



Policy 308

Subject

GENERAL DISCIPLINARY PROCESS

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By Order of the Police Commissioner

POLICY

1. **Accountability.** A robust and well-functioning accountability system in which officers are held to the highest standards of integrity is critical to the Baltimore Police Department's (BPD's) legitimacy, and a priority of the Department. A well-functioning accountability system is one in which BPD: openly and readily receives complaints reported by civilians and officers and fully, fairly, and efficiently investigates them; supports all investigative findings by the appropriate Standard of Proof and documents them in writing; holds accountable all officers who commit misconduct pursuant to a disciplinary system that is fair, consistent, and provides due process; and treats all individuals who participate in BPD's internal disciplinary process — including complainants, officers, and witnesses — with respect and dignity.
2. **Limited Protection.** Members of the BPD who serve at the pleasure of the Police Commissioner, civilian employees, cadets, police officer trainees, and officers on probation (except for allegations of brutality), are not afforded certain processes outlined in this policy .

DEFINITIONS

Accelerated Disposition Program (ADP) — A mechanism to expedite the disciplinary process in cases where the facts are not in dispute. The ADP Disciplinary Recommendation is non-negotiable; refusal to accept the ADP Disciplinary Recommendation will result in an increased Disciplinary Recommendation at a later date if the allegation is Sustained. The member has seven days to accept or reject the ADP Disciplinary Recommendation.

Administrative Hearing — A panel convened of two Command Staff members, and one member of equal rank to the employee under investigation, responsible for determining the Outcome of the hearing based on a Preponderance of the Evidence. An Outcome is reached by a majority decision.

Beyond a Reasonable Doubt — Evidence that establishes that the alleged misconduct did or did not occur to a moral certainty. The trier of fact must have no doubt, founded in reason, that the alleged misconduct did or did not occur. This is the highest Standard of Proof.

Clear and Convincing Evidence — Evidence that establishes a high probability that the alleged misconduct did or did not occur. This Standard of Proof is higher than Preponderance of the Evidence, but lower than Beyond a Reasonable Doubt.

Disciplinary Review Committee — The Disciplinary Review Committee (DRC) is selected and appointed by the Police Commissioner and consists of sworn and civilian members of the BPD and BPD Legal Affairs Section. Its purpose is to review the factual findings of any investigation conducted by the Office of Professional Responsibility (OPR) and make a recommendation for discipline in accordance with Policy 310, *Disciplinary/Failure to Appear and Traffic Matrix*.

NOTE: All Disciplinary Recommendations from the DRC will be reviewed by the Police Commissioner, or his or her designee, who will either accept or amend the penalty.

Of the members appointed to the DRC by the Police Commissioner, one will serve as the DRC Chairperson. This Chairperson may, when necessary, act unilaterally to carry out the function of the entire DRC, or, when exigent circumstances exist and rescheduling of the DRC's duties will not be in the best interests of the BPD, may designate another member of the DRC to act in his/her place. The DRC Chairperson may also determine the manner in which an Investigative Casebook and/or investigative findings is/are reviewed. At the discretion of the DRC Chairperson, DRC Committee members may review investigative materials individually and then submit a written recommendation, meet as a full group, or communicate via any alternative means in order to carry out the function and purpose of the DRC.

In the event that a member of the DRC cannot perform the duties to which he/she has been appointed, the member must inform the Police Commissioner, in writing, of his/her inability to perform or continue as a member of the DRC.

At the sole discretion of the Police Commissioner, or his/her designee, cases may be reviewed by an alternative designated Commander or DRC, when the case is of a sensitive nature or deemed to be in the best interest of the BPD.

Exonerated — Where the investigation determines, by a Preponderance of the Evidence, that the alleged conduct did occur, but did not violate BPD policies, procedures, or training.

Member — An employee of the Baltimore Police Department (BPD). Includes all sworn officers and commanders, civilian personnel, probationary officers, trainees, and persons in appointed positions.

Not Sustained — Where the investigation is unable to determine, by a Preponderance of the Evidence, whether the alleged misconduct occurred.

Outcome — One of four possible findings rendered by the trier of fact at the conclusion of an Administrative Hearing. The possible Outcomes are Sustained, Not Sustained, Exonerated, or Unfounded.

Preponderance of the Evidence — Evidence that establishes it was more likely than not (51% / 49%) that the alleged misconduct did or did not occur. Preponderance of the Evidence is a lower Standard of Proof than Clear and Convincing Evidence.

Standard of Proof — The level of certainty and degree of evidence necessary to establish if the alleged misconduct did or did not occur. The Standard of Proof to determine if alleged misconduct did or did not occur is Preponderance of the Evidence.

Sustained — Where the investigation determines, by a Preponderance of the Evidence, that the alleged misconduct did occur.

Unfounded — Where the investigation determines, by Clear and Convincing Evidence that the alleged misconduct did not occur or did not involve the employee under investigation.

GENERAL

1. OPR will initiate investigations in accordance with its Standard Operating Procedures (SOP), and/or have administrative oversight authority for all internal investigations of Level 3 uses-of-force, allegations of misconduct or wrongdoing, or alleged/suspected violations of BPD Policy by any member of the BPD, sworn or civilian.
2. The Equal Opportunity and Diversity Section (EODS), Human Resources Section (HRS) shall investigate all alleged/suspected violations of Policy 1701, *Equal Employment Opportunity and Diversity* by any member of the BPD, sworn or civilian.
3. The Chief, OPR or any Command member holding the rank of captain or above, is designated as the appropriate law enforcement official to bring an act (that gives rise to charges) to the attention of the BPD. This notice is accomplished via direct communication to the Command member, the Command member being present during and having knowledge of the act, or entry of the act into BlueTeam or IAPro by any member of the BPD.
4. BPD will ensure that disciplinary charges for Sustained allegations of misconduct are consistently applied, fair, and based on the nature of the allegation, the evidence, and that mitigating and aggravating factors are identified and consistently applied and documented.
5. Where, after OPR conducts a misconduct investigation and an officer's actions are found to violate policy, BPD shall ensure appropriate charges are brought and/or corrective action is taken.
6. The Police Commissioner has the ultimate authority to issue a Final Order setting forth discipline that may be levied at the conclusion of a BPD Administrative Hearing.

REQUIRED ACTION**Chief, Office of Professional Responsibility**

1. For sworn officers, not members of the BPD who serve at the pleasure of the Police Commissioner, civilian employees, cadets, police officer trainees, and officers on probation (unless investigated for brutality), if the case appears viable for charges:
 - 1.1. Recommend what violation(s) should be Sustained;
 - 1.2. Refer the case to ADP, if appropriate;
 - 1.3. Submit the Charging Document and Investigative Report to the Legal Affairs Section for review for legal sufficiency; and
 - 1.4. Submit the Investigative Casebook and Charging Document to the Office of Administrative Hearings (OAH).
2. For sworn probationary officers and police officer trainees, if the case appears viable for charges:
 - 2.1. Recommend what violation(s) should be Sustained;

- 2.2. Refer the case to ADP, if appropriate; and
- 2.3. Submit the Investigative Casebook and a Disciplinary Recommendation in accordance with Policy 310, *Disciplinary/Failure to Appear and Traffic Matrix*, to the Police Commissioner or his/her designee.
3. For sworn appointed commanders, if the case is viable for charges:
 - 3.1. Recommend what violation(s) should be Sustained;
 - 3.2. Refer the case to ADP, if appropriate;
 - 3.3. Submit the Investigative Casebook and a Disciplinary Recommendation in accordance with Policy 310, *Disciplinary/Failure to Appear and Traffic Matrix*, to the Police Commissioner or his/her designee; and
 - 3.4. Ensure the appeal of any recommended or imposed discipline is in accordance with the Baltimore Public Local Laws, if applicable.
4. For sworn members, provide written notification to both the employee under investigation and any complainant(s) of the final disposition of all allegations, including those that may be closed as "Exonerated," "Not Sustained," or "Unfounded." For civilian members notification will only be provided to the member.
5. Retain all records and completed casebooks for all internal investigations.
6. Maintain a system (e.g., IAPro, BlueTeam, or similar application) capable of tracking the progress of OPR investigations to ensure they are conducted in a timely and efficient manner.

Supervisor, Office of Administrative Hearings

Upon receipt of a completed Investigative Casebook from OPR:

1. Ensure it contains all necessary documentation, records, etc;
2. Act as a liaison between the Legal Affairs Section, OPR, and the Police Commissioner and/or his/her designee for matters of discipline and Administrative Hearings;
3. Administratively track the case;
4. Forward the casebook to the DRC Chairperson;
5. Serve the employee under investigation with the Charging Document;
6. If the Disciplinary Recommendation is accepted by the employee under investigation, forward the Investigative Casebook to the Police Commissioner or his/her designee for approval.
 - 6.1. Once approved by the Police Commissioner or his/her designee, contact HRS to ensure the appropriate Human Resource Order (HRO) is issued for the member reflecting the discipline imposed (e.g., loss of leave, transfer, demotion, etc.).

- 6.2. Verify that the discipline has been administered and complete Form 155, Certification of Completion of Disciplinary Action (See Appendix C) and forward it to HRS.
7. If the Disciplinary Recommendation is rejected by the employee under investigation, or if the employee under investigation wishes to review the Investigative Casebook, forward a copy of the Investigative Casebook to the attorney representing the employee under investigation.
8. Schedule Administrative Hearings when an employee under investigation rejects a Disciplinary Recommendation and elects to have an Administrative Hearing.
 - 8.1. Ensure the appropriate personnel (two Command Staff members, and a member of equal rank to the employee under investigation) are available to act as an Administrative Hearing Board.
 - 8.2. Designate an Administrative Hearing Board Chairperson.

Chairperson, Disciplinary Review Committee

1. Upon receipt of an Investigative Casebook from OAH, review the factual findings from OPR, along with all Sustained charges.
2. Determine a Disciplinary Recommendation in accordance with Policy 310, *Disciplinary/Failure to Appear and Traffic Matrix*, so as to ensure discipline is consistent and progressive.
3. Upon completion of the DRC's review of a particular case, return the Investigative Casebook, Charging Document and Disciplinary Recommendation to OAH, for service upon the employee under investigation:

Employee Under Investigation

When served with a Charging Document from the OAH or OPR:

1. Accept the Disciplinary Recommendation, sign and check the appropriate box on the Charging Document indicating your acceptance, and sign the Acceptance of Disciplinary Action, Form 402 (See Appendix B); or
2. Reject the Disciplinary Recommendation, sign and check the appropriate box on the Charging Document requesting an Administrative Hearing; or
3. Request Legal Affairs modify the Disciplinary Recommendation. The Legal Affairs Section may agree to modify the Disciplinary Recommendation to a lesser disciplinary option (settlement), or choose to retain the Disciplinary Recommendation originally presented to the employee under investigation. Upon being notified of Legal Affairs decision:
 - 3.1. Accept the modified Disciplinary Recommendation (see 1 above), or
 - 3.2. Reject the modified Disciplinary Recommendation (see 2 above).
4. An employee under investigation may choose to review the Investigative Casebook prior to making a decision to accept or reject the Disciplinary Recommendation. Submit requests in writing via an Administrative Report, Form 95, via official channels, to the Supervisor, OAH.

- 4.1. The employee under investigation has 10 business days to review the contents of the Investigative Casebook and make a determination to accept or reject the Disciplinary Recommendation.
- 4.2. If the decision is not made within 10 business days of you, or your representative's receipt of the Investigative Casebook, the DRC's Disciplinary Recommendation will be considered to have been rejected and an Administrative Hearing will be conducted on the scheduled date.

Chairperson, Administrative Hearing

1. Hear the facts of the case as presented by the Legal Affairs Section and council representing the employee under investigation.
2. Conduct all Administrative Hearings in accordance with the Administrative Hearings Rules of Procedure (see Appendix A).
3. Ensure the following documents are forwarded to the OAH within seven days of the conclusion of a BPD Administrative Hearing:
 - 3.1. A written summary of the Administrative Hearing's proceedings.
 - 3.2. A finding of fact.
 - 3.3. A verdict sheet.
 - 3.4. All exhibits and evidence admitted in the Administrative Hearing.

Director, Human Resources Section

Whenever an employee under investigation has accepted and completed a Disciplinary Recommendation, ensure that a copy of the related Form 155, Certification of Completion of Disciplinary Action (See Appendix C), is added to the member's personnel file upon receipt.

RESCISSION

Remove and destroy/recycle General Order C-08, *General Disciplinary Process*, dated 26 August 2011, Policy 306, *Command Discipline* dated 10 April 2015 and General Order C-3, *Departmental Administrative Disciplinary Process* dated 1 July 1977 and all amendments.

APPENDIX

- A. Administrative Hearings Rules of Procedure
- B. Acceptance of Disciplinary Action
- C. Certification of Completion of Disciplinary Action, Form 155
- D. Disciplinary Process Flow Chart

ASSOCIATED POLICIES

Policy 302, *Rules and Regulations*
Policy 304, *Suspension Procedures*
Policy 307, *Civilian Review Board Complaint Procedures*
Policy 309, *Civilian Disciplinary Process*
Policy 310, *Disciplinary/Failure to Appear and Traffic Matrix*
Policy 724, *Performance Review Board*
Policy 1701, *Equal Employment Opportunity and Diversity*

COMMUNICATION OF POLICY

This policy is effective on the date listed herein. Each employee is responsible for complying with the contents of this policy.

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ADMINISTRATIVE HEARINGS: PROCEDURES FOR BOARD MEMBERS

A. Introduction

If the investigation or interrogation of a law enforcement officer results in the recommendation of demotion, dismissal, transfer, loss of pay, reassignment, or similar action that is considered punitive. A law enforcement officer is entitled to a hearing, before the law enforcement agency takes that action. The Department shall give notice, to the law enforcement officer, of the right to a hearing by a hearing board. The notice required 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. (Md. Code, Public Safety Article, Title 3, Section 3-107).

The Administrative Hearing Board ("Board"), convened by direction of the Police Commissioner, conducts administrative hearings to hear the charges against law enforcement officers. This can lead to punitive action and bring forth to the Police Commissioner a finding of fact concerning the charges and specifications. If it finds guilt on any charge, the Board recommends a course of disciplinary action to the Police Commissioner.

An administrative hearing is an administrative proceeding in which neither life nor liberty is placed in jeopardy. The rules of evidence applicable in a judicial proceeding 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.

B. General Duties and Responsibilities of the Administrative Hearing Board Members

Each Board must render finding of fact concerning the charges and specifications, and, if the Board renders a finding of guilt on any charge, the Board shall recommend a course of disciplinary action to the Police Commissioner.

The decision of the Board will be made upon the information contained in investigative reports, statements, documents, testimony of witnesses, and other appropriate evidence introduced during the hearing.

The Board's decision and recommendation of punishment are based on a simple majority vote.

While conducting the hearing, the Board must:

1. Maintain a chronology of events;

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2. Maintain a list of all exhibits and evidence presented including but limited to the exhibit number; description of the exhibit; and an identification of which party introduced it;
3. Record all motions and ruling; and
4. Take notes regarding testimony of witnesses, objections, and evidence.

C. Chairperson's Responsibilities

The Chairperson will preside over the hearing and administer oaths or instruct the Court reporter to do so.

The Chairperson shall ensure that Board members fulfill their general duties and responsibilities and may assign or delegate the required tasks, such as the recording of exhibits, to specific members.

The Chairperson shall decide questions of procedure and will rule on objections and all other related matters.

The Chairperson shall seek legal counsel on questions of law which arise during the hearing.

The Chairperson shall notify the parties of any fact the Board will take notice of and give each party an opportunity to contest to those facts.

The Chairperson shall issue summons and subpoenas, when requested in a timely manner.

After deliberation by the Board on the charges and specification(s) in question, the Chairperson shall reach a consensus, by majority vote (each board member's vote being equal, regardless of rank) of the Board members as to the appropriate finding of fact for each charge and specification. Included within such finding of fact will be a concise statement of fact applicable to each charge. The discussion of each charge 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 shall note the fact in the report to the Police Commissioner.

The dissenting member shall also submit the rationale for such dissent, and this opinion will be included in the report to the Police Commissioner.

The Chairperson shall be responsible for apprising the Police Commissioner and the affected employee in writing of the board's finding of fact, conclusions of law and recommendations of discipline.

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D. Administrative Hearing Stages**1. Preliminary Matters and Introductions:**

This is the introductory phase of the hearing, at this stage:

- a. The Chairperson shall call the case to order;
- b. Board members identify themselves by name and rank;
- c. The Chairperson shall have parties and their representatives identify themselves;
- d. The Chairperson shall announce the proceedings are being recorded;
- e. The Chairperson shall ask if Respondent has received the charges; and
- f. The Chairperson shall hear and rule on any preliminary motions.

Example Preliminary Motions:

- **Continuance** – Hearing is continued to another day because of an unexpected issue.
- **Sequestration** – Witnesses to testify required to leave the hearing room, except for expert witnesses, the Department's representative, and the accused.
- **Postponements** – Same as continuance; no attorney, illness, witnesses not available, etc.
- **Motions to Amend Charging Documents:** Correcting typos or language in charges and specifications.

2. Reading of the Administrative Charges:

The Chairperson shall read the charges and specifications into the record. If the Respondent waives the reading of the charges, the Chairperson shall proceed to plea stage.

3. Plea by the Respondent to Administrative Charges:

The Chairperson shall ask the Respondent what his plea is to each and every charge and specification. The Respondent shall enter a plea of guilty or not guilty to each and every charge and specification. If the Respondent pleads guilty to all the charges and specifications, the Chairperson shall proceed to the disciplinary recommendation. If the Respondent pleads guilty to some, but not all, of the charges and specifications or pleads not guilty to all of the charges and specifications, the Board shall proceed to opening statements.

4. Opening Statement by the Department:

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The Department's opening statement is an outline or summary of the nature of case and of the facts and evidence it anticipates it will present in support of the charges and specifications. The purpose of an opening statement is to advise the Board of the facts relied upon and of the issues involved so that the Board will be able to better understand the evidence. Nothing a representative says in opening statement, or in any argument for that matter, is evidence.

5. Opening Statement by the Respondent:

The Respondent's opening statement is an outline or summary of the nature of case and of the facts and evidence it anticipates to present or that it anticipates the Department will not present as to the charges and specifications. Its purpose also is to advise the Board of the facts relied upon and of the issues involved so that the Board will be able to better understand the evidence. Again, nothing a representative says in the opening statement, or in any argument for that matter, is evidence.

6. Department's Presentation:

This is the Department's evidence or factual support for the charges and specifications; it will include any or all of the following: information contained in investigative reports, statements, documents, testimony of witnesses, and pictures and other evidence.

Generally, it will proceed in the following order:

Examination of witnesses by Department
Cross-examination by the Respondent
Examination by the Hearing Board
Submission of Documentary Evidence
Facts Department requests Board to notice

Note: During the Presentation stage of the hearing, representatives for the Department and the Respondent will make objections to the questions or evidence presented or may make motions to exclude evidence. The Chairperson shall follow the procedures for ruling on objections and motions on pages 8-10.

7. Respondent's Presentation:

This is the Respondent's evidence or factual support for his defense to the charges and the specifications; it will include any or all of the following: information contained in investigative reports, statements, documents, testimony of witnesses,

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pictures, and other evidence. The Respondent does not have to put on a defense; he may simply argue that the Department has failed to meet its burden of proof.

Generally, it will proceed in the following order:

Examination of witnesses by Respondent
Cross-examination by the Department
Examination by the Hearing Board
Submission of Documentary evidence
Facts Respondent requests Board to notice

8. Rebuttal by Department:

This is the Department's response to Respondent's evidence or factual support for his defense to the charges and specifications; it will include any or all of the following: information contained in investigative reports, statements, documents, testimony of witnesses, and pictures and other evidence. The Department does not have to put on a rebuttal, and does so rarely, and only, if there is additional evidence not already in the record that it believes will rebut any evidence presented by the Respondent in his defense.

9. Department's Summation:

This is the opening closing statements or arguments by the Department's representative to the Board. It should summarize the evidence that has been presented that the Department believes establishes by a preponderance of the evidence that the Respondent committed the conduct alleged in the charges and specifications. The argument does not constitute evidence and the Board may limit the time allowed for argument.

10. Respondent's Summation:

This is the closing statements or arguments by the Respondent's representative to the Board. It should summarize the evidence that the Respondent believes proves or demonstrates that the Department has failed to establish, by a preponderance of the evidence, that the Respondent committed the conduct alleged in the charges and specifications, or that the Respondent has a valid defense to charges and specifications. The argument does not constitute evidence and the Board may limit the time allowed for argument.

11. Department's Rebuttal Summation:

This is the final closing statements or closing arguments by the Department's representative to the Board. It should respond to the argument presented by the Respondent and summarize the evidence that has been presented that the

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Department believes establishes by a preponderance of the evidence that the Respondent committed the conduct alleged in the charges and specifications. The argument does not constitute evidence and the Board may limit the time allowed for argument. The Department gets the final word because it has the burden of proving the charges.

12. Deliberation for Decision on Guilt or Innocence:

After closing arguments or summations, the Chairperson should ensure that they have all of the evidence that has been admitted and then recess for deliberations. Deliberations shall be conducted in a closed session and all parties, except the Board, shall be excused from the hearing room.

This is the most important stage of the process. The Board must decide whether the Department has proved by a preponderance of the evidence that the Respondent committed any or all of the violations Departmental rule, regulation, policy or procedure alleged in the charges and specifications.

13. Verdict on Guilt or Innocence:

Once the Board has come to a consensus as to the Respondent's guilt or innocence for each and every charge and specification, the Chairperson shall recall all parties to the hearing room.

After determining that all parties are present, the Chairperson shall reconvene the hearing and the findings of each charge and specification shall be announced.

If the accused is found not guilty of all charges, the Chairperson shall conclude the hearing and announce, "The case has been concluded and the hearing shall stand adjourned."

If there is any finding of guilty as to any charge and/or specification, the hearing should continue to hear evidence on recommended discipline and mitigation.

14. Department's Recommendation of Discipline and any supporting evidence:

The Chairperson shall instruct the Department's representative to present the Department's recommendation of discipline to the Board and provide any supporting testimony or evidence, including but not limited to testimony of supervisors, prior disciplinary history, past performance. This may be received in the form the Respondent's Personnel file.

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The Department is required to make a recommendation of discipline to the Board. Prior to the representative making the Department's recommendation, the recommendation is approved by the Police Commissioner's Designee. Typically, the recommendation is made in accordance with the disciplinary matrix. However, the disciplinary matrix is not binding and extenuating circumstances may exist for a recommendation above or below the matrix.

15. Respondent's Response and any supporting evidence:

The Chairperson shall allow the Respondent to respond to the recommendation and provide any supporting mitigating testimony or evidence, if he/she so desires, including but not limited to testimony of supervisors, prior disciplinary history, past performance.

The Respondent is not required to respond to the disciplinary recommendation of the Department. If the Respondent chooses not to respond, no presumption should be made by the Board based on his election.

16. Department's Rebuttal:

If the Respondent elects to respond to the Department's Disciplinary recommendation, the Chairperson shall allow the Department to respond and give its final recommendation.

17. Close of Hearing:

After the presentations on discipline have concluded, the Chairperson shall adjourn the hearing. The Chairperson shall not announce the Board's disciplinary recommendation at the hearing. After deliberations on the disciplinary recommendation, the Board's disciplinary recommendation shall be included in the Board's written report to the Police Commissioner.

18. Written Decision:

After the Board completes deliberations and arrives at consensus regarding the disciplinary recommendation, the Chairperson shall promptly deliver a written report to the Police Commissioner regarding the Board's finding of fact, conclusions of law, and disciplinary recommendation. The decision of the Board shall be in writing and must be accompanied by findings of fact. The findings of fact shall consist of a concise statement on each charge in the case. The written report and decision should follow the structure and organization of the example attached.

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E. Administrative Hearing Procedures and Guidelines for Legal Rulings and Recommendation of Discipline

1. Procedure for ruling on motions:

- a. Moving party makes motion and presents argument and/or evidence in support;
- b. Opposing part either consents or opposes - if the motion is opposed, the Chairperson shall hear the opposition;
- c. Moving party then responds; and
- d. Chairperson then rules (grants or denies) and, if necessary, states reasons for the decision.

A motion is either *denied* which means that the Board is not allowing the requested action or *granted* which means the Board is allowing the requested action.

Important Note: Unless the other party consents, when ruling on a motion, seek legal advice prior to ruling. The Board's legal advisor is appointed by the City Solicitor, and is a member of the Law Department. He or she will be available by phone while the hearing is in session.

2. Procedure for handling objections or motions to exclude evidence:

- a. Party must object to the evidence or question before the question is answered or the evidence is admitted, otherwise it is waived;
- b. If the objection is timely made, Chairperson may ask for the basis, if not stated;
- c. Chairperson shall hear any opposition or response from the other party;
- d. Rule on the objection, ruling on objections:
 - ***Sustained*** – objection is agreed to; question or evidence not allowed
 - ***Overruled*** – disagree with the objection; question or evidence is allowed

Guidelines for ruling on objections or motions to exclude evidence:

1. If after hearing the basis and response, the Chairperson intends to sustain an objection that will result in the exclusion of evidence; the Chairperson shall seek legal advice before ruling.
2. If the objection is to the form of the question and the Chairperson sustains the objection; he or she shall instruct the asking party to rephrase the question.
3. If an objection is overruled; the Chairperson shall note the objection in the record and proceed with the testimony.

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Evidentiary Standard:

There are, generally speaking, two types of evidence from which the Board may properly find the truth as to the facts of a case. One is direct evidence – such as the testimony of an eyewitness. The other is indirect or circumstantial evidence – a fact or set of facts from which the board may draw a reasonable inference. A good example of circumstantial evidence is a person testifies that he saw the person in question holding a wet umbrella coming in from outside. The witness does not need to testify to seeing it actually raining for the Board to infer that it was raining outside. As a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires the Board to find the facts in accordance with the preponderance of all the evidence in the case, both direct and circumstantial.

Pursuant to the LEOBR, evidence with probative value, including hearsay, that is commonly accepted by reasonable and prudent individuals in the conduct of their affairs is admissible and shall be given probative effect. Each record or document that a party desires to use shall be offered and made a part of the record.

Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. The hearing board shall give effect to the rules of privilege recognized by law and shall exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence. However, just because the Department may have obtained the evidence in violation of the procedural requirement of the LEOBR does not mean that the Board must exclude the evidence. There is no such exclusionary rule in the LEOBR or under state law. Miller v. Baltimore Cty. Police Dep't, 179 Md. App. 370, 393, 946 A.2d 1, 15 (2008)

Before excluding any evidence, the Chairperson must and shall seek advice from the Board's designated legal counsel.

In the event that an objection to the introduction of certain evidence is made and the Chairperson decides to allow admission of evidence, the Chairperson should note the objection in the record and proceed with the testimony.

3. Procedure for seeking legal advice:

- a. After hearing the motion or objection, the Chairperson will announce that he or she will seek legal advice on the issue;
- b. The Chairperson will announce the hearing is in recess;
- c. Excuse the parties from the hearing room; and
- d. Contact the Legal Advisor via the phone number provided by the Office of Administrative Hearings. If the Chairperson is unable to reach the Legal Advisor, the Chairperson shall have the Office of Administrative Hearings staff contact the Solicitor's Office. The Chairperson shall not seek advice

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- from anyone other than the designated Legal Advisor without prior approval from the Office of Administrative Hearing staff.
- e. After receiving and considering the advice, the Chairperson shall reconvene the hearing; and
 - f. Announce the ruling on the record.

4. Procedure and standard for determining guilt or innocence

a. Legal standard for determining guilt or innocence:

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. Some commentators have stated that a preponderance of the evidence means fifty-one (51) percent margin for the party with the burden of proof. Others have characterized this test by visualizing this concept as if it were a scale, and, as such, the party with the burden of proof need only “tip” the scale in his favor in order to prevail.

b. Burden of Proof:

The Department has the burden of proof, so if the Board determines by majority vote that the Department has failed to prove the conduct alleged in the charges and specifications by a preponderance of the evidence, the Respondent shall be found not guilty.

If the Board determines by majority vote, each vote being equal, that the Department has proved any or all of the conduct alleged in the charges and specifications and that the proven conduct is a violation of any or all of the Departmental rules or regulations identified in the charges by a preponderance of the evidence, then the Board shall find the Respondent guilty of the Charge(s) and Specification(s).

5. Procedures and standard for determining a recommendation of discipline

In determining what disciplinary action the board will recommend to the Police Commissioner, the Board should consider the totality of the circumstances including but not limited to:

- a. The nature of the charges and specifications for which the Respondent was found guilty;

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- b. The disciplinary matrix;
- c. The Department's recommendation;
- d. Testimony from supervisors;
- e. The Respondent's past performance;
- f. Disciplinary history; and
- g. Any other relevant information or evidence.

F. Example Hearing Language for Chairperson

1. Introduction:

Let the record show that on _____ at _____ this hearing board convened to hear the charges against _____.

This hearing will be recorded but not transcribed unless deemed necessary at a later date.

The members of the board are _____ **(identify all members)**

Would the attorneys or representatives for both sides please identify themselves for the record?

Mr./Ms. _____, has your client received a copy of the charges and relevant specifications?

Note: At this point the defense may waive or request a reading of the charges

Are both sides ready to proceed?

Any primary matters?

What is your client's plea to each of the charges and specifications, either guilt or not guilt. (record all pleas)

2. Opening statements:

Department: Mr./Ms. _____ you may proceed with your opening statement.

Respondent: Mr./Ms. _____ you may proceed with your opening statement.

3. Department's Presentation of Evidence:

Mr./Ms. _____ **(Department)**, call your first witness.

4. Respondent's Presentation of Evidence

Appendix A

Hearing Board Guidelines, pg. 12

Mr./Ms. ____ (**Respondent**), call your first witness.

5. Closing Arguments or Summations

Department: Mr./Ms. ____ you may proceed with your closing statement.

Respondent: Mr./Ms. ____ you may proceed with your closing statement

Department: Mr./Ms., you may proceed with your rebuttal

6. Verdict Deliberations

The Board will recess at _____ hours to deliberate the guilt or innocence of the accused member.

7. Announcement of the Verdict

The hearing board is reconvened at _____ hours to inform Police Officer _____ of the Board's finding regarding the listed charges and specifications.

The Board reviewed the evidence and the testimony. It took into account the totality of the evidence presented. The Board finds that

If the verdict is not guilty:

This case has been concluded and the hearing stands adjourned at _____ hours.

If the Verdict is guilty on any or all charges, proceed to disciplinary phase:

8. Recommendation for Discipline

Ask the representative for the Department:

Mr./Ms. _____, what is the Department's recommendation?

After receiving the recommendation, ask the representative for the Respondent:

Mr./Ms. _____, do you have any mitigation witnesses or information you would like to present?

9. Mitigation

The Respondent will present mitigation witnesses.

Appendix A

Hearing Board Guidelines, pg. 13

After the Mitigation Phase, announce:

The Board has heard recommendations from the Department and Respondent and the mitigation from the Respondent. Now adjourn to consider what if any disciplinary action it will recommend to the Police Commissioner. The decision of the Hearing Board on discipline will be delivered to the Respondent and the Police Commissioner in writing.

Thank the participants, and announce that the administrative hearing is now adjourned at _____.

Appendix B

Acceptance of Disciplinary Action

POLICE DEPARTMENT
BALTIMORE, MARYLANDAcceptance of Disciplinary Action
Form 402

Date: _____

To: Commanding Officer

Via: Official Channels

From: Chief _____
Office of Professional ResponsibilitySubject: Disciplinary Action
Officer _____
IA # _____
E.O.D. _____
Seq. # _____

Summary of Facts: (Attached copy of charging documents).

Disciplinary Determination:

I acknowledge receipt of this disciplinary action.

Respondent Officer Date_____
Chief OPR/Commander IAS Date

Appendix C

Certification of Completion of Disciplinary Action, Form 155

**POLICE DEPARTMENT
BALTIMORE, MARYLAND**

**Certificate of Completion of Disciplinary Action
Form 155**

TO: Director, Human Resources Section

VIA: Official Channels

FROM: Commanding Officer-

SUBJECT: Certification of Completion of Disciplinary Action, Case of

Rank/Classification First Name M.I. Last Name

Sequence Number Personnel Order

- _____
Suspension from duty without pay (Subject Employee's payroll account has been appropriately marked from _____ to _____).
- _____
Suspension from duty with (FSLA Exempt) (Subject Employee's payroll account has been appropriately marked from _____ to _____).
- _____
Loss of leave in the amount of _____ days. (These days have been deducted from subject employee's record of allotted leave and an appropriate memorandum placed in the employee's District/Division personnel jacket – copy provided herewith.)
- _____
Voluntary reimbursement for loss/damage to departmental equipment in the amount of _____. (Provide a copy of reimbursement agreement/authorization as attached.)
- _____
Reimbursement in the amount of _____ for Departmental Accident on _____ Date.
- _____
Reprimand: _____ Simple Letter _____ Middle Letter
 _____ Severe Letter
- _____
Failure to Appear in Court. Fine of _____.
- _____
Successfully completed Enhanced Driver's Training on department time.
- _____
Non-punitive Counseling. (Form 98/164 must reflect date, summary of initial session, state of intended follow-up where appropriate, signature of counseling official). Non-punitive counseling form should be filed in the training section of member's personnel jacket in Human Resources Section.
- _____
Other Non-disciplinary action. (Specify) _____

I hereby certify that the above disciplinary action was in fact carried out.

Respectfully,

Signature of Commanding Officer / Date

Appendix D

Disciplinary Process Flow Chart

