

## San Francisco Fire Commission

# PROCEDURAL RULES GOVERNING TRIAL OF DISCIPLINARY CASES

### I. INTRODUCTION

Under Charter Section A8.343, a uniformed member of the Department shall not be subject to dismissal, nor to punishment for any breach of duty or misconduct, including any violation of the Rules, except for cause.

The Chief may impose a disciplinary suspension not to exceed 10 working days, subject to a suspended member's right to appeal the suspension to the Commission and to have a trial and hearing on that suspension.

If the Chief determines that a member's breach of duty or misconduct warrants discipline in excess of a suspension of 10 working days, the Chief must file a verified complaint against the member with the Commission, setting forth specifically the acts that the Chief has determined constitute a breach of duty or misconduct.

If the Chief determines that a non-disciplinary dismissal of a member from the Department is warranted, the Chief must file a verified complaint against the member with the Commission, setting forth specifically the facts that the Chief has determined warrant a non-disciplinary dismissal. Generally, the Commission will apply these Procedures in non-disciplinary dismissal cases.

After reasonable notice, the Commission will afford the member a fair and impartial trial and hearing on the appeal or verified complaint. The member is entitled to appear personally and by representative, to have a public trial, and to secure and enforce, free of expense, the attendance of all witnesses necessary for his or her defense.

### II. DEFINITIONS

A. **Chief.** "Chief" means the Chief of the San Francisco Fire Department.

B. **City.** "City" means the City and County of San Francisco.

C. **Commission.** "Commission" means the San Francisco Fire Commission.

D. **Day.** Unless expressly stated otherwise, any reference to a "day" or to "days" in these Procedures is a reference to calendar days.

E. **Department.** "Department" means the San Francisco Fire Department. In proceedings before the Commission, the Department acts through the Chief or the Chiefs designee.

F. **Hearing Officer.** A "Hearing Officer" is a single Commissioner assigned by the Commission President to preside at a hearing in a disciplinary case to take evidence in the case and to take other actions delegated or authorized under these Procedures.

G. **Member.** In a disciplinary case, the "member" is a uniformed Department employee accused of a breach of duty or misconduct, including any violation of the Rules. In a non-disciplinary case, the "member" is a uniformed Department employee against whom the Chief has filed a verified complaint alleging non-disciplinary cause for dismissal from employment.

H. **Parties.** The Department and the member are the parties to a Commission proceeding. Individually, the Department and the member are each a party to the proceeding.

The Department may be represented during a proceeding by the Chief or the Chief's Departmental designee. The Chief may not select as a designee an individual listed by one of the parties as a witness or otherwise expected to be a witness in the case. Notwithstanding this restriction, the Chief and the Deputy Chiefs may attend some or all of a discipline proceeding and still testify as a witness in that proceeding.

I. **Presiding Officer.** "Presiding Officer" means the Commissioner responsible for presiding at the hearing on a discipline case. For hearings held before the Commission, the Presiding Officer is the Commission President, or the Commission Vice President or another Commissioner when designated by the Commission President to preside at the proceeding; and for hearings held before a Hearing Officer, the Presiding Officer is the Hearing Officer.

J. **Procedures.** "Procedures" means these "San Francisco Fire Commission Procedural Rules Governing Trial of Disciplinary Cases."

K. **Rules.** "Rules" means City or Department Rules and Regulations, General Orders, Manuals, Policies or Procedures.

### III. GENERAL REQUIREMENTS

#### A. Ex Parte Communications Prohibited

An "ex parte communication" is any communication regarding any aspect of a discipline case between a party to the case or any representative of a party, and any individual Commissioner, the Commission as a whole, or the Commission Secretary or counsel, where the other party to the case is not included in the communication. All ex parte communications, by any means, including but not limited to, by telephone, email, in person, or written correspondence, are prohibited.

The prohibition on ex parte communications does not prohibit communications where all parties to the case are included in the communication. In addition, a party or a party's representative may have ex parte communications about the case with the Commission Secretary and the Commission's counsel, provided that the communication is limited solely to procedural matters.

#### B. Burden of Proof

In all discipline cases, including appeals, the Department has the burden of proving by a preponderance of the evidence that the accused member has committed a breach of duty or engaged in misconduct.

In any non-disciplinary proceeding, the Department has the burden of proving cause for dismissal by a preponderance of the evidence.

#### C. Rules of Evidence

The rules of evidence applicable in the courts are not binding on the Commission or any assigned Hearing Officer.

#### D. Witnesses

A "witness" is an individual whom at least one party intends to call to testify before the Commission during a particular discipline proceeding.

Each witness shall testify under oath.

With the exception of parties and party representatives, all witnesses are excluded from Commission discipline proceedings except when testifying,

until the witness has completed testifying and has been excused by the Presiding Officer. A party may request that an investigator be permitted to be present during proceedings, which request the Presiding Officer may grant in his or her discretion.

The parties and their representatives may not disclose the content of a witness's testimony to other witnesses before those other witnesses testify and are excused by the Presiding Officer.

**E. Submissions to the Commission**

The parties shall submit any correspondence, pleading or other material for the Commission or Presiding Officer in care of the Fire Commission Secretary, 698 2<sup>nd</sup> Street, San Francisco, California, 94107. The parties may submit materials via hand delivery, email, facsimile, overnight delivery, or U.S. Mail.

When a party submits any correspondence, pleading or other material to the Commission or Presiding Officer, the party shall concurrently submit the correspondence, pleading or other material to the other party or, if known, to that party's representative, using a method that ensures delivery on the same date as delivery to the Commission. An item is "submitted" when received by the Fire Commission Secretary.

**F. Hearing Time**

The Commission's goal is to render a decision in a suspension appeal proceeding within 90 days of the notice of appeal being filed, and to render a decision in a proceeding on a verified complaint filed by the Chief within 120 days of the complaint being filed. In any individual case, the time to render a decision may exceed these goals, and the failure to render a decision within these time objectives shall not provide any basis for challenging any discipline imposed by the Commission. In an effort to accomplish its goals for rendering a decision on a case, and to promote efficiency in the hearings, the Commission generally sets time limitations on the parties' presentation of their cases, based on the facts and circumstances of a particular case. For many cases, the Commission will allocate 1 1/2 hours to each party as the maximum total hearing time for the party's discipline case. Because the Department bears the burden of proof, generally the Commission also allocates 10 additional minutes to the Department for rebuttal argument. In a particular case, the Commission may set shorter or longer time limits for the parties to present their cases, in its sole discretion.

The Commission will notify the parties regarding the maximum total hearing time allowed for the parties to present their discipline cases, and the allocation of time, in its notice scheduling the initial hearing date. The Presiding Officer may modify the time allocation as the case develops, in his or her discretion.

If either party believes that additional time beyond that set by the Commission is required to present its case, the party shall submit a written request to the Presiding Officer, with a copy concurrently provided to the other party, stating good cause for the additional time and specifying the amount of additional time requested. The deadline for a party to submit any request for additional time will be set in the written notice scheduling the initial hearing date.

#### **G. Continuances**

In order to complete discipline proceedings within the time goals set by the Commission, continuances are generally disfavored. The procedures to request a continuance at various stages of the case are described in Sections IV.A. [35-57](#), IV.B. [35-57](#) and XI.E., below.

#### **H. Record**

The Commission will provide a court reporter to record and prepare a stenographic transcript of all proceedings (excluding Commission deliberations and any meeting on proposed findings of fact, which shall be recorded by the Commission Secretary). The Commission will order the transcripts and provide a complete copy to both parties. The Commission will maintain all documentary or other evidence as part of the record, including copies of any documents or other tangible items excluded from evidence.

#### **I. Non-Disciplinary Dismissal**

At times, the Department may request that the Commission dismiss a member for non-disciplinary cause, e.g., non-punitive medical separation or failure to meet minimum qualifications for the member's classification. In such a case, the Chief shall file a verified complaint against the member with the Commission, indicating the Chief's recommendation for a non-disciplinary dismissal from employment and specifying the cause for the requested dismissal. Notwithstanding any reference to "discipline" or "disciplinary" proceedings in these Procedures, generally the Commission will use these hearing Procedures for any non-disciplinary dismissal proceeding.

#### IV. PROCEDURES FOR SETTING A DISCIPLINARY CASE FOR HEARING

##### A. Suspension Appeals

###### 1. Charter Requirements

Under the Charter, the trial and hearing on a suspension appeal must be held within 30 days after the notice of appeal is filed with the Commission. A notice of appeals is deemed filed when received at the Commission office.

###### 2. Telephonic Case Management Conference

After an appeal is filed, the Commission Secretary will contact the Department, Department counsel, the Member and/or the Member's representative, if known, to arrange a date and time for a telephonic initial case management conference with the assigned Hearing Officer. During the telephonic case management conference, the Hearing Officer will discuss available hearing dates, pre-hearing deadlines, the availability of an Early Case Resolution Conference, and whether a time waiver is needed from the Member.

###### 3. Voluntary Early Case Resolution Conference

The parties may agree to participate in an Early Case Resolution Conference. At an Early Case Resolution Conference, the accused Member and his or her representative must attend in person, and the Chief or his or her designee must also attend in person. The Early Case Resolution Conference shall be conducted by the assigned Hearing Officer. The parties will submit an Early Case Resolution Conference statement to the Commission Secretary two business days prior to an Early Case Resolution Conference. The statement shall not exceed three pages, and shall include a statement of facts, a summary of evidence that party anticipates presenting at the hearing, the party's position on settlement, and any other information the party deems necessary to inform the Hearing Officer of the relevant issues.

If the parties do not mutually agree to participate in an early case resolution conference or the parties agree to participate in a conference but are unable to reach a settlement, the case will be scheduled for hearing.

If the parties reach a settlement, the Department will prepare a settlement agreement and send it to the Member and/or the Member's representative for review and approval. The Commission must ultimately approve any settlement. The Commission Secretary will notify the parties in advance of the Commission meeting where the Commission will consider the settlement. The parties may appear at that meeting to present the settlement to the Commission.

#### **2.4. Notice of Hearing Date**

The Secretary will send written notice to the member and Chief, and the parties' representatives if known, of the time and date of the hearing on the appeal. The member and Chief will receive at least 10 days notice of the initial hearing date.

#### **3.5. Request for Continuance by Member**

The member or the member's representative may request a continuance of the scheduled hearing date by sending a letter to the Commission President, in care of the Commission Secretary, (1) requesting a continuance of the hearing, (2) stating good cause for the continuance, (3) waiving the 30-day period set by the Charter and consenting to have the hearing held at a later date, and (4) providing dates in the near future when the member, the member's representative and the member's witnesses are all available for the hearing. The request for continuance must include a "Consent to Waive Time For Trial on Appeal" form completed and signed by the member. At the same time the member or the member's representative submits the request for continuance to the Commission, the member or representative shall send a copy of the request to the Department's representative, if known, or if not known, then to the Chief, using a method that ensures delivery on the same date as delivery to the Commission.

Any request for a continuance must be in writing and submitted as soon as the member or the member's representative learns of the circumstances leading to the request for a continuance. The Presiding Officer will generally not grant a request for a continuance when the request is submitted within 3 business days of the scheduled hearing date, absent extraordinary circumstances.

#### **4.6. Request for Continuance by Department**

The Department may request a continuance of the scheduled hearing date by sending a letter to the Commission President, in care of the Commission Secretary, (1) requesting a continuance of the hearing, (2) stating good cause for the continuance, and (3) providing dates in the near future when the Department's representatives and witnesses are all available for the hearing. At the same time it submits the request for continuance to the Commission, the Department shall send a copy of the request to the member's representative, if known, or if not known, to the member, using a method that ensures delivery on the same date as delivery to the Commission.

Because a member is entitled to have the appeal hearing held within 30 days after the notice of appeal is filed, if the Department wishes a continuance beyond that time, the Department must obtain the accused member's waiver of the 30-day period and consent to having the hearing held at a later date by obtaining from the member a completed and signed "Consent to Waive Time For Trial on Appeal" form. Members are not required to complete the form or consent to an extension of time. The Presiding Officer will not ordinarily continue the hearing beyond the 30-day period without the member's written consent to extend the time for the hearing.

Any request for a continuance must be in writing and submitted as soon as the Department learns of the circumstances leading to the request for a continuance. The Presiding Officer will generally not grant a request for a continuance when the request is submitted within 3 business days of the scheduled hearing date, absent extraordinary circumstances.

**5.7. Action on Requests for Continuance**

Only the Presiding Officer has the authority to continue the hearing date. The Commission Secretary may not take a hearing off calendar unless directed to do so by the Presiding Officer. When a request for continuance is received, the Presiding Officer will consider the request and respond in writing. If a request for continuance is granted, the hearing will be continued to a date certain, absent extraordinary circumstances.

**B. Verified Complaint Filed by the Chief**

**1. Timeline for Setting Hearing**

The Commission will ordinarily begin the trial and hearing on a verified complaint filed by the Chief within 60 days from the date the complaint is filed with the Commission. A complaint is deemed filed on the date transmitted by the Department.

**2. Telephonic Case Management Conference**

After a verified complaint is filed, the Commission Secretary will contact the Department, Department counsel, the Member, and/or the Member's representative, if known, to arrange a date and time for a telephonic initial case management conference with the assigned Hearing Officer. During the telephonic case management conference, the Hearing Officer will discuss

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available hearing dates, pre-hearing deadlines, and the availability of an early case resolution conference.

### **3. Voluntary Early Case Resolution Conference**

Except for in cases where the Department is seeking termination, the may agree to participate in an Early Case Resolution Conference. At an Early Case Resolution Conference, the accused Member and his or her representative must attend in person, and the Chief or his or her designee must also attend in person. The Early Case Resolution Conference shall be conducted by the assigned Hearing Officer. The parties will submit an Early Case Resolution Conference statement to the Commission Secretary two business days prior to an Early Case Resolution Conference. The statement shall not exceed three pages, and shall include a statement of facts, a summary of evidence that party anticipates presenting at the hearing, the party's position on settlement, and any other information the party deems necessary to inform the Hearing Officer of the relevant issues.

If the parties do not mutually agree to participate in an early case resolution conference or the parties agree to participate in a conference but are unable to reach a settlement, the case will be scheduled for hearing.

If the parties reach a settlement, the Department will prepare a agreement and send it to the Member and/or the Member's representative for review and approval. The Commission must ultimately approve any settlement. The Commission Secretary will notify the parties in advance of the Commission meeting where the Commission will consider the settlement. The parties may appear at that meeting to present the settlement to the Commission.

### **2.4. Notice of Hearing**

The Secretary will send written notice to the member and the Chief, and the parties' representatives if known, of the time and date of the hearing on the complaint. The member and Chief are entitled to at least 21 days' notice of the initial hearing date.

### **3.5. Request for Continuance by Member**

The member or the member's representative may request a continuance of the scheduled hearing date by sending a letter to the Commission President, in care of the Commission Secretary, (1) requesting a continuance of the hearing, (2) stating good cause for the continuance, and (3) providing dates in the near future when the member, the member's representative, and the member's witnesses are all available for the hearing. At the same time the member or the member's representative submits the request for continuance

to the Commission, the member or representative shall send a copy of the request to the Department's representative, if known, or if not known, then to the Chief, using a method that ensures delivery on the same date as delivery to the Commission.

Any request for a continuance must be in writing and submitted as soon as the member or the member's representative learns of the circumstances leading to the request for a continuance. The Presiding Officer will generally not grant a request for a continuance when the request is submitted within 3 business days of the scheduled hearing date, absent extraordinary circumstances.

#### **4.6. Request for Continuance by Department**

The Department may request a continuance of the scheduled hearing date by sending a letter to the Commission President, in care of the Commission Secretary, (1) requesting a continuance of the hearing, (2) stating good cause for the continuance, and (3) providing dates in the near future when the Department's representatives and witnesses are all available for the hearing. At the same time it submits the request for continuance to the Commission, the Department shall send a copy of the request to the member's representative, if known, or if not known, to the member, using a method that ensures delivery on the same date as delivery to the Commission.

Any request for a continuance must be in writing and submitted as soon as the Department learns of the circumstances leading to the request for a continuance. The Presiding Officer will generally not grant a request for a continuance when the request is submitted within 3 business days of the scheduled hearing date, absent extraordinary circumstances.

#### **5.7. Action on Requests for Continuance**

Only the Presiding Officer has authority to continue the hearing date. The Commission Secretary may not take a hearing off calendar unless directed to do so by the Presiding Officer. When a request for continuance is received, the Presiding Officer will consider the request and respond in writing. If a request for continuance is granted, the hearing will be continued to a date certain, absent extraordinary circumstances.

## **V. REPRESENTATION**

### **A. Member Representative**

At any hearing before the Commission, whether a suspension appeal or trial on a verified complaint filed by the Chief, a member may choose to represent

himself or herself or to have a representative, including an attorney, a representative from the San Francisco Firefighters Union Local 798, or a Department employee below the rank of Assistant Deputy Chief; provided, however, that when the member is at the rank of Assistant Deputy Chief or above, the member may choose an officer of the same rank as a representative.

The member may not select as a representative an individual listed by one of the parties as a witness, or otherwise expected to be a witness in the case.

**B. Member's Notice to Commission**

If a member elects to proceed with a representative, the member or the representative shall promptly notify the Fire Commission Secretary and the Chief in writing of the representative's name and contact information.

**C. Department's Notice to Commission**

The Chief or the Chiefs representative shall notify the Fire Commission Secretary and the member of the name and contact information for the individual who will represent the Department at the Commission hearing.

**VI. PROCEDURE FOR ASSIGNING A DISCIPLINARY CASE**

**A. Suspension Appeals**

Generally, appeals will be assigned to a Hearing Officer for the taking of evidence. The Commission President may assign the appeal to the Commission for the taking of evidence, in the President's discretion.

**B. Verified Complaint Filed by the Chief**

**1. Discipline Recommendation from Chief**

In all discipline cases where the Chief files a verified complaint against a member, the Chief shall set forth specifically the acts that the Chief has determined constitute a breach of duty or misconduct, as well as any Rules violated. The Chief shall also include in the complaint a recommendation for a particular level of discipline. If the Commission finds a breach of duty or misconduct by a member, it may impose discipline that is greater or less than that recommended by the Chief. The Commission may impose discipline as specified in Section XIII of these Procedures. In non-disciplinary dismissal cases under Section III.I., the Chief shall specify that the request for dismissal is non-disciplinary, and shall provide the basis for the recommendation for dismissal in the verified complaint.

**2. Suspension not Exceeding 30 Days**

Generally, disciplinary cases where the Chief has recommended discipline not exceeding a 30-day suspension will be assigned to a Hearing Officer for the taking of evidence. The Commission President may assign the case to the Commission for the taking of evidence, in the President's discretion.

**3. Suspension in Excess of 30 Days**

For cases where the Chief has recommended discipline in excess of a 30-day suspension but less than dismissal, the Commission President shall determine, in the President's discretion, whether to assign the matter to a Hearing Officer or the Commission for the taking of evidence.

**4. Dismissal**

The Commission will take evidence in any case where the Chief has recommended dismissal from employment.

**VII. PUBLIC PROCEEDINGS**

**A. Location**

Generally, the hearing and trial on a discipline case will be held in the Commission Meeting Room at Department Headquarters, unless the Presiding Officer designates an alternate location. Any alternate location will be selected with due regard to the convenience of the parties, witnesses and the public.

**B. Open (Public) Session**

All disciplinary hearings will be convened in open session. Members have the right to have the hearing on the appeal or verified complaint held in an open session, subject to Section VII.D., below.

**C. Rights Under State Law**

California Government Code §54957(b)(2) provides: "As a condition to holding a closed session on specific complaints or charges brought against an employee by another person or employee, the employee shall be given written notice of his or her right to have the complaints or charges heard in an open session rather than a closed session, which notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding the session. If notice is not given, any disciplinary or other action taken by the legislative body against the employee based on the specific complaints or charges in the closed session shall be null or void."

**D. Other Grounds for Closed (Non-Public) Session**

Even where the member requests an open session, the Commission may hold some or all of a hearing in closed session for other reasons, for example, due to third-party privacy rights or where federal, state or local law or rules prohibit disclosure of certain information.

**E. Requesting Closed (Non-Public) Session**

If the member wishes to have the appeal or verified complaint heard in closed session, the member shall request that the matter be heard in closed session at the start of the initial hearing and shall establish good cause to close the proceeding. The Presiding Officer will consider any request for a closed session at that time.

If a member does not initially request closed session, but subsequently wishes to request closed session, the member may request closed session at any time, and shall establish good cause to close the proceedings. The Presiding Officer will consider the request for closed session when made.

The Presiding Officer has authority to rule on any request for closed session.

**F. Record of Proceedings**

The record of open proceedings will be available for public inspection unless disclosure is otherwise prohibited by law. The record of closed proceedings will not be available for public inspection unless disclosure is otherwise required by law.

**VIII. DISCOVERY**

**A. Department's Discovery Obligations**

The Department shall provide the following required discovery to the accused member.

- The entire investigative file related to the discipline investigation and case, prepared and maintained by the Department, including the final investigative report, notes prepared by the investigator, audio or video recordings, photographs and any other physical evidence.
- Any evidence that the Chief relied on in imposing discipline, filing a verified complaint or recommending a level of discipline.
- The names and, where reasonably possible, telephone numbers of witnesses who are known by the Department to have information relevant to the complaint. For all witnesses who are Department employees, the Department shall provide work contact information. The member and any representative or agent may contact any witnesses solely in connection with the discipline proceeding, and shall not

otherwise use or disclose any telephone numbers or other contact information provided by the Department under this Section.

- All evidence that the Department intends to introduce in its case in chief during the taking of evidence.
- If requested by the accused member or the member's representative, an opportunity to inspect Department facilities or original physical evidence related to the discipline proceeding.

Before producing required discovery, the Department may redact or withhold any attorney-client communication, attorney-work product or third-party confidential material in the discovery materials.

The Department shall provide the required discovery no later than 7 days after receiving notice of an appeal, and no later than 14 days after filing a verified complaint with the Commission.

**B. Continuing Discovery Obligation**

The Department's duty to provide required discovery to the member shall continue beyond its initial disclosure obligation, and the Department shall produce any required discovery obtained after the initial production.

**C. Additional Discovery from Department**

If the accused member believes that he or she needs additional information or materials to prepare a defense, the member or the member's representative shall submit a written discovery request to the Department's representative if known, or if not known, to the Chief. The Department shall provide a written response to the discovery request within 10 days. The Department's response shall either state that the Department will provide the requested information or materials or raise one or more objections to some or all of the discovery requests. With its written response, the Department shall provide any information or materials that are responsive to requests to which it had not raised an objection. If the member wishes to pursue the discovery request over the Department's objection, the member shall follow the motion procedures described in Section IX.C., below.

**D. Obtaining Attendance of Witnesses**

**1. Department Employees**

If the member intends to call any Department employee as a witness at the hearing, the member or the member's representative shall submit a written request to the Department's representative, asking that the Department detail to the proceeding any employee requested by the member. The member shall

submit the request to the Department at least 5 days before the scheduled hearing date.

The member and Department shall coordinate in scheduling any Department employees as witnesses, to minimize inconvenience to employees and Department operations.

If the Department objects to one or more of the member's proposed witnesses, the Department shall notify the member or the member's representative of the objection before the hearing. The Department shall also arrange for the witness to be available on standby, and may raise its objections with the Presiding Officer at the hearing.

If a witness is unavailable for the hearing, the Department shall, upon learning of the unavailability, notify the member of the witness's unavailability and generally the reason for that unavailability.

## **2. Other Witnesses**

For witnesses who are not Department employees, either party may request that the Commission issue a "Notice to Attend Hearing" to an employee in another City department or to a third-party. The party's request must include the full name and contact information for the witness and a brief description of the witness's anticipated testimony and its relevance to the case.

A party wishing a "Notice to Attend Hearing" must submit a written request to the Presiding Officer by the deadline set for submitting a motion under Section IX.B., below.

The Presiding Officer is authorized to determine whether to issue the "Notice to Attend Hearing." If the Presiding Officer grants the request to issue a "Notice to Attend Hearing," the Commission Secretary will issue and send the "Notice to Attend Hearing" to the identified witness, with copies to all parties and their representatives. If the Presiding Officer denies the request to issue the "Notice to Attend Hearing," the party may ask the Commission to reconsider the request.

If the witness refuses or fails to attend the hearing, the party seeking to call that witness may request that the Commission issue a subpoena for attendance of the witness. The Commission will schedule a meeting to determine whether to issue the subpoena.

**E. Obtaining Production of Records Not Maintained by the Department**

If a party wishes to obtain production of records from another City department or a third party, the party may request that the Commission issue a "Notice to Produce Records." The request must include the full name and contact information for the custodian of records and a description of records sought and their relevance to the case.

A party wishing a "Notice to Produce Records" must submit a written request to the Presiding Officer by the deadline set for submitting a motion under Section IX.B., below.

The Presiding Officer is authorized to determine whether to issue the "Notice to Produce Records." If the Presiding Officer grants the request to issue a "Notice to Produce Records," the Commission Secretary will send the "Notice to Produce Records" to the identified witness. If the Presiding Officer denies the request to issue the "Notice to Produce Records" the party may ask the Commission to reconsider the request.

If the custodian of records refuses or fails to produce the requested records, the party seeking to obtain those records may request that the Commission issue a subpoena for production of the records. The Commission will schedule a meeting to determine whether to issue the subpoena.

**F. Extension of Deadlines**

A party may request an extension of a discovery deadline under this Section by (1) submitting a written request to the Presiding Officer, with a copy concurrently provided to the other party, stating good cause for the requested extension, or (2) presenting to the Presiding Officer a stipulation of the parties, establishing good cause for the extension. Only the Presiding Officer may extend the deadline.

**IX. MOTIONS**

**A. Generally**

This Section governs all motions advanced by either party to a discipline proceeding. Requests for a continuance shall be governed by Sections 111.G., IV.A.3-5, IV.B.3-5, and XI.E. of these Procedures, and not by this Section.

Motions shall be written, typed, double-spaced and bear the caption of the proceeding. No motion filed with the Commission may exceed 10 pages in length without written permission from the Presiding Officer.



**B. Timeline to Submit Motions**

**1. Suspension Appeals**

If an appeal is heard on the initially scheduled hearing date (no continuance), any party wishing to make a motion shall submit the motion to the Commission and other party no later than 3 days before the initial hearing date. The other party shall submit any opposition at the initial hearing.

If the Presiding Officer grants a request to continue the initial hearing date, the Presiding Officer will include in the written notice rescheduling the hearing a schedule for submitting motions and any opposition and reply papers.

**2. Verified Complaint Filed by Chief**

Any party wishing to make a motion shall submit the motion to the Commission and other party no later than 14 days before the initial hearing date. The other party may submit any opposition papers no later than 7 days before the initial hearing date. The moving party may submit reply papers no later than 3 days before the initial hearing date. Any party submitting a motion or opposition or reply papers to the Commission shall serve all papers on the other party at the same time the party submits the papers to the Commission, using a method that ensures delivery on the same date as delivery to the Commission.

If the Presiding Officer grants a request to continue the initial hearing date, the Presiding Officer will include in the written notice rescheduling the hearing a schedule for submitting motions and any opposition and reply papers.

**C. Discovery Motions**

A member dissatisfied with the Department's response to a discovery request under Section VIII.C. may submit a motion to the Presiding Officer requesting further discovery from the Department. The motion shall include the following:

- A list specifically identifying all discovery materials requested by the member that the Department declined to produce and the Department's stated objections;
- A clear description of any perceived discovery deficiencies in the Department's response to the member's discovery request;
- A statement explaining why the member anticipates the additional discovery would be relevant to the member's defense;
- Legal authorities relevant to the member's motion; and
- A written declaration, under penalty of perjury, showing compliance with the requirements of Section VIII.C., and attaching copies of all correspondence sent to and received from the Department concerning

the discovery request; or explaining why the party did not comply with the requirements of Section VIII.C.

**D. Other Motions, including Dispositive Motions**

Any party wishing to make a motion other than a discovery motion, including but not limited to a dispositive motion, may submit the motion and any supporting papers to the Commission in compliance with the requirements of this Section. A "dispositive motion" is a motion brought by the member that, if granted, would result in the dismissal of one or more charges against the member. A dispositive motion may be brought on jurisdictional or procedural grounds and/or on the ground of alleged insufficiency of the evidence presented by the Department. If a member believes that one or more of the charges should be dismissed on procedural or jurisdictional grounds, the member shall file a motion presenting all such arguments.

Any motion shall include the following:

- A clear description of the alleged problem or procedural defect prompting the motion;
- A description of all facts supporting the motion;
- Legal authorities relevant to the member's motion;
- A concise statement of the remedy or relief sought through the motion; and
- If appropriate, a written declaration, under penalty of perjury, showing any communication or correspondence between the parties regarding the alleged problem or procedural defect.

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Even when a discipline case is assigned to a Hearing Officer for the taking of evidence, any dispositive motion brought will be decided by the Commission. Dispositive motions brought solely on procedural and/or jurisdictional grounds may be decided before or after the taking of evidence. Any motion to dismiss on the ground of alleged insufficiency of the evidence may not be heard or decided until after the close of the Department's case in chief, and may be heard after all evidence and argument is received.

**X. PRE-HEARING SUBMISSIONS**

**A. Required Pre-Hearing Submissions**

Each party shall prepare and submit seven (7) copies of the following materials to the Commission:

- A written summary of the case and a list of all witnesses that party intends to call during the hearing, with a brief description of the anticipated testimony of each witness.
- All exhibits the party intends to introduce into evidence at the hearing. If the total number of pages of exhibits exceeds 25 pages, the party shall include the exhibits in a binder, with the exhibits separated by tabs. The binder shall include an index listing the tab number/letter and a description of each exhibit.

Each party must provide a copy of these materials to the other party at the same time the party submits the materials to the Commission, using a method that ensures delivery on the same date as delivery to the Commission.

**B. Deadline for Pre-Hearing Submissions**

**1. Suspension Appeals**

If an appeal is heard on the initially scheduled hearing date (no continuance), the parties shall submit the required materials no later than 3 days before the initial hearing date. If the Presiding Officer grants a request to continue the initial hearing date, the Presiding Officer will include in the written notice rescheduling the hearing a schedule for submitting the required materials.

**2. Verified Complaint filed by Chief**

The parties shall submit the required materials no later than 14 days before the initial hearing date.

**3. Extension of Deadlines**

Either party may request an extension of the submission deadline under this Section by submitting a written request to the Presiding Officer, with a copy concurrently provided to the other party, stating good cause for the requested extension. Only the Presiding Officer may extend the deadline.

**XI. INITIAL HEARING DATE**

**A. Plea by Accused Member**

At the initial hearing, whether on the originally set date or a continued date, the member shall plead guilty or not guilty to the charged breach of duty or misconduct. In non-disciplinary cases, the member shall state whether he or she agrees or disagrees with the Chiefs stated reason for requesting dismissal.

**B. Open (Public)/Closed (Non-Public) Session**

If the member wishes to have the hearing and trial conducted in closed session, the member shall request closed session at the initial hearing. If a

member does not initially request closed session, but subsequently wishes to request closed session, the member may request closed session at any time.

The member shall establish good cause to close the proceedings. The Presiding Officer has authority to rule on any request for closed session, and will consider any request for closed session when made.

**C. Motions and other Matters**

The Presiding Officer may take the following actions at the initial hearing, whether on the originally set date or a continued date:

- Accept the member's plea;
- Respond to any request for closed session;
- Respond to any request for additional time beyond the maximum total hearing time allocated to a party for its discipline case;
- Respond to any request that the Commission issue a "Notice to Attend Hearing" or "Notice to Produce Records;"
- Decide any non-dispositive motions briefed by the parties, including discovery motions, or set a schedule for further briefing, any argument and consideration of such motions;
- Identify and set deadlines for any additional submissions;
- Set a briefing schedule if the parties anticipate or if the Presiding Officer directs briefing on particular issues;
- Schedule dates for additional hearing days, if necessary;
- Hear opening statements, take evidence, and hear closing argument; and
- Conduct any additional business as necessary.

The Commission Secretary will send a notice to the parties and any representatives, confirming any additional hearing dates and any other dates or information from the hearing.

**D. Taking of Evidence**

At the initial hearing, whether on the originally set date or a continued date, all parties and their respective representatives shall be prepared to proceed with opening statements, the taking of evidence, and closing arguments.

**E. Continuances after Initial Hearing Date**

Continuances of additional hearing dates set at the initial hearing are strongly disfavored. Any party who wishes a continuance of any dates after the initial hearing date shall submit a written request for continuance as soon as the party identifies a need for a continuance. The request shall state good cause

for the continuance and provide dates in the near future when the party, any representatives and witnesses are all available for the hearing. Only the Presiding Officer has authority to continue a hearing date. The Commission Secretary may not continue a hearing date.

## **XII. TAKING OF EVIDENCE, DELIBERATIONS AND DECISION**

### **A. Hearing Officer Proceedings**

#### **1. Actions of the Hearing Officer**

The Hearing Officer is authorized to take the following actions:

- Set a schedule for hearings, pre-trial submissions and motions;
- Direct discovery and resolve discovery disputes, including discovery motions under Section IX.C.;
- Preside at hearings to take evidence in the case;
- Rule upon all objections presented by the parties;
- Hear opening statements, take evidence, and hear closing arguments;
- Ask questions of any witness; and
- Rule on any non-dispositive motions.

#### **2. Actions of the Parties**

Each party or the party's representative may make an opening statement; call, examine and cross-examine witnesses; raise objections; move for the admission of items into evidence; and make closing argument, subject to any time constraints imposed by the Commission. The Presiding Officer may permit or direct written closing argument in addition to or in lieu of oral closing argument.

#### **3. Actions of the Commission Secretary**

After the close of the taking of evidence proceeding, the Commission Secretary shall submit the complete record of the proceedings, including the reporter's transcript and all admitted evidence, to each Commissioner.

### **B. Trial of Disciplinary Cases by the Commission After Evidence is Taken by a Hearing Officer**

#### **1. Notice of Proceedings before Full Commission**

After submitting the record of proceedings before the Hearing Officer to all Commissioners, the Commission Secretary will notice the date and place of trial before the Commission. The parties will receive at least 7 days notice of the trial date.

## **2. Purpose of Proceedings before Full Commission**

Except as provided in Section XII.B.3 below, proceedings before the Commission after evidence has been taken by a Hearing Officer shall be limited to deliberations by the Commission.

## **3. Additional Testimony or Evidence**

In any disciplinary case where evidence has been taken by a Hearing Officer, the Commission will not hear live testimony or take other evidence, except as specified in this subsection.

At the request of a party, the Commission may take additional live testimony or other evidence (1) where the requesting party demonstrates that the evidence is newly discovered and could not with reasonable diligence have been located before the proceedings before the Hearing Officer, and (2) the Commission determines that the proposed evidence is material and relevant to the case under consideration.

In addition, if after reviewing the record of a case the Commission concludes that it cannot decide the matter without receiving additional evidence, including documentary evidence or live testimony from one or more of the witnesses or from additional witnesses, the Commission may order the parties to present additional evidence, including live testimony from any witness.

## **4. Commission Review of Record and Deliberations**

The Commission will not begin deliberations to decide a case until each Commissioner participating in the deliberative process affirms for the record that he or she has reviewed the entire record of the proceedings before the Hearing Officer, including the transcript of the proceedings and all documentary and any other evidence admitted by the Hearing Officer. After that review and affirmation on the record, the Commission will deliberate and decide the case.

### **C. Trial by the Commission Without a Hearing Officer Taking Evidence**

#### **1. Taking of Evidence by the Commission**

The Presiding Officer may take the following actions:

- Set a schedule for hearings, pre-trial submissions and motions;
- Direct discovery and resolve discovery disputes, including discovery motions under Section IX.C.;
- Preside at hearings to take evidence in the case;
- Receive testimony, documents and other evidence;
- Rule upon all objections presented by the parties; and
- Rule on any non-dispositive motions.

Any Commissioner may ask questions of any witness.

The Commission may deliberate and decide any dispositive motion submitted by a party before or after the taking of evidence.

**2. Actions of the Parties**

Each party or the party's representative may make an opening statement; call, examine and cross-examine witnesses; raise objections; move for the admission of items into evidence; and make closing argument, subject to any time constraints imposed by the Commission. The Presiding Officer may permit or direct written closing argument in addition to or in lieu of oral closing argument.

**3. Commission Deliberations and Decision**

At the conclusion of the trial, the Commission shall conduct deliberations and render a decision on the case. The Commission may not begin deliberations until each Commissioner participating in the deliberative process affirms for the record either (1) that he or she was present for the entire proceeding before the Commission or (2) that he or she has reviewed the transcript of any hearings when he or she was not present, as well as all documentary and any other evidence admitted at any hearings when he or she was not present.

**XIII. PENALTY**

**A. Suspension Appeals**

The Commission may sustain the Chiefs disciplinary suspension, may affirm the breach of duty or misconduct but reduce the suspension, or may find the member not guilty of any violation. The Commission may not increase the penalty beyond that imposed by the Chief for any violation affirmed by the Commission. If the Commission reverses or reduces a suspension imposed by the Chief, in whole or in part, and if the member has already served the suspension imposed by the Chief, the Commission will order that the member be paid his or her salary for any period of suspension reversed by the Commission.

**B. Verified Complaint Filed by the Chief**

If the Commission finds a member guilty of any breach of duty or misconduct based on a verified complaint filed by the Chief, the Commission may impose the penalty recommended by the Chief, or a lesser or greater penalty. The Commission may impose the following penalties:

- Reprimand;
- Fine not exceeding one (1) month's salary for any offense;

- Suspension for a period not exceeding three (3) calendar months for any
- offense;
- Dismissal from the Department.

**C. Non-Disciplinary Verified Complaint Filed by the Chief**

If the Commission finds cause for dismissal based on a non-disciplinary verified complaint filed by the Chief, the Commission may dismiss the member from employment with the Department.

**XIV. NOTIFICATION OF COMMISSION DECISION AND FINDINGS OF FACT**

**A. Final Commission Decision**

When the Commission has completed deliberations and rendered a decision on the case, the Commission will announce its final decision in open session. The Commission Secretary will also send written notification to all parties announcing the Commission's final decision.

If all parties are present when the Commission concludes deliberations and announces its decision, the decision is final at that time. If all parties are not present when the Commission concludes deliberations and announces its decision, the decision is final on the date of the Secretary's written notification of the decision to all parties.

**B. Proposed Findings of Fact**

The Commission may direct one of the parties to prepare proposed findings of fact consistent with the Commission's decision, and to submit those proposed findings to the Commission and the other party for consideration.

Generally, the Commission allows time for the other party to respond to the proposed findings of fact before taking any action to adopt and issue the Commission's findings of fact.

**C. Deadline to Submit Proposed Findings of Fact**

Generally, the Commission will allow the party asked to prepare the proposed findings of fact 15 days from transmission by the Commission Secretary of the complete transcript of the proceedings. That party may request an extension of the deadline to submit those findings by submitting a written request to the Presiding Officer, stating good cause for the requested extension. Only the Presiding Officer may extend the deadline.

**D. Findings of Fact**

Any findings of fact adopted by the Commission will be issued to the parties.



Adopted at the Meeting of December 13, 2007  
Ayes: Conroy, Lau, Nakajo, Clarke, Makras  
Tania Bauer, Commission Secretary