

2. ADMINISTRATIVE HEARING BOARDS (December 2005)

I. POLICY

In accordance with due process generally, and the Law Enforcement Officers Bill of Rights specifically, unless a sworn employee is convicted of a felony in a court of law, it is the policy of the Department to provide every sworn non-probationary employee accused of misconduct a hearing so that the employee may respond to the allegations and present their perspective. Probationary sworn employees are only provided hearings when the allegation(s) involves use of force.

II. CHECKLIST (N/A)

III. DEFINITIONS

Administrative Hearing Board (AHB):
An administrative body that conducts hearings concerning charges that have been sustained against sworn employees, determines findings of fact, and makes recommendations of discipline to the Chief of Police.

IV. FORMS

- Report of Investigation (PGC Form #67M)

V. PROCEDURES

Administrative Hearing Boards (AHB) are quasi-judicial proceedings, and shall be conducted according to guidelines published by the Maryland Chiefs of Police Association, Inc., in an atmosphere affording a degree of formality. They are open to the public. The chairman of the

AHB shall exclude disruptive persons from attendance.

The rules of evidence used by the Courts need not be strictly followed. Hearsay evidence may be introduced for its probative value.

Any decision, order, or action taken as a result of the hearing shall be in writing and accompanied by findings of fact, which shall consist of a concise statement regarding each issue in the case. AHB findings and recommendations shall be forwarded to the Director, OPR who shall forward them to the Chief of Police for review.

A copy of the Chief's determination, accompanying findings, and conclusions, with recommendations for action, shall be delivered or mailed promptly to the respondent or their representative.

1. Respondent Privileges

The respondent's appearance before an AHB is optional. The respondent officer shall be notified in writing of the AHB and the charges to be presented no less than 30 days prior to the hearing.

Within three working days of service, the respondent shall advise the Director, IAD, whether they wish to appear before the AHB in their defense. If they do not wish to appear, they must sign and forward a waiver to the Director, IAD.

The respondent has the right to be represented by an individual of their choosing. The respondent, or the representative, may call defense witnesses and cross-examine prosecution witnesses.

A respondent may request to waive their right to an AHB and be disciplined by the

Chief of Police directly. Approval of the waiver is at the discretion of the Chief who may mandate an AHB, even if the respondent chooses not to attend.

2. Appearance at Boards

Notice to appear before an AHB is a direct order. Failure to appear is insubordination.

Upon appearance, any employee who disobeys a direct order to testify specifically, directly, and narrowly to the facts at issue before the AHB may be suspended and charged with insubordination.

Witness Fees

Police or civilian witnesses summoned for the prosecution or defense fall within the purview of the LEOBR.

Witness fees, mileage, and expenses incurred to secure the attendance of witnesses or their testimony shall be itemized and paid by the Department according to the criteria used by the Circuit Court.

Commanders/Directors may require that a copy of the summons be attached to the Compensation Request Form.

Applications for witness fees are available through the Fiscal Affairs Division (FAD) and must be validated by the AHB Chairman.

Continuances

Requests for continuances must be made in writing to the Director, IAD, no less than 72 hours prior to the hearing.

Emergency requests shall be honored without regard to this provision.

3. Weapons

Respondents shall not possess weapons during administrative proceedings.

The chairman of the AHB is responsible for security of the proceedings.

4. IAD Responsibilities

(Internal Affairs Division SOP)

The Director, IAD, will designate an AHB Coordinator who shall:

- ❑ Serve as the point of contact for all parties to the proceeding
- ❑ Oversee the decorum of the AHB
- ❑ Effect witness's appearance
- ❑ Notify the parties as appropriate
- ❑ Coordinate the collection and dissemination of documents
- ❑ Monitor the selection of the board member of equal rank

5. AHB Coordinator

The AHB Coordinator shall report to the Director, IAD, and is responsible for coordinating AHBs. The coordinator shall:

- ❑ Prepare and disseminate necessary documents to facilitate the AHB process
- ❑ Coordinate the scheduling of pre-trial conferences and hearings to ensure necessary accommodations, equipment and personnel are available
- ❑ Act as the Departmental liaison and assist during the hearing process
- ❑ Monitor cases with sustained findings through final disposition
- ❑ Provide timely updates to the Director, IAD, regarding status of sustained cases in the hearing board process

6. Duties of the AHB Chair

The Chair presides over the AHB and is responsible for ruling on procedural questions and objections raised by either party, as well as determining the acceptability or relevance of evidence presented. The Chair shall notify the Chief of Police, in writing, of the Board's findings, recommendations, and vote.

7. Duties of Board Members

All board members shall participate in deliberations to determine a verdict and recommendation. Majority opinion shall prevail.

8. One-Member Board

When a respondent officer rejects summary punishment, a one-member AHB shall be convened.

The hearing officer shall be selected by the Chief of Police, and hold the rank of Captain or above. In every instance, the AHB Officer shall be at least one rank higher than the respondent.

The AHB shall be bound by the range of disciplinary actions authorized for summary punishment by the LEOBR for each charge.

9. Three-Member Board

The Chief may convene a three-member AHB comprised of officers who did not participate in the incident or the subsequent investigation that lead to the hearing board.

At least one AHB member shall be of equal rank and assignment as the respondent, unless impractical. The second member shall usually be a Captain. The third member is the Chair, a Major or above, who

has completed the disciplinary training seminar.

The Chief of Police, or his designee, chooses the Chair and the Captain. The respondent chooses the officer of equal rank by lottery. The respondent randomly selects two names:

- ❑ A primary officer of equal rank
- ❑ An alternate officer of equal rank

The respondent, or representative, and the Director, OPR may strike one name from the officer of equal rank list for any reason. The respondent, or representative, and the Director, OPR may strike additional selections for just cause. Explanations shall be provided to the AHB Coordinator who shall document the reason(s) and then approve or deny the strike.

IAD maintains a list of positions ineligible to serve as AHB members. The list is available to any officer upon request.

Order of Presentation of Evidence

- ❑ Presentation of prosecution's case
- ❑ Cross-examination by defense
- ❑ Examination by AHB members
- ❑ Presentation of defense's case
- ❑ Cross-examination by prosecution
- ❑ Examination by AHB members
- ❑ Summation by prosecution
- ❑ Summation by defense
- ❑ Final rebuttal by prosecution

Deliberation by the Board

Deliberation leading to a finding of fact by the Board shall be done in a closed session and shall not be a matter of record.

Degree of Proof

The standard of proof when determining guilt or exoneration shall be a preponderance of the evidence.

A preponderance of evidence is the belief that it is more likely than not that the event occurred. Expressed numerically, the preponderance of evidence would be 51% on a scale of 1-100. In determining the preponderance of evidence, it must be weighed against the character of the witnesses, the nature of the evidence, and the probabilities of its truth when tested by the experience of an average individual.

Violations of administrative regulations are by no means the same as violations of criminal law, which may lead to the loss of life or liberty. The serious nature of the penalty for criminal violations requires proof beyond a reasonable doubt. Violations of administrative regulations can result, at most, in termination of employment. Due to the lesser nature of the potential consequences, the standard for conviction in an AHB is the preponderance of evidence.

Board Recommendations to the Chief of Police

The Chief of Police is not bound by the disciplinary action recommendations provided by the AHB.

Within 30 days of receipt of the recommendations, the Chief of Police shall review the findings, conclusions, and recommendations and issue a final order. The final order is binding but may be appealed to the Circuit Court.

When considering whether to increase the recommended disciplinary action, the Chief of Police shall:

- ❑ Review the entire record of the AHB proceedings
- ❑ Meet with, and allow, the respondent to be heard on the record
- ❑ Disclose and provide to the respondent, in writing, any information not included in the AHB record upon which the decision to increase the penalty is based in whole or in part, at least 10 days prior to the meeting
- ❑ State on the record the evidence relied upon to support the increase of the recommended penalty

Notwithstanding any other provisions of this section, if the Chief of Police is a witness to the incident that led to the AHB, the decision of the AHB, both as to finding of fact and punishment, if any, is final. That decision may then be appealed in accordance with the LEOBR.

Recommendation for Termination

If the AHB recommends that the respondent's employment be terminated, the respondent's police powers shall be suspended and the respondent shall be placed on administrative leave. An OPR officer shall recover all equipment listed on the Suspension Property Checklist from the respondent.

Department-wide notification regarding the respondent's suspension shall be made under the authority of the Director, OPR.

All letters of termination shall be prepared and served by the OPR at the direction of the Chief of Police.

Appeal to the Circuit Court

If the respondent wishes to appeal the Chief's decision to the Circuit Court, the Director, IAD, shall be notified within 30 days. The respondent must comply with court rules to effectuate an appeal.

10. File Expungement

(Records Management Handbook)

If an officer has been investigated or interrogated by the Department for any reason that could have resulted in disciplinary action, the LEOBR permits that officer, upon written request, to have any record of a formal complaint expunged from any file provided that:

- ❑ The law enforcement agency investigating the complaint has exonerated, non sustained, or unfounded all of the charges in the complaint, or
- ❑ An AHB renders an acquittal, a dismissal, or a finding of not guilty in the matter, and
- ❑ Three years have passed since the law enforcement agency's findings

Expungement requests shall be forwarded to the Director, OPR, who shall notify the:

- ❑ Chief of Police
- ❑ Citizen Complaint Oversight Panel
- ❑ Director, Records Section
- ❑ Human Relations Commission

If expungement is approved, all reports shall be forwarded to the Director, IAD. The file and the Report of Investigation shall be destroyed by shredding or burning. The Director, IAD, shall certify the destruction.

If approved, the expungement and destruction of IAD records will occur

approximately six months after the three years have passed.

An investigative record of a complaint shall not be expunged if civil litigation is pending.

For cases involving multiple respondents or multiple charges, a file shall not be destroyed if it contains any sustained findings. All information pertaining to employees whose charges were exonerated, non sustained, or unfounded shall be deleted from the file.

11. Infractions - Category I Through III

The respondent shall be informed, in writing, of the:

- ❑ Specific charges
- ❑ Proposed disciplinary action
- ❑ Appeal procedures
- ❑ Scheduled AHB, if appropriate

The employee may accept the proposed disciplinary action or have the case heard by the AHB.

Within 10 working days of service, the respondent shall notify the investigator whether they wish to accept summary punishment or request that the case be heard by an AHB. The respondent shall also advise whether they want to appear at the hearing.

A respondent requesting a hearing must submit the request in writing. Upon receipt, the investigator shall forward the entire case through the chain of command to the Director, IAD.

12. Infraction - Category IV

All sustained Category IV violations should be heard by an AHB. The investigator shall inform the respondent, in writing, of the specific charges and recommended disciplinary action. The interpretation of the facts may be shared with the respondent.

A pretrial conference between the prosecution and defense will be held in order to determine the date and time of the AHB and to discuss discovery issues.

OPR will prepare all documents in reference to the pending AHB and will notify the respondent, in writing, of the hearing date.

VI. GOVERNING LEGISLATION & REFERENCE

This General Order addresses:

- ❑ Commission on Accreditation for Law Enforcement Agencies, Standards 26.1.6, 26.1.8
- ❑ Memorandum of Agreement Between the United State's Department of Justice and Prince George's County Maryland, January 22, 2004

References:

- ❑ Office of Professional Responsibility, Internal Affairs Division SOPS
- ❑ Office of Professional Responsibility, Internal Investigations Guide
- ❑ Maryland Code, Title 3, Subtitle 1 et. seq., Law Enforcement Officers' Bill of Rights,
- ❑ Manual of Procedures for Administrative Disciplinary Hearings, Maryland Chiefs of Police Association, Incorporated 1997