

FORT MYERS POLICE DEPARTMENT GENERAL ORDER 7.2

TITLE: Disciplinary Process

INDEXING: Disciplinary Process, Counseling, Reprimand, Suspension, Demotion, Termination, Re-Training, Classifications of Allegations, Disciplinary Authority

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PURPOSE

The purpose of this general order is to establish a fair disciplinary process for personnel charged with violations of department rules, regulations, general orders, policies, or procedures.

SCOPE

These procedures shall apply to all Fort Myers Police Department personnel.

SECTION I: DEFINITIONS

Final Action Summary (FAS): A form used in all **Internal Affairs** Investigations, **Administrative Investigations**, Supervisory **Actions**, Vehicle Pursuits, Firearm Discharges, and Vehicle Accidents **involving City owned/leased vehicles** to document a final disposition.

Discipline: **A corrective measure to attain satisfactory employee behavior/performance and prevent reoccurrence of policy violations. Discipline includes any of the following: termination, demotion, suspension, transfer or reassignment (only as a direct result of sustained misconduct), reprimand, or formal counseling.**

Law Enforcement and Correctional Officers' Bill of Rights (Florida State Statute 112.532-534): Legislation created to establish conditions for interrogating law enforcement and correctional officers under investigation by the agency for any reason that could lead to disciplinary action, suspension, demotion, or dismissal.

Preponderance of Evidence: Preponderance of evidence means such evidence, when considered and compared with that opposing it, has more convincing force and produces a belief that what is sought to be proved is more likely true than not.

SECTION II: CODE OF CONDUCT/Written DIRECTIVES

- A. A Code of Conduct and appearance for Fort Myers Police Department members is inclusive in departmental written directives. The agency's written directives specify both required and prohibited conduct by members. **(CALEA 26.1.1)**

- B. Each police department member will be provided access to the agency's written directives. All departmental policies, procedures, and regulations will be available electronically via the department's Intranet (PowerDMS Program). It shall be each member's responsibility to read, understand, and comply with all agency directives.
- C. The Accreditation Manager will be the administrator of the PowerDMS Program, and will be responsible for inputting, revising, and the dissemination of all departmental general orders, policies, procedures, and regulations.
- D. **Violations of** department's general orders, policies, and procedures are the basis for disciplinary action taken by this agency.

SECTION III: DISCIPLINARY PROCESS (CALEA 26.1.4)

A. Discipline is an action initiated and administered to attain satisfactory employee performance. ***Discipline can result based upon the outcome of Internal Affairs or Administrative Investigations conducted by the Department. Additionally, disciplinary action can result from the outcome of Supervisory Actions, Vehicle Pursuits, Firearm Discharges, and employee involved Vehicle Accidents involving City owned/leased vehicles.*** The disciplinary process as enumerated in this general order encompasses many forms, including demotion and termination when appropriate. Depending on the circumstances, the disciplinary process may be progressive in nature and will consider factors to include officer experience as well as aggravating and mitigating circumstances. Forms of discipline may include:

1. Counseling (***except that done as Supervisory Notes***)
2. Reprimand
3. ***Reassignment/Transfer (only as a direct result of sustained misconduct)***
4. Suspension (***with loss of pay***)
5. Demotion
6. Termination

B. **Disciplinary authority regarding the outcome of Internal Affairs or Administrative Investigations (See G.O. 7.1): The final disposition (to include discipline) of Internal Affairs and Administrative Investigations rests solely with the Chief of Police. All recommendations regarding the final disposition of Internal Affairs and Administrative Investigations shall be made by the Internal Affairs Commander, as directed by the Chief of Police. (CALEA 26.1.5)**

C. **Disciplinary authority regarding the outcome of Supervisory Actions, Vehicle Pursuits, Firearm Discharges (without injury or death), and employee involved Vehicle Accidents involving City owned/leased is delegated to the following positions:**

<u>Action</u>	<u>Authority Vested in</u>
1. Termination	Chief of Police
2. Demotion	Chief of Police

- | | |
|--------------------------------------|---------------------------------|
| 3. Suspension | Chief of Police |
| 4. Reassignment/
Transfer | Chief of Police |
| 5. Reprimand | Deputy Chief or Designee |
| 6. Formal Counseling | Deputy Chief or Designee |

Reprimands and formal counseling require final review/approval by the Internal Affairs Commander before disciplinary action is taken. This does not preclude supervisors within the effected members chain of command from making a final action recommendation (e.g., Deputy Chief or designee may make a recommendation for suspension, but the Chief will determine the final disciplinary action.)

D. Counseling, Remedial, Training, and Reprimands: Supervisors are responsible for counseling and/or reprimanding employees when necessary to improve **behavior/performance**. Remedial training, **although a function of the disciplinary process**, is not considered discipline. (CALEA 26.1.4)

1. Informal Counseling: **The first step in correcting behavior/performance is usually informal counseling. In most cases, it is appropriate to consider whether coaching, counseling, and retraining can bring behavior/performance up to a satisfactory level.** The supervisor shall indicate to the employee the required conduct or performance expected. Informal counseling **will only be utilized when addressing a supervisor's observation/knowledge of minor policy violations which do not involve third-party external complaints.** Informal counseling shall not be recorded on a Final Action Summary (FAS). Supervisors are encouraged to retain Supervisory Notes in the BlueTeam/IA Pro software program **for** informal counseling.
 - a. Any remedial training utilized as a **function of the disciplinary process** shall be documented and maintained in the member's **training** file.
2. Formal Counseling: Recorded guidance to correct a deficiency or direct employee **behavior/performance**. **Formal counseling is appropriate when informal counseling did not resolve the behavior/performance issue/minor policy violation or when the issue is serious enough to warrant advancement immediately beyond informal counseling. It is also appropriate to remind the employee that subsequent disciplinary action may be necessary if behavior/performance does not improve. Formal Counseling is a form of discipline and must be recorded on a Final Action Summary (FAS).**
3. Reprimand: **A formal written admonishment** of a deficiency, poor performance or violation of a rule, order, directive, policy, or procedure. **Reprimands are a form of discipline and must be recorded on a Final Action Summary (FAS).**

D. Supervisory Action Reports: The appropriate level of **retraining, counseling, or the degree of discipline** administered must be fair and objective. **The final report, the Final Action Summary and all supporting documents shall be forwarded through the member's chain of command for review by the Internal Affairs Commander and approval through the BlueTeam/IA Pro System. Supervisors shall make a recommendation for final action (to include possible disciplinary action), but the final disposition will be determined by the appropriate Deputy**

Chief (or designee) or higher authority based upon the level of action/discipline issued. (See G.O. 7.2, Section III C).

- E. Upon determination that an employee has committed a serious breach of the rules of conduct, orders, directives, policies or procedures, or is otherwise determined to be unfit for duty, the supervisor will report the situation to the **Internal Affairs** via the chain of command without delay. In the absence of a Lieutenant or higher-ranking authority, the responsibility reverts to the ranking Sergeant.
- F. Alternative to Suspension: **If an employee is suspended, in lieu of serving the suspension he/she may** opt to have up to forty (40) hours of that suspension time deducted from their annual vacation or holiday comp time banks.
1. Employees are not permitted to deduct time from their regular comp time banks due to FLSA (Fair Labor Standards Act) overtime standards.
 2. When an employee chooses this option, they are obligated to waive their right to grieve the disciplinary action and shall sign a document to that effect.
 3. This suspension alternative is available to an employee only once during a **12-month period**.
- G. Upon receiving a Final Action Summary (FAS), members shall acknowledge receipt by signing a copy. The member's signature on an FAS does not imply the member concurs with the final disposition, but merely acknowledges their receipt of the document. The member may still avail themselves of any right to appeal in accordance with policy or applicable provisions of a collective bargaining agreement. A member's failure to sign the document, acknowledging receipt, may lead to further discipline.

SECTION IV: FINAL DISPOSITIONS

Final Dispositions: For each investigation of misconduct, a "conclusion of fact" is written and a "finding" is addressed as one of the following: **(CALEA 26.3.8)**

- A. Exonerated: A completed investigation may be labeled exonerated when the facts suggest that the alleged incident did occur, but that the employee's actions were lawful, proper, and consistent with department policy.
- B. Not Sustained: The allegation has been investigated and the facts presented are insufficient to prove the allegation by a preponderance of evidence.
- C. Sustained: The allegation is supported by a preponderance of evidence to justify reasonable cause and/or just cause that the incident occurred.
- D. Unfounded: A completed investigation may be labeled unfounded when the complainant admits to making a false allegation or the facts of the investigation support this, or the accused employee was not involved in the incident, or there is no basis in fact that the incident occurred. An investigation may also be labeled unfounded if, after investigation, the allegation is demonstrably false or there is no credible evidence to support it.
- E. Other Findings: During the course of the investigation it was determined other violations exist, or training and / or the policy does not properly address the allegation, or there is confusion about, or a conflict in policy that led to the alleged conduct, or a policy was non-existent, or the policy itself was incorrect or deficient.

SECTION V: DISCIPLINARY ACTION

A. Due Process Written Notification to Personnel:

1. Pre-Discipline Notice: Upon determining that an **allegation** is sustained and **and termination, demotion, suspension, transfer or reassignment (only as a direct result of sustained misconduct), or other personnel action that might result in loss of pay or benefits is proposed against a department employee.** A pre-discipline notice, addressed to the employee and signed by the **Internal Affairs** Commander or Chief of Police shall be prepared and include the following:
 - a. A detailed statement of the alleged act(s) or omission(s) or other misconduct.
 - b. The date(s), time(s), and place(s) where the alleged misconduct, act(s), or omission(s) took place.
 - c. The rule(s), G.O.(s), and or law(s), by section number, alleged to have been violated.
 - d. **A statement of the proposed discipline for each sustained allegation of misconduct.**
 - e. A date, time, and place where the employee is to meet with the Chief of Police or designee in order that the employee may present an explanation of his/her action(s).
 - f. The pre-discipline **notice** shall be delivered to the employee prior to the effective date of any action taken by the agency. The employee shall sign the letter to acknowledge receipt of the letter. Signing of this letter is not an admission of wrong doing, but it is to acknowledge that the employee will appear at the meeting.
 - g. **Upon request, the employee will be provided with a complete copy of the investigative file.**
 - h. Counseling, training, and/or reprimands are excluded from this requirement.
2. Pre-Discipline Hearing: The Chief of Police or designee shall conduct a pre-discipline **hearing, if termination, demotion, suspension, transfer or reassignment (only as a direct result of sustained misconduct), or other personnel action that might result in loss of pay or benefits is proposed against a department employee.** This **hearing shall** be recorded. The employee may be represented by **a union representative or** counsel and may present **reasons why the proposed disciplinary action should not be taken.** Although facts **and mitigating circumstances** may be presented, this is not a full evidentiary hearing, and testimony of witnesses other than **from** the employee **or his/her representative,** will not be allowed. The employee may waive the pre-discipline hearing in **writing prior to the hearing.**
 - a. Upon the conclusion of the pre-discipline hearing, all new facts, if any, shall be considered by the Chief of Police or designee, and a final decision will be reached. After the decision is final, a Final Action Summary will be completed and signed.
 - b. In the case of termination, the affected member will be given a copy of the disposition and findings letter, which will contain the additional following information:
(CALEA 26.1.7)

1. Reason for dismissal.
 2. Effective date of dismissal.
 3. Notice to contact the Human Resources Department, who will advise the member of the status of all fringe and retirement benefits afforded the member after dismissal.
 4. Upon the member's request, one copy of the investigative file that contains supporting documentation relating to the member's dismissal.
3. Appeals to Disciplinary Action: General Order 7.3 establishes the appeal process for both grievances and appeals for disciplinary action. As stated in that order, an employee may grieve or appeal utilizing the procedures outlined in the appropriate collective bargaining agreement or City of Fort Myers H.R. policy 6.05. **(CALEA 26.1.6)**
 4. The provisions established in this section, do not apply to the following employment statuses; new hire civilian (non-sworn) employees who are in their initial probationary period or a new hire employee, hired into a non-certified police officer classification, prior to receiving a sworn police officer status.

SECTION VI: DOCUMENTATION/MAINTENANCE OF DISCIPLINARY RECORDS

- A. Documentation of Disciplinary Action: The IA Pro computer program is the official repository for all documented incidents that fall under this general order. The investigating supervisor shall document each instance of discipline on a Final Action Summary (FAS). The ***Internal Affairs Bureau*** is responsible for the security and maintenance of these records.

REFERENCES

Law Enforcement and Correctional Officers' Bill of Rights (Florida State Statute 112.532)
Florida State Statutes, Chapter 257
FMPD General Order 7.3 – Grievance Process
FMPD General Order 7.1 – Professional Standards & Internal Affairs

APPROVED:

[Electronic Signature on File]

Jason Fields, Chief of Police
Fort Myers Police Department

08/23/2024

Date _____