that it is not feasible to enumerate all the decisions, rulings, and findings that he/she may be called upon to make. The Chairman will make the necessary rulings according to his/her 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 Chairman decides to allow admission of evidence, the Chairman should note the objection or challenge in the record and proceed with the testimony.

**G. General Administrative Hearing Board Proceedings**

**1. Presentation of Evidence**

**a. Police Department Presentation**

- \* Presentation of Department's case
- \* Cross-examination by defense
- \* Examination by board

**b. Defense Presentation**

- \* Presentation of defense
- \* Cross-examination by Department
- \* Examination by board

**c. Conclusion**

- \* Summation by Department
- \* Summation by defense
- \* Final rebuttal by Department

**d. 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 finds of fact and recommendation(s) by the board. This will be done in closed session.

**2. Degree of Proof**

- \* Unlike criminal trials where "beyond a reasonable doubt" is the degree of proof necessary to establish a finding of guilt, 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.

**3. Refusal to Testify**

Should an officer disobey a direct order to testify specifically, directly, and narrowly to the facts, he/she may be subjected to disciplinary action for failing to obey a lawful and proper order.

**4. Hearing Board Results and Subsequent Action**

- \* Findings should be made as a matter of principle. This is important for several reasons: the case may be subject to further review and a more intelligent review is thus made possible; finding apprise the parties of the basis for the decision, and finally, a statement of findings demonstrates 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 the Hearing Board makes a finding of guilt, the Hearing Board shall: (i) reconvene the hearing, (ii) receive evidence; and (iii) consider the law enforcement officer's past job performance and other relevant information as factors before making *a disciplinary decision*.
- \* A copy of the decision or order, finding of facts, conclusions, and written recommendations for action, shall be delivered or mailed promptly to: (i) the law enforcement officer or the law enforcement officer's counsel or representative of record; and (ii) the Chief.
- \* After a disciplinary hearing and a finding of guilt, the Hearing Board *will decide* the *punishment* it considers appropriate under the circumstances, including demotion, dismissal, transfer, loss of

pay, reassignment, or other similar action that is considered punitive. The *determination of punishment* shall be in writing *and consistent with the Statewide Police Disciplinary Matrix*.

- \* *Within 30 days after the date of issuance of a decision of the Hearing Board, the decision may be appealed by the employee to the Circuit Court.*
- \* *A Hearing Board decision that is not appealed is final.*

**III. FIREARMS CONTROL**

*The accused officer is prohibited from wearing or carrying a firearm or other weapon while attending a hearing board.*

**IV. PROPONENT UNIT:** Internal Affairs Section.

**V. CANCELLATION:** This directive cancels Index Code 304, dated *02-25-21*.