



DISCIPLINARY HEARINGS BOARDS

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I. Purpose

The purpose of this Written Directive is to enumerate the procedures for establishing a Disciplinary Hearing Board and the process by which the hearing may be accomplished, to include the final order, decision, and appeal process.

II. Policy

It shall be the policy of the University of Maryland, Baltimore Police Force (UMBPF) that all assigned members of the Disciplinary Hearing Board shall conduct themselves and the hearing as outlined in this Written Directive and by applicable law (See Annex).

III. Disciplinary Hearing Board

A. Recommendations for Discipline

1. If the investigation results in the recommendation of an offer of summary punishment, an accused member may decline summary punishment and is then entitled to a Disciplinary Hearing Board.
2. If the investigation or interrogation of a police officer results in the recommendation of some action such as demotion, dismissal, loss of pay, reassignment, or similar punitive action, the UMBPF shall give notice to the officer entitling them to a Hearing Board on the disputed issues.
3. The notice 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.

B. Procedures for Hearings

1. The hearing shall be conducted by a Disciplinary Hearing Board empowered to hear all evidence associated with the charges presented and to come to a conclusion as to innocence or guilt. Each party shall be given ample opportunity to present an argument with respect to the issues involved.

2. Each party may be represented by counsel and has the right of cross-examination of the witnesses including rebuttal evidence. The Office of the University Council will represent the department.
3. The Hearing Board Chairperson or designee shall administer oaths or affirmations and may examine any individual under oath.

C. Admissible Evidence

1. Evidence, which possesses probative value commonly accepted by reasonable and prudent individuals in the conduct of their affairs, shall be admissible and shall be given probative effect.
2. The Disciplinary Hearing Board conducting the hearing shall give effect to the rules of privilege recognized by law and shall exclude incompetent, irrelevant, immaterial and unduly repetitious evidence. All records and documents used by either party shall be offered and made a part of the permanent record. Documentary evidence may be received in the form of copies, excerpts, or by reference material.

D. Fees

Summonsed or subpoenaed witnesses from the UMBPF for either the defense or prosecution shall be reimbursed for expenses. They shall be reimbursed at the same rate as for testimony in a circuit court and shall be paid by the UMBPF.

E. Power to Issue Summonses

1. The Disciplinary Hearing Board may issue summonses to compel the attendance and testimony of witnesses. They may also request the production of books, papers, records, and documents as may be relevant or necessary.
2. The summonses will be served in accordance with Maryland Rules of Procedure pertaining to the service of process issued by a court and without cost (Rule 3.121). Any party may request the Chief of Police or the Disciplinary Hearing Board to issue a summons or order.

F. Refusal to Obey Summons

1. In case of disobedience or refusal to obey any summonses, the hearing board may apply to the Circuit Court of the jurisdiction where the summoned party resides or conducts business, for an order requiring the attendance and testimony of the witness, production of books, papers, records, and documents.
2. Upon a finding that the attendance and testimony of the witness, or the production of the books, papers, records, and documents that are needed, the court may issue an order requiring the attendance, testimony, production of books, papers, records, and documents. Any failure to obey an order of the court may be punishable by the court as contempt thereof.

G. Judicial Notice

The Disciplinary Hearing Board may take judicial notice of general, technical, or scientific facts within its specialized knowledge. Parties shall be notified either before or during the hearing, by reference in preliminary reports, or by noted material. They shall be afforded an opportunity and reasonable time to contest the facts given judicial notice. A Disciplinary Hearing Board may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented.

IV. Hearing Process

A. Make-up of the Disciplinary Hearing Board

The Law Enforcement Officers Bill of Rights empowers the Chief of Police to select all board members with the caveat that one member of the Disciplinary Hearing Board shall be the same rank as the accused. The Disciplinary Hearing Board shall consist of at least three (3) voting members.

B. Hearing Board Chairperson

1. The hearing will be conducted under the direction of the senior ranking board member who will be designated as the Disciplinary Hearing Board Chairperson. The Chairperson shall call the hearing to order and advise the parties that the proceedings of the hearing will be recorded, but not transcribed unless deemed necessary at a later time.
2. The chairperson shall confirm that the accused member has received a copy of the charges and specifications to be heard.

C. Specifications Revealed

If the prosecution and defense are ready to proceed, each charge and specification shall be read (unless waived) and the accused shall enter a plea to each charge.

D. Case Prosecution

1. The Chairperson shall direct the prosecution to begin its case and shall instruct all present that all testimony under oath or affirmation is subject to the penalties of perjury.
2. The Chairperson shall resolve issues regarding the admissibility of any evidence.
3. After completion of the prosecution's case, the Chairperson may direct a verdict for the accused or shall direct the defense to proceed. Counsel will be advised of the appropriate time for presenting matters of mitigation and extenuation.
4. Upon completion of all arguments, the hearing room will be cleared and the Disciplinary Hearing Board will make an objective review of all evidence brought before the members, being careful not to prejudice the case as to the innocence or guilt of the accused.

E. Determining Innocence or Guilt

1. Members of the Disciplinary Hearing Board will then make a determination of innocence or guilt as to each charge and specification, and will inform other board members of their decision when requested by the Chairperson. A majority shall decide the verdict on each charge and specification.
2. All parties shall then re-enter the hearing room where the findings on each charge and specification will be announced. The time that the hearing room was cleared and the time the recall of all parties was initiated shall be noted in the record.

V. Findings of a Disciplinary Hearing Board

A. Finding of Fact

1. Any decision, order, or action taken as a result of the hearing shall be in writing and shall be accompanied by findings of fact. The findings shall consist of a concise statement upon each issue in the case.
2. If the accused is found "Not Guilty" of all charges, the Chairperson shall announce the conclusion of the case and adjourn the hearing. If the accused is found "Guilty" on any charge, the Chairperson shall announce that conclusion and will advise counsel that the matters of mitigation and extenuation may be presented.
3. At the completion of any matters in mitigation and extenuation, the hearing room shall be cleared and the Chairperson shall cause another vote to be taken as to punishment. If the Disciplinary Hearing Board recommends any disciplinary action following the hearing in which there is a finding of guilt, they shall consider the past job performance of the accused as a factor before any punitive actions are recommended. Voting will be finished when a majority is reached.
4. After the Disciplinary Hearing Board makes a finding of guilt, they may recommend action as it deems appropriate under the circumstances. Recommended action may include demotion, dismissal, reduction of pay, reassignment, or other similar action, which would be considered a punitive measure.
5. All interested parties shall then re-enter the hearing room (noting the time of clearing the room and the re-entry). The Chairperson shall inform the parties of the judgement reached and their recommendations.
6. The Chairperson of the Disciplinary Hearing Board shall provide a copy of the decision or order and accompanying findings and conclusions, along with written recommendations for action, to the accused, attorney or representative of record, and to the Chief of Police within 48 hours.

7. In the case of a split decision by the Disciplinary Hearing Board in the rendering of a guilty verdict, the reasons for the dissenting opinion will be noted in the report. A copy of the report will also be provided to the accused member or their defense counsel.

B. Termination

1. Should termination be the recommendation, the Chairperson shall immediately contact the Chief of Police.
2. The Disciplinary Hearing Board Chairperson shall then notify the accused, Bureau Commander, and the Deputy Chief that the accused is immediately suspended with pay until the Chief of Police makes a final determination of punitive action.

C. Role of the Chief of Police

1. The recommendation of punitive actions as submitted by the Disciplinary Hearing Board is not binding upon the Chief of Police.
2. Within 30 days of receipt of the hearing board's recommendations, the Chief of Police shall review the findings, conclusions, and recommendations and shall issue a final order.

D. Appeals

1. The final decision by the Chief of Police is binding.
2. The final decision may only be appealed in accordance with the following guidelines:
 - a. Appeal from decisions rendered in accordance with Section 3-109 of the Law Enforcement Officers Bill of Rights shall be taken to the appropriate Circuit Court pursuant to Maryland Rule 7-202. Any party aggrieved by a decision of Circuit Court under this section may appeal to the Maryland Court of Special Appeals.
 - b. Any police officer who is denied any right afforded by this Written Directive or by the Law Enforcement Officers Bill of Rights, may apply at any time prior to the commencement of the hearing, either individually or through a certified or recognized employee organization, to the Circuit Court of Baltimore City for any order directing the UMBPF to show cause why the right should not be afforded.

E. Conflicts of Law

The provisions of the Law Enforcement Officers Bill or Rights shall supersede any state, county, or municipal law, ordinance, or regulation that conflicts with the provisions of this Written Directive. Any local legislation shall be preempted by the subject and material of the aforementioned Bill of Rights.

F. Increasing Penalties

Before the Chief of Police may increase the recommended penalty of the hearing board, a personal review of the entire record of the hearing board proceedings shall be conducted. The

Chief of Police must also hear the police officer. The Chief of Police shall articulate reason(s) for increasing the recommended penalty.

G. Eyewitness Restrictions

Notwithstanding any other provision of this Written Directive, the Chief of Police who is an eyewitness to the incident under investigation shall ratify the decision of the Disciplinary Hearing Board without further deliberation.

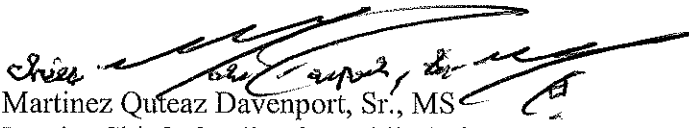
VI. Annex List

A. Appendix 5.5.1 - Section 3-107 – Hearing by a Hearing Board

B. Appendix 5.5.2 – Disciplinary Hearing Board Information and Process

Written Directive System Impact

Upon approval and publication, this edition of WD 5.5, Disciplinary Hearing Boards supersedes all previous editions, and shall incorporate and replace WD 5.6, Final Order, Decision and Appeal. WD 5.6 shall be deactivated.


Martinez Quteaz Davenport, Sr., MS
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CALEA Standard (s): 26.1.6

Annex A – Appendix 5.5.1 - Section 3-107 – Hearing by a Hearing Board

Section 3-107 -Hearing by A Hearing Board

(a) (1) Except as provided in paragraph (2) of this subsection and § 3-111 of this subtitle, if the investigation or interrogation of a law enforcement officer results in a recommendation of demotion, dismissal, transfer, loss of pay, reassignment, or similar action that is considered punitive, the law enforcement officer is entitled to a hearing on the issues by a hearing board before the law enforcement agency takes that action.

(2) A law enforcement officer who has been convicted of a felony is not entitled to a hearing under this section.

(b) (1) The law enforcement agency shall give notice to the law enforcement officer of the right to a hearing by a hearing board under this section.

(2) The notice required under this subsection shall state the time and place of the hearing and the issues involved.

(c) (1) Except as provided in paragraph (5) of this subsection and in § 3-111 of this subtitle, the hearing board authorized under this section shall consist of at least three *voting* members who:

(i) are appointed by the chief and chosen from law enforcement officers within that law enforcement agency, or from law enforcement officers of another law enforcement agency with the approval of the chief of the other agency; and

(ii) have had no part in the investigation or interrogation of the law enforcement officer.

(2) At least one member of the hearing board shall be of the same rank as the law enforcement officer against whom the complaint is filed.

(3) *(I) Subject to subparagraph (II) of this paragraph, a chief may appoint, as a nonvoting member of the hearing board, one member of the public who has received training administered by the Maryland Police Training and Standards Commission on the Law Enforcement Bill of Rights and matters relating to police procedures.*

(II) If authorized by local law, a hearing board formed under paragraph (1) of this subsection may include up to two voting or nonvoting members of the public who have received training administered by the Maryland Police Training and Standards Commission on the Law Enforcement Bill of Rights and matters relating to police procedures.

(4) (i) If the chief is the law enforcement officer under investigation, the chief of another law enforcement agency in the State shall function as the law enforcement officer of the same rank on the hearing board.

Annex – Appendix 5.5.1 Cont.

(ii) If the chief of a State law enforcement agency is under investigation, the Governor shall appoint the chief of another law enforcement agency to function as the law enforcement officer of the same rank on the hearing board.

(iii) If the chief of a law enforcement agency of a county or municipal corporation is under investigation, the official authorized to appoint the chief's successor shall appoint the chief of another law enforcement agency to function as the law enforcement officer of the same rank on the hearing board.

(iv) If the chief of a State law enforcement agency or the chief of a law enforcement agency of a county or municipal corporation is under investigation, the official authorized to appoint the chief's successor, or that official's designee, shall function as the chief for purposes of this subtitle.

(5) (i) (1) A law enforcement agency or the agency's superior governmental authority that has recognized and certified an exclusive collective bargaining representative may negotiate with the representative an alternative method of forming a hearing board.

(2) A hearing board formed under this paragraph may include up to two voting or nonvoting members of the public, appointed by the chief, who have received training administered by the Maryland Police Training and Standards Commission on the Law Enforcement Bill of Rights and matters relating to police procedures.

(ii) A law enforcement officer may elect the alternative method of forming a hearing board if:

1. the law enforcement officer works in a law enforcement agency described in subparagraph (i) of this paragraph; and

2. the law enforcement officer is included in the collective bargaining unit.

(iii) The law enforcement agency shall notify the law enforcement officer in writing before a hearing board is formed that the law enforcement officer may elect an alternative method of forming a hearing board if one has been negotiated under this paragraph.

(iv) If the law enforcement officer elects the alternative method, that method shall be used to form the hearing board.

(v) An agency or exclusive collective bargaining representative may not require a law enforcement officer to elect an alternative method of forming a hearing board.

(vi) If the law enforcement officer has been offered summary punishment, an alternative method of forming a hearing board may not be used.

(vii) If authorized by local law, this paragraph is subject to binding arbitration.

Annex – Appendix 5.5.1 Cont.

- (d) (1) In connection with a disciplinary hearing, the chief or hearing board may issue subpoenas to compel the attendance and testimony of witnesses and the production of books, papers, records, and documents as relevant or necessary.
- (2) The subpoenas may be served without cost in accordance with the Maryland Rules that relate to service of process issued by a court.
- (3) Each party may request the chief or hearing board to issue a subpoena or order under this subtitle.
- (4) In case of disobedience or refusal to obey a subpoena served under this subsection, the chief or hearing board may apply without cost to the circuit court of a county where the subpoenaed party resides or conducts business, for an order to compel the attendance and testimony of the witness or the production of the books, papers, records, and documents.
- (5) On a finding that the attendance and testimony of the witness or the production of the books, papers, records, and documents is relevant or necessary:
- (i) the court may issue without cost an order that requires the attendance and testimony of witnesses or the production of books, papers, records, and documents; and
- (ii) failure to obey the order may be punished by the court as contempt.
- (e) (1) The hearing shall be
- (I) conducted by a hearing board; *and*
- (II) *open to the public, unless the chief finds a hearing must be closed for good cause, including to protect a confidential informant, an undercover officer, or a child witness*
- (2) The hearing board shall give the law enforcement agency and law enforcement officer ample opportunity to present evidence and argument about the issues involved.
- (3) The law enforcement agency and law enforcement officer may be represented by counsel.
- (4) Each party has the right to cross-examine witnesses who testify and each party may submit rebuttal evidence.
- (f) (1) Evidence with probative value that is commonly accepted by reasonable and prudent individuals in the conduct of their affairs is admissible and shall be given probative effect.
- (2) The hearing board shall give effect to the rules of privilege recognized by law and shall exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence.

Annex – Appendix 5.5.1 Cont.

- (3) Each record or document that a party desires to use shall be offered and made a part of the record.
- (4) Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.
 - (g) (1) The hearing board may take notice of:
 - (i) judicially cognizable facts; and
 - (ii) general, technical, or scientific facts within its specialized knowledge.
 - (2) The hearing board shall:
 - (i) notify each party of the facts so noticed either before or during the hearing, or by reference in preliminary reports or otherwise; and
 - (ii) give each party an opportunity and reasonable time to contest the facts so noticed.
 - (3) The hearing board may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented.
- (h) (1) With respect to the subject of a hearing conducted under this subtitle, the chief shall administer oaths or affirmations and examine individuals under oath.
 - (2) In connection with a disciplinary hearing, the chief or a hearing board may administer oaths.
 - (i) (1) Witness fees and mileage, if claimed, shall be allowed the same as for testimony in a circuit court.
 - (2) Witness fees, mileage, and the actual expenses necessarily incurred in securing the attendance of witnesses and their testimony shall be itemized and paid by the law enforcement agency.
- (j) An official record, including testimony and exhibits, shall be kept of the hearing.

Changes in effect on 10/1/16 HB101

Annex B – Appendix 5.5.2 - Disciplinary Hearing Board Information and Process

Hearing Board Member Responsibilities

1. Maintain a chronology of events – Starting/Ending times, etc.
2. Control and record all submitted evidence – description, when entered, by whom.
3. Record all motions and include separately with written reporting.
4. Take notes regarding testimony – objections, motions, evidence, etc.
5. Come to a decision – majority rules.
6. Present written decision to the Chief of Police.

Stages of a Departmental Hearing Board

1. Reading of the departmental charges.
2. Plea by the accused.
3. Opening statement by the prosecution (legal).
4. Opening statement by the defense (defense attorney for the accused).
5. Prosecution case-in-chief, includes examination of witnesses by direct and cross-examination.
6. Motion for acquittal (from the defense attorney).
7. The Board will recess to discuss the motion for a judgement of acquittal.
8. The Board will reconvene to render its decision as to the motion for judgement of acquittal. Note: acquittal motion – granted or denied - if denied, defense case begins.
9. Defense case, includes examination of witnesses by direct and cross-examination.
10. Rebuttal by the prosecution, includes examination of witnesses by direct and cross-examination.
11. Closing arguments by the prosecution.
12. Closing arguments by the defense.
13. Rebuttal arguments by prosecution.
14. Deliberation for the verdict.
15. Announcement of the verdict.
16. Mitigation witnesses by the defense.
17. Anti-mitigation witnesses by the prosecution.
18. Punishment argument by the prosecution.

Annex B – Appendix 5.5.2, Cont.

19. Punishment argument by the defense.
20. Deliberation for the punishment recommendation.
21. Announcement of the punishment recommendation.
22. Close.

Hearing Board Procedural Steps

All of the following items must be read into the record:

1. Let the record show that on _____ at _____ this Hearing Board is convened to hear the charges against _____.
2. This hearing will be recorded but not transcribed unless deemed necessary, at a later date.
3. The members of the Board are: _____ (identify all members).
4. Would the attorneys for both sides please identify themselves for the record?
5. Mr./Ms. _____, has your client received a copy of the charges and related specifications?

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

6. Are you ready to proceed?
7. What is your client's plea to (each of) the charges and specification? (Record all pleas)
8. Opening statement of Mr./Ms. _____ (departmental attorney).
9. Opening statement of Mr./Ms. _____ (defense attorney).
10. Prosecution case - Mr./Ms. _____, call your first witness.

Note: After the department presents its case, the defense will move for a motion for judgement of acquittal. Has the department presented a Prima Facie Case?

11. The Board will recess at _____ hours to discuss the motion for judgement of acquittal.
12. The Board is reconvened at _____ hours to render its decision as to the motion for judgement of Acquittal.

Note: Acquittal motion is granted or denied. If denied, the defense case begins.

13. Defense case – Mr./Ms. _____, call your first witness.

Note: After the defense presents their case the verdict deliberation commences.

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

Note: After the verdict deliberation:

Annex B – Appendix 5.5.2, Cont.

15. This Hearing Board is reconvened at _____ hours to inform Police Officer _____ of the Board's findings regarding the listed charges and specifications.

16. The Board reviewed the evidence and the testimony. It took into account the totality of the evidence presented. The Board finds that ... (all charges and findings are read into the record).

17. If a guilty verdict: MR./Ms. _____, do you have any mitigation witnesses?

Note: After mitigation witnesses, the Board recesses for punishment deliberation.

18. Let the record show that the Board recessed at _____ hours for punishment deliberation and recommendation.

19. This Hearing Board is reconvened at _____ hours to inform Police Officer (Detective) _____ of the Board's recommended punishment.

Note: Read into the record: As to Charge # _____, Specification _____, the Board recommends _____.

20. The Board's recommendations will be forwarded to the Chief of Police for his/her final determination.

21. This case has been concluded and the hearing shall stand adjourned at _____ hours.

Note: If termination is recommended, a department sworn member of senior rank will suspend the accused if he/she is not already under that status.