



Administrative Hearing Boards

.01 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 Bladensburg Police 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.

.02 Terms

Administrative Hearing Board: 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.

LEOBR: Law Enforcement Officers' Bill of Rights

.03 Governing Legislation and Reference

Governing Legislation:

Maryland Public Safety Article, Title 3, Subtitle 1 *et. seq.*, Law Enforcement Officers' Bill of Rights.

Forms:

Administrative Hearing Board Attestation Form (Form #6707).

Administrative Hearing Board Exhibit Inventory (Form #6708).

Administrative Hearing Board Procedure Script (Form #6709).

.04 Procedure

Administrative Hearing Boards are quasi-judicial proceedings, and shall be conducted in an atmosphere affording a degree of formality. They are open to the public. The chairman of the Administrative Hearing Board 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. Administrative Hearing Board findings and recommendations shall be forwarded 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.

A. Respondent Privileges

The respondent's appearance before an Administrative Hearing Board is optional. The respondent officer shall be notified in writing of the Administrative Hearing Board 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 Chief of Police whether they wish to appear before the Administrative Hearing Board in their defense. If they do not wish to appear, they must sign and forward a waiver to the Chief of Police.

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 Administrative Hearing Board and be disciplined by the Chief of Police directly. Approval of the waiver is at the discretion of the Chief who may mandate an Administrative Hearing board, even if the respondent chooses not to attend.

B. Appearance at Boards

Notice to appear before an Administrative Hearing Board 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 Administrative Hearing Board may be suspended and charged with insubordination.

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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.

A copy of the summons shall be attached to the Compensation Request. Requests for witness fees must be validated by the Administrative Hearing Board Chairman.

Continuances

Requests for continuances must be made in writing to the Chief of Police, no less than 72 hours prior to the hearing.

Emergency requests shall be honored without regard to this provision.

C. Weapons

Respondents shall not possess weapons during administrative proceedings.

The chairman of the Administrative Hearing Board is responsible for security of the proceedings.

D. Administrative Hearing Board Coordinator

The Chief of Police shall designate an Administrative Hearing Board Coordinator who shall:

- Serve as the point of contact for all parties to the proceeding;
- Oversee the decorum of the Administrative Hearing Board;
- 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;
- Prepare and disseminate necessary documents to facilitate the Administrative Hearing Board process;
- Coordinate the scheduling of pre-trial conferences and hearings to ensure necessary accommodations, equipment,

and personnel are available; and,

- Act as the Departmental liaison and assist during the hearing process.

E. Duties of the Administrative Hearing Board Chair

The Chair presides over the proceeding 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.

F. Duties of Board Members

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

G. One-Member Board

When a respondent officer rejects summary punishment, a one-member Administrative Hearing Board shall be convened.

The hearing officer shall be selected by the Chief of Police and shall be at least one rank higher than the respondent.

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

H. Three-Member Board

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

At least one Administrative Hearing Board member shall be of equal rank and assignment as the respondent, unless impractical. The Chair, shall be a command staff officer.

Order of Presentation of Evidence

- Presentation of prosecution's case;
- Cross-examination by defense;
- Examination by Administrative Hearing Board members;
- Presentation of defense's case;
- Cross-examination by prosecution;

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- Examination by Administrative Hearing Board members;
- Summation by prosecution;
- Summation by defense; and,
- 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 Administrative Hearing Board 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 Administrative Hearing Board.

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 Administrative Hearing Board 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 Administrative Hearing Board record upon which the decision to increase the penalty is based in whole or in part, at least 10 days prior to the meeting; and,
- 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 Administrative Hearing Board, the decision of the Administrative Hearing Board, 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 Administrative Hearing Board 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.

Department-wide notification regarding the respondent's suspension shall be made under the authority of the Chief of Police.

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

Appeal to the Circuit Court

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

I. File Expungement

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, not sustained, or unfounded all of the charges in the complaint, or,

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An Administrative Hearing Board 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.

If expungement is approved, the file and the Report of Investigation shall be destroyed by shredding or burning. The Chief of Police shall certify the destruction.

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 redacted from the file.

HISTORY: Adopted December 1, 2013

This General Order supersedes all other orders and memoranda in conflict therewith.

Authority:



Charles L. Owens
Chief of Police